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

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MCLAUGHLIN, KELLY MULLIGAN-  
MAHONEY, SHARON RANSAVAGE,  
DAVID RIEN, DAVID SIBLEY, MARK  
HOULE, KURT MALLORY, JOAN DUDLEY,  
MARYBETH WINKLER, CATHERINE  
ROBERTS, JOSEPH COLLESANO, SIMON  
BEAVEN, STEVE MORTILLARO, RYAN  
GEIER, DANIEL SULLIVAN, BARRY  
GLUSTOFF, THOMAS AYALA, JAMES  
BERGMANN, MATTHEW MIKULSKY,  
RICHARD GROGAN, CHAD DIAL, LORI  
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WHITE, WILLIAM PREININGER, DANIEL  
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ANDREA FRANZ, WARREN COFFIN,  
CESAR OLMOS, THOMAS LASKO, JOHN

Civil Action No.

**CLASS ACTION COMPLAINT AND  
DEMAND FOR JURY TRIAL**

GAMBLE, LESLIE MACLISE-KANE, JASON  
HILL, AARON JOY, ROBERT MILLER,  
RAMON SAN NICOLAS, on behalf of  
themselves and all others similarly situated,

Plaintiffs,

v.

VOLKSWAGEN GROUP OF AMERICA, INC.,  
a New Jersey Corporation, and VOLKSWAGEN  
AG, a German corporation,

Defendants.

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Plaintiffs John McLaughlin, David Sibley, Mark Houle, Kurt Mallory, Joan Dudley, Marybeth Winkler, Catherine Roberts, Amy Clarke, Joseph Collesano, Simon Beaven, Steve Mortillaro, Ryan Geier, Daniel Sullivan, Barry Glustoff, Thomas Ayala, James Bergmann, Matthew Mikulsky, Richard Grogan, Chad Dial, Lori Edwards, Tamara Lyman, Eric White, William Preininger, Daniel Ohlstein, Dorie Mallory, Wendy Goldner, Brian Bialecki, Dawn Boulware, Mark Gjonbalaj, Angela Wagner, Sharon Ransavage, David Rien, Charles Robbins, Thomas Buchberger, , Kyle Tisdell, Craig Lybarger, Britney Schnathorst, Jonathon Rodgers, Donald Allen, Luis Moreno, Charles Nicolosi, Alfred Golden, Jack Sandelman, Kelly Mulligan-[Mah?], Linda Hunt, Daphne Marcyan, Paul Harris, Heather Lemelle, Harry Walsh, Andrea Franz, Warren Coffin, Cesar Olmos, Thomas Lasko, John Gampble, Leslie Maclise-Kane (“Plaintiffs”), individually and on behalf of all others similarly situated (the “Class”), allege the following:

## I. INTRODUCTION

1. The United States Government, through the Environmental Protection Agency, as well as individual state regulators, have passed and enforced laws designed to protect their citizens from pollution and in particular, certain chemicals and agents known to cause disease in humans. Automobile manufacturers must abide by these laws and must adhere to state and EPA rules and regulations. This case arises because Defendants Volkswagen AG and Volkswagen Group of America (collectively, “Volkswagen”) purposefully and intentionally breached the laws of the United States and the rules and regulations of various states and the EPA by selling in the United States Volkswagen and Audi vehicles that purposefully evaded federal and state laws. As stated by Cynthia Giles, Assistant Administrator for the Office of Enforcement and Compliance Assurance at the EPA: “Using a defeat device in cars to evade clean air standards is

illegal and a threat to public health.” Yet that is exactly what Volkswagen did in its 2009-2015 Volkswagen and Audi CleanDiesel vehicles.<sup>1</sup>

2. As detailed in the EPA’s Notice of Violation (“NOV”), sophisticated software in the Volkswagen and Audi diesel vehicles sold by Volkswagen in the United States detects when the vehicle is undergoing official emissions testing and turns full emissions controls on during the test. But otherwise, at all other times that the vehicle is running, the emissions controls are suppressed. This results in cars that meet emissions standards in the laboratory or testing station, but during normal operation emit nitrogen oxides (NOx) at up to 40 times the standard allowed under federal and state laws and regulations. The software produced and used by Volkswagen is a defeat device as defined by the Clean Air Act.

3. By manufacturing and selling cars with defeat devices that allowed for higher levels of emissions than what was certified to EPA, and higher levels than state and federal regulations allow, Volkswagen violated the Clean Air Act and state regulations, breached its express and implied warranties, defrauded its customers, and engaged in unfair competition under state and federal law.

4. According the EPA NOV and admitted by Volkswagen, Volkswagen installed its defeat device in at least the following diesel models of its vehicles (the “Affected Vehicles”): MY 2009-2015 VW Jetta; 2009-2015 Jetta Sportswagen; MY 2012-2015 VW Beetle and Beetle Convertible; MY 2010-2015 VW Golf; 2015 Golf Sportswagen; MY 2012-2015 VW Passat; and MY 2010-2015 Audi A3. Discovery may reveal that additional vehicle models and model years are properly included as Affected Vehicles.

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<sup>1</sup> See Sept. 18, 2015 EPA News Release.

5. Substantial diminution in the value of Affected Vehicles has already been reported. On average, the resale value of Volkswagen diesel cars fell 13% in the first two weeks following the disclosure of VW fraud.<sup>2</sup> In addition, Volkswagen Group of America CEO Michael Horn admitted in Congressional testimony on October 8, 2015, that at least 415,000 of the Affected Vehicles will require software *and hardware* changes and any fix for these vehicle could take years to implement and vehicle performance may be implicated.<sup>3</sup>

6. Plaintiffs bring this action individually and on behalf of all other owners or lessees of Affected Vehicles at the time that Volkswagen's fraud was disclosed. Plaintiffs seek damages, injunctive relief, and equitable relief for the conduct of Volkswagen related to the defeat device, as alleged in this Complaint. Specifically, Plaintiffs seek: the return of the premium that they paid for a CleanDiesel over the cost of the same model and trim of car with a gasoline engine; restitution of the purchase price of their car should any "fix" installed by Volkswagen result in a degradation of performance and/or fuel efficiency; compensation for any additional sums spent of fuel or maintenance as a result of any "fix"; restitution for purchase of extended warranties that will go unused; and a lump sum for remediation of the environmental damage Plaintiffs and the Class unwittingly contributed to by driving cars that they believed were clean, but were in fact in violation of state and EPA regulations and the Clean Air Act.

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<sup>2</sup> See <http://www.buzzfeed.com/matthewzeitlin/resale-value-of-vw-diesels-down-13-percent#.kvRJEo96L>

<sup>3</sup> See <http://www.autonews.com/article/20151008/OEM02/151009826/older-vw-diesels-will-need-software-and-hardware-fixes-horn-tells>

## II. FACTUAL ALLEGATIONS

### A. EPA and State Regulations Place a Premium on the Reduction of Pollutants that Cause Smog and Are Harmful to Human Health

7. The Clean Air Act, enacted in 1970, is a comprehensive federal law that regulates air emissions from stationary and mobile sources. 42 U.S.C. § 7401, *et seq.* (1970). Congress determined 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). The Clean Air Act and the regulations under it, as well as state regulations, were passed and are intended to reduce the emission of NO<sub>x</sub> and other pollutants, thereby protecting human health and the environment.

8. NO<sub>x</sub> contributes to nitrogen dioxide, ground-level ozone, and fine particulate matter. When humans are exposed to nitrogen dioxide, they may be at a greater risk for serious health dangers, including asthma attacks and other respiratory illness requiring hospitalization. Ozone and particulate matter exposure have been associated with premature death due to respiratory-related or cardiovascular-related effects. Children, the elderly, and people with pre-existing respiratory illness are at an elevated risk for adverse health consequences associated with these pollutants.

9. The Clean Air Act requires car makers to certify that vehicles sold in the United States meet federal emissions standards. The EPA certifies conformity with regulations to car makers for vehicles that satisfy emissions regulations. To be sold in the United States, a vehicle must be certified by the EPA to comply with its regulations.

10. The Clean Air Act 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.”

11. The Clean Air Act defines a “defeat device” as one “that reduces the effectiveness of the emission control system under conditions which may reasonably be expected to be encountered in normal vehicle operation use.” When a defeat device is in place, it can bypass, defeat, or render inoperative elements of the vehicle’s emission control system that are put in place to ensure compliance with the Clean Air Act. Motor vehicles that are equipped with defeat devices cannot be certified by the EPA.<sup>4</sup>

12. California’s emission standards are even more stringent than EPA standards. Several states have adopted California’s standards and also demand even more from car makers than the EPA. The California emissions regulator is called the California Air Resources Board, or CARB.

**B. Volkswagen Falsely Pitched Itself as a Leader in Environmental Issues**

13. Volkswagen is a German automotive company that manufactures and sells vehicles under the Volkswagen, Audi, Porsche and other brand names with operations in approximately 150 countries, including the United States. In the first half of 2015, Volkswagen surpassed Toyota as the world’s largest automaker by sales, selling 5.04 million vehicles in the first six months of the year. By July 2015, Volkswagen ranked eighth on the Fortune Global 500 list of the world’s largest companies.

14. Despite Volkswagen’s ascension to become the world’s biggest automaker, Volkswagen sales lagged in the United States. Volkswagen has sought to improve sales in the

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<sup>4</sup> EPA, Advisory Circular Number 24: Prohibition on use of Emission Control Defeat Device (Dec. 11, 1972).

United States by touting the performance and reliability of its vehicles and its environmental leadership. Volkswagen's 2013 Annual Report emphasizes that "Volkswagen intends to become the global economic and environmental leader among automobile manufactures by 2018" and that "[w]e are focusing in particular on the environmentally friendly orientation and profitability of our vehicle projects."

**C. Volkswagen Falsely Marketed its Diesel Engine Systems as Clean and Green**

15. Volkswagen broadly boasted about the performance and environmental cleanliness of its engine systems. In an October 2008 release, Volkswagen bragged:

The Jetta TDI is amongst the ten most fuel efficient vehicles on the US market. In the recently published "Fuel Economy Guide 2009" the EPA (Environmental Protection Agency) listed the Jetta TDI in the top ten low consumption and low emissions vehicles.

In the current edition of the publication, the Jetta 2.0 l Clean TDI, introduced to the market two months ago, is praised particularly for its excellent consumption figures - it has a fuel consumption of 5.7 litre per 100 kilometre. Moreover, the Jetta Clean TDI also fulfils stringent Californian emission standards. This was achieved through modifications within the engine and ***by implementing an exhaust treatment system developed especially by Volkswagen and which reduces nitrogen oxide emissions (NOx) by up to 90 percent.*** The central element of the exhaust treatment system is the NOx storage catalytic converter.<sup>5</sup>

16. Since introducing the 2.0L TDI CleanDiesel engine in 2008, Volkswagen has touted it as a "fantastic power train" that "gives very good fuel economy" and "is also good for the environment because it puts out 25% less greenhouse gas emissions than what a gasoline

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<sup>5</sup> See [http://www.volkswagenag.com/content/vwcorp/info\\_center/en/news/2008/10/vw\\_in\\_fuel\\_economy\\_guide.html](http://www.volkswagenag.com/content/vwcorp/info_center/en/news/2008/10/vw_in_fuel_economy_guide.html) (last accessed Sept. 23, 2015) (emphasis added).

engine would . . . cuts out the particulate emissions by 90% and the emissions of nitrous oxide are cut by 95% . . . [and is] clean enough to be certified in all 50 states.”<sup>6</sup>

17. The TDI CleanDiesel engines are turbocharged and directly inject fuel into each cylinder via fuel injectors. Volkswagen has stated, “[t]he superior qualities of the 2.0 Liter 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.”

18. Volkswagen has marketed and advertised its CleanDiesel models as extraordinarily clean, EPA certified in all 50 states, and powerful. For example, the following promotional material was used in 2010, and similar materials have been used across the spectrum of models using the CleanDiesel engine system:

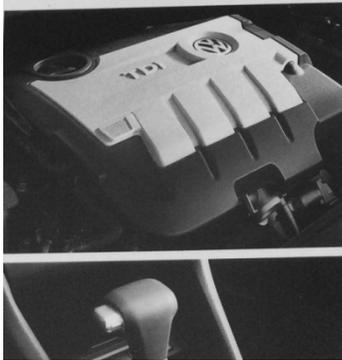
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<sup>6</sup> Statement of Volkswagen Group of America, Inc.’s Chief Operating Officer Mark Barnes, to The Business Insider, October 9, 2009.

## Burn rubber, not money.

The all-new 2010 Golf TDI Clean Diesel offers fuel efficiency,\* power, and performance. Or, in other words, it's a lean, mean, cleaner-burning machine. The Volkswagen TDI engine is cleaner than conventional diesels, emitting as much as 95% fewer sooty emissions than previous diesel engines, as well as a reduction in oxides of nitrogen and sulfur. It's powerful, with the kind of street-savvy torque that brings a smile to every stoplight. It's efficient, using a turbocharger and smart exhaust design to use fuel more effectively. So much so, in fact, that Volkswagen was the first automaker to make clean diesel cars that are certified in all 50 states. And best of all, it will help save you money, with an out-of-this-world EPA-estimated mileage of 30 city/42 highway mpg (automatic)\* and over 594 miles on a single tank of fuel.\*\*

If efficiency and savings weren't enough, the Golf TDI model also gives you premium features like the multi-function leather steering wheel, the touchscreen Premium VIII radio with a Media Device Interface (MDI) and iPod® cable, SIRIUS® Satellite Radio, a 6-speed manual transmission, fog lights, and the optional navigation package with touchscreen navigation to efficiently find your way to the bank.



"Good, clean fun" takes on  
a whole new meaning.



19. Volkswagen's advertising, which keyed on the unique combination of clean, efficient and highly performing, was very effective. In fact, Volkswagen has become the largest seller of diesel passenger vehicles in the United States.

20. In an October 2009 interview with Business Insider, when asked "[w]hat is the advantage of a diesel over a hybrid," VW of America's Chief Operating officer, Mark Barnes, stated: "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."<sup>7</sup>

<sup>7</sup> Gayathri Vaidyanathan, *Volkswagen Preps for a Diesel Revolution*, The Business Insider, Oct. 9, 2009, <http://www.businessinsider.com/volkswagen-preps-for-adiesel-revolution-2009-10>.

21. Volkswagen doubled-down on “clean” and “green” vehicles. Being highly efficient, fun, and “clean” are the central messages for Volkswagen’s diesel engine campaign.

22. Volkswagen also touted the performance characteristics of the TDI CleanDiesel, claiming that clean emission technology did not sacrifice its 236 lbs/ft of torque and turbocharged CleanDiesel engine. In a recent 2015 Volkswagen Golf sales brochure, Volkswagen stated “With the 2.0L TDI engine, you’ll appreciate every fuel-efficient mile with the EPA-estimated 45 hwy mpg. But that’s only half the story. Step on the pedal and feel the 236 lb-ft of torque and let the performance tell the other half.”



**1.8L TSI® engine**

With the turbocharged 1.8L TSI engine, performance comes standard along with practicality, it's fast\* it's fun. And it can get up to an EPA-estimated 37 hwy mpg\*\* In short, it's a turbocharged win-win.

**170**  
HORSEPOWER

**200**  
LB-FT OF TORQUE



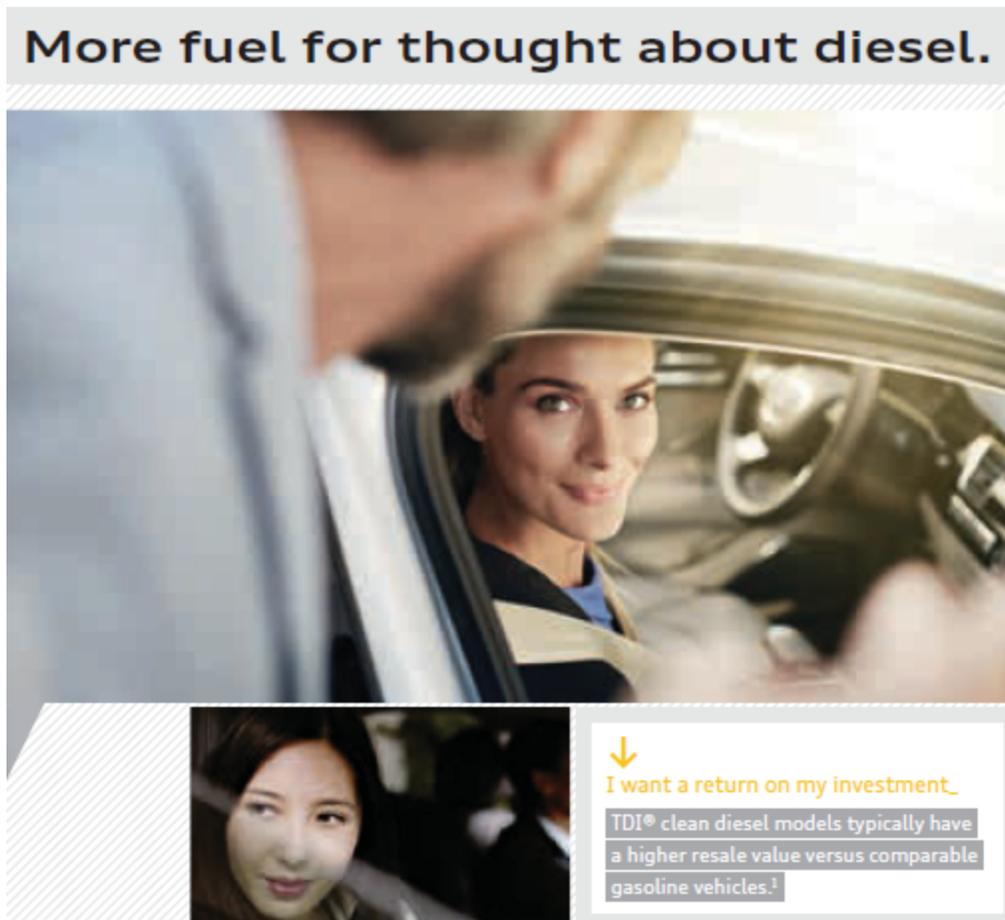
**2.0L TDI® Clean Diesel engine**

With the 2.0L TDI engine, you'll appreciate every fuel-efficient mile with the EPA-estimated 45 hwy mpg! But that's only half the story. **Step on the pedal and feel the 236 lb-ft of torque. And let the performance tell the other half!**

**150**  
HORSEPOWER

**236**  
LB-FT OF TORQUE

23. Volkswagen also claimed that TDI Clean Diesel models “typically have a higher resale value versus comparable gasoline vehicles”:



24. But even when Volkswagen knew that EPA investigators had discovered—or at the very least suspected—their fraud and the defeat device, it continued to deceive its customers through false recalls and false advertising.

25. Beginning in April 2015, Volkswagen issued VW Action Code 2306, which was a recall for CleanDiesel equipped vehicles. Volkswagen claimed that the recall was a “repair” and that it “improved” the engine management system. But many owners recorded a marked decrease in fuel efficiency and performance after the recall was completed.

26. Below is a copy of the Recall Notice sent to CleanDiesel owners in April 2015:



Das Auto.

Volkswagen of America, Inc.  
3800 Hamlin Road  
Auburn Hills, MI 48326

April 2015

**This notice applies to your vehicle:**

**Subject: Emissions Service Action 2306 – ECM Software  
Certain 2010-2014 Model Year Volkswagen Vehicles Equipped with a 2.0L TDI®  
Clean Diesel Engine**

Dear Volkswagen Owner,

As part of Volkswagen's ongoing commitment to our environment, and in cooperation with the United States Environmental Protection Agency and the California Air Resources Board, we are informing you of our decision to conduct an emissions service action on certain 2010-2014 model year Volkswagen vehicles equipped with a 2.0L TDI® Clean Diesel engine. Our records show that you are the owner of a vehicle affected by this action.

**What is the issue, and what will we do?**

The vehicle's engine management software has been improved to assure your vehicle's tailpipe emissions are optimized and operating efficiently. Under certain operating conditions, the earlier strategy may have increased the chance of the vehicle's MIL light illuminating. If the MIL illuminates for any reason, your vehicle will not pass an IM emissions inspection in some regions.

To address this issue, your authorized Volkswagen dealer will update the ECM software in your vehicle. This work will take about one hour to complete and will be performed for you free of charge. Please keep in mind that your dealer may need additional time for the preparation of the repair, as well as to accommodate their daily workshop schedule.

**IMPORTANT!**  
Please note that if the ECM in your vehicle has been "chipped," "tuned," or otherwise modified from original factory specifications with aftermarket components and/or software, work needed to repair, replace, or return the ECM to original factory specifications is **NOT** covered under this action.

**What should you do?**

In order to limit any possible inconvenience, please contact your authorized Volkswagen dealer as soon as possible to schedule this service.

2306/D8 CALI

27. But after having the recall installed, A3 owners made posts on enthusiast blogs such as the following two posts:

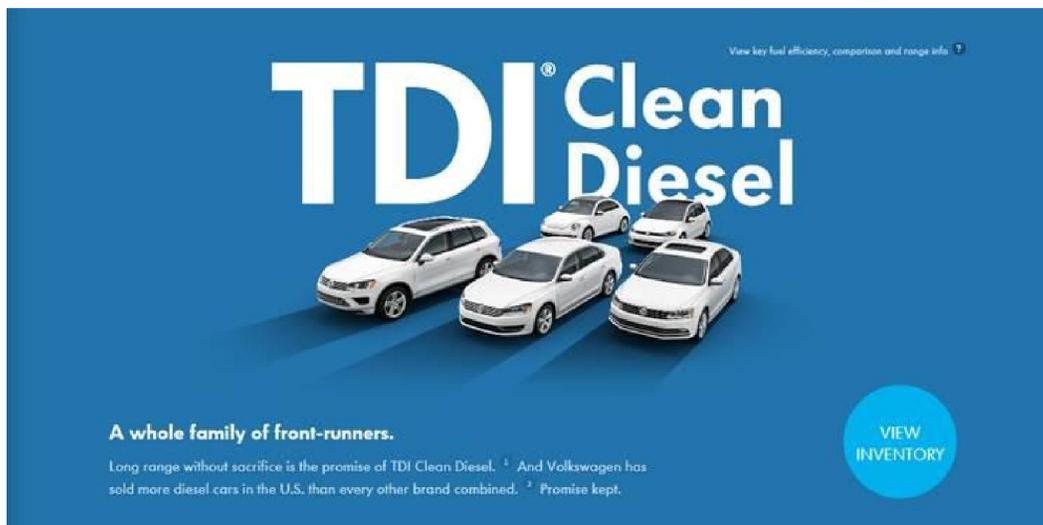
Had my update done couple weeks ago and I've noticed a sizable performance hit afterwards, compared to previous tanks pre-update.  
38.00 MPG

36.42 MPG  
37.77 MPG  
37.51 MPG  
37.05 MPG  
/////Recall performed  
34.13 MPG  
33.12 MPG

---

edt: real data...  
bought car in jan in CA (first two is drive back)  
38.14  
36.63  
32.10  
32.99  
32.77  
32.15  
29.94 (recall done during this tank)  
26.67  
25.79  
26.10

28. Volkswagen continued its aggressive campaign to dupe its customers into believing its cars were clean and environmentally friendly. In advertisements appearing on its webpage as recent as September 21, 2015, Volkswagen extended the deceit. These ads are only now being stripped from Volkswagen’s websites.



29. Volkswagen’s now dubious concern for the environment extended beyond its CleanDiesel campaigns. On the “Environment” page of its website, Volkswagen claims that it

takes “environmental responsibility very seriously. When it comes to making our cars as green as possible, Volkswagen has an integrated strategy focused on reducing fuel consumption and emissions, building the world’s cleanest diesel engines and developing totally new power systems, which utilize new fuel alternatives.”

30. Volkswagen trumpeted its apparent environmental *bone fides* when the Audi A3 TDI and VW Jetta TDI were named the 2010 Green Car of the Year and the 2009 Green Car of the Year. Ironically, a key feature of the most recent CleanDiesel advertisements was “*Promise kept.*”<sup>8</sup>

31. On the Volkswagen CleanDiesel webpage, it continued to mislead consumers, touting the supposedly reduced greenhouse gas emission of the CleanDiesel engine system.<sup>9</sup>



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<sup>8</sup> See <http://www.vw.com/features/clean-diesel/> (last visited Sept. 21, 2015). The content has since been removed.

<sup>9</sup> See <http://www.audiusa.com/technology/efficiency/tdi?csref=116751439289858719> (last visited Sept. 21, 2015). The content has since been removed.

32. Through its “Think Blue” program, Volkswagen claimed to have a policy of being “more responsible on the road and more environmentally conscious—not just in our cars.” But whether Volkswagen had any care at all for the environment is now, at best, debatable.

33. On its website to promote its “clean” diesel technology, [www.clearlybetterdiesel.org](http://www.clearlybetterdiesel.org), Volkswagen falsely claimed that its CleanDiesel engine system reduces smog and “meets the highest standards in all 50 states, thanks to ultra-low sulfur diesel (ULSD) fuel and innovative engine technology that burns cleaner.”

**D. Volkswagen’s CleanDiesel Engine Systems Were a Fraud**

34. The EPA’s investigation of Volkswagen was prompted by a May 15, 2014, publication titled “In-Use Emissions Testing of Light-Duty Diesel Vehicles in the United States” by the Center for Alternative Fuels, Engines & Emissions (“CAFEE”) of West Virginia University (“the CAFEE Report”).

35. The International Council of Clean Transportation (“ICCT”) hired CAFEE to conduct in-use testing of three light-duty diesel vehicles. According to the CAFEE Report, in the tested vehicles “real-world NOx emissions were found to exceed the US-EPA ... standard by a factor[s] of 5 to 35.”

36. Those findings led the EPA to conduct its own further investigation, which ultimately revealed that, contrary to Volkswagen’s vigorous efforts to promote itself as a “green” company with an extraordinary commitment to environmental protection, it was instead a liar and a cheat—its CleanDiesel technology was a fraud and its cars were gross polluters that were, in fact, not even legal to drive on U.S. roadways.

37. On September 18, 2015, the EPA issued to Volkswagen and its parent Volkswagen AG and Audi AG a Notice of Violation (“NOV”). The NOV explained the EPA’s allegations that Volkswagen installed sophisticated software in the Volkswagen and Audi diesel

vehicles sold by Volkswagen in the United States that detects when the vehicle is undergoing official emissions testing and turns full emissions controls on only during the test. At all other times that the vehicle is running, however, the emissions controls are deactivated, meaning that pollution is freely released into the environment at levels that exceed those allowed by federal and state laws and regulations. The software produced and used by Volkswagen falls under the legal description of a defeat device, which is prohibited by the Clean Air Act.

38. Because modern cars include sophisticated computers and sensors throughout the car, modern emissions testing uses the car's own sensors and computer controls to measure the presence of pollutants and track compliance with EPA and state emissions standards. Emissions testing stations plug a diagnostic device into the car's on-board diagnostics ("OBD II") port and use the exhaust sensors installed in the car to measure the substances emitted. Some states, instead of or in addition to an OBD II diagnostic device, use a probe inserted into the exhaust pipe to measure emissions.

39. Volkswagen's defeat device used software and sophisticated algorithms to detect when the cars were undergoing emissions testing, and only then engaged pollution suppression systems to ensure that emissions complied with regulatory standards. When the car was not being emissions tested—that is, under all other operating conditions—the electronic engine control systems operated the vehicle with no regard for regulatory emissions restrictions.

40. The result is that Volkswagen's CleanDiesel vehicles would meet emissions standards in labs or testing stations, but at all other times emit NO<sub>x</sub> at *up to 40 times the standard* allowed under United States laws and regulations.

41. As the journal *Popular Mechanics* reported, non-Volkswagen diesels commonly use urea injection to "neutralize" NO<sub>x</sub> emission, but those systems add weight and complexity to

the engine. “Everyone wondered how VW met emissions standards while foregoing urea injection. As it turns out, they didn’t. It wasn’t magical German engineering. Just plain old fraud.”

42. Remarkably, Volkswagen has done this before. As reported in *USA Today* and the *Los Angeles Times*, Volkswagen was accused of using a defeat device to pass emissions standards in vehicles it made in 1972-73. While Volkswagen denied wrongdoing, it paid a \$120,000 fine in 1974 in order to settle charges that “it gamed pollution control systems in four models by changing carburetor settings and shutting off an emissions-control system at low temperatures.” Volkswagen also agreed to install corporate controls to prevent a future similar occurrence. Apparently those controls were not effective.

43. On September 20, 2015, Volkswagen admitted that the EPA allegations were true. It admitted using a defeat device in the Affected Vehicles. Prior to his resignation as a result of the disclosure of the emissions fraud, Volkswagen’s CEO Martin Winterkorn stated: “I personally am deeply sorry that we have broken the trust of our customers and the public.”

44. Michael Horn, President and CEO of Volkswagen Group of America, reportedly admitted on September 21, 2015:

As you have seen since Friday, the EPA, the Environmental Protection Agency, has issued a statement and reality that Volkswagen Group manipulated engine software in our TDI diesel cars, and we violated emissions standards. The CEO of our parent company, Dr. Martin Winterkorn, said yesterday Volkswagen will fully cooperate with the responsible agencies, and much much more important as I see it, he stated that he was personally and deeply sorry for this—that Volkswagen has broken the trust of our customers, and the public here in America. And lastly he stated that this matter, and this is I think common sense, now this is the first priority for him personally and for the entire [board]. So let’s be clear about this: our company was dishonest with the EPA and the California Air Resources Board, and with all of you. And in my German words, we’ve totally screwed up. We must fix those cars,

and prevent this from ever happening again, and we have to make things right—with the government, the public, our customers, our employees, and also very importantly our dealers. This kind of behavior, I can tell you out of my heart, is completely inconsistent with our core values. The three core values of our brand are value, innovation, and in this context very importantly, responsibility: for our employees, for our stakeholders, and for the environment. So it goes totally against what we believe is right. Along with our German headquarters, we are committed to do what must be done, and to begin to restore your trust.

45. In what will perhaps prove to be the automotive understatement of the decade, Mr. Horn said Volkswagen “screwed up.”

46. By manufacturing and selling cars with defeat devices that allowed for higher levels of emissions than were certified to the EPA, Volkswagen violated the Clean Air Act, defrauded its customers, placed in commerce vehicles that were illegal to drive on U.S. roadways, and engaged in unfair competition and false advertising under state and federal laws.

47. Moreover, Volkswagen’s fraud harmed not just the customers it duped into buying its heavily polluting—not so—CleanDiesels, but it harmed the environment. Through six years of fraud, Volkswagen put on the United States roadways over 483,000 cars that spewed up to 40 times the permitted level of NOx and other pollutants. These emissions invariably have harmed the air quality and environment and, as a result, harmed the United States and its citizens.

48. And the harm Volkswagen has caused by selling its illegally polluting “CleanDiesel” cars is ongoing and will be for many months, if not years. Mr. Horn testified before Congress on October 8, 2015, admitting the purposeful use of the defeat device by Volkswagen to defraud regulators and its customers. Mr. Horn testified that any fix for at least 420,000 of the Affected Vehicles would require *software and hardware* changes and would take

at least many months, and perhaps years to implement.<sup>10</sup> All the while, Volkswagen is not offering replacement cars or a buyback program, thus forcing unhappy and embarrassed owners to knowingly spew noxious fumes into the environment or make alternative arrangements at their own sole expense.

**E. Volkswagen Caused a Quantifiable Environmental Injury**

49. Ozone is a colorless and odorless gas, which directly affects asthmatics and has been shown to lead to increased incidence of pneumonia and bronchitis. It also has been demonstrated to negatively affect crops and natural vegetation. The public health literature has established a link between marginal short run fluctuations in ambient ozone concentrations and mortality rates.<sup>11</sup> Ozone itself is not directly emitted into the environment. It is “produced” by sunlight and warm temperatures and a reaction in the atmosphere between NO<sub>x</sub> and Volatile Organic Compounds (VOCs).

50. The reaction also requires somewhat fixed proportions of NO<sub>x</sub> and VOCs to form ozone, so in regions where VOC concentrations are high, ozone formation is “NO<sub>x</sub>-constrained,” meaning that marginal increases in VOC emissions will not affect ozone concentrations, but marginal increases of NO<sub>x</sub> emissions will. Similarly, areas with relatively high NO<sub>x</sub> levels are called “VOC-constrained,” which means that in these areas marginal increases in NO<sub>x</sub> emissions will not affect ozone concentrations, but marginal increases of VOCs emissions will.

51. There are multiple sources of NO<sub>x</sub> other than cars and trucks, *e.g.*, electric generation plants, industrial boilers, and kilns. Solvents and paints are major sources of VOC emissions, but the largest sources of VOCs are biogenic; deciduous trees are major sources of VOC emissions, so ozone formation in rural (tree covered) areas is generally NO<sub>x</sub>-constrained,

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<sup>10</sup> See <http://www.autonews.com/article/20151008/OEM02/151009826/older-vw-diesels-will-need-software-and-hardware-fixes-horn-tells>

<sup>11</sup> Bell *et al.* (2004) show evidence of a short-term 10 parts per billion (ppb) rise in ozone concentrations would result in 3,767 additional premature deaths across 95 urban areas in the U.S. For evidence regarding ozone’s morbidity and environmental impacts, see EPA (2006), Moretti and Neidell (2008), and Neidell (2004, 2009).

while urban areas are frequently VOC-constrained (Sillman 1999, Blanchard 2001).<sup>12</sup> Further, local NO<sub>x</sub> emissions can impact ozone formation as much as 1,000 km downwind, whereas VOC emissions have only a local effect (Milford *et al.* 1989, Sillman 1999).

52. Translating NO<sub>x</sub> emissions of in one location into economic damages to health requires a model that translates the ground level emissions of NO<sub>x</sub> in one location into Ozone damages everywhere as NO<sub>x</sub> travels and reacts in spatially heterogeneous ways across the country. One such model is the AP2 Model (Muller, 2015). This model, which has county level resolution, translates NO<sub>x</sub> emissions at ground level (and a variety of other pollutants) into economic damage across all other counties in the US and sums them up across counties.

53. Figure 1 below demonstrates an estimate of damages from a pollution increase caused by a representative VW Jetta. It uses the Bell et al. (2004) dose response curve for Ozone and a conservative value of a statistical life (VSL) of \$2 million as applied in Müller, Mendelsohn and Nordhaus (2011). The model does not include damages on crops or affects on morbidity, so the preliminary estimates should be treated as a strict lower bound on damages. The standard requires a NO<sub>x</sub> limit per kilometer of 0.043 grams. The lower range of the vehicle tested by WVU was 0.61 grams per kilometer and the upper bound 1.5 grams per kilometer. Since we do not know where these vehicles are operated we cannot currently calculate the total damages incurred, but can calculate the damages from a vehicle driven for 100,000 miles in any of the over 3,000 US counties. For the low end of the range of the Jetta test (0.61 g/km) a vehicle driven 100,000 miles would emit and additional 201 pounds of NO<sub>x</sub> above a compliant car. For the high end of the range of the Jetta test (1.5 g/km) a vehicle driven 100,000 miles would emit and additional 516 pounds of NO<sub>x</sub> above a compliant car. For the low end of the range of the Passat test (0.34 g/km) a vehicle driven 100,000 miles would emit and additional 105 pounds of NO<sub>x</sub> above a compliant car. For the high end of the range of the Passat test (0.67 g/km) a vehicle driven 100,000 miles would emit and additional 222 pounds of NO<sub>x</sub> above a compliant car. Figure 1 below applies these numbers to the AP2 Model to illustrate the physicality of Ozone formation.

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<sup>12</sup> There are some exceptions. Rural regions closeby and downwind of an urban center are sometimes VOC-limited. Urban regions in the wooded South, such as Atlanta, can be NO<sub>x</sub>-limited.

Figure 1: Marginal damages from driving a Jetta emitting 1.5g of NO<sub>x</sub>/km for 100,000 miles.

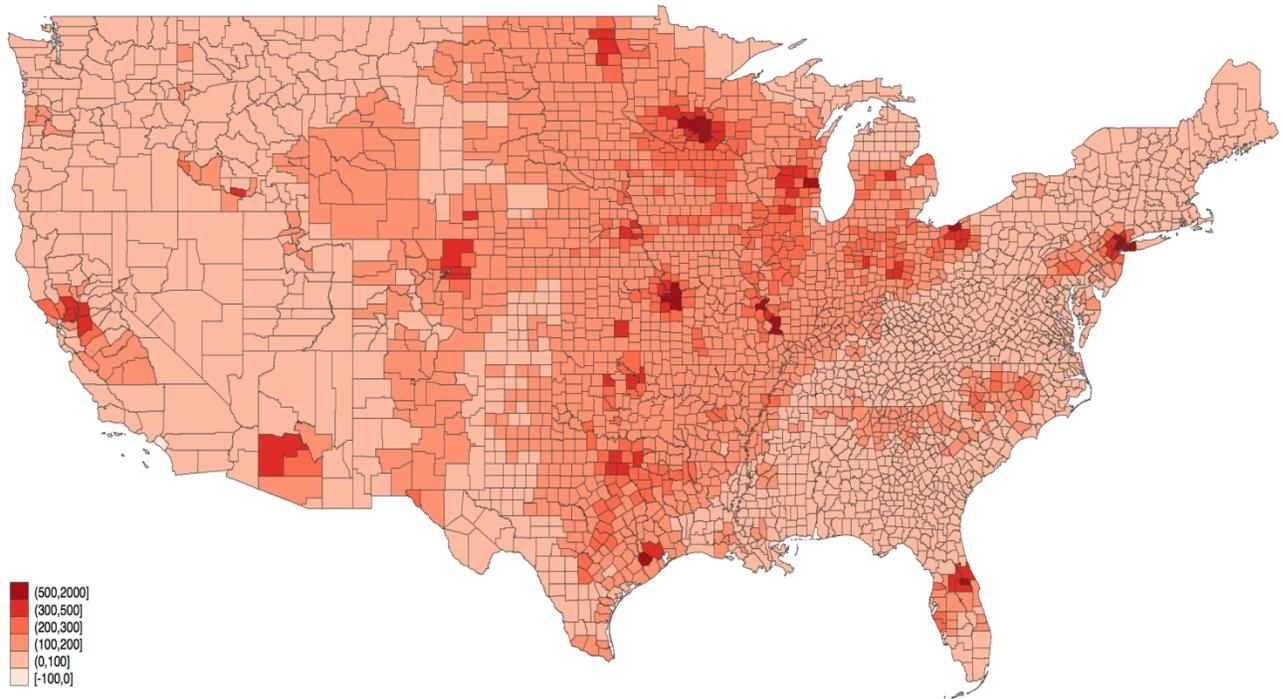
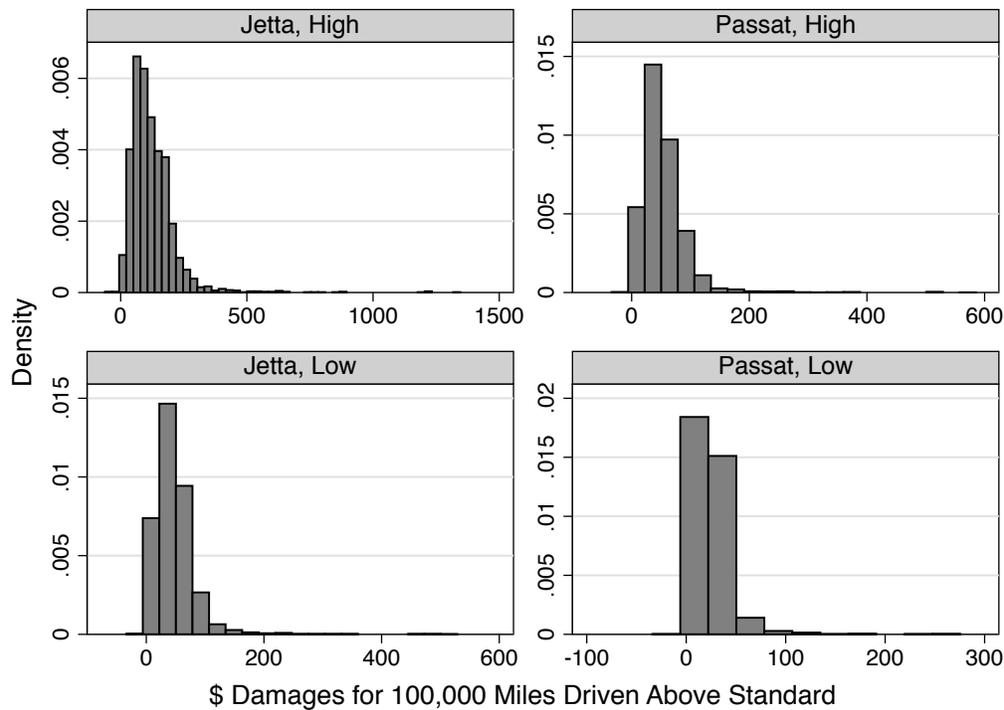


Figure 1 displays the spatial damage distribution across the US for the high emitting Jetta. Figure 2 below displays the distributions of damages for the low and high emitting versions of the Jetta and Passat as tested by WVU. The spatial patterns are not affected by the difference in emissions by vehicle type and emissions scenario, yet the overall range of damages is. The range of damages for the Jetta under the high emissions scenario is roughly \$62 to \$1,346. The range for the vehicle with lowest emissions (Passat, low) is roughly \$13 to \$274.

Figure 2: Marginal damages from driving the low and high emitting Jetta and Passat for 100,000 miles.



**F. Volkswagen Profited From its Fraud**

54. Volkswagen has charged a substantial premium for the Affected Vehicles, ironically marketed by Volkswagen as “CleanDiesel.” For example, for the 2015 Volkswagen Jetta, the base S model has a starting MSRP of \$18,780. The base TDI S CleanDiesel, however, has a starting MSRP of \$21,640, a price premium of \$2,860. The CleanDiesel premium for the highest trim Jetta model is substantially higher. The highest level gas Jetta SE has a starting MSRP of \$20,095, while the CleanDiesel TDI SEL MSRP is \$26,410, a staggering \$6,315 premium.

55. These premiums occur across all of the vehicles lines in which Volkswagen installed its defeat device for emissions testing. The table below sets forth the price premium in

2015 for each base, mid-level and top-line trim for each affected model. Similar premiums existed for each Affected Vehicle for every model year:

**2015 CleanDiesel Price Premiums**

<b>Model</b>	<b>Base</b>	<b>Mid-level</b>	<b>Top-line</b>
<i>VW Jetta</i>	\$2,860	\$4,300	\$6,315
<i>VW Beetle</i>	\$4,635	n/a	\$2,640
<i>VW Golf</i>	\$2,950	\$1,000	\$1,000
<i>VW Passat</i>	\$5,755	\$4,750	\$6,855
<i>Audi A3</i>	\$2,805	\$3,095	\$2,925

**G. Volkswagen's False Advertising and Fraud Has Profoundly Harmed Owners of Affected Vehicles**

56. As set forth above, Class members paid large premiums to purchase Affected Vehicles. They paid these premiums as a result of Volkswagen's false claims that the CleanDiesel engine system was environmentally friendly, clean, efficient and EPA compliant. Class members were harmed because from the day they drove their Affected Vehicle off the lot, they did not get what they paid for.

57. In addition, as a direct result of the disclosure of Volkswagen's CleanDiesel fraud, Affected Vehicles have sharply decreased in value and are presently unsalable. In fact, Volkswagen has halted all sales of Affected Vehicles, new or used, so that even its dealers are stuck with Affected Vehicles that they cannot sell. Within two weeks of the announcement of Volkswagen's emissions fraud the following decreases in model values were documented:

**Diesel models (MY 2009 – 2015):**

	Pre-Announcement	Post-Announcement	Percent change
<b>Audi</b>	<b>\$16,075</b>	<b>\$16,085</b>	<b>0.1%</b>
A3	\$16,075	\$16,085	0.1%
<b>Volkswagen</b>	<b>\$12,822</b>	<b>\$11,146</b>	<b>-13.1%</b>
Beetle	\$16,197	\$13,852	-14.5%
Golf	\$13,551	\$12,069	-10.9%
Jetta	\$11,901	\$10,248	-13.9%
Passat	\$16,586	\$15,253	-8.0%
<b>Grand Total</b>	<b>\$12,830</b>	<b>\$11,160</b>	<b>-13.0%</b>

The resale value of the Audi TDI, though not negative at the time of this study (due to lack of sales) is now, on information and belief, also negative. Each Class member therefore suffered a direct pecuniary loss in the form of the decreased value of their Affected Vehicle.<sup>13</sup>

58. The loss in value is particularly acute and affects Class members because they do not want to own cars that pollute and harm the environment. Cleanliness was the core of Volkswagen's marketing efforts and a driving factor in purchase decisions. Class members want to sell their Affected Vehicles but they cannot without incurring substantial losses.

59. Moreover, many Class members purchased their vehicles with financing in the form of car loans or leases. The drop in value of Affected Vehicles has caused the financing to be underwater, meaning that Class members will have to pay money, over and above whatever they can sell their car for, in order to get into a car that is actually legal to drive on United States roadways.

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

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<sup>13</sup> See <http://www.buzzfeed.com/matthewzeitlin/resale-value-of-vw-diesels-down-13-percent#.kvRJEo96L>

their horsepower and their efficiency. As a result, even if Volkswagen is able to make the Affected Vehicles EPA compliant, Class members will nonetheless suffer actual harm and damages because their vehicles will no longer perform as they did when purchased and as advertised. This will necessarily result in a diminution in value of every Affected Vehicle and it will cause owners of Affected Vehicles to pay more for fuel while using their affected vehicles.

61. The harm described immediately above is not at all speculative. In April 2015, Volkswagen issued a recall for one line of Affected Vehicles, the Audi A3 diesel. Volkswagen claimed this was a “repair” that “improved” engine management software. But scores of Class members reported that immediately after having the recall repair performed, their vehicle performance and fuel efficiency precipitously dropped 10-20%. These owners have already suffered harm to the value of their cars and have been harmed from having to pay additional sums for fuel.

62. In addition, many Class members purchased very expensive extended warranties for their Affected Vehicles, intending to own the vehicles for many years beyond the initial warranty. However, as a result of Volkswagen’s fraud, Class members no longer want to own the Affected Vehicles and when they sell them, in addition to losses from the cars being worth much less as a result of Volkswagen’s fraud, they will lose the value of the extended warranties that they purchased.

63. Further compounding the harm to Class members is that as of the date of this filing, Volkswagen has provided no guidance directly to customers or to its dealer network. Concerned owners of Affected Vehicles have been told absolutely nothing about what will happen to their cars, whether they are legal to drive in their states, what Volkswagen intends to

do, or what owners should do. Instead, calls to dealers and Volkswagen itself either go unanswered, or are answered with “we don’t know.”

64. As a result of Volkswagen’s unfair, deceptive, and/or fraudulent business practices, and its failure to disclose that under normal operating conditions the Affected Vehicles emit up to 40 times the allowed levels, owners and/or lessees of the Affected Vehicles have suffered losses in money and/or property. Had Plaintiffs and Class members known of the defeat device at the time they purchased or leased their Affected Vehicles, they would not have purchased or leased those vehicles, or would have paid substantially less for the vehicles than they did. Moreover, when and if Volkswagen recalls Affected Vehicles, in addition to its prior recall of the Audi A3, and degrades the CleanDiesel engine performance in order to make the Affected Vehicles compliant with EPA standards, all Plaintiffs and Class members will be required to pay extra for fuel and will not obtain the performance characteristics of their vehicles when purchased. Affected Vehicles will necessarily be worth less in the marketplace because of the decrease in performance and efficiency.

65. As a result of Volkswagen’s unfair, deceptive, and/or fraudulent business practices, and its failure to disclose that under normal operating conditions the Affected Vehicles emit up to 40 times the allowed levels of pollutants, the environment and air quality in the United States has been harmed. If the EPA and other regulators had known of the true nature of the CleanDiesel engine system and the true levels of pollutants it emitted, it would not have certified it for use on the United States roadways and the air quality and environment in the United States would not have been harmed.

### **III. JURISDICTION**

66. This Court has jurisdiction pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d), because the proposed Class consists of 100 or more members; the amount in

controversy exceeds \$5,000,000, exclusive of costs and interest; and minimal diversity exists. This Court also has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

#### **IV. VENUE**

67. Venue is proper in this District under 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this District. Plaintiffs Clarke, McLaughlin, Gjonbalaj, Rieh, Ransavage and Mulligan-Mahooney are domiciled in this District and purchased their Affected Vehicles in this District. Volkswagen is incorporated in this District and has multiple facilities and hundreds of employees working within this District. Volkswagen has marketed, advertised, sold, and leased the Affected Vehicles within this District.

#### **V. PARTIES**

##### **A. New Jersey Plaintiffs**

##### **1. Amy Clarke**

68. Plaintiff Amy Clarke is an individual domiciled in Millville, New Jersey. In January, 2015, Plaintiff purchased a new 2012 VW Jetta TDI SE CleanDiesel from Salem County Volkswagen, an authorized Volkswagen dealer in Elmer, New Jersey. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff at the time the vehicle was purchased, the vehicle was equipped with an emissions control defeat device which caused the vehicle to get an undue EPA certification and pass emissions tests, but at all other times emit up to 40 times the allowed level of pollutants, including NOx. The use of the defeat device by Volkswagen has caused Plaintiff out-of-pocket loss, future attempted repairs, future additional fuel costs, loss of warranty value, and diminished value of his vehicle. Volkswagen knew about and purposefully used the defeat device, but did not disclose the defeat device and its effects to Plaintiff, so Plaintiff purchased the vehicle on the reasonable, but mistaken, belief that the

vehicle complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life.

**2. Mark Gjonbalaj**

69. Plaintiff Mark Gjonbalaj is an individual domiciled in Millstone, New Jersey. In February, 2011, Plaintiff purchased a new 2011 Volkswagen Jetta TDI CleanDiesel from VW of Freehold, an authorized Volkswagen dealer in Freehold, New Jersey. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff at the time the vehicle was purchased, the vehicle was equipped with an emissions control defeat device which caused the vehicle to get an undue EPA certification and pass emissions tests, but at all other times emit up to 40 times the allowed level of pollutants, including NOx. The use of the defeat device by Volkswagen has caused Plaintiff out-of-pocket loss, future attempted repairs, future additional fuel costs, loss of warranty value, and diminished value of his vehicle. Volkswagen knew about and purposefully used the defeat device, but did not disclose the defeat device and its effects to Plaintiff, so Plaintiff purchased the vehicle on the reasonable, but mistaken, belief that the vehicle complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life.

**3. John McLaughlin**

70. Plaintiff John McLaughlin is an individual domiciled in Bernardsville, New Jersey. On July 23, 2010, Plaintiff purchased a new 2010 VW Golf TDI CleanDiesel from Princeton Volkswagen, an authorized Volkswagen dealer in Princeton, New Jersey. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff at the time the vehicle was purchased, the vehicle was equipped with an emissions control defeat device which caused the vehicle to get an undue EPA certification and pass emissions tests, but at all other times emit up to 40 times the allowed level of pollutants, including NOx. The use of the defeat device by

Volkswagen has caused Plaintiff out-of-pocket loss, future attempted repairs, future additional fuel costs, loss of warranty value, and diminished value of his vehicle. Volkswagen knew about and purposefully used the defeat device, but did not disclose the defeat device and its effects to Plaintiff, so Plaintiff purchased the vehicle on the reasonable, but mistaken, belief that the vehicle complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life.

**3. Kelly Mulligan-Mahoney**

71. Plaintiff Kelly Mulligan-Mahony is an individual domiciled in Park Ridge, New Jersey. On June 13, 2015, Plaintiff leased a new 2015 Volkswagen Passat TDI CleanDiesel from Joe Heidt Volkswagen, an authorized Volkswagen dealer in Princeton, New Jersey. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff at the time the vehicle was purchased, the vehicle was equipped with an emissions control defeat device which caused the vehicle to get an undue EPA certification and pass emissions tests, but at all other times emit up to 40 times the allowed level of pollutants, including NO<sub>x</sub>. The use of the defeat device by Volkswagen has caused Plaintiff out-of-pocket loss, future attempted repairs, future additional fuel costs, loss of warranty value, and diminished value of his vehicle. Volkswagen knew about and purposefully used the defeat device, but did not disclose the defeat device and its effects to Plaintiff, so Plaintiff purchased the vehicle on the reasonable, but mistaken, belief that the vehicle complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life.

**4. Sharon Ransavage**

72. Plaintiff Sharon Ransavage is an individual domiciled in Flemington, New Jersey. On June 9, 2009, Plaintiff purchased a new 2009 Jetta Wagon TDI CleanDiesel from Flemington Volkswagen Audi, an authorized Volkswagen dealer in Flemington, New Jersey. Plaintiff

purchased, and still owns, this vehicle. Unknown to Plaintiff at the time the vehicle was purchased, the vehicle was equipped with an emissions control defeat device which caused the vehicle to get an undue EPA certification and pass emissions tests, but at all other times emit up to 40 times the allowed level of pollutants, including NOx. The use of the defeat device by Volkswagen has caused Plaintiff out-of-pocket loss, future attempted repairs, future additional fuel costs, loss of warranty value, and diminished value of his vehicle. Volkswagen knew about and purposefully used the defeat device, but did not disclose the defeat device and its effects to Plaintiff, so Plaintiff purchased the vehicle on the reasonable, but mistaken, belief that the vehicle complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life.

**5. David Rein**

73. Plaintiff David Rein is an individual domiciled in Plaifield, New Jersey. On July 27, 2011, Plaintiff purchased a new 2011 VW Golf TDI CleanDiesel from World Volkswagen, an authorized Volkswagen dealer in Neptune, New Jersey. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff at the time the vehicle was purchased, the vehicle was equipped with an emissions control defeat device which caused the vehicle to get an undue EPA certification and pass emissions tests, but at all other times emit up to 40 times the allowed level of pollutants, including NOx. The use of the defeat device by Volkswagen has caused Plaintiff out-of-pocket loss, future attempted repairs, future additional fuel costs, loss of warranty value, and diminished value of the vehicle. Volkswagen knew about and purposefully used the defeat device, but did not disclose the defeat device and its effects to Plaintiff, so Plaintiff purchased the vehicle on the reasonable, but mistaken, belief that his vehicle complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life.

**B. Alabama Plaintiffs**

**1. Tamara Lyman**

74. Plaintiff Tamara is an individual domiciled in Birmingham, Alabama. In December, 2013, Plaintiff purchased a new 2013 VW Beetle TDI CleanDiesel from Serra Volkswagen, an authorized Volkswagen dealer in Centerpoint, Alabama. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff at the time the vehicle was purchased, the vehicle was equipped with an emissions control defeat device which caused the vehicle to get an undue EPA certification and pass emissions tests, but at all other times emit up to 40 times the allowed level of pollutants, including NOx. The use of the defeat device by Volkswagen has caused Plaintiff out-of-pocket loss, future attempted repairs, future additional fuel costs, loss of warranty value, and diminished value of his vehicle. Volkswagen knew about and purposefully used the defeat device, but did not disclose the defeat device and its effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life.

**C. Alaska Plaintiffs**

**1. Jason Hill**

75. Plaintiff Jason Hill is an individual domiciled in Anchorage, Alaska. In February, 2014, Plaintiff purchased a new 2013 Jetta TDI CleanDiesel from Kendall Volkswagen, an authorized Volkswagen dealer in Anchorage, Alaska. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff at the time the vehicle was purchased, the vehicle was equipped with an emissions control defeat device which caused the vehicle to get an undue EPA certification and pass emissions tests, but at all other times emit up to 40 times the allowed level of pollutants, including NOx. The use of the defeat device by Volkswagen has caused Plaintiff

out-of-pocket loss, future attempted repairs, future additional fuel costs, loss of warranty value, and diminished value of his vehicle. Volkswagen knew about and purposefully used the defeat device, but did not disclose the defeat device and its effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life.

**D. Arizona Plaintiffs**

**1. James Bergmann**

76. Plaintiff James Bergmann is an individual domiciled in Phoenix, Arizona. On March 31, 2015, Plaintiff purchased a new 2015 VW Passat TDI SEL CleanDiesel from Chapman Volkswagen, an authorized Volkswagen dealer in Scottsdale, Arizona. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff at the time the vehicle was purchased, the vehicle was equipped with an emissions control defeat device which caused the vehicle to get an undue EPA certification and pass emissions tests, but at all other times emit up to 40 times the allowed level of pollutants, including NOx. The use of the defeat device by Volkswagen has caused Plaintiff out-of-pocket loss, future attempted repairs, future additional fuel costs, loss of warranty value, and diminished value of his vehicle. Volkswagen knew about and purposefully used the defeat device, but did not disclose the defeat device and its effects to Plaintiff, so Plaintiff purchased the vehicle on the reasonable, but mistaken, belief that the vehicle complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life.

**E. California Plaintiffs**

**1. Simon Beaven**

77. Plaintiff Simon Beaven is an individual domiciled in Westlake Village, California. On May 15, 2011, Plaintiff purchased a new 2011 Audi A3 TDI CleanDiesel from Audi Newport Beach, an authorized Audi dealer in Newport Beach, California. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff at the time the vehicle was purchased, the vehicle was equipped with an emissions control defeat device which caused the vehicle to get an undue EPA certification and pass emissions tests, but at all other times emit up to 40 times the allowed level of pollutants, including NOx. The use of the defeat device by Volkswagen has caused Plaintiff out-of-pocket loss, future attempted repairs, future additional fuel costs, loss of warranty value, and diminished value of his vehicle. Volkswagen knew about and purposefully used the defeat device, but did not disclose the defeat device and its effects to Plaintiff, so Plaintiff purchased the vehicle on the reasonable, but mistaken, belief that the vehicle complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life.

**2. Mark Houle**

78. Plaintiff Mark Houle is an individual domiciled in Laguna Hills, California. On May 8, 2015, Plaintiff purchased a new 2015 Volkswagen Passat TDI SE CleanDiesel from Capistrano Volkswagen, an authorized Volkswagen dealer in San Juan Capistrano, California. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff at the time the vehicle was purchased, the vehicle was equipped with an emissions control defeat device which caused the vehicle to get an undue EPA certification and pass emissions tests, but at all other times emit up to 40 times the allowed level of pollutants, including NOx. The use of the defeat device by Volkswagen has caused Plaintiff out-of-pocket loss, future attempted repairs, future additional

fuel costs, loss of warranty value, and diminished value of his vehicle. Volkswagen knew about and purposefully used the defeat device, but did not disclose the defeat device and its effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life.

**3. Linda Hunt**

79. Plaintiff Linda Hunt is an individual domiciled in San Dimas, California. On December 23, 2011, Plaintiff purchased a new 2012 Volkswagen Jetta TDI CleanDiesel from Bozzani Volkswagen, an authorized Volkswagen dealer in San Dimas, California. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff at the time the vehicle was purchased, the vehicle was equipped with an emissions control defeat device which caused the vehicle to get an undue EPA certification and pass emissions tests, but at all other times emit up to 40 times the allowed level of pollutants, including NOx. The use of the defeat device by Volkswagen has caused Plaintiff out-of-pocket loss, future attempted repairs, future additional fuel costs, loss of warranty value, and diminished value of his vehicle. Volkswagen knew about and purposefully used the defeat device, but did not disclose the defeat device and its effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life.

**F. Colorado Plaintiffs**

**1. Wendy Goldner**

80. Plaintiff Wendy Goldner is an individual domiciled in Boulder, Colorado. On May 26, 2011, Plaintiff purchased a new 2011 VW Jetta Sportwagen TDI CleanDiesel from Gebhardt Motors, an authorized Volkswagen dealer in Boulder, Colorado. Plaintiff purchased,

and still owns, this vehicle. Unknown to Plaintiff at the time the vehicle was purchased, the vehicle was equipped with an emissions control defeat device which caused the vehicle to get an undue EPA certification and pass emissions tests, but at all other times emit up to 40 times the allowed level of pollutants, including NOx. The use of the defeat device by Volkswagen has caused Plaintiff out-of-pocket loss, future attempted repairs, future additional fuel costs, loss of warranty value, and diminished value of his vehicle. Volkswagen knew about and purposefully used the defeat device, but did not disclose the defeat device and its effects to Plaintiff, so Plaintiff purchased the vehicle on the reasonable, but mistaken, belief that the vehicle complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life.

**G. Connecticut Plaintiffs**

**1. John Gamble**

81. Plaintiff John Gamble is an individual domiciled in Old Saybrook, Connecticut. On May 9, 2015, Plaintiff purchased a new 2015 VW Golf Sportwagen TDI CleanDiesel from Volkswagen of Old Saybrook, an authorized Volkswagen dealer in Old Saybrook, Connecticut. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff at the time the vehicle was purchased, the vehicle was equipped with an emissions control defeat device which caused the vehicle to get an undue EPA certification and pass emissions tests, but at all other times emit up to 40 times the allowed level of pollutants, including NOx. The use of the defeat device by Volkswagen has caused Plaintiff out-of-pocket loss, future attempted repairs, future additional fuel costs, loss of warranty value, and diminished value of his vehicle. Volkswagen knew about and purposefully used the defeat device, but did not disclose the defeat device and its effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his

vehicle complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life.

**2. Leslie MacLise-Kane**

82. Plaintiff Leslie MacLise-Kane is an individual domiciled in Southbury, Connecticut. On December 28, 2012, Plaintiff purchased a new 2013 VW Jetta TDI CleanDiesel from Danbury Volkswagen, an authorized Volkswagen dealer in Danbury, Connecticut. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff at the time the vehicle was purchased, the vehicle was equipped with an emissions control defeat device which caused the vehicle to get an undue EPA certification and pass emissions tests, but at all other times emit up to 40 times the allowed level of pollutants, including NOx. The use of the defeat device by Volkswagen has caused Plaintiff out-of-pocket loss, future attempted repairs, future additional fuel costs, loss of warranty value, and diminished value of his vehicle. Volkswagen knew about and purposefully used the defeat device, but did not disclose the defeat device and its effects to Plaintiff, so Plaintiff purchased the vehicle on the reasonable, but mistaken, belief that the vehicle complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life.

**3. Charles Robbins**

83. Plaintiff Charles Robbins is an individual domiciled in Ridgefield, Connecticut. In March 2010, Plaintiff purchased a new 2010 VW Jetta TDI Sportwagen CleanDiesel from Danbury Volkswagen, an authorized Volkswagen dealer in Danbury, Connecticut. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff at the time the vehicle was purchased, the vehicle was equipped with an emissions control defeat device which caused the vehicle to get an undue EPA certification and pass emissions tests, but at all other times emit up to 40 times the allowed level of pollutants, including NOx. The use of the defeat device by

Volkswagen has caused Plaintiff out-of-pocket loss, future attempted repairs, future additional fuel costs, loss of warranty value, and diminished value of his vehicle. Volkswagen knew about and purposefully used the defeat device, but did not disclose the defeat device and its effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life.

## **H. Delaware Plaintiffs**

### **1. Warren Coffin**

84. Plaintiff Warren Coffin is an individual domiciled in Wilmington, Delaware. On December 17, 2012, Plaintiff purchased a new 2013 Jetta Sportswagen TDI DSG CleanDiesel from Jeff D'Ambrosio Auto Group, an authorized Volkswagen dealer in Downingtown, Pennsylvania. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff at the time the vehicle was purchased, the vehicle was equipped with an emissions control defeat device which caused the vehicle to get an undue EPA certification and pass emissions tests, but at all other times emit up to 40 times the allowed level of pollutants, including NOx. The use of the defeat device by Volkswagen has caused Plaintiff out-of-pocket loss, future attempted repairs, future additional fuel costs, loss of warranty value, and diminished value of his vehicle. Volkswagen knew about and purposefully used the defeat device, but did not disclose the defeat device and its effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life.

**I. Florida Plaintiffs**

**1. Jack Sandelman**

85. Plaintiff Jack Sandelman is an individual domiciled in Sarasota, Florida. On April 25, 2015, Plaintiff purchased a new 2015 VW Passat TDI CleanDiesel from Bert Smith Volkswagen, an authorized Volkswagen dealer in St. Petersburg, Florida. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff at the time the vehicle was purchased, the vehicle was equipped with an emissions control defeat device which caused the vehicle to get an undue EPA certification and pass emissions tests, but at all other times emit up to 40 times the allowed level of pollutants, including NOx. The use of the defeat device by Volkswagen has caused Plaintiff out-of-pocket loss, future attempted repairs, future additional fuel costs, loss of warranty value, and diminished value of his vehicle. Volkswagen knew about and purposefully used the defeat device, but did not disclose the defeat device and its effects to Plaintiff, so Plaintiff purchased her vehicle on the reasonable, but mistaken, belief that her vehicle complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life.

**J. Georgia Plaintiffs**

**1. Barry Glustoff**

86. Plaintiff Barry Glustoff is an individual domiciled in Marietta, Georgia. On September 3, 2015, Plaintiff purchased a new 2015 VW Jetta SE TDI CleanDiesel from Kuhn Volkswagen of America, an authorized Volkswagen dealer in Marietta, Georgia. Plaintiff purchased, and still owns, this vehicles. Unknown to Plaintiff at the time the vehicle was purchased, the vehicle was equipped with an emissions control defeat device which caused the vehicle to get an undue EPA certification and pass emissions tests, but at all other times emit up to 40 times the allowed level of pollutants, including NOx. The use of the defeat device by

Volkswagen has caused Plaintiff out-of-pocket loss, future attempted repairs, future additional fuel costs, loss of warranty value, and diminished value of his vehicles. Volkswagen knew about and purposefully used the defeat device, but did not disclose the defeat device and its effects to Plaintiff, so Plaintiff purchased his vehicles on the reasonable, but mistaken, belief that his vehicle complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout their useful life.

**K. Idaho Plaintiffs**

**1. Dorie Mallory**

87. Plaintiff Dorie Mallory is an individual domiciled in Post Falls, Idaho. July 15, 2014, Plaintiff purchased a new 2014 VW Passat TDI SEL 2.0 CleanDiesel from Parker Volkswagen an authorized Volkswagen dealer in Post Falls, Idaho. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff at the time the vehicle was purchased, the vehicle was equipped with an emissions control defeat device which caused the vehicle to get an undue EPA certification and pass emissions tests, but at all other times emit up to 40 times the allowed level of pollutants, including NOx. The use of the defeat device by Volkswagen has caused Plaintiff out-of-pocket loss, future attempted repairs, future additional fuel costs, loss of warranty value, and diminished value of his vehicle. Volkswagen knew about and purposefully used the defeat device, but did not disclose the defeat device and its effects to Plaintiff, so Plaintiff purchased the vehicle on the reasonable, but mistaken, belief that the vehicle complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life.

**L. Iowa Plaintiffs**

**1. Britney Schnathorst**

88. Plaintiff Britney Schnathorst is an individual domiciled in Newton, Iowa. In July 2014, Plaintiff purchased a new 2014 VW Passat TDI CleanDiesel from Lithia of Des Moines an authorized Volkswagen dealer in Des Moines, Iowa. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff at the time the vehicle was purchased, the vehicle was equipped with an emissions control defeat device which caused the vehicle to get an undue EPA certification and pass emissions tests, but at all other times emit up to 40 times the allowed level of pollutants, including NOx. The use of the defeat device by Volkswagen has caused Plaintiff out-of-pocket loss, future attempted repairs, future additional fuel costs, loss of warranty value, and diminished value of his vehicle. Volkswagen knew about and purposefully used the defeat device, but did not disclose the defeat device and its effects to Plaintiff, so Plaintiff purchased the vehicle on the reasonable, but mistaken, belief that the vehicle complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life.

**M. Illinois Plaintiffs**

**1. Alfred Golden**

89. Plaintiff Alfred Golden is an individual domiciled in Joliet, Illinois. On September 21, 2013, Plaintiff purchased a new 2014 VW Jetta 4 door Sportwagen TDI CleanDiesel from Volkswagen of Orland Park, an authorized Volkswagen dealer in Orland Park, Illinois. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff at the time the vehicle was purchased, the vehicle was equipped with an emissions control defeat device which caused the vehicle to get an undue EPA certification and pass emissions tests, but at all other times emit up to 40 times the allowed level of pollutants, including NOx. The use of the defeat

device by Volkswagen has caused Plaintiff out-of-pocket loss, future attempted repairs, future additional fuel costs, loss of warranty value, and diminished value of his vehicle. Volkswagen knew about and purposefully used the defeat device, but did not disclose the defeat device and its effects to Plaintiff, so Plaintiff purchased the vehicle on the reasonable, but mistaken, belief that the vehicle complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life.

**N. Indiana Plaintiffs**

**1. Cesar Olmos**

90. Plaintiff Cesar Olmos is an individual domiciled in Crown Point, Indiana. In September 2013, Plaintiff purchased a new 2014 VW Passat TDI CleanDiesel from Team Volkswagen, an authorized Volkswagen dealer in Merriville, Indiana. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff at the time the vehicle was purchased, the vehicle was equipped with an emissions control defeat device which caused the vehicle to get an undue EPA certification and pass emissions tests, but at all other times emit up to 40 times the allowed level of pollutants, including NOx. The use of the defeat device by Volkswagen has caused Plaintiff out-of-pocket loss, future attempted repairs, future additional fuel costs, loss of warranty value, and diminished value of his vehicle. Volkswagen knew about and purposefully used the defeat device, but did not disclose the defeat device and its effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life.

**O. Iowa Plaintiffs**

**1. Britney Schnathorst**

91. Plaintiff Britney Schnathorst is an individual domiciled in Newton, Iowa. In July, 2014, Plaintiff purchased a new Passat TDI CleanDiesel from Lithia of Des Moines, an authorized Volkswagen dealer in Des Moines, Iowa. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff at the time the vehicle was purchased, the vehicle was equipped with an emissions control defeat device which caused the vehicle to get an undue EPA certification and pass emissions tests, but at all other times emit up to 40 times the allowed level of pollutants, including NOx. The use of the defeat device by Volkswagen has caused Plaintiff out-of-pocket loss, future attempted repairs, future additional fuel costs, loss of warranty value, and diminished value of his vehicle. Volkswagen knew about and purposefully used the defeat device, but did not disclose the defeat device and its effects to Plaintiff, so Plaintiff purchased the vehicle on the reasonable, but mistaken, belief that the vehicle complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life.

**P. Kansas Plaintiffs**

**1. Carla Berg**

92. Plaintiff Carla Berg is an individual domiciled in Lawrence, KS. In September, 2013, Plaintiff purchased a new 2014 VW Passat TDI CleanDiesel from Crown Volkswagen, an authorized Volkswagen dealer in Lawrence, KS. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff at the time the vehicle was purchased, the vehicle was equipped with an emissions control defeat device which caused the vehicle to get an undue EPA certification and pass emissions tests, but at all other times emit up to 40 times the allowed level of pollutants, including NOx. The use of the defeat device by Volkswagen has caused Plaintiff out-of-pocket

loss, future attempted repairs, future additional fuel costs, loss of warranty value, and diminished value of his vehicle. Volkswagen knew about and purposefully used the defeat device, but did not disclose the defeat device and its effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life.

**2. Aaron Joy**

93. Plaintiff Aaron Joy is an individual domiciled in Fredonia, KS. In November, 2013, Plaintiff purchased a new 2013 VW Jetta TDI CleanDiesel from Crown Volkswagen, an authorized Volkswagen dealer in Lawrence, KS. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff at the time the vehicle was purchased, the vehicle was equipped with an emissions control defeat device which caused the vehicle to get an undue EPA certification and pass emissions tests, but at all other times emit up to 40 times the allowed level of pollutants, including NOx. The use of the defeat device by Volkswagen has caused Plaintiff out-of-pocket loss, future attempted repairs, future additional fuel costs, loss of warranty value, and diminished value of his vehicle. Volkswagen knew about and purposefully used the defeat device, but did not disclose the defeat device and its effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life.

**Q. Kentucky Plaintiffs**

**1. Jonathan Rodgers**

94. Plaintiff Joathan Rodgers is an individual domiciled in Louisville, Kentucky. On October 6, 2012, Plaintiff purchased a new 2012 VW Jetta TDI CleanDiesel from Bachman

Volkswagen, an authorized Volkswagen dealer in Louisville, Kentucky. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff at the time the vehicle was purchased, the vehicle was equipped with an emissions control defeat device which caused the vehicle to get an undue EPA certification and pass emissions tests, but at all other times emit up to 40 times the allowed level of pollutants, including NOx. The use of the defeat device by Volkswagen has caused Plaintiff out-of-pocket loss, future attempted repairs, future additional fuel costs, loss of warranty value, and diminished value of his vehicle. Volkswagen knew about and purposefully used the defeat device, but did not disclose the defeat device and its effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life.

**R. Louisiana Plaintiffs**

**1. Eric White**

95. Plaintiff Eric White is an individual domiciled in Baton Rouge, Louisiana. On December 1, 2013, Plaintiff purchased a new 2014 VW Golf TDI CleanDiesel from Southpoint Volkswagen, an authorized Volkswagen dealer in Baton Rouge, Louisiana. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff at the time the vehicle was purchased, the vehicle was equipped with an emissions control defeat device which caused the vehicle to get an undue EPA certification and pass emissions tests, but at all other times emit up to 40 times the allowed level of pollutants, including NOx. The use of the defeat device by Volkswagen has caused Plaintiff out-of-pocket loss, future attempted repairs, future additional fuel costs, loss of warranty value, and diminished value of his vehicle. Volkswagen knew about and purposefully used the defeat device, but did not disclose the defeat device and its effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle complied

with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life.

**S. Maine Plaintiffs**

**1. Daniel Sullivan**

96. Plaintiff Daniel Sullivan is an individual domiciled in Cooper, Maine. On February 6, 2014, Plaintiff purchased a new 2014 VW Passat TDI CleanDiesel from Darlings Volkswagen, an authorized Volkswagen dealer in Bangor, Maine. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff at the time the vehicle was purchased, the vehicle was equipped with an emissions control defeat device which caused the vehicle to get an undue EPA certification and pass emissions tests, but at all other times emit up to 40 times the allowed level of pollutants, including NOx. The use of the defeat device by Volkswagen has caused Plaintiff out-of-pocket loss, future attempted repairs, future additional fuel costs, loss of warranty value, and diminished value of his vehicle. Volkswagen knew about and purposefully used the defeat device, but did not disclose the defeat device and its effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life.

**2. Thomas Buchberger**

97. Plaintiff Thomas Buchberger is an individual domiciled in Jonesboro, Maine. In October, 2012, Plaintiff purchased a new 2012 VW Jetta Sportswagen TDI CleanDiesel from Darlings Volkswagen, an authorized Volkswagen dealer in Bangor, Maine. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff at the time the vehicle was purchased, the vehicle was equipped with an emissions control defeat device which caused the vehicle to get an undue EPA certification and pass emissions tests, but at all other times emit up to 40 times the

allowed level of pollutants, including NOx. The use of the defeat device by Volkswagen has caused Plaintiff out-of-pocket loss, future attempted repairs, future additional fuel costs, loss of warranty value, and diminished value of his vehicle. Volkswagen knew about and purposefully used the defeat device, but did not disclose the defeat device and its effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life.

**T. Maryland Plaintiffs**

**1. MaryBeth Winkler**

98. Plaintiff MaryBeth Winkler is an individual domiciled in Owings Mills, Maryland. On March 31, 2012, Plaintiff purchased a new 2012 VW Jetta Sportwagen TDI CleanDiesel from Fitzgerald Auto Mall, an authorized Volkswagen dealer in Frederick, Maryland. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff at the time the vehicle was purchased, the vehicle was equipped with an emissions control defeat device which caused the vehicle to get an undue EPA certification and pass emissions tests, but at all other times emit up to 40 times the allowed level of pollutants, including NOx. The use of the defeat device by Volkswagen has caused Plaintiff out-of-pocket loss, future attempted repairs, future additional fuel costs, loss of warranty value, and diminished value of his vehicle. Volkswagen knew about and purposefully used the defeat device, but did not disclose the defeat device and its effects to Plaintiff, so Plaintiff purchased the vehicle on the reasonable, but mistaken, belief that the vehicle complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life.

**U. Massachusetts Plaintiffs**

**1. Donald Allen**

99. Plaintiff Donald Allen is an individual domiciled in Carlisle, Massachusetts. On November 5, 2010, Plaintiff purchased a new 2011 VW Jetta TDI Sportwagen CleanDiesel from Minuteman Volkswagen, an authorized Volkswagen dealer in Bedford, Massachusetts. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff at the time the vehicle was purchased, the vehicle was equipped with an emissions control defeat device which caused the vehicle to get an undue EPA certification and pass emissions tests, but at all other times emit up to 40 times the allowed level of pollutants, including NOx. The use of the defeat device by Volkswagen has caused Plaintiff out-of-pocket loss, future attempted repairs, future additional fuel costs, loss of warranty value, and diminished value of his vehicle. Volkswagen knew about and purposefully used the defeat device, but did not disclose the defeat device and its effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life.

**2. Charles Nicolosi**

100. Plaintiff Charles Nicolosi is an individual domiciled in Rockport, Massachusetts. On October 21, 2014, Plaintiff purchased a new 2015 VW Golf TDI CleanDiesel from Colonial Volkswagen, an authorized Volkswagen dealer in Medford, Massachusetts. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff at the time the vehicle was purchased, the vehicle was equipped with an emissions control defeat device which caused the vehicle to get an undue EPA certification and pass emissions tests, but at all other times emit up to 40 times the allowed level of pollutants, including NOx. The use of the defeat device by Volkswagen has caused Plaintiff out-of-pocket loss, future attempted repairs, future additional fuel costs, loss of

warranty value, and diminished value of his vehicle. Volkswagen knew about and purposefully used the defeat device, but did not disclose the defeat device and its effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life.

**3. Andrea Franz**

101. Plaintiff Andrea Franz is an individual domiciled in Charlestown, Massachusetts. On April 11, 2014, Plaintiff purchased a new 2014 VW Jetta TDI Sportswagen CleanDiesel from Colonial Volkswagen, an authorized Volkswagen dealer in Medford, Massachusetts. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff at the time the vehicle was purchased, the vehicle was equipped with an emissions control defeat device which caused the vehicle to get an undue EPA certification and pass emissions tests, but at all other times emit up to 40 times the allowed level of pollutants, including NOx. The use of the defeat device by Volkswagen has caused Plaintiff out-of-pocket loss, future attempted repairs, future additional fuel costs, loss of warranty value, and diminished value of his vehicle. Volkswagen knew about and purposefully used the defeat device, but did not disclose the defeat device and its effects to Plaintiff, so Plaintiff purchased the vehicle on the reasonable, but mistaken, belief that the vehicle complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life.

**V. Michigan Plaintiffs**

**1. William Preninger**

102. Plaintiff William Preninger is an individual domiciled in Farmington Hills, Michigan. In November 2010, Plaintiff purchased a new 2010 VW Jetta Sportswagen TDI CleanDiesel from Fox Volkswagen, an authorized Volkswagen dealer in Michigan. Plaintiff

purchased, and still owns, this vehicle. Unknown to Plaintiff at the time the vehicle was purchased, the vehicle was equipped with an emissions control defeat device which caused the vehicle to get an undue EPA certification and pass emissions tests, but at all other times emit up to 40 times the allowed level of pollutants, including NOx. The use of the defeat device by Volkswagen has caused Plaintiff out-of-pocket loss, future attempted repairs, future additional fuel costs, loss of warranty value, and diminished value of his vehicle. Volkswagen knew about and purposefully used the defeat device, but did not disclose the defeat device and its effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life.

**W. Minnesota Plaintiffs**

**1. Robert Miller**

103. Plaintiff Robert Miller is an individual domiciled in \_\_\_\_\_. In March 2013, Plaintiff purchased a new 2013 Golf TDI CleanDiesel from Eich Motor Company, an authorized Volkswagen dealer in Minneapolis, Minnesota. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff at the time the vehicle was purchased, the vehicle was equipped with an emissions control defeat device which caused the vehicle to get an undue EPA certification and pass emissions tests, but at all other times emit up to 40 times the allowed level of pollutants, including NOx. The use of the defeat device by Volkswagen has caused Plaintiff out-of-pocket loss, future attempted repairs, future additional fuel costs, loss of warranty value, and diminished value of his vehicle. Volkswagen knew about and purposefully used the defeat device, but did not disclose the defeat device and its effects to Plaintiff, so Plaintiff purchased the vehicle on the reasonable, but mistaken, belief that the vehicle complied with United States

emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life.

**X. Missouri Plaintiffs**

**1. Joseph Collesano**

104. Plaintiff Joseph Collesano is an individual domiciled in Saint Louis, Missouri. On May 17, 2015, Plaintiff purchased a new 2014 VW Jetta 2.0L TDI SE CleanDiesel from Suntrup Nissan Volkswagen, an authorized Volkswagen dealer in Saint Louis, Missouri. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff at the time the vehicle was purchased, the vehicle was equipped with an emissions control defeat device which caused the vehicle to get an undue EPA certification and pass emissions tests, but at all other times emit up to 40 times the allowed level of pollutants, including NOx. The use of the defeat device by Volkswagen has caused Plaintiff out-of-pocket loss, future attempted repairs, future additional fuel costs, loss of warranty value, and diminished value of his vehicle. Volkswagen knew about and purposefully used the defeat device, but did not disclose the defeat device and its effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life.

**Y. Nevada Plaintiffs**

**1. Ramon San Nicolas**

105. Plaintiff Ramon San Nicolas is an individual domiciled in Las Vegas, NV. In September, 2013, Plaintiff purchased a new 2013 Passat TDI CleanDiesel from AutoNation Volkswagen, an authorized Volkswagen dealer in Las Vegas, Nevada. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff at the time the vehicle was purchased, the vehicle was equipped with an emissions control defeat device which caused the vehicle to get an undue

EPA certification and pass emissions tests, but at all other times emit up to 40 times the allowed level of pollutants, including NOx. The use of the defeat device by Volkswagen has caused Plaintiff out-of-pocket loss, future attempted repairs, future additional fuel costs, loss of warranty value, and diminished value of his vehicle. Volkswagen knew about and purposefully used the defeat device, but did not disclose the defeat device and its effects to Plaintiff, so Plaintiff purchased the vehicle on the reasonable, but mistaken, belief that the vehicle complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life.

**Z. New Hampshire Plaintiffs**

**1. Richard Grogan**

106. Plaintiff Richard Grogan is an individual domiciled in West Chesterfield, New Hampshire. On May 23, 2015, Plaintiff purchased a new 2015 VW Golf TDI CleanDiesel from Rich Grogan Volkswagen, an authorized Volkswagen dealer in Keene, New Hampshire. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff at the time the vehicle was purchased, the vehicle was equipped with an emissions control defeat device which caused the vehicle to get an undue EPA certification and pass emissions tests, but at all other times emit up to 40 times the allowed level of pollutants, including NOx. The use of the defeat device by Volkswagen has caused Plaintiff out-of-pocket loss, future attempted repairs, and diminished value of his vehicle. Volkswagen knew about and purposefully used the defeat device, but did not disclose the defeat device and its effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life.

**AA. New Mexico Plaintiffs**

**1. Dawn Boulware**

107. Plaintiff Dawn Boulware is an individual domiciled in Taos Ski Valley, New Mexico. On July 12, 2014, Plaintiff purchased a new VW Passat TDI SE CleanDiesel from University Volkswagen, an authorized Volkswagen dealer in Albuquerque, New Mexico. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff at the time the vehicle was purchased, the vehicle was equipped with an emissions control defeat device which caused the vehicle to get an undue EPA certification and pass emissions tests, but at all other times emit up to 40 times the allowed level of pollutants, including NOx. The use of the defeat device by Volkswagen has caused Plaintiff out-of-pocket loss, future attempted repairs, future additional fuel costs, loss of warranty value, and diminished value of his vehicle. Volkswagen knew about and purposefully used the defeat device, but did not disclose the defeat device and its effects to Plaintiff, so Plaintiff purchased the vehicle on the reasonable, but mistaken, belief that the vehicle complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life.

**2. Kyle Tisdell**

108. Plaintiff Kyle Tisdell is an individual domiciled in Taos, New Mexico. In April, 2011, Plaintiff purchased a new 2011 VW Jetta Sportswagen TDI CleanDiesel from Pekhus Volkswagen, an authorized Volkswagen dealer in Colorado. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff at the time the vehicle was purchased, the vehicle was equipped with an emissions control defeat device which caused the vehicle to get an undue EPA certification and pass emissions tests, but at all other times emit up to 40 times the allowed level of pollutants, including NOx. The use of the defeat device by Volkswagen has caused Plaintiff out-of-pocket loss, future attempted repairs, future additional fuel costs, loss of warranty value,

and diminished value of his vehicle. Volkswagen knew about and purposefully used the defeat device, but did not disclose the defeat device and its effects to Plaintiff, so Plaintiff purchased the vehicle on the reasonable, but mistaken, belief that the vehicle complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life.

**BB. New York Plaintiffs**

**1. Paul Harris**

109. Plaintiff Paul Harris is an individual domiciled in East Setauket, New York. On February 17, 2015, Plaintiff purchased a new 2015 VW Passat TDI CleanDiesel from Donaldsons Volkswagen, an authorized Volkswagen dealer in Sayville, New York. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff at the time the vehicle was purchased, the vehicle was equipped with an emissions control defeat device which caused the vehicle to get an undue EPA certification and pass emissions tests, but at all other times emit up to 40 times the allowed level of pollutants, including NOx. The use of the defeat device by Volkswagen has caused Plaintiff out-of-pocket loss, future attempted repairs, and diminished value of his vehicle. Volkswagen knew about and purposefully used the defeat device, but did not disclose the defeat device and its effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life.

**2. David Sibley**

110. Plaintiff David Sibley is an individual domiciled in Manhasset, New York. On July 26, 2013, Plaintiff purchased a new 2013 VW Jetta TDI Premium CleanDiesel from Bay Ridge Volkswagen, an authorized Volkswagen dealer in Brooklyn, New York. Plaintiff

purchased, and still owns, this vehicle. Unknown to Plaintiff at the time the vehicle was purchased, the vehicle was equipped with an emissions control defeat device which caused the vehicle to get an undue EPA certification and pass emissions tests, but at all other times emit up to 40 times the allowed level of pollutants, including NOx. The use of the defeat device by Volkswagen has caused Plaintiff out-of-pocket loss, future attempted repairs, and diminished value of his vehicle. Volkswagen knew about and purposefully used the defeat device, but did not disclose the defeat device and its effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life.

**3. Harry Walsh**

111. Plaintiff Paul Harris is an individual domiciled in Central Islip, New York. In December 2009, Plaintiff purchased a new 2010 VW Jetta TDI CleanDiesel from Taylor Volkswagen, an authorized Volkswagen dealer in Findlay, Ohio. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff at the time the vehicle was purchased, the vehicle was equipped with an emissions control defeat device which caused the vehicle to get an undue EPA certification and pass emissions tests, but at all other times emit up to 40 times the allowed level of pollutants, including NOx. The use of the defeat device by Volkswagen has caused Plaintiff out-of-pocket loss, future attempted repairs, and diminished value of his vehicle. Volkswagen knew about and purposefully used the defeat device, but did not disclose the defeat device and its effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life.

**CC. North Carolina Plaintiffs**

**1. Lori Edwards**

112. Plaintiff Lori Edwards is an individual domiciled in Parkton, North Carolina. In 2009, Plaintiff purchased a new VW Jetta Sportwagen TDI CleanDiesel in Wilmington, North Carolina. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff at the time the vehicle was purchased, the vehicle was equipped with an emissions control defeat device which caused the vehicle to get an undue EPA certification and pass emissions tests, but at all other times emit up to 40 times the allowed level of pollutants, including NOx. The use of the defeat device by Volkswagen has caused Plaintiff out-of-pocket loss, future attempted repairs, future additional fuel costs, loss of warranty value, and diminished value of his vehicle. Volkswagen knew about and purposefully used the defeat device, but did not disclose the defeat device and its effects to Plaintiff, so Plaintiff purchased the vehicle on the reasonable, but mistaken, belief that the vehicle complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life.

**DD. Ohio Plaintiffs**

**1. Craig Lybarger**

113. Plaintiff Craig Lybarger is an individual domiciled in Toledo, Ohio. In August, 2015, Plaintiff purchased a new 2015 VW Jetta TDI CleanDiesel from Taylor Volkswagen, an authorized Volkswagen dealer in Findlay, Ohio. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff at the time the vehicle was purchased, the vehicle was equipped with an emissions control defeat device which caused the vehicle to get an undue EPA certification and pass emissions tests, but at all other times emit up to 40 times the allowed level of pollutants, including NOx. The use of the defeat device by Volkswagen has caused Plaintiff out-of-pocket loss, future attempted repairs, and diminished value of his vehicle. Volkswagen knew about and

purposefully used the defeat device, but did not disclose the defeat device and its effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life.

**EE. Oregon Plaintiffs**

**1. Thomas Ayala**

114. Plaintiff Thomas Ayala is an individual domiciled in Lebanon, Oregon. On October 4, 2014, Plaintiff purchased a new VW Passat TDI SE CleanDiesel from Volkswagen of Salem, an authorized Volkswagen dealer in Salem, Oregon. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff at the time the vehicle was purchased, the vehicle was equipped with an emissions control defeat device which caused the vehicle to get an undue EPA certification and pass emissions tests, but at all other times emit up to 40 times the allowed level of pollutants, including NOx. The use of the defeat device by Volkswagen has caused Plaintiff out-of-pocket loss, future attempted repairs, and diminished value of his vehicle. Volkswagen knew about and purposefully used the defeat device, but did not disclose the defeat device and its effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life.

**2. Joan Dudley**

115. Plaintiff Joan Dudley is an individual domiciled in Prineville, Oregon. In July 2014, Plaintiff purchased a new VW Passat TDI CleanDiesel from Volkswagen of Bend, an authorized Volkswagen dealer in Bend, Oregon. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff at the time the vehicle was purchased, the vehicle was equipped with an emissions control defeat device which caused the vehicle to get an undue EPA certification and

pass emissions tests, but at all other times emit up to 40 times the allowed level of pollutants, including NOx. The use of the defeat device by Volkswagen has caused Plaintiff out-of-pocket loss, future attempted repairs, future additional fuel costs, loss of warranty value, and diminished value of his vehicle. Volkswagen knew about and purposefully used the defeat device, but did not disclose the defeat device and its effects to Plaintiff, so Plaintiff purchased the vehicle on the reasonable, but mistaken, belief that the vehicle complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life.

**3. Daphne Marcyan**

116. Plaintiff Daphne Marcyan is an individual domiciled in Portland, Oregon. In August 2010, Plaintiff purchased a new VW Jetta TDI CleanDiesel from Dick Hannah Volkswage, an authorized Volkswagen dealer in Portland, Oregon. Unknown to Plaintiff at the time the vehicle was purchased, the vehicle was equipped with an emissions control defeat device which caused the vehicle to get an undue EPA certification and pass emissions tests, but at all other times emit up to 40 times the allowed level of pollutants, including NOx. The use of the defeat device by Volkswagen has caused Plaintiff out-of-pocket loss, future attempted repairs, and diminished value of his vehicle. Volkswagen knew about and purposefully used the defeat device, but did not disclose the defeat device and its effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that her vehicle complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life.

**FF. Pennsylvania Plaintiffs**

**1. Brian Bialecki**

117. Plaintiff Brian Bialecki is an individual domiciled in Downingtown, Pennsylvania. In February, 2015, Plaintiff purchased a new 2014 VW Jetta TDI CleanDiesel from Jeff D'Ambrosio Volkswagen, an authorized Volkswagen dealer in Downingtown, PA. Plaintiff purchased, and still owns, this vehicle. On April 13, 2012, Plaintiff purchased a new VW Jetta TDI CleanDiesel from Jeff D'Ambrosio Volkswagen, an authorized Volkswagen dealer in Downingtown, Pennsylvania. On June 4, 2014, Plaintiff purchased a new VW Passat TDI CleanDiesel from Jeff D'Ambrosio Volkswagen, an authorized Volkswagen dealer in Downingtown, Pennsylvania. Plaintiff purchased, and still owns, these vehicles. Unknown to Plaintiff at the time these vehicles were purchased, the vehicles were equipped with an emissions control defeat device which caused the vehicles to get an undue EPA certification and pass emissions tests, but at all other times emit up to 40 times the allowed level of pollutants, including NOx. The use of the defeat device by Volkswagen has caused Plaintiff out-of-pocket loss, future attempted repairs, and diminished value of his vehicles. Volkswagen knew about and purposefully used the defeat device, but did not disclose the defeat device and its effects to Plaintiff, so Plaintiff purchased his vehicles on the reasonable, but mistaken, belief that his vehicles complied with United States emissions standards, were properly EPA certified, and would retain all of their operating characteristics throughout their useful lives.

**GG. Rhode Island Plaintiffs**

**1. Luis Moreno**

118. Plaintiff Luis Moreno is an individual domiciled in Providence, RI. In March, 2014, Plaintiff purchased a new VW Jetta TDI CleanDiesel from Scott VW, an authorized Volkswagen dealer in East Providence, RI. Plaintiff purchased, and still owns, this vehicle.

Unknown to Plaintiff at the time the vehicle was purchased, the vehicle was equipped with an emissions control defeat device which caused the vehicle to get an undue EPA certification and pass emissions tests, but at all other times emit up to 40 times the allowed level of pollutants, including NOx. The use of the defeat device by Volkswagen has caused Plaintiff out-of-pocket loss, future attempted repairs, and diminished value of his vehicle. Volkswagen knew about and purposefully used the defeat device, but did not disclose the defeat device and its effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life.

**HH. Tennessee Plaintiffs**

**1. Steve Mortillaro**

119. Plaintiff Steve Mortillaro is an individual domiciled in Nashville, Tennessee. In May, 2015, Plaintiff purchased a new VW Jetta TDI CleanDiesel from Hallmark VW, an authorized Volkswagen dealer in Franklin, Tennessee. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff at the time the vehicle was purchased, the vehicle was equipped with an emissions control defeat device which caused the vehicle to get an undue EPA certification and pass emissions tests, but at all other times emit up to 40 times the allowed level of pollutants, including NOx. The use of the defeat device by Volkswagen has caused Plaintiff out-of-pocket loss, future attempted repairs, and diminished value of his vehicle. Volkswagen knew about and purposefully used the defeat device, but did not disclose the defeat device and its effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life.

## **II. Texas Plaintiffs**

### **1. Angela Wagner**

120. Plaintiff Angela Wagner is an individual domiciled in Houston, TX. In April, 2014, Plaintiff purchased a new VW Jetta TDI CleanDiesel from West Houston Volkswagen, an authorized Volkswagen dealer in Houston, TX. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff at the time the vehicle was purchased, the vehicle was equipped with an emissions control defeat device which caused the vehicle to get an undue EPA certification and pass emissions tests, but at all other times emit up to 40 times the allowed level of pollutants, including NOx. The use of the defeat device by Volkswagen has caused Plaintiff out-of-pocket loss, future attempted repairs, and diminished value of his vehicle. Volkswagen knew about and purposefully used the defeat device, but did not disclose the defeat device and its effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life.

## **JJ. Utah Plaintiffs**

### **1. Heather LeMelle**

121. Plaintiff Heather LeMelle is an individual domiciled in West Valley City, Utah. In November 2012, Plaintiff purchased a new 2013 VW Beetle TDI CleanDiesel from Strong Volkswagen, an authorized Volkswagen dealer in Salt Lake City, Utah. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff at the time the vehicle was purchased, the vehicle was equipped with an emissions control defeat device which caused the vehicle to get an undue EPA certification and pass emissions tests, but at all other times emit up to 40 times the allowed level of pollutants, including NOx. The use of the defeat device by Volkswagen has caused Plaintiff out-of-pocket loss, future attempted repairs, and diminished value of his vehicle.

Volkswagen knew about and purposefully used the defeat device, but did not disclose the defeat device and its effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life.

**KK. Vermont Plaintiffs**

**1. Catherine Roberts**

122. Plaintiff Catherine Roberts is an individual domiciled in Montpelier, Vermont. In October, 2012, Plaintiff purchased a new 2012 Audi A3 TDI from Lewis Motors, now known as Shearer Auto, an authorized Volkswagen dealer in South Burlington, Vermont. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff at the time the vehicle was purchased, the vehicle was equipped with an emissions control defeat device which caused the vehicle to get an undue EPA certification and pass emissions tests, but at all other times emit up to 40 times the allowed level of pollutants, including NOx. The use of the defeat device by Volkswagen has caused Plaintiff out-of-pocket loss, future attempted repairs, and diminished value of her vehicle. Volkswagen knew about and purposefully used the defeat device, but did not disclose the defeat device and its effects to Plaintiff, so Plaintiff purchased her vehicle on the reasonable, but mistaken, belief that her vehicle complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life.

**LL. Virginia Plaintiffs**

**1. Daniel Ohlstein**

123. Plaintiff Daniel Ohlstein is an individual domiciled in Alexandria, Virginia. In October, 2013, Plaintiff purchased a new 2012 Jetta TDI CleanDiesel from Fairfax Volkswagen, an authorized Volkswagen dealer in Fairfax, Virginia. Plaintiff purchased, and still owns, this

vehicle. Unknown to Plaintiff at the time the vehicle was purchased, the vehicle was equipped with an emissions control defeat device which caused the vehicle to get an undue EPA certification and pass emissions tests, but at all other times emit up to 40 times the allowed level of pollutants, including NOx. The use of the defeat device by Volkswagen has caused Plaintiff out-of-pocket loss, future attempted repairs, future additional fuel costs, loss of warranty value, and diminished value of his vehicle. Volkswagen knew about and purposefully used the defeat device, but did not disclose the defeat device and its effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life.

**MM. Washington Plaintiffs**

**1. Chad Dial**

124. Plaintiff Chad Dial is an individual domiciled in Woodinville, WA. In November, 2013, Plaintiff purchased a new 2014 VW Passat TDI CleanDiesel from Chaplains Bellevue Volkswagen, an authorized Volkswagen dealer in Bellevue, WA. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff at the time the vehicle was purchased, the vehicle was equipped with an emissions control defeat device which caused the vehicle to get an undue EPA certification and pass emissions tests, but at all other times emit up to 40 times the allowed level of pollutants, including NOx. The use of the defeat device by Volkswagen has caused Plaintiff out-of-pocket loss, future attempted repairs, and diminished value of his vehicle. Volkswagen knew about and purposefully used the defeat device, but did not disclose the defeat device and its effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life.

**2. Kurt Mallory**

125. Plaintiff Kurt Mallory is an individual domiciled in Gig Harbor, WA. In April, 2010, Plaintiff purchased a new 2010 VW Golf TDI CleanDiesel from Chaplains Bellevue Volkswagen, an authorized Volkswagen dealer in Bellevue, WA. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff at the time the vehicle was purchased, the vehicle was equipped with an emissions control defeat device which caused the vehicle to get an undue EPA certification and pass emissions tests, but at all other times emit up to 40 times the allowed level of pollutants, including NOx. The use of the defeat device by Volkswagen has caused Plaintiff out-of-pocket loss, future attempted repairs, and diminished value of his vehicle. Volkswagen knew about and purposefully used the defeat device, but did not disclose the defeat device and its effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life.

**3. Matthew Mikulsky**

126. Plaintiff Matthew Mikulsky is an individual domiciled in Lynnwood, WA. In July, 2010, Plaintiff purchased a new 2010 VW Jetta Sportswagen TDI CleanDiesel from Pignatero Volkswagen, an authorized Volkswagen dealer in Everett, WA. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff at the time the vehicle was purchased, the vehicle was equipped with an emissions control defeat device which caused the vehicle to get an undue EPA certification and pass emissions tests, but at all other times emit up to 40 times the allowed level of pollutants, including NOx. The use of the defeat device by Volkswagen has caused Plaintiff out-of-pocket loss, future attempted repairs, and diminished value of his vehicle. Volkswagen knew about and purposefully used the defeat device, but did not disclose the defeat device and its effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but

mistaken, belief that his vehicle complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life.

**NN. Wisconsin Plaintiffs**

**1. Ryan Geier**

127. Plaintiff Ryan Geier is an individual domiciled in Verona, Wisconsin. In October, 2014, Plaintiff purchased a new 2014 VW Passat TDI CleanDiesel from Zimbrick VW, an authorized Volkswagen dealer in Madison, WI. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff at the time the vehicle was purchased, the vehicle was equipped with an emissions control defeat device which caused the vehicle to get an undue EPA certification and pass emissions tests, but at all other times emit up to 40 times the allowed level of pollutants, including NOx. The use of the defeat device by Volkswagen has caused Plaintiff out-of-pocket loss, future attempted repairs, and diminished value of his vehicle. Volkswagen knew about and purposefully used the defeat device, but did not disclose the defeat device and its effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life.

**OO. Defendants**

128. Volkswagen Group of America, Inc., is a corporation doing business in all 50 states (including the District of Columbia) and is organized under the laws of the State of New Jersey, with its principal place of business located at 2200 Ferdinand Porsche Dr., Herndon, Virginia 20171.

129. Volkswagen Aktiengesellschaft, doing business as Volkswagen Group and/or Volkswagen AG (“Volkswagen AG”), has its principal place of business in Wolfsburg,

Germany. Volkswagen AG is a corporation organized under the laws of Germany and it is the parent corporation of Volkswagen Group of America, Inc.

130. Volkswagen Group of American, Inc., and Volkswagen AG were and are at all times relevant to the allegations in this complaint working in concert under the common objective to engage in the emissions scheme described in this complaint. Each of Volkswagen Group of America and Volkswagen AG were and are the agents of each other and have acted and act for their common goals and profit. Therefore, all acts and knowledge ascribed to one of Volkswagen Group of America or Volkswagen AG are properly imputed to the other. Volkswagen Group of America and Volkswagen AG are referred to collectively herein as Volkswagen or “VW.”

131. At all times relevant to this action, Volkswagen manufactured, distributed, sold, leased, and warranted the Affected Vehicles under the Volkswagen and Audi brand names throughout the United States. Volkswagen and/or its parents, affiliates and agents designed, manufactured, and installed the CleanDiesel engine systems in the Affected Vehicles, which included the “defeat device.” Volkswagen and/or its parents, affiliates and agents developed and disseminated the owner’s manuals and warranty booklets, advertisements, and other promotional materials relating to the Affected Vehicles.

## **VI. TOLLING OF THE STATUTE OF LIMITATIONS**

### **A. Discovery Rule Tolling**

132. Class Members had no way of knowing about Volkswagen’s deception with respect to its CleanDiesel engine system and “defeat device.” It took federal EPA and California Air Resources Board investigations to uncover Volkswagen’s deception, which involved sophisticated software manipulation on Volkswagen’s part. As reported by the *Los Angeles Times* on September 18, 2015, it took California Air Resources Board testing on a special dynamometer in a

laboratory, open road testing using portable equipment, and the use of special testing devised by the Board to uncover Volkswagen's scheme and to detect how software on the engine's electronic control module was deceiving emissions certifications tests. Plainly, Volkswagen was intent on expressly hiding its behavior from regulators and consumers. This is the quintessential case for tolling.

133. Within the time period of any applicable statutes of limitation, Plaintiffs and members of the proposed classes could not have discovered through the exercise of reasonable diligence that Volkswagen was concealing the conduct complained of herein and misrepresenting the Company's true position with respect to the emission qualities of its vehicles.

134. Plaintiffs and the other Class members did not discover, and did not know of facts that would have caused a reasonable person to suspect, that Volkswagen did not report information within its knowledge to federal and state authorities, its dealerships, or consumers; nor would a reasonable and diligent investigation have disclosed that Volkswagen had information in its possession about the existence of its sophisticated emissions scheme and that it opted to conceal that information, which was discovered by Plaintiffs only shortly before this action was filed. Nor in any event would such an investigation on the part of Plaintiffs and other Class members have disclosed that Volkswagen valued profits over compliance with federal and state law, or the trust that Plaintiffs and other Class members had placed in its representations, or that, necessarily, Volkswagen actively discouraged its personnel from raising or disclosing issues with regard to the true quality and quantity of the emissions, and the emissions software, of its vehicles, or of Volkswagen's emissions scheme.

135. For these reasons, all applicable statutes of limitation have been tolled by operation of the discovery rule with respect to claims as to all vehicles identified herein.

**B. Fraudulent Concealment Tolling**

136. All applicable statutes of limitation have also been tolled by Volkswagen's knowing and active fraudulent concealment and denial of the facts alleged herein throughout the time period relevant to this action.

137. Instead of disclosing its emissions scheme, or that the quality and quantity of emissions from the subject vehicles were far worse than represented, and of its disregard of federal and state law, Volkswagen falsely represented that its vehicles complied with federal and state emissions standards, and that it was a reputable manufacturer whose representations could be trusted.

**C. Estoppel**

138. Volkswagen was under a continuous duty to disclose to Plaintiffs and the other Class members the true character, quality, and nature of emissions from the vehicles at issue, and of those vehicles' emissions systems, and of the compliance of those systems with applicable federal and state law.

139. Volkswagen knowingly, affirmatively, and actively concealed the true nature, quality, and character of the emissions systems, and the emissions, of the vehicles at issue.

140. Volkswagen was also under a continuous duty to disclose to Plaintiffs and Class members that it had engaged in the scheme complained of herein to evade federal and state emissions and clean air standards, and that it systematically devalued compliance with, and deliberately flouted, federal and state laws regulating vehicle emissions and clean air.

141. Based on the foregoing, Volkswagen is estopped from relying on any statutes of limitations in defense of this action.

## VII. CLASS ALLEGATIONS

142. Plaintiffs bring this action pursuant to the provisions of Rules 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure, on behalf of themselves and the following class and subclasses (collectively, the “Classes”):

### **The Nationwide Class**

All persons or entities in the United States who owned and/or leased an “Affected Vehicle” as of September 18, 2015. Affected Vehicles include, without limitation, the diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW Passat; and MY 2009-2015 Audi A3.

### **The Alabama Subclass**

All persons or entities in the state of Alabama who owned and/or leased an “Affected Vehicle” as of September 18, 2015. Affected Vehicles include, without limitation, the diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW Passat; and MY 2009-2015 Audi A3.

### **The Alaska Subclass**

All persons or entities in the state of Alaska who owned and/or leased an “Affected Vehicle” as of September 18, 2015. Affected Vehicles include, without limitation, the diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW Passat; and MY 2009-2015 Audi A3.

### **The Arizona Subclass**

All persons or entities in the state of Arizona who owned and/or leased an “Affected Vehicle” as of September 18, 2015. Affected Vehicles include, without limitation, the diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW Passat; and MY 2009-2015 Audi A3.

### **The California Subclass**

All persons or entities in the state of California who owned and/or leased an “Affected Vehicle” as of September 18, 2015. Affected Vehicles include, without limitation, the diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW Passat; and MY 2009-2015 Audi A3.

### **The Colorado Subclass**

All persons or entities in the state of Colorado who owned and/or leased an “Affected Vehicle” as of September 18, 2015. Affected Vehicles include, without limitation, the diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW Passat; and MY 2009-2015 Audi A3.

### **The Connecticut Subclass**

All persons or entities in the state of Connecticut who owned and/or leased an “Affected Vehicle” as of September 18, 2015. Affected Vehicles include, without limitation, the diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW Passat; and MY 2009-2015 Audi A3.

### **The Delaware Subclass**

All persons or entities in the state of Delaware who owned and/or leased an “Affected Vehicle” as of September 18, 2015. Affected Vehicles include, without limitation, the diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW Passat; and MY 2009-2015 Audi A3.

### **The Florida Subclass**

All persons or entities in the state of Florida who owned and/or leased an “Affected Vehicle” as of September 18, 2015. Affected Vehicles include, without limitation, the diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW Passat; and MY 2009-2015 Audi A3.

### **The Georgia Subclass**

All persons or entities in the state of Georgia who owned and/or leased an “Affected Vehicle” as of September 18, 2015. Affected Vehicles include, without limitation, the diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW Passat; and MY 2009-2015 Audi A3.

### **The Idaho Subclass**

All persons or entities in the state of Idaho who owned and/or leased an “Affected Vehicle” as of September 18, 2015. Affected Vehicles include, without limitation, the diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW Passat; and MY 2009-2015 Audi A3.

### **The Illinois Subclass**

All persons or entities in the state of Illinois who owned and/or leased an “Affected Vehicle” as of September 18, 2015. Affected Vehicles include, without limitation, the diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW Passat; and MY 2009-2015 Audi A3.

### **The Indiana Subclass**

All persons or entities in the state of Indiana who owned and/or leased an “Affected Vehicle” as of September 18, 2015. Affected Vehicles include, without limitation, the diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW Passat; and MY 2009-2015 Audi A3.

### **The Iowa Subclass**

All persons or entities in the state of Iowa who owned and/or leased an “Affected Vehicle” as of September 18, 2015. Affected Vehicles include, without limitation, the diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW Passat; and MY 2009-2015 Audi A3.

### **The Kansas Subclass**

All persons or entities in the state of Kansas who owned and/or leased an “Affected Vehicle” as of September 18, 2015. Affected Vehicles include, without limitation, the diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW Passat; and MY 2009-2015 Audi A3.

### **The Kentucky Subclass**

All persons or entities in the state of Kentucky who owned and/or leased an “Affected Vehicle” as of September 18, 2015. Affected Vehicles include, without limitation, the diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW Passat; and MY 2009-2015 Audi A3.

### **The Louisiana Subclass**

All persons or entities in the state of Louisiana who owned and/or leased an “Affected Vehicle” as of September 18, 2015. Affected Vehicles include, without limitation, the diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW Passat; and MY 2009-2015 Audi A3.

**The Maine Subclass**

All persons or entities in the state of Maine who owned and/or leased an “Affected Vehicle” as of September 18, 2015. Affected Vehicles include, without limitation, the diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW Passat; and MY 2009-2015 Audi A3.

**The Maryland Subclass**

All persons or entities in the state of Maryland who owned and/or leased an “Affected Vehicle” as of September 18, 2015. Affected Vehicles include, without limitation, the diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW Passat; and MY 2009-2015 Audi A3.

**The Massachusetts Subclass**

All persons or entities in the state of Massachusetts who owned and/or leased an “Affected Vehicle” as of September 18, 2015. Affected Vehicles include, without limitation, the diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW Passat; and MY 2009-2015 Audi A3.

**The Michigan Subclass**

All persons or entities in the state of Michigan who owned and/or leased an “Affected Vehicle” as of September 18, 2015. Affected Vehicles include, without limitation, the diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW Passat; and MY 2009-2015 Audi A3.

**The Minnesota Subclass**

All persons or entities in the state of Minnesota who owned and/or leased an “Affected Vehicle” as of September 18, 2015. Affected Vehicles include, without limitation, the diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW Passat; and MY 2009-2015 Audi A3.

**The Missouri Subclass**

All persons or entities in the state of Missouri who owned and/or leased an “Affected Vehicle” as of September 18, 2015. Affected Vehicles include, without limitation, the diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW Passat; and MY 2009-2015 Audi A3.

### **The Nevada Subclass**

All persons or entities in the state of Nevada who owned and/or leased an “Affected Vehicle” as of September 18, 2015. Affected Vehicles include, without limitation, the diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW Passat; and MY 2009-2015 Audi A3.

### **The New Hampshire Subclass**

All persons or entities in the state of New Hampshire who owned and/or leased an “Affected Vehicle” as of September 18, 2015. Affected Vehicles include, without limitation, the diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW Passat; and MY 2009-2015 Audi A3.

### **The New Jersey Subclass**

All persons or entities in the state of New Jersey who owned and/or leased an “Affected Vehicle” as of September 18, 2015. Affected Vehicles include, without limitation, the diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW Passat; and MY 2009-2015 Audi A3.

### **The New Mexico Subclass**

All persons or entities in the state of New Mexico who owned and/or leased an “Affected Vehicle” as of September 18, 2015. Affected Vehicles include, without limitation, the diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW Passat; and MY 2009-2015 Audi A3.

### **The New York Subclass**

All persons or entities in the state of New York who owned and/or leased an “Affected Vehicle” as of September 18, 2015. Affected Vehicles include, without limitation, the diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW Passat; and MY 2009-2015 Audi A3.

### **The North Carolina Subclass**

All persons or entities in the state of North Carolina who owned and/or leased an “Affected Vehicle” as of September 18, 2015. Affected Vehicles include, without limitation, the diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW Passat; and MY 2009-2015 Audi A3.

### **The Ohio Subclass**

All persons or entities in the state of Ohio who owned and/or leased an “Affected Vehicle” as of September 18, 2015. Affected Vehicles include, without limitation, the diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW Passat; and MY 2009-2015 Audi A3.

### **The Oregon Subclass**

All persons or entities in the state of Oregon who owned and/or leased an “Affected Vehicle” as of September 18, 2015. Affected Vehicles include, without limitation, the diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW Passat; and MY 2009-2015 Audi A3.

### **The Pennsylvania Subclass**

All persons or entities in the state of Pennsylvania who owned and/or leased an “Affected Vehicle” as of September 18, 2015. Affected Vehicles include, without limitation, the diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW Passat; and MY 2009-2015 Audi A3.

### **The Rhode Island Subclass**

All persons or entities in the state of Rhode Island who owned and/or leased an “Affected Vehicle” as of September 18, 2015. Affected Vehicles include, without limitation, the diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW Passat; and MY 2009-2015 Audi A3.

### **The Tennessee Subclass**

All persons or entities in the state of Tennessee who owned and/or leased an “Affected Vehicle” as of September 18, 2015. Affected Vehicles include, without limitation, the diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW Passat; and MY 2009-2015 Audi A3.

### **The Texas Subclass**

All persons or entities in the state of Texas who owned and/or leased an “Affected Vehicle” as of September 18, 2015. Affected Vehicles include, without limitation, the diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW Passat; and MY 2009-2015 Audi A3.

**The Utah Subclass**

All persons or entities in the state of Utah who owned and/or leased an “Affected Vehicle” as of September 18, 2015. Affected Vehicles include, without limitation, the diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW Passat; and MY 2009-2015 Audi A3.

**The Vermont Subclass**

All persons or entities in the state of Vermont who owned and/or leased an “Affected Vehicle” as of September 18, 2015. Affected Vehicles include, without limitation, the diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW Passat; and MY 2009-2015 Audi A3.

**The Virginia Subclass**

All persons or entities in the state of Virginia who owned and/or leased an “Affected Vehicle” as of September 18, 2015. Affected Vehicles include, without limitation, the diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW Passat; and MY 2009-2015 Audi A3.

**The Washington Subclass**

All persons or entities in the state of Washington who owned and/or leased an “Affected Vehicle” as of September 18, 2015. Affected Vehicles include, without limitation, the diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW Passat; and MY 2009-2015 Audi A3.

**The Wisconsin Subclass**

All persons or entities in the state of Wisconsin who owned and/or leased an “Affected Vehicle” as of September 18, 2015. Affected Vehicles include, without limitation, the diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW Passat; and MY 2009-2015 Audi A3.

143. Excluded from the Class are individuals who have personal injury claims resulting from the installation of the defeat device in the CleanDiesel engine system. Also excluded from the Class are Volkswagen and its subsidiaries and affiliates; all persons who make a timely election to be excluded from the Class; governmental entities; and the judge to whom

this case is assigned and his/her immediate family. Plaintiffs reserve the right to revise the Class definition based upon information learned through discovery.

144. Certification of Plaintiffs' claims for class-wide treatment is appropriate because Plaintiffs can prove the elements of their 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.

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

146. Numerosity. Federal Rule of Civil Procedure 23(a)(1): The members of the Classes are so numerous and geographically dispersed that individual joinder of all Class members is impracticable. While Plaintiffs are informed and believe that there are not less than hundreds of thousands of members of the Class, and at least hundreds of members of each subclass, the precise number of Class and Subclass members is unknown to Plaintiffs, but may be ascertained from Volkswagen's books and records. Class members may be notified of the pendency of this action by recognized, Court-approved notice dissemination methods, which may include U.S. mail, electronic mail, Internet postings, and/or published notice.

147. Commonality and Predominance: Federal Rule of Civil Procedure 23(a)(2) and 23(b)(3): This action involves common questions of law and fact, which predominate over any questions affecting individual Class members, including, without limitation:

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

- c) Whether the CleanDiesel engine system in the Affected Vehicles contains a defect in that it does not comply with U.S. EPA requirements and federal and state emissions regulations;
- d) Whether the CleanDiesel engine systems in Affected Vehicles can be made to comply with EPA and state standards without substantially degrading the performance and/or efficiency of the Affected Vehicles;
- e) Whether Volkswagen knew about the defeat device and, if so, how long Volkswagen has known;
- f) Whether Volkswagen designed, manufactured, marketed, and distributed Affected Vehicles with a defeat device;
- g) Whether Volkswagen's conduct violates consumer protection statutes, false advertising laws, sales contracts, warranty laws, and other laws as asserted herein;
- h) Whether Plaintiffs and the other Class members overpaid for their Affected Vehicles;
- i) Whether Plaintiffs and the other Class members are entitled to equitable relief, including, but not limited to, restitution or injunctive relief; and
- j) Whether Plaintiffs and the other Class members are entitled to damages and other monetary relief and, if so, in what amount.

148. Typicality: Federal Rule of Civil Procedure 23(a)(3): Plaintiffs' claims are typical of the other Class members' claims because, among other things, all Class members were comparably injured through Volkswagen's wrongful conduct as described above.

149. Adequacy: Federal Rule of Civil Procedure 23(a)(4): Plaintiffs are adequate Class representative because their interests do not conflict with the interests of the other members of the Classes they seek to represent; Plaintiffs have retained counsel competent and experienced in complex class action litigation; and Plaintiffs intend to prosecute this action vigorously. The Classes' interests will be fairly and adequately protected by Plaintiffs and their counsel.

150. Declaratory and Injunctive Relief: Federal Rule of Civil Procedure 23(b)(2): Volkswagen has acted or refused to act on grounds generally applicable to Plaintiffs and the other members of the Classes, thereby making appropriate final injunctive relief and declaratory relief, as described below, with respect to the Class as a whole.

151. Superiority: Federal Rule of Civil Procedure 23(b)(3): A class action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. The damages or other financial detriment suffered by Plaintiffs and the other Class members are relatively small compared to the burden and expense that would be required to individually litigate their claims against Volkswagen, so it would be impracticable for the members of the Classes to individually seek redress for Volkswagen's wrongful conduct. Even if Class members could afford individual litigation, the court system could not. Individualized litigation creates a potential for inconsistent or contradictory judgments, and increases the delay and expense to all parties and the court system. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

## VIII. VIOLATIONS ALLEGED

### A. Claims Brought on Behalf of the Nationwide Class

#### COUNT I VIOLATION OF MAGNUSON-MOSS WARRANTY ACT (15 U.S.C. § 2301, *ET SEQ.*)

152. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

153. This claim is brought on behalf of the Nationwide Class.

154. Plaintiffs are “consumers” within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(3).

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

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

157. 15 U.S.C. § 2301(d)(1) provides a cause of action for any consumer who is damaged by the failure of a warrantor to comply with a written or implied warranty.

158. Volkswagen’s express warranties are written warranties within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(6). The Affected Vehicles’ implied warranties are covered under 15 U.S.C. § 2301(7).

159. Volkswagen breached these warranties as described in more detail above. Without limitation, the Affected Vehicles are equipped with non-EPA complaint CleanDiesel engine systems and a defeat device. The Affected Vehicles share a common design defect in that the CleanDiesel engine system fails to operate as represented by Volkswagen.

160. Plaintiffs and the other Nationwide Class members have had sufficient direct dealings with either Volkswagen or its agents (dealerships and technical support) to establish

privity of contract between Volkswagen, on one hand, and Plaintiffs and each of the other Nationwide Class members on the other hand. Nonetheless, privity is not required here because Plaintiffs and each of the other Nationwide Class members are intended third-party beneficiaries of contracts between Volkswagen and its dealers, and specifically, of Volkswagen's implied warranties. The dealers were not intended to be the ultimate consumers of the Affected Vehicles and have no rights under the warranty agreements provided with the Affected Vehicles; the warranty agreements were designed for and intended to benefit the consumers only.

161. Affording Volkswagen a reasonable opportunity to cure its breach of written warranties would be unnecessary and futile here. Indeed, Plaintiffs have already done so, and Volkswagen has failed, after numerous attempts, to cure the defects. Moreover, Volkswagen has admitted that it will not even attempt to recall and fix Affected Vehicles until at least 2016, and the process may take years.

162. At the time of sale or lease of each Affected Vehicle, Volkswagen knew, should have known, or was reckless in not knowing of its misrepresentations and omissions concerning the Affected Vehicles' inability to perform as warranted, but nonetheless failed to rectify the situation and/or disclose the defective design. Under the circumstances, the remedies available under any informal settlement procedure would be inadequate and any requirement that Plaintiffs resort to an informal dispute resolution procedure and/or afford Volkswagen a reasonable opportunity to cure its breach of warranties is excused and thereby deemed satisfied.

163. Plaintiffs and the other Nationwide Class members would suffer economic hardship if they returned their Affected Vehicles but did not receive the return of all payments made by them. Because Volkswagen is refusing to acknowledge any revocation of acceptance

and return immediately any payments made, Plaintiffs and the other Nationwide Class members have not re-accepted their Affected Vehicles by retaining them.

164. The amount in controversy of Plaintiffs' individual claims meets or exceeds the sum of \$25. The amount in controversy of this action exceeds the sum of \$50,000, exclusive of interest and costs, computed on the basis of all claims to be determined in this lawsuit.

165. Plaintiffs, individually and on behalf of the other Nationwide Class members, seek all damages permitted by law, including diminution in value of the Affected Vehicles, in an amount to be proven at trial.

**B. Claims Brought on Behalf of the Nationwide Class and the Virginia Subclass Under Virginia Law**

**COUNT I  
FRAUD BY CONCEALMENT UNDER VIRGINIA LAW**

166. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

167. This claim is brought on behalf of the Nationwide Class and the Virginia Subclass.

168. Volkswagen intentionally concealed and suppressed material facts concerning the quality of the Affected Vehicles. As alleged in this Complaint, notwithstanding references in the very model names of the subject vehicles as "Clean Diesel," or to their engines as "TDI Clean Diesel" engines, Volkswagen engaged in a secret scheme to evade federal and state vehicle emissions standards by installing software designed to conceal its vehicles' emissions of the pollutant nitrogen oxide, which contributes to the creation of ozone and smog. The software installed on the vehicles at issue was designed nefariously to kick-in during emissions certification testing, such that the vehicles would show far lower emissions than when actually operating on the road. The result was what Volkswagen intended: vehicles passed emissions

certifications by way of deliberately induced false readings. Reportedly, Volkswagen's deliberate, secret scheme resulted in noxious emissions from these vehicles at up to 40 times applicable standards.

169. Plaintiffs and Class members reasonably relied upon Volkswagen's false representations. They had no way of knowing that Volkswagen's representations were false and gravely misleading. As alleged herein, Volkswagen employed extremely sophisticated methods of deception. Plaintiffs and Class members did not, and could not, unravel Volkswagen's deception on their own.

170. Volkswagen concealed and suppressed material facts concerning what is evidently the true culture of Volkswagen – one characterized by an emphasis on profits and sales above compliance with federal and state clean air laws, and emissions regulations that are meant to protect the public and consumers. It also emphasized profits and sales over the trust that Plaintiffs and Class members placed in its representations. As one customer, Priya Shah, put it in a quotation cited by the *Los Angeles Times* in a September 18, 2015 article, "It's just a blatant disregard and intentional manipulation of the system. That's just a whole other level of not only lying to the government, but also lying to your consumer. People buy diesel cars from Volkswagen because they feel they are clean diesel cars." In the words of Ms. Shah, which no doubt reflect the sentiments of all other CleanDiesel vehicle buyers, "I don't want to be spewing noxious gases into the environment."

171. Necessarily, Volkswagen also took steps to ensure that its employees did not reveal the details of its scheme to regulators or consumers, including Plaintiffs and Class members. Volkswagen did so in order to boost the reputations of its vehicles and to falsely assure purchasers and lessors of its vehicles, including previously owned vehicles, that

Volkswagen is a reputable manufacturer that complies with applicable law, including federal and state clean air laws and emissions regulations, and that its vehicles likewise comply with applicable law and regulations. Volkswagen's false representations were material to consumers, both because they concerned the quality of the affected vehicles, including their compliance with applicable federal and state law and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As Volkswagen well knew, its customers, including Plaintiffs and Class members, highly valued that the vehicles they were purchasing or leasing were *clean* diesel cars, and they paid accordingly.

172. Volkswagen had a duty to disclose its emissions scheme because knowledge of the scheme and its details were known and/or accessible only to Volkswagen, because Volkswagen had exclusive knowledge as to implementation and maintenance of its scheme, and because Volkswagen knew the facts were not known to or reasonably discoverable by Plaintiffs or Class members. Volkswagen also had a duty to disclose because it made general affirmative representations about the qualities of its vehicles with respect to emissions standards, starting with references to them as *clean* diesel cars, or cars with *clean* diesel engines, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding its emissions scheme, the actual emissions of its vehicles, its actual philosophy with respect to compliance with federal and state clean air laws and emissions regulations, and its actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs, Volkswagen had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and Class members. Whether a manufacturer's products comply with federal and state clean air laws and emissions regulations,

and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certification testing their vehicles must pass. Volkswagen represented to Plaintiffs and Class members that they were purchasing *clean* diesel vehicles, and certification testing appeared to confirm this – except that, secretly, Volkswagen had subverted the testing process thoroughly.

173. Volkswagen actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect its profits and to avoid the perception that its vehicles did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost Volkswagen money, and it did so at the expense of Plaintiffs and Class members.

174. On information and belief, Volkswagen has still not made full and adequate disclosures, and continues to defraud Plaintiffs and Class members by concealing material information regarding the emission qualities of its vehicles and its emissions scheme.

175. Plaintiffs and Class members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly “clean” diesel cars manufactured by Volkswagen, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiffs' and Class Members' actions were justified. Volkswagen was in exclusive control of the material facts, and such facts were not known to the public, Plaintiffs, or Class members.

176. Because of the concealment and/or suppression of the facts, Plaintiffs and Class members have sustained damage because they own vehicles that are diminished in value as a

result of Volkswagen's concealment of the true quality and quantity of those vehicles' emissions and Volkswagen's failure to timely disclose the actual emission qualities and quantities of hundreds of thousands of Volkswagen- and Audi-branded vehicles and the serious issues engendered by Volkswagen's corporate policies. Had Plaintiffs and Class members been aware of Volkswagen's emissions scheme, and the company's callous disregard for compliance with applicable federal and state law and regulations, Plaintiffs and Class members who purchased or leased new or previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

177. The value of Plaintiffs' and Class Members' vehicles has diminished as a result of Volkswagen's fraudulent concealment of its emissions scheme, which has greatly tarnished the Volkswagen and Audi brand names attached to Plaintiffs' and Class members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles. In addition, Class members are entitled to damages for loss of use, costs of additional fuel, costs of unused warranties, and other damages to be proved at trial.

178. Accordingly, Volkswagen is liable to Plaintiffs and Class members for damages in an amount to be proven at trial.

179. Volkswagen's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Class members' rights and the representations that Volkswagen made to them, in order to enrich Volkswagen. To the extent permitted under applicable law, Volkswagen's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

180. Plaintiffs plead this count pursuant to the law of Virginia, where Volkswagen has its United States headquarters, on behalf of all members of the Nationwide Class. As necessary, and in the alternative, Plaintiffs stand ready to plead sub-classes, based on the domicile at pertinent times of members of the Nationwide Class, to allege fraudulent concealment under the laws of states other than Virginia.

**COUNT II**  
**VIOLATIONS OF THE VIRGINIA CONSUMER PROTECTION ACT**  
**(Va. Code Ann. §§ 59.1-196, *et seq.*)**

181. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

182. This claim is brought on behalf of the Nationwide Class and the Virginia Subclass.

183. The Virginia Consumer Protection Act prohibits “... (5) misrepresenting that goods or services have certain quantities, characteristics, ingredients, uses, or benefits; (6) misrepresenting that goods or services are of a particular standard, quality, grade, style, or model; ... (8) advertising goods or services with intent not to sell them as advertised ...; [and] (14) using any other deception, fraud, false pretense, false promise, or misrepresentation in connection with a consumer transaction[.]” VA. CODE ANN. § 59.1-200(A).

184. Defendants are each a “person” as defined by VA. CODE ANN. § 59.1-198. The transactions between Plaintiffs and the other Class members on one hand and Volkswagen on the other, leading to the purchase or lease of the Affected Vehicles by Plaintiffs and the other Class members, are “consumer transactions” as defined by VA. CODE ANN. § 59.1-198, because the Affected Vehicles were purchased or leased primarily for personal, family or household purposes.

185. In the course of Volkswagen's business, it willfully failed to disclose and actively concealed the defeat device in Affected Vehicles as described above. Accordingly, Volkswagen engaged in acts and practices violating VA. CODE ANN. § 59.1-200(A), including representing that Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Affected Vehicles are of a particular standard and quality when they are not; advertising Affected Vehicles with the intent not to sell them as advertised; and otherwise engaging in conduct likely to deceive.

186. Volkswagen's actions as set forth above occurred in the conduct of trade or commerce.

187. Volkswagen's conduct proximately caused injuries to Plaintiffs and the other Class members.

188. Plaintiffs and the other Class members were injured as a result of Volkswagen's conduct in that Plaintiffs and the other Class members overpaid for their Affected Vehicles and did not receive the benefit of their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of Volkswagen's misrepresentations and omissions.

189. Volkswagen actively and willfully concealed and/or suppressed the material facts regarding the defective and non-EPA compliant CleanDiesel engine system, the defeat device and the Affected Vehicles, in whole or in part, with the intent to deceive and mislead Plaintiffs and the other Class members and to induce Plaintiffs and the other Class members to purchase or lease Affected Vehicles at a higher price, which did not match the Affected Vehicles' true value. Plaintiffs and the other Class members therefore seek treble damages.

**COUNT III**  
**BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**  
**(VA. CODE ANN. § 8.2-314)**

190. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

191. Plaintiffs bring this Count on behalf of the Nationwide Class and the Virginia Subclass.

192. Volkswagen is and was at all relevant times a merchant with respect to motor vehicles.

193. A warranty that the Affected Vehicles were in merchantable condition is implied by law in the instant transactions. These Affected Vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Affected Vehicles are inherently defective in that they do not comply with federal and state emissions standards, rendering certain safety and emissions functions inoperative; and the CleanDiesel engine system was not adequately designed, manufactured, and tested.

194. Volkswagen was provided notice of these issues by the investigations of the EPA and individual state regulators, numerous complaints filed against it including the instant complaint, and by numerous individual letters and communications sent by Plaintiffs and other Class members before or within a reasonable amount of time after the allegations of Affected Vehicle defects became public.

195. As a direct and proximate result of Volkswagen's breach of the warranties of merchantability, Plaintiffs and the other Class members have been damaged in an amount to be proven at trial.

**COUNT IV**  
**BREACH OF CONTRACT**  
**(Based on Virginia Law)**

196. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

197. Plaintiffs bring this Count on behalf new or certified pre-owned purchasers in the Nationwide Class and Virginia Subclass.

198. Volkswagen's misrepresentations and omissions alleged herein, including Volkswagen's failure to disclose the CleanDiesel engine system was not EPA-compliant and the existence of the defeat device as alleged herein, caused Plaintiffs and the other Class members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiffs and the other Class members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain non EPA-compliant engine systems and a defeat device. Accordingly, Plaintiffs and the other Class members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

199. Each and every sale or lease of an Affected Vehicle by an authorized Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing Plaintiffs and the other Class members defective Affected Vehicles and by misrepresenting or failing to disclose the CleanDiesel engine system was not EPA-compliant and failing to disclose the existence of the defeat device, including information known to Volkswagen rendering each Affected Vehicle illegal under federal and state environmental laws, and thus less valuable, than vehicles not equipped with CleanDiesel engine systems.

200. As a direct and proximate result of Volkswagen's breach of contract, Plaintiffs and the Class have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

**C. Claims on Behalf of the Alabama Subclass**

**COUNT I  
VIOLATION OF ALABAMA DECEPTIVE TRADE PRACTICES ACT  
(ALA. CODE § 8-19-1, *et seq.*)**

201. Plaintiff Tamara Lyman ("Plaintiff," for purposes of all Alabama Subclass Counts) incorporates by reference all preceding allegations as though fully set forth herein.

202. Plaintiff intends to assert a claim under the Alabama Deceptive Trade Practices Act ("Alabama DTPA") which proscribes: "(5) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities that they do not have," "(7) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another," and "(27) Engaging in any other unconscionable, false, misleading, or deceptive act or practice in the conduct of trade or commerce." ALA. CODE § 8-19-5. Plaintiff will make a demand in satisfaction of ALA. CODE § 8-19-10(e), and may amend this Complaint to assert claims under the DTPA once the required 15 days have elapsed. This paragraph is included for purposes of notice only and is not intended to actually assert a claim under the DTPA.

**COUNT II  
FRAUD BY CONCEALMENT**

203. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

204. This claim is brought on behalf of the Alabama Subclass.

205. Volkswagen intentionally concealed and suppressed material facts concerning the quality of the Affected Vehicles. As alleged in this Complaint, notwithstanding references in the very model names of the subject vehicles as “Clean Diesel,” or to their engines as “TDI Clean Diesel” engines, Volkswagen engaged in a secret scheme to evade federal and state vehicle emissions standards by installing software designed to conceal its vehicles’ emissions of the pollutant nitrogen oxide, which contributes to the creation of ozone and smog. The software installed on the vehicles at issue was designed nefariously to kick-in during emissions certification testing, such that the vehicles would show far lower emissions than when actually operating on the road. The result was what Volkswagen intended: vehicles passed emissions certifications by way of deliberately induced false readings. Reportedly, Volkswagen’s deliberate, secret scheme resulted in noxious emissions from these vehicles at up to 40 times applicable standards.

206. Plaintiffs and Class members reasonably relied upon Volkswagen’s false representations. They had no way of knowing that Volkswagen’s representations were false and gravely misleading. As alleged herein, Volkswagen employed extremely sophisticated methods of deception. Plaintiffs and Class members did not, and could not, unravel Volkswagen’s deception on their own.

207. Volkswagen concealed and suppressed material facts concerning what is evidently the true culture of Volkswagen—one characterized by an emphasis on profits and sales above compliance with federal and state clean air laws, and emissions regulations that are meant to protect the public and consumers. It also emphasized profits and sales over the trust that Plaintiffs and Class members placed in its representations. As one customer, Priya Shah, put it in a quotation cited by the *Los Angeles Times* in a September 18, 2015 article, “It’s just a blatant

disregard and intentional manipulation of the system. That's just a whole other level of not only lying to the government, but also lying to your consumer. People buy diesel cars from Volkswagen because they feel they are clean diesel cars." In the words of Ms. Shah, which no doubt reflect the sentiments of all other CleanDiesel vehicle buyers, "I don't want to be spewing noxious gases into the environment."

208. Necessarily, Volkswagen also took steps to ensure that its employees did not reveal the details of its scheme to regulators or consumers, including Plaintiffs and Class members. Volkswagen did so in order to boost the reputations of its vehicles and to falsely assure purchasers and lessors of its vehicles, including previously owned vehicles, that Volkswagen is a reputable manufacturer that complies with applicable law, including federal and state clean air laws and emissions regulations, and that its vehicles likewise comply with applicable law and regulations. Volkswagen's false representations were material to consumers, both because they concerned the quality of the Affected Vehicles, including their compliance with applicable federal and state laws and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As Volkswagen well knew, its customers, including Plaintiffs and Class members, highly valued that the vehicles they were purchasing or leasing were *clean* diesel cars, and they paid accordingly.

209. Volkswagen had a duty to disclose its emissions scheme because knowledge of the scheme and its details were known and/or accessible only to Volkswagen, because Volkswagen had exclusive knowledge as to implementation and maintenance of its scheme, and because Volkswagen knew the facts were not known to or reasonably discoverable by Plaintiffs or Class members. Volkswagen also had a duty to disclose because it made general affirmative representations about the qualities of its vehicles with respect to emissions standards, starting

with references to them as *clean* diesel cars, or cars with *clean* diesel engines, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding its emissions scheme, the actual emissions of its vehicles, its actual philosophy with respect to compliance with federal and state clean air laws and emissions regulations, and its actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs, Volkswagen had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and Class members. Whether a manufacturer's products comply with federal and state clean air laws and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certification testing their vehicles must pass. Volkswagen represented to Plaintiffs and Class members that they were purchasing *clean* diesel vehicles, and certification testing appeared to confirm this—except that, secretly, Volkswagen had subverted the testing process thoroughly.

210. Volkswagen actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect its profits and to avoid the perception that its vehicles did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost Volkswagen money, and it did so at the expense of Plaintiffs and Class members.

211. On information and belief, Volkswagen has still not made full and adequate disclosures, and continues to defraud Plaintiffs and Class members by concealing material information regarding the emissions qualities of its vehicles and its emissions scheme.

212. Plaintiffs and Class members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly “clean” diesel cars manufactured by Volkswagen, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiffs’ and Class Members’ actions were justified. Volkswagen was in exclusive control of the material facts, and such facts were not known to the public, Plaintiffs, or Class members.

213. Because of the concealment and/or suppression of the facts, Plaintiffs and Class members have sustained damage because they own vehicles that are diminished in value as a result of Volkswagen’s concealment of the true quality and quantity of those vehicles’ emissions and Volkswagen’s failure to timely disclose the actual emissions qualities and quantities of hundreds of thousands of Volkswagen- and Audi-branded vehicles and the serious issues engendered by Volkswagen’s corporate policies. Had Plaintiffs and Class members been aware of Volkswagen’s emissions scheme, and the company’s callous disregard for compliance with applicable federal and state laws and regulations, Plaintiffs and Class members who purchased or leased new or previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

214. The value of Plaintiffs’ and Class members’ vehicles has diminished as a result of Volkswagen’s fraudulent concealment of its emissions scheme, which has greatly tarnished the Volkswagen and Audi brand names attached to Plaintiffs’ and Class members’ vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles. In addition, Class members

are entitled to damages for loss of use, costs of additional fuel, costs of unused warranties, and other damages to be proved at trial.

215. Accordingly, Volkswagen is liable to Plaintiffs and Class members for damages in an amount to be proven at trial.

216. Volkswagen's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Class members' rights and the representations that Volkswagen made to them, in order to enrich Volkswagen. To the extent permitted under applicable law, Volkswagen's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

**COUNT III**  
**BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**  
**(ALA. CODE § 7-2-314)**

217. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

218. Plaintiffs bring this Count on behalf of the Alabama Subclass.

219. Volkswagen is and was at all relevant times a merchant with respect to motor vehicles under Ala. Code § 7-2-104.

220. A warranty that the Affected Vehicles were in merchantable condition is implied by law in the instant transactions, pursuant to Ala. Code § 7-2-314. These Affected Vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Affected Vehicles are inherently defective in that they do not comply with federal and state emissions standards, rendering certain safety and emissions functions inoperative; and the CleanDiesel engine system was not adequately designed, manufactured, and tested.

221. Volkswagen was provided notice of these issues by the investigations of the EPA and individual state regulators, numerous complaints filed against it including the instant complaint, and by numerous individual letters and communications sent by Plaintiffs and other Class members before or within a reasonable amount of time after the allegations of Affected Vehicle defects became public.

222. As a direct and proximate result of Volkswagen's breach of the warranties of merchantability, Plaintiffs and the other Class members have been damaged in an amount to be proven at trial.

**COUNT V  
BREACH OF CONTRACT  
(BASED ON ALABAMA LAW)**

223. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

224. Plaintiff brings this Count on behalf of new vehicle or certified pre-owned vehicle purchasers in the Alabama Subclass.

225. Volkswagen's misrepresentations and omissions alleged herein, including Volkswagen's failure to disclose the existence of the CleanDiesel engine system's defect and/or defective design as alleged herein, caused Plaintiff and the other Alabama Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiff and the other Alabama Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the CleanDiesel engine system and which were not marketed as including such a system. Accordingly, Plaintiff and the other Alabama Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

226. Each and every sale or lease of an Affected Vehicle by an authorized Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the other Alabama Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose the existence of the CleanDiesel engine system's defect and/or defective design, including information known to Volkswagen rendering each Affected Vehicle non EPA-compliant, and thus less valuable, than vehicles not equipped with a CleanDiesel engine system.

227. As a direct and proximate result of Volkswagen's breach of contract, Plaintiff and the Alabama Subclass have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

**D. Claims on Behalf of the Alaska Subclass**

**COUNT I  
VIOLATION OF THE ALASKA UNFAIR TRADE  
PRACTICES AND CONSUMER PROTECTION ACT  
(ALASKA STAT. ANN. § 45.50.471, *et seq.*)**

228. Plaintiff Jason Hill ("Plaintiff," for purposes of all Alaska Subclass Counts) incorporates by reference all preceding allegations as though fully set forth herein.

229. Plaintiff intends to assert a claim under the Alaska Unfair Trade Practices And Consumer Protection Act ("Alaska CPA") which proscribes unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce unlawful, including: "(4) representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that the person does not have;" "(6) representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or

model, if they are of another;” “(8) advertising goods or services with intent not to sell them as advertised;” or “(12) using or employing deception, fraud, false pretense, false promise, misrepresentation, or knowingly concealing, suppressing, or omitting a material fact with intent that others rely upon the concealment, suppression or omission in connection with the sale or advertisement of goods or services whether or not a person has in fact been misled, deceived or damaged.” ALASKA STAT. ANN. § 45.50.471. Plaintiffs will make a demand in satisfaction of ALASKA STAT. § 45.50.535, and may amend this Complaint to assert claims under the CPA once the required notice period has elapsed. This paragraph is included for purposes of notice only and is not intended to actually assert a claim under the CPA.

**COUNT II  
FRAUD BY CONCEALMENT**

230. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

231. This claim is brought on behalf of the Alaska Subclass.

232. Volkswagen intentionally concealed and suppressed material facts concerning the quality of the Affected Vehicles. As alleged in this Complaint, notwithstanding references in the very model names of the subject vehicles as “Clean Diesel,” or to their engines as “TDI Clean Diesel” engines, Volkswagen engaged in a secret scheme to evade federal and state vehicle emissions standards by installing software designed to conceal its vehicles’ emissions of the pollutant nitrogen oxide, which contributes to the creation of ozone and smog. The software installed on the vehicles at issue was designed nefariously to kick-in during emissions certification testing, such that the vehicles would show far lower emissions than when actually operating on the road. The result was what Volkswagen intended: vehicles passed emissions certifications by way of deliberately induced false readings. Reportedly, Volkswagen’s

deliberate, secret scheme resulted in noxious emissions from these vehicles at up to 40 times applicable standards.

233. Plaintiffs and Class members reasonably relied upon Volkswagen's false representations. They had no way of knowing that Volkswagen's representations were false and gravely misleading. As alleged herein, Volkswagen employed extremely sophisticated methods of deception. Plaintiffs and Class members did not, and could not, unravel Volkswagen's deception on their own.

234. Volkswagen concealed and suppressed material facts concerning what is evidently the true culture of Volkswagen—one characterized by an emphasis on profits and sales above compliance with federal and state clean air laws, and emissions regulations that are meant to protect the public and consumers. It also emphasized profits and sales over the trust that Plaintiffs and Class members placed in its representations. As one customer, Priya Shah, put it in a quotation cited by the *Los Angeles Times* in a September 18, 2015 article, "It's just a blatant disregard and intentional manipulation of the system. That's just a whole other level of not only lying to the government, but also lying to your consumer. People buy diesel cars from Volkswagen because they feel they are clean diesel cars." In the words of Ms. Shah, which no doubt reflect the sentiments of all other CleanDiesel vehicle buyers, "I don't want to be spewing noxious gases into the environment."

235. Necessarily, Volkswagen also took steps to ensure that its employees did not reveal the details of its scheme to regulators or consumers, including Plaintiffs and Class members. Volkswagen did so in order to boost the reputations of its vehicles and to falsely assure purchasers and lessors of its vehicles, including previously owned vehicles, that Volkswagen is a reputable manufacturer that complies with applicable law, including federal and

state clean air laws and emissions regulations, and that its vehicles likewise comply with applicable law and regulations. Volkswagen's false representations were material to consumers, both because they concerned the quality of the Affected Vehicles, including their compliance with applicable federal and state laws and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As Volkswagen well knew, its customers, including Plaintiffs and Class members, highly valued that the vehicles they were purchasing or leasing were *clean* diesel cars, and they paid accordingly.

236. Volkswagen had a duty to disclose its emissions scheme because knowledge of the scheme and its details were known and/or accessible only to Volkswagen, because Volkswagen had exclusive knowledge as to implementation and maintenance of its scheme, and because Volkswagen knew the facts were not known to or reasonably discoverable by Plaintiffs or Class members. Volkswagen also had a duty to disclose because it made general affirmative representations about the qualities of its vehicles with respect to emissions standards, starting with references to them as *clean* diesel cars, or cars with *clean* diesel engines, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding its emissions scheme, the actual emissions of its vehicles, its actual philosophy with respect to compliance with federal and state clean air laws and emissions regulations, and its actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs, Volkswagen had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and Class members. Whether a manufacturer's products comply with federal and state clean air laws and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance,

are material concerns to a consumer, including with respect to the emissions certification testing their vehicles must pass. Volkswagen represented to Plaintiffs and Class members that they were purchasing *clean* diesel vehicles, and certification testing appeared to confirm this—except that, secretly, Volkswagen had subverted the testing process thoroughly.

237. Volkswagen actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect its profits and to avoid the perception that its vehicles did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost Volkswagen money, and it did so at the expense of Plaintiffs and Class members.

238. On information and belief, Volkswagen has still not made full and adequate disclosures, and continues to defraud Plaintiffs and Class members by concealing material information regarding the emissions qualities of its vehicles and its emissions scheme.

239. Plaintiffs and Class members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly “clean” diesel cars manufactured by Volkswagen, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiffs' and Class Members' actions were justified. Volkswagen was in exclusive control of the material facts, and such facts were not known to the public, Plaintiffs, or Class members.

240. Because of the concealment and/or suppression of the facts, Plaintiffs and Class members have sustained damage because they own vehicles that are diminished in value as a result of Volkswagen's concealment of the true quality and quantity of those vehicles' emissions

and Volkswagen's failure to timely disclose the actual emissions qualities and quantities of hundreds of thousands of Volkswagen- and Audi-branded vehicles and the serious issues engendered by Volkswagen's corporate policies. Had Plaintiffs and Class members been aware of Volkswagen's emissions scheme, and the company's callous disregard for compliance with applicable federal and state laws and regulations, Plaintiffs and Class members who purchased or leased new or previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

241. The value of Plaintiffs' and Class members' vehicles has diminished as a result of Volkswagen's fraudulent concealment of its emissions scheme, which has greatly tarnished the Volkswagen and Audi brand names attached to Plaintiffs' and Class members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles. In addition, Class members are entitled to damages for loss of use, costs of additional fuel, costs of unused warranties, and other damages to be proved at trial.

242. Accordingly, Volkswagen is liable to Plaintiffs and Class members for damages in an amount to be proven at trial.

243. Volkswagen's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Class members' rights and the representations that Volkswagen made to them, in order to enrich Volkswagen. To the extent permitted under applicable law, Volkswagen's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

**COUNT III  
BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY  
(ALASKA STAT. § 45.02.314)**

244. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

245. Plaintiffs bring this Count on behalf of the Alaska Subclass.

246. Volkswagen is and was at all relevant times a merchant with respect to motor vehicles.

247. A warranty that the Affected Vehicles were in merchantable condition is implied by law in the instant transactions. These Affected Vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Affected Vehicles are inherently defective in that they do not comply with federal and state emissions standards, rendering certain safety and emissions functions inoperative; and the CleanDiesel engine system was not adequately designed, manufactured, and tested.

248. Volkswagen was provided notice of these issues by the investigations of the EPA and individual state regulators, numerous complaints filed against it including the instant complaint, and by numerous individual letters and communications sent by Plaintiffs and other Class members before or within a reasonable amount of time after the allegations of Affected Vehicle defects became public.

249. As a direct and proximate result of Volkswagen's breach of the warranties of merchantability, Plaintiffs and the other Class members have been damaged in an amount to be proven at trial.

**COUNT IV  
BREACH OF CONTRACT  
(BASED ON ALASKA LAW)**

250. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

251. Plaintiff brings this Count on behalf of new vehicle or certified pre-owned vehicle purchasers in the Alaska Subclass.

252. Volkswagen's misrepresentations and omissions alleged herein, including Volkswagen's failure to disclose the existence of the CleanDiesel engine system's defect and/or defective design as alleged herein, caused Plaintiff and the other Alaska Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiff and the other Alaska Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the CleanDiesel engine system and which were not marketed as including such a system. Accordingly, Plaintiff and the other Alaska Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

253. Each and every sale or lease of an Affected Vehicle by an authorized Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the other Alaska Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose the existence of the CleanDiesel engine system's defect and/or defective design, including information known to Volkswagen rendering each Affected Vehicle non EPA-compliant, and thus less valuable, than vehicles not equipped with a CleanDiesel engine system.

254. As a direct and proximate result of Volkswagen's breach of contract, Plaintiff and the Alaska Subclass have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

**E. Claims Brought on Behalf of the Arizona Subclass**

**COUNT I  
VIOLATIONS OF THE CONSUMER FRAUD ACT  
(ARIZ. REV. STAT. §§ 44-1521, *et seq.*)**

255. Plaintiff James Bergmann ("Plaintiff," for purposes of all Arizona Subclass Counts) incorporates by reference all preceding allegations as though fully set forth herein.

256. Plaintiff brings this Count on behalf of the Arizona Subclass.

257. Plaintiff and Volkswagen are each "persons" as defined by ARIZ. REV. STAT. § 44-1521(6). The Affected Vehicles are "merchandise" as defined by ARIZ. REV. STAT. § 44-1521(5).

258. The Arizona Consumer Fraud Act proscribes "[t]he act, use or employment by any person of any deception, deceptive act or practice, fraud, false pretense, false promise, misrepresentation, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise whether or not any person has in fact been misled, deceived or damaged thereby." ARIZ. REV. STAT. § 44-1522(A).

259. By failing to disclose and actively concealing that the CleanDiesel engine systems were not EPA-compliant and used a "defeat device" in the Affected Vehicles, Volkswagen engaged in deceptive business practices prohibited by the Arizona Consumer Fraud Act, ARIZ. REV. STAT. § 44-1522(A), including (1) representing that Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have, (2) representing that Affected Vehicles are

of a particular standard, quality, and grade when they are not, (3) advertising Affected Vehicles with the intent not to sell them as advertised, and (4) engaging in acts or practices which are otherwise unfair, misleading, false, or deceptive to the consumer.

260. As alleged above, Volkswagen made numerous material statements about the benefits and characteristics of the CleanDiesel system that were either false or misleading. Each of these statements contributed to the deceptive context of Volkswagen's unlawful advertising and representations as a whole.

261. Volkswagen knew that the CleanDiesel engine systems in the Affected Vehicles were defectively designed or manufactured, did not comply with EPA regulations, used a "defeat device," and were not suitable for their intended use. Volkswagen nevertheless failed to warn Plaintiff about these defects despite having a duty to do so.

262. Volkswagen owed Plaintiff a duty to disclose the defective nature of the CleanDiesel engine system in the Affected Vehicles, because Volkswagen:

- i) Possessed exclusive knowledge of the defects rendering the Affected Vehicles illegal under EPA regulations;
- ii) Intentionally concealed the defects associated with CleanDiesel engine systems through its deceptive marketing campaigns and use of the "defeat device" that it designed to hide the defects in the CleanDiesel engine system; and/or
- iii) Made incomplete representations about the characteristics and performance of the CleanDiesel engine system generally, while purposefully withholding material facts from Plaintiff that contradicted these representations.

263. Volkswagen's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiff, about the true performance and characteristics of the CleanDiesel engine system in Affected Vehicles.

264. As a result of its violations of the Arizona Consumer Fraud Act detailed above, Volkswagen caused actual damage to Plaintiff and, if not stopped, will continue to harm Plaintiff. Plaintiff currently owns or leases, or within the class period has owned or leased, an Affected Vehicle that is defective. Defects associated with the CleanDiesel engine system have caused the value of Affected Vehicles to decrease.

265. Plaintiff and the Class sustained damages as a result of the Volkswagen's unlawful acts and are, therefore, entitled to damages and other relief as provided under the Arizona Consumer Fraud Act.

266. Plaintiff also seeks court costs and attorneys' fees as a result of Volkswagen's violation of the Arizona Consumer Fraud Act as provided in ARIZ. REV. STAT. § 12-341.01.

**COUNT II**  
**BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**  
**(ARIZ. REV. STAT. § 47-2314)**

267. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

268. Plaintiffs bring this Count on behalf of the Arizona Subclass.

269. Volkswagen is and was at all relevant times a merchant with respect to motor vehicles under Ariz. Rev. Stat. § 47-2014.

270. A warranty that the Affected Vehicles were in merchantable condition is implied by law in the instant transactions. These Affected Vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Affected Vehicles are inherently defective in that they do not

comply with federal and state emissions standards, rendering certain safety and emissions functions inoperative; and the CleanDiesel engine system was not adequately designed, manufactured, and tested.

271. Volkswagen was provided notice of these issues by the investigations of the EPA and individual state regulators, numerous complaints filed against it including the instant complaint, and by numerous individual letters and communications sent by Plaintiffs and other Class members before or within a reasonable amount of time after the allegations of Affected Vehicle defects became public.

272. As a direct and proximate result of Volkswagen's breach of the warranties of merchantability, Plaintiffs and the other Class members have been damaged in an amount to be proven at trial.

**COUNT III  
BREACH OF CONTRACT  
(Based on Arizona Law)**

273. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

274. Plaintiff brings this Count on behalf of new vehicle or certified pre-owned vehicle purchasers in the Arizona Subclass.

275. Volkswagen's misrepresentations and omissions alleged herein, including Volkswagen's failure to disclose the existence of the CleanDiesel engine system's defect and/or defective design as alleged herein, caused Plaintiff and the other Arizona Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiff and the other Arizona Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the CleanDiesel engine system and which were not marketed as including such a

system. Accordingly, Plaintiff and the other Arizona Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

276. Each and every sale or lease of an Affected Vehicle by an authorized Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the other Arizona Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose the existence of the CleanDiesel engine system's defect and/or defective design, including information known to Volkswagen rendering each Affected Vehicle non EPA-compliant, and thus less valuable, than vehicles not equipped with a CleanDiesel engine system.

277. As a direct and proximate result of Volkswagen's breach of contract, Plaintiff and the Arizona Subclass have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

**COUNT IV  
FRAUDULENT CONCEALMENT  
(Based on Arizona Law)**

278. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

279. Plaintiff brings this Count on behalf of the Arizona Subclass.

280. Volkswagen intentionally concealed that the CleanDiesel engine systems were not EPA-compliant and used a "defeat device," or acted with reckless disregard for the truth, and denied Plaintiff and the other Class members information that is highly relevant to their purchasing decision.

281. Volkswagen further affirmatively misrepresented to Plaintiff in advertising and other forms of communication, including standard and uniform material provided with each car,

that the Affected Vehicles it was selling were new, had no significant defects, complied with EPA regulations and would perform and operate properly when driven in normal usage.

282. Volkswagen knew these representations were false when made.

283. The Affected Vehicles purchased or leased by Plaintiff and the other Class members were, in fact, defective, non-EPA compliant, unsafe, and unreliable because the Affected Vehicles contained faulty and defective CleanDiesel engine system, as alleged herein.

284. Volkswagen had a duty to disclose that these Affected Vehicles were defective, unsafe, non-EPA compliant and unreliable in that certain crucial emissions functions of the Affected Vehicles would be rendered inoperative due to the “defeat device” installed in the defective CleanDiesel engine system, because Plaintiff and the other Class members relied on Volkswagen’s material representations that the Affected Vehicles they were purchasing were safe, environmentally clean, efficient and free from defects.

285. The aforementioned concealment was material because if it had been disclosed Plaintiff and the other Class members would not have bought or leased the Affected Vehicles, or would not have bought or leased those Vehicles at the prices they paid.

286. The aforementioned representations were material because they were facts that would typically be relied on by a person purchasing or leasing a new motor vehicle. Volkswagen knew or recklessly disregarded that its representations were false because it knew that it had to use the “defeat device” in order for Affected Vehicles to pass EPA emissions requirements. Volkswagen intentionally made the false statements in order to sell Affected Vehicles.

287. Plaintiff and the other Class members relied on Volkswagen’s reputation – along with Volkswagen’s failure to disclose the faulty and defective nature of the CleanDiesel engine

system and Volkswagen's affirmative assurance that its Affected Vehicles were safe and reliable, and other similar false statements – in purchasing or leasing Affected Vehicles.

288. As a result of their reliance, Plaintiff and the other Class members have been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase or lease and/or the diminished value of their Affected Vehicles.

289. Volkswagen's conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of Plaintiff and the other Class members. Plaintiff and the other Class members are therefore entitled to an award of punitive damages to the extent permitted under applicable law.

**F. Claims Brought on Behalf of the California Subclass**

**COUNT I  
VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW  
(CAL. BUS. & PROF. CODE §§ 17200, *et seq.*)**

290. Plaintiffs Mark Houle, Simon Beaven and Linda Hunt ("Plaintiffs," for purposes of all California Subclass Counts) incorporate by reference all preceding allegations as though fully set forth herein.

291. Plaintiffs bring this Count on behalf of the California Subclass.

292. California's Unfair Competition Law ("UCL"), CAL. BUS. & PROF. CODE §§ 17200, *et seq.*, proscribes acts of unfair competition, including "any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising."

293. Volkswagen's conduct, as described herein, was and is in violation of the UCL. Volkswagen's conduct violates the UCL in at least the following ways:

- i. By knowingly and intentionally concealing from Plaintiffs and the other California Subclass members that the Affected Vehicles suffer from a design defect while obtaining money from Plaintiffs and the Class;
- ii. By marketing Affected Vehicles as possessing functional and defect-free, EPA-compliant CleanDiesel engine systems;
- iii. By purposefully installing an illegal “defeat device” in the Affected Vehicles to fraudulently obtain EPA certification and cause Affected Vehicles to pass emissions tests when in truth and fact they did not pass such tests;
- iv. By violating federal laws, including the Clean Air Act; and
- v. By violating other California laws, including California laws governing vehicle emissions and emission testing requirements.

294. Volkswagen’s misrepresentations and omissions alleged herein caused Plaintiffs and the other California Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiffs and the other California Subclass members would not have purchased or leased these vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain CleanDiesel engine systems that failed to comply with EPA and California emissions standards.

295. Accordingly, Plaintiffs and the other California Subclass members have suffered injury in fact including lost money or property as a result of Volkswagen’s misrepresentations and omissions.

296. Plaintiffs seek to enjoin further unlawful, unfair, and/or fraudulent acts or practices by Volkswagen under CAL. BUS. & PROF. CODE § 17200.

297. Plaintiffs requests that this Court enter such orders or judgments as may be necessary to enjoin Volkswagen from continuing its unfair, unlawful, and/or deceptive practices and to restore to Plaintiffs and members of the Class any money it acquired by unfair competition, including restitution and/or restitutionary disgorgement, as provided in CAL. BUS. & PROF. CODE § 17203 and CAL. BUS. & PROF. CODE § 3345; and for such other relief set forth below.

**COUNT II**  
**VIOLATION OF CALIFORNIA CONSUMERS LEGAL REMEDIES ACT**  
**(CAL. BUS. & PROF. CODE §§ 1750, *et seq.*)**

298. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

299. Plaintiffs bring this Count on behalf of the California Subclass.

300. California’s Consumers Legal Remedies Act (“CLRA”), Cal. Bus. & Prof. Code §§ 1750, *et seq.*, proscribes “unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer.”

301. The Affected Vehicles are “goods” as defined in Cal. Bus. & Prof. Code § 1761(a).

302. Plaintiffs and the other California Subclass members are “consumers” as defined in Cal. Bus. & Prof. Code § 1761(d), and Plaintiffs, the other California Subclass members, and Volkswagen are “persons” as defined in Cal. Bus. & Prof. Code § 1761(c).

303. As alleged above, Volkswagen made numerous representations concerning the benefits, efficiency, performance and safety features of CleanDiesel engine systems that were misleading.

304. In purchasing or leasing the Affected Vehicles, Plaintiffs and the other California Subclass members were deceived by Volkswagen's failure to disclose that the Affected Vehicles were equipped with defective CleanDiesel engine systems that failed EPA and California emissions standards.

305. Volkswagen's conduct, as described hereinabove, was and is in violation of the CLRA. Volkswagen's conduct violates at least the following enumerated CLRA provisions:

- i. Cal. Civ. Code § 1770(a)(2): Misrepresenting the approval or certification of goods;
- ii. Cal. Civ. Code § 1770(a)(3): Misrepresenting the certification by another;
- iii. Cal. Civ. Code § 1770(a)(5): Representing that goods have sponsorship, approval, characteristics, uses, benefits, or quantities which they do not have;
- iv. Cal. Civ. Code § 1770(a)(7): Representing that goods are of a particular standard, quality, or grade, if they are of another;
- v. Cal. Civ. Code § 1770(a)(9): Advertising goods with intent not to sell them as advertised; and
- vi. Cal. Civ. Code § 1770(a)(16): Representing that goods have been supplied in accordance with a previous representation when they have not.

306. Plaintiffs and the other California Subclass members have suffered injury in fact and actual damages resulting from Volkswagen's material omissions and misrepresentations because they paid an inflated purchase or lease price for the Affected Vehicles and because they

stand to pay additional fuel costs if and when their Affected Vehicles are made to comply with emissions standards.

307. Volkswagen knew, should have known, or was reckless in not knowing of the defective design and/or manufacture of the CleanDiesel engine systems, and that the Affected Vehicles were not suitable for their intended use.

308. The facts concealed and omitted by Volkswagen to Plaintiffs and the other California Subclass members are material in that a reasonable consumer would have considered them to be important in deciding whether to purchase or lease the Affected Vehicles or pay a lower price. Had Plaintiffs and the other California Subclass members known about the defective nature of the Affected Vehicles, they would not have purchased or leased the Affected Vehicles or would not have paid the prices they paid.

309. In accordance with Cal. Civ. Code § 1780(a), Plaintiffs and members of the Class seek injunctive relief for Volkswagen's violations of the CLRA.

310. While Plaintiffs do not seek to recover damages under the CLRA in this initial Complaint, after mailing appropriate notice and demand in accordance with Civil Code § 1782(a) & (d), Plaintiffs will subsequently amend this Complaint to also include a request for compensatory and punitive damages.

**COUNT III**  
**VIOLATION OF CALIFORNIA FALSE ADVERTISING LAW**  
**(CAL. BUS. & PROF. CODE §§ 17500, *et seq.*)**

311. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

312. Plaintiffs bring this Count on behalf of the California Subclass.

313. California Bus. & Prof. Code § 17500 states: "It is unlawful for any ... corporation ... with intent directly or indirectly to dispose of real or personal property ... to

induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated ... from this state before the public in any state, in any newspaper or other publication, or any advertising device, ... or in any other manner or means whatever, including over the Internet, any statement ... which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.”

314. Volkswagen caused to be made or disseminated through California and the United States, through advertising, marketing and other publications, statements that were untrue or misleading, and which were known, or which by the exercise of reasonable care should have been known to Volkswagen, to be untrue and misleading to consumers, including Plaintiffs and the other Class members.

315. Volkswagen has violated § 17500 because the misrepresentations and omissions regarding the safety, reliability, and functionality of Affected Vehicles as set forth in this Complaint were material and likely to deceive a reasonable consumer.

316. Plaintiffs and the other Class members have suffered an injury in fact, including the loss of money or property, as a result of Volkswagen’s unfair, unlawful, and/or deceptive practices. In purchasing or leasing their Affected Vehicles, Plaintiffs and the other Class members relied on the misrepresentations and/or omissions of Volkswagen with respect to the safety, performance and reliability of the Affected Vehicles. Volkswagen’s representations turned out not to be true because the Affected Vehicles are distributed with faulty and defective CleanDiesel engine systems, rendering certain safety and emissions functions inoperative. Had Plaintiffs and the other Class members known this, they would not have purchased or leased their Affected Vehicles and/or paid as much for them. Accordingly, Plaintiffs and the other Class members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

317. All of the wrongful conduct alleged herein occurred, and continues to occur, in the conduct of Volkswagen's business. Volkswagen's wrongful conduct is part of a pattern or generalized course of conduct that is still perpetuated and repeated, both in the State of California and nationwide.

318. Plaintiffs, individually and on behalf of the other Class members, requests that this Court enter such orders or judgments as may be necessary to enjoin Volkswagen from continuing their unfair, unlawful, and/or deceptive practices and to restore to Plaintiffs and the other Class members any money Volkswagen acquired by unfair competition, including restitution and/or restitutionary disgorgement, and for such other relief set forth below.

**COUNT IV  
BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY  
(CAL. COM. CODE § 2314)**

319. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

320. Plaintiffs bring this Count on behalf of the California Subclass.

321. Volkswagen is and was at all relevant times a merchant with respect to motor vehicles under Cal. Com. Code § 2014.

322. A warranty that the Affected Vehicles were in merchantable condition is implied by law in the instant transactions, pursuant to Cal. Com. Code § 2314. These Affected Vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Affected Vehicles are inherently defective in that they do not comply with federal and state emissions standards, rendering certain safety and emissions functions inoperative; and the CleanDiesel engine system was not adequately designed, manufactured, and tested.

323. Volkswagen was provided notice of these issues by the investigations of the EPA and individual state regulators, numerous complaints filed against it including the instant

complaint, and by numerous individual letters and communications sent by Plaintiffs and other Class members before or within a reasonable amount of time after the allegations of Affected Vehicle defects became public.

324. As a direct and proximate result of Volkswagen's breach of the warranties of merchantability, Plaintiffs and the other Class members have been damaged in an amount to be proven at trial.

**COUNT VI**  
**VIOLATION OF SONG-BEVERLY CONSUMER WARRANTY ACT FOR**  
**BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**  
**(CAL. CIV. CODE §§ 1791.1 & 1792)**

325. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

326. Plaintiffs bring this Count on behalf of the California Subclass.

327. Plaintiffs and the other Class members who purchased or leased the Affected Vehicles in California are "buyers" within the meaning of Cal. Civ. Code § 1791(b).

328. The Affected Vehicles are "consumer goods" within the meaning of Cal. Civ. Code § 1791(a).

329. Volkswagen is a "manufacturer" of the Affected Vehicles within the meaning of Cal. Civ. Code § 1791(j).

330. Volkswagen impliedly warranted to Plaintiffs and the other Class members that its Affected Vehicles were "merchantable" within the meaning of Cal. Civ. Code §§ 1791.1(a) & 1792, however, the Affected Vehicles do not have the quality that a buyer would reasonably expect.

331. Cal. Civ. Code § 1791.1(a) states:

"Implied warranty of merchantability" or "implied warranty that goods are merchantable" means that the consumer goods meet each of the following:

- (1) Pass without objection in the trade under the contract description.
- (2) Are fit for the ordinary purposes for which such goods are used.

- (3) Are adequately contained, packaged, and labeled.
- (4) Conform to the promises or affirmations of fact made on the container or label.

332. The Affected Vehicles would not pass without objection in the automotive trade because of the defects in the Affected Vehicles' CleanDiesel engine system. Specifically, the Affected Vehicles do not comply with federal and state emissions standards, rendering certain safety and emissions functions inoperative. In addition, the CleanDiesel engine system was not adequately designed, manufactured, and tested.

333. Because of the defects in the Affected Vehicles' CleanDiesel engine system, they are not in merchantable condition and thus not fit for ordinary purposes.

334. The Affected Vehicles are not adequately labeled because the labeling fails to disclose the defects in the Affected Vehicles' CleanDiesel engine system.

335. Volkswagen breached the implied warranty of merchantability by manufacturing and selling Affected Vehicles containing defects associated with the CleanDiesel engine system. Furthermore, these defects have caused Plaintiffs and the other Class members to not receive the benefit of their bargain and have caused Affected Vehicles to depreciate in value.

336. As a direct and proximate result of Volkswagen's breach of the implied warranty of merchantability, Plaintiffs and the other Class members received goods whose defective condition substantially impairs their value to Plaintiffs and the other Class members. Plaintiffs and the other Class members have been damaged as a result of the diminished value of Volkswagen's products, the products' malfunctioning, and the nonuse of their Affected Vehicles.

337. Pursuant to Cal. Civ. Code §§ 1791.1(d) & 1794, Plaintiffs and the other Class members are entitled to damages and other legal and equitable relief including, at their election, the purchase price of their Affected Vehicles, or the overpayment or diminution in value of their Affected Vehicles.

338. Pursuant to Cal. Civ. Code § 1794, Plaintiffs and the other Class members are entitled to costs and attorneys' fees.

**COUNT VII  
BREACH OF CONTRACT  
(Based on California Law)**

339. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

340. Plaintiffs bring this Count on behalf of new vehicle or certified pre-owned vehicle purchasers in the California Subclass.

341. Volkswagen's misrepresentations and omissions alleged herein, including Volkswagen's failure to disclose the existence of the "defeat device" and/or defective design as alleged herein, caused Plaintiffs and the other California Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiffs and the other California Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the CleanDiesel engine system and the "defeat device." Accordingly, Plaintiffs and the other California Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

342. Each and every sale or lease of an Affected Vehicle by an authorized Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing Plaintiffs and the other California Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose the existence of the "defeat device" and/or defective design, including information known to Volkswagen rendering each Affected Vehicle less safe and emissions compliant, and thus less valuable, than vehicles not equipped with CleanDiesel engine systems and "defeat devices."

343. As a direct and proximate result of Volkswagen's breach of contract, Plaintiffs and the California Subclass have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

**COUNT VIII**  
**FRAUD BY CONCEALMENT**  
**(Based on California Law)**

344. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

345. This claim is brought on behalf of California Subclass members.

346. Volkswagen intentionally concealed and suppressed material facts concerning the quality of the Affected Vehicles. As alleged in this Complaint, notwithstanding references in the very model names of the subject vehicles as "CleanDiesel," or to their engines as "TDI Clean Diesel" engines, Volkswagen engaged in a secret scheme to evade federal and state vehicle emissions standards by installing software designed to conceal its vehicles' emissions of the pollutant nitrogen oxide, which contributes to the creation of ozone and smog. The software installed on the vehicles at issue was designed nefariously to kick-in during emissions certification testing, such that the vehicles would show far lower emissions than when actually operating on the road. The result was what Volkswagen intended: vehicles passed emissions certifications by way of deliberately induced false readings. Reportedly, Volkswagen's deliberate, secret scheme resulted in noxious emissions from these vehicles at up to 40 times applicable standards.

347. Plaintiffs and California Subclass members reasonably relied upon Volkswagen's false representations. They had no way of knowing that Volkswagen's representations were false and gravely misleading. As alleged herein, Volkswagen employed extremely sophisticated

methods of deception. Plaintiffs and California Subclass members did not, and could not, unravel Volkswagen's deception on their own.

348. Volkswagen concealed and suppressed material facts concerning what is evidently the true culture of Volkswagen – one characterized by an emphasis on profits and sales above compliance with federal and state clean air laws, and emissions regulations that are meant to protect the public and consumers. It also emphasized profits and sales over the trust that Plaintiffs and California Subclass members placed in its representations. As one customer, Priya Shah, put it in a quotation cited by the *Los Angeles Times* in a September 15, 2015 article, “It’s just a blatant disregard and intentional manipulation of the system. That’s just a whole other level of not only lying to the government, but also lying to your consumer. People buy diesel cars from Volkswagen because they feel they are clean diesel cars.” As Ms. Shah put it, “I don’t want to be spewing noxious gases into the environment.”

349. Necessarily, Volkswagen also took steps to ensure that its employees did not reveal the details of its scheme to regulators or consumers, including Plaintiffs and California Subclass Members. Volkswagen did so in order to boost the reputations of its vehicles and to falsely assure purchasers and lessors of its vehicles, including previously owned vehicles, that Volkswagen is a reputable manufacturer that complies with applicable law, including federal and state clean air laws and emissions regulations, and that its vehicles likewise comply with applicable law and regulations. Volkswagen’s false representations were material to consumers, both because they concerned the quality of the Affected Vehicles, including their compliance with applicable federal and state laws and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As Volkswagen well knew, its customers, including Plaintiffs and California Subclass Members, highly valued

that the vehicles they were purchasing or leasing were *clean* diesel cars, and they paid accordingly.

350. Volkswagen had a duty to disclose the emissions scheme it engaged in with respect to the Affected Vehicles because knowledge of the scheme and its details were known and/or accessible only to Volkswagen, because Volkswagen had exclusive knowledge as to implementation and maintenance of its scheme, and because Volkswagen knew the facts were not known to or reasonably discoverable by Plaintiffs or California Subclass Members. Volkswagen also had a duty to disclose because it made general affirmative representations about the qualities of its vehicles with respect to emissions standards, starting with references to them as *clean* diesel cars, or cars with *clean* diesel engines, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding its emissions scheme, the actual emissions of its vehicles, its actual philosophy with respect to compliance with federal and state clean air laws and emissions regulations, and its actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs, Volkswagen had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and California Subclass members. Whether a manufacturer's products comply with federal and state clean air laws and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certification testing their vehicles must pass. Volkswagen represented to Plaintiffs and California Subclass members that they were purchasing *clean* diesel vehicles, and certification

testing appeared to confirm this – except that, secretly, Volkswagen had subverted the testing process thoroughly.

351. Volkswagen actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect its profits and to avoid the perception that its vehicles did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost Volkswagen money, and it did so at the expense of Plaintiffs and California Subclass members.

352. On information and belief, Volkswagen has still not made full and adequate disclosures, and continues to defraud Plaintiffs and California Subclass members by concealing material information regarding the emission qualities of its vehicles and its emissions scheme.

353. Plaintiffs and California Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly “clean” diesel cars manufactured by Volkswagen, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiffs' and California Subclass Members' actions were justified. Volkswagen was in exclusive control of the material facts, and such facts were not known to the public, Plaintiffs, or California Subclass Members.

354. Because of the concealment and/or suppression of the facts, Plaintiffs and California Subclass members have sustained damage because they own vehicles that are diminished in value as a result of Volkswagen's concealment of the true quality and quantity of those vehicles' emissions and Volkswagen's failure to timely disclose the actual emission qualities and quantities of millions of Volkswagen- and Audi-branded vehicles and the serious

issues engendered by Volkswagen's corporate policies. Had Plaintiffs and California Subclass members been aware of Volkswagen's emissions scheme, and the company's callous disregard for compliance with applicable federal and state laws and regulations, Plaintiffs and California Subclass members who purchased or leased new or previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

355. The value of Plaintiffs' and California Subclass Members' vehicles has diminished as a result of Volkswagen's fraudulent concealment of its emissions scheme, which has greatly tarnished the Volkswagen and Audi brand names attached to Plaintiffs' and California Subclass members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles. In addition, Class members are entitled to damages for loss of use, costs of additional fuel, costs of unused warranties, and other damages to be proved at trial.

356. Accordingly, Volkswagen is liable to Plaintiffs and California Subclass members for damages in an amount to be proven at trial.

357. Volkswagen's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and California Subclass members' rights and the representations that Volkswagen made to them, in order to enrich Volkswagen. Volkswagen's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

**G. Claims Brought on Behalf of the Colorado Subclass**

**COUNT I  
VIOLATIONS OF THE COLORADO CONSUMER PROTECTION ACT  
(COLO. REV. STAT. §§ 6-1-101, *et seq.*)**

358. Plaintiff Wendy Goldner ("Plaintiffs," for purposes of all Colorado Subclass Counts) incorporate by reference all preceding allegations as though fully set forth herein.

359. Plaintiffs bring this Count on behalf of the Colorado Subclass.

360. Colorado's Consumer Protection Act (the "CCPA") prohibits a person from engaging in a "deceptive trade practice," which includes knowingly making "a false representation as to the source, sponsorship, approval, or certification of goods," or "a false representation as to the characteristics, ingredients, uses, benefits, alterations, or quantities of goods." COLO. REV. STAT. § 6-1-105(1)(b), (e). The CCPA further prohibits "represent[ing] that goods ... are of a particular standard, quality, or grade ... if he knows or should know that they are of another," and "advertis[ing] goods ... with intent not to sell them as advertised." COLO. REV. STAT. § 6-1-105(1)(g), (i).

361. Defendants are each a "person" under § 6-1-102(6) of the Colorado CPA, COL. REV. STAT. § 6-1-101, *et seq.*

362. Plaintiffs and Colorado Class members are "consumers" for the purpose of COL. REV. STAT. § 6-1-113(1)(a) who purchased or leased one or more Affected Vehicles.

363. In the course of Volkswagen's business, it willfully misrepresented and failed to disclose, and actively concealed, that the CleanDiesel Engine System was non-EPA compliant, and the use of the "defeat device" in Affected Vehicles as described above. Accordingly, Volkswagen engaged in unlawful trade practices, including representing that Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Affected Vehicles are of a particular standard and quality when they are not; advertising Affected Vehicles with the intent not to sell them as advertised; and otherwise engaging in conduct likely to deceive.

364. In purchasing or leasing the Affected Vehicles, Plaintiffs and the other Colorado Subclass members were deceived by Volkswagen's failure to disclose that the Affected Vehicles

were equipped with defective CleanDiesel engine systems that failed EPA and Colorado emissions standards.

365. Plaintiffs and Colorado Subclass members reasonably relied upon Volkswagen's false misrepresentations. They had no way of knowing that Volkswagen's representations were false and gravely misleading. As alleged herein, Volkswagen engaged in extremely sophisticated methods of deception. Plaintiffs and Colorado Subclass members did not, and could not, unravel Volkswagen's deception on their own.

366. Volkswagen intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Colorado Subclass.

367. Volkswagen knew or should have known that its conduct violated the Colorado CPA.

368. Volkswagen's actions as set forth above occurred in the conduct of trade or commerce.

369. Volkswagen's conduct proximately caused injuries to Plaintiffs and the other Class members.

370. Plaintiffs and the other Class members were injured as a result of Volkswagen's conduct in that Plaintiffs and the other Class members overpaid for their Affected Vehicles and did not receive the benefit of their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of Volkswagen's misrepresentations and omissions.

371. Pursuant to Col. Rev. Stat. § 6-1-113, Plaintiffs and the Colorado Subclass seek monetary relief against Volkswagen measured as the greater of (a) actual damages in an amount

to be determined at trial and the discretionary trebling of such damages, or (b) statutory damages in the amount of \$500 for each Plaintiffs and each Colorado Subclass member.

372. Plaintiffs also seek an order enjoining Volkswagen's unfair, unlawful, and/or deceptive practices, declaratory relief, attorneys' fees, and any other just and proper relief available under the Colorado CPA.

**COUNT II**  
**STRICT PRODUCT LIABILITY**  
**(Based on Colorado Law)**

373. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

374. Plaintiffs bring this Count on behalf of the Colorado Subclass.

375. Colorado law recognizes an action for product defects that complements Colorado's Product Liability Statute, COLO. REV. STAT. TITLE 13, Article 21, Part 4.

376. Volkswagen is a "manufacturer" and "seller" of the Affected Vehicles within the meaning of COLO. REV. STAT. § 13-21-401(1).

377. Volkswagen manufactured and sold the Affected Vehicles in a defective condition and in a condition that was unreasonably dangerous to drivers, other motorists, pedestrians, and others or to their property, including persons who may reasonably be expected to use, consume, or be affected by them, in at least the following respects: (i) the Affected Vehicles were defectively designed, assembled, fabricated, produced, and constructed in that they were not EPA compliant and used a "defeat device"; and (ii) the Affected Vehicles were not accompanied by adequate warnings about their defective nature.

378. The Affected Vehicles were defective and unreasonably dangerous at the time they were sold by Volkswagen and were intended to and did reach Plaintiffs and the other Class

members in substantially the same condition as they were in when they were manufactured, sold, and left the control of Volkswagen.

379. Plaintiffs and the other Class members are persons who were reasonably expected to use, consume, or be affected by the Affected Vehicles.

380. As a direct and proximate result of the defective and illegal conditions of the Affected Vehicles, Plaintiffs and the other Class members have suffered damages.

**COUNT III  
BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY  
(COLO. REV. STAT. § 4-2-314)**

381. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

382. Plaintiffs bring this Count on behalf of the Colorado Subclass.

383. Volkswagen is and was at all relevant times a merchant with respect to motor vehicles.

384. A warranty that the Affected Vehicles were in merchantable condition is implied by law in the instant transactions. These Affected Vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Affected Vehicles are inherently defective in that they do not comply with federal and state emissions standards, rendering certain safety and emissions functions inoperative; and the CleanDiesel engine system was not adequately designed, manufactured, and tested.

385. Volkswagen was provided notice of these issues by the investigations of the EPA and individual state regulators, numerous complaints filed against it including the instant complaint, and by numerous individual letters and communications sent by Plaintiffs and other Class members before or within a reasonable amount of time after the allegations of Affected Vehicle defects became public.

386. As a direct and proximate result of Volkswagen's breach of the warranties of merchantability, Plaintiffs and the other Class members have been damaged in an amount to be proven at trial.

**COUNT IV  
BREACH OF CONTRACT  
(Based on Colorado Law)**

387. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

388. Plaintiffs bring this Count on behalf of new vehicle or certified pre-owned vehicle purchasers in the Colorado Subclass.

389. Volkswagen's misrepresentations and omissions alleged herein, including Volkswagen's failure to disclose the existence of the CleanDiesel engine system's defect and/or defective design as alleged herein, caused Plaintiffs and the other Colorado Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiffs and the other Colorado Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the CleanDiesel engine system and which were not marketed as including such a system. Accordingly, Plaintiffs and the other Colorado Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

390. Each and every sale or lease of an Affected Vehicle by an authorized Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing Plaintiffs and the other Colorado Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose the existence of the CleanDiesel engine system's defect and/or defective design, including information known

to Volkswagen rendering each Affected Vehicle non EPA-compliant, and thus less valuable, than vehicles not equipped with a CleanDiesel engine system.

391. As a direct and proximate result of Volkswagen's breach of contract, Plaintiffs and the Colorado Subclass have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

**COUNT V  
FRAUDULENT CONCEALMENT  
(Based on Colorado Law)**

392. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

393. Plaintiffs bring this Count on behalf of the Colorado Subclass.

394. Volkswagen concealed and suppressed material facts concerning the quality of its vehicles and the Volkswagen brand.

395. Volkswagen intentionally concealed that the CleanDiesel engine systems were not EPA-compliant and used a "defeat device", or acted with reckless disregard for the truth, and denied Plaintiffs and the other Class members information that is highly relevant to their purchasing decision.

396. Volkswagen further affirmatively misrepresented to Plaintiffs in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles it was selling were new, had no significant defects, complied with EPA regulations and would perform and operate properly when driven in normal usage.

397. Volkswagen knew these representations were false when made.

398. The Affected Vehicles purchased or leased by Plaintiffs and the other Class members were, in fact, defective, non-EPA compliant, unsafe, and unreliable because the Affected Vehicles contained faulty and defective CleanDiesel engine system, as alleged herein.

399. Volkswagen had a duty to disclose that these Affected Vehicles were defective, unsafe, non-EPA compliant and unreliable in that certain crucial emissions functions of the Affected Vehicles would be rendered inoperative due to the “defeat device” installed in the defective CleanDiesel engine system, because Plaintiffs and the other Class members relied on Volkswagen’s material representations that the Affected Vehicles they were purchasing were safe, environmentally clean, efficient and free from defects.

400. The aforementioned concealment was material because if it had been disclosed Plaintiffs and the other Class members would not have bought or leased the Affected Vehicles, or would not have bought or leased those Vehicles at the prices they paid.

401. The aforementioned representations were material because they were facts that would typically be relied on by a person purchasing or leasing a new motor vehicle. Volkswagen knew or recklessly disregarded that its representations were false because it knew that it had to use the “defeat device” in order for Affected Vehicles to pass EPA emissions requirements. Volkswagen intentionally made the false statements in order to sell Affected Vehicles.

402. Plaintiffs and the other Class members relied on Volkswagen’s reputation – along with Volkswagen’s failure to disclose the faulty and defective nature of the CleanDiesel engine system and Volkswagen’s affirmative assurance that its Affected Vehicles were safe and reliable, and other similar false statements – in purchasing or leasing Volkswagen’s Affected Vehicles.

403. As a result of their reliance, Plaintiffs and the other Class members have been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase or lease and/or the diminished value of their Affected Vehicles.

404. Volkswagen's conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class members. Plaintiffs and the other Class members are therefore entitled to an award of punitive damages to the extent permitted under applicable law.

#### **H. Claims Brought on Behalf of the Connecticut Subclass**

### **COUNT I VIOLATIONS OF THE UNFAIR TRADE PRACTICES ACT (CONN. GEN. STAT. ANN. §§ 42-110A, *et seq.*)**

405. Plaintiff Leslie McLise-Kane, Charles Robbins, and John Gamble ("Plaintiffs," for purposes of all Connecticut Subclass Counts) incorporate by reference all preceding allegations as though fully set forth herein.

406. Plaintiffs bring this Count on behalf of the Connecticut Subclass.

407. Plaintiffs and Volkswagen are each "persons" as defined by CONN. GEN. STAT. ANN. § 42-110a(3).

408. The Connecticut Unfair Trade Practices Act ("CUTPA") provides that "[n]o person shall engage in unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce." CONN. GEN. STAT. ANN. § 42-110b(a). The CUTPA further provides a private right of action under CONN. GEN. STAT. ANN. § 42-110g(a).

409. By failing to disclose and actively concealing that the CleanDiesel engine systems were not EPA-compliant and used a "defeat device" in the Affected Vehicles, Volkswagen engaged in deceptive business practices prohibited by the CUTPA, including (1) representing

that Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have, (2) representing that Affected Vehicles are of a particular standard, quality, and grade when they are not, (3) advertising Affected Vehicles with the intent not to sell them as advertised, and (4) engaging in acts or practices which are otherwise unfair, misleading, false, or deceptive to the consumer.

410. As alleged above, Volkswagen made numerous material statements about the benefits and characteristics of the CleanDiesel engine system that were either false or misleading. Each of these statements contributed to the deceptive context of Volkswagen's unlawful advertising and representations as a whole.

411. Volkswagen knew that the CleanDiesel engine system in the Affected Vehicles were defectively designed or manufactured, were not EPA-compliant, and were not suitable for their intended use. Volkswagen nevertheless failed to warn Plaintiff about these defects despite having a duty to do so.

412. Volkswagen owed Plaintiff a duty to disclose the defective nature of the CleanDiesel engine system in the Affected Vehicles, because Volkswagen:

- a) Possessed exclusive knowledge of the defects rendering the Affected Vehicles illegal under EPA standards;
- b) Intentionally concealed the defects associated with CleanDiesel through its deceptive marketing campaigns that it designed to hide the defects in the CleanDiesel engine system; and/or
- c) Made incomplete representations about the characteristics and performance of the CleanDiesel engine system generally, while

purposefully withholding material facts from Plaintiff that contradicted these representations.

413. Volkswagen's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiff, about the true performance and characteristics of the CleanDiesel engine system.

414. As a result of its violations of the CUTPA detailed above, Volkswagen caused actual damage to Plaintiff and, if not stopped, will continue to harm Plaintiff. Plaintiff currently owns or leases, or within the class period has owned or leased, an Affected Vehicle that is defective. Defects associated with the CleanDiesel engine system have caused the value of Affected Vehicles to decrease.

415. Plaintiff and the Class sustained damages as a result of the Volkswagen's unlawful acts and are, therefore, entitled to damages and other relief as provided under the CUTPA.

416. Plaintiff also seeks court costs and attorneys' fees as a result of Volkswagen's violation of the CUTPA as provided in CONN. GEN. STAT. ANN. § 42-110g(d). A copy of this Complaint has been mailed to the Attorney General and the Commissioner of Consumer Protection of the State of Connecticut in accordance with CONN. GEN. STAT. ANN. § 42-110g(c).

**COUNT II**  
**BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**  
**(CONN. GEN. STAT. ANN. § 42A-2-314)**

417. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

418. Plaintiffs bring this Count on behalf of the Connecticut Subclass.

419. Volkswagen is and was at all relevant times a merchant with respect to motor vehicles under Conn. Gen. Stat. Ann. § 42a-2-104(1).

420. A warranty that the Affected Vehicles were in merchantable condition is implied by law in the instant transactions pursuant to Conn. Gen. Stat. Ann. § 42a-2-314. These Affected Vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Affected Vehicles are inherently defective in that they do not comply with federal and state emissions standards, rendering certain safety and emissions functions inoperative; and the CleanDiesel engine system was not adequately designed, manufactured, and tested.

421. Volkswagen was provided notice of these issues by the investigations of the EPA and individual state regulators, numerous complaints filed against it including the instant complaint, and by numerous individual letters and communications sent by Plaintiffs and other Class members before or within a reasonable amount of time after the allegations of Affected Vehicle defects became public.

422. As a direct and proximate result of Volkswagen's breach of the warranties of merchantability, Plaintiffs and the other Class members have been damaged in an amount to be proven at trial.

**COUNT III**  
**BREACH OF CONTRACT**  
**(Based on Connecticut Law)**

423. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

424. Plaintiff brings this Count on behalf of new vehicle or certified pre-owned vehicle purchasers in the Connecticut Subclass.

425. Volkswagen's misrepresentations and omissions alleged herein, including Volkswagen's failure to disclose the existence of the CleanDiesel engine system's defect and/or defective design as alleged herein, caused Plaintiff and the other Connecticut Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations

and omissions, Plaintiff and the other Connecticut Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the CleanDiesel engine system and which were not marketed as including such a system. Accordingly, Plaintiff and the other Connecticut Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

426. Each and every sale or lease of an Affected Vehicle by an authorized Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the other Connecticut Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose the existence of the CleanDiesel engine system's defect and/or defective design, including information known to Volkswagen rendering each Affected Vehicle non-EPA-compliant, and thus less valuable, than vehicles not equipped with a CleanDiesel engine system.

427. As a direct and proximate result of Volkswagen's breach of contract, Plaintiff and the Connecticut Subclass have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

**COUNT IV  
FRAUDULENT CONCEALMENT  
(Based on Connecticut Law)**

428. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

429. Plaintiff brings this Count on behalf of the Connecticut Subclass.

430. Volkswagen intentionally concealed that the CleanDiesel engine systems were not EPA-compliant and used a "defeat device," or acted with reckless disregard for the truth, and

denied Plaintiff and the other Class members information that is highly relevant to their purchasing decision.

431. Volkswagen further affirmatively misrepresented to Plaintiff in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles it was selling were new, had no significant defects, complied with EPA regulations and would perform and operate properly when driven in normal usage.

432. Volkswagen knew these representations were false when made.

433. The Affected Vehicles purchased or leased by Plaintiff and the other Class members were, in fact, defective, non-EPA compliant, unsafe, and unreliable because the Affected Vehicles contained faulty and defective CleanDiesel engine system, as alleged herein.

434. Volkswagen had a duty to disclose that these Affected Vehicles were defective, unsafe, non-EPA compliant and unreliable in that certain crucial emissions functions of the Affected Vehicles would be rendered inoperative due to the “defeat device” installed in the defective CleanDiesel engine system, because Plaintiff and the other Class members relied on Volkswagen’s material representations that the Affected Vehicles they were purchasing were safe, environmentally clean, efficient and free from defects.

435. The aforementioned concealment was material because if it had been disclosed Plaintiff and the other Class members would not have bought or leased the Affected Vehicles, or would not have bought or leased those Vehicles at the prices they paid.

436. The aforementioned representations were material because they were facts that would typically be relied on by a person purchasing or leasing a new motor vehicle. Volkswagen knew or recklessly disregarded that its representations were false because it knew that it had to use the “defeat device” in order for Affected Vehicles to pass EPA emissions

requirements. Volkswagen intentionally made the false statements in order to sell Affected Vehicles.

437. Plaintiff and the other Class members relied on Volkswagen's reputation – along with Volkswagen's failure to disclose the faulty and defective nature of the CleanDiesel engine system and Volkswagen's affirmative assurance that its Affected Vehicles were safe and reliable, and other similar false statements – in purchasing or leasing Volkswagen's Affected Vehicles.

438. As a result of their reliance, Plaintiff and the other Class members have been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase or lease and/or the diminished value of their Affected Vehicles.

439. Volkswagen's conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of Plaintiff and the other Class members. Plaintiff and the other Class members are therefore entitled to an award of punitive damages.

## **I. Claims Brought on Behalf of the Delaware Subclass**

### **COUNT I VIOLATION OF THE DELAWARE CONSUMER FRAUD ACT (6 DEL. CODE § 2513, *ET SEQ.*)**

440. Plaintiff Warren Coffin ("Plaintiff," for purposes of all Delaware Subclass Counts) incorporates by reference all preceding allegations as though fully set forth herein.

441. This claim is brought only on behalf of the Delaware Subclass.

442. Defendants are each a "person" within the meaning of 6 DEL. CODE § 2511(7).

443. The Delaware Consumer Fraud Act ("Delaware CFA") prohibits the "act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, or the concealment, suppression, or omission of any material fact with intent

that others rely upon such concealment, suppression or omission, in connection with the sale, lease or advertisement of any merchandise, whether or not any person has in fact been misled, deceived or damaged thereby.” 6 DEL. CODE § 2513(a).

444. Volkswagen participated in deceptive trade practices that violated the Delaware CFA as described herein. In the course of its business, Volkswagen installed the “defeat device” and concealed that its CleanDiesel systems failed EPA regulations as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Volkswagen also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Affected Vehicles.

445. Volkswagen has known of the true characteristics of its CleanDiesel engine systems for at least six years, but concealed all of that information until recently.

446. Volkswagen was also aware that it valued profits over environmental cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles throughout the United States that did not comply with EPA regulations. Volkswagen concealed this information as well.

447. By failing to disclose and by actively concealing the “defeat device” and the true cleanliness and performance of the CleanDiesel engine system, by marketing its vehicles as safe, reliable, environmentally clean, efficient, and of high quality, and by presenting itself as a reputable manufacturer that valued safety, environmental cleanliness and efficiency, and stood behind its vehicles after they were sold, Volkswagen engaged in deceptive business practices in violation of the Delaware CFA.

448. In the course of Volkswagen's business, it willfully failed to disclose and actively concealed the use of the "defeat device" and true cleanliness and efficiency of the CleanDiesel engine system and serious defects discussed above. Volkswagen compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable, environmentally clean, efficient, and of high quality, and by claiming to be a reputable manufacturer that valued safety, environmental cleanliness and efficiency, and stood behind its vehicles once they are on the road.

449. Volkswagen's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiff, about the true cleanliness and efficiency of the CleanDiesel engine system, the quality of the Volkswagen and Audi brands, the devaluing of safety, integrity and lawfulness at Volkswagen, and the true value of the Affected Vehicles.

450. Volkswagen intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiff and the Delaware Subclass.

451. Volkswagen knew or should have known that its conduct violated the Delaware CFA.

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

453. Volkswagen owed Plaintiffs a duty to disclose the true safety, cleanliness, efficiency and reliability of the Affected Vehicles and the devaluing of safety, integrity and lawfulness at Volkswagen, because Volkswagen:

- a. Possessed exclusive knowledge that it valued profits over environmental cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles throughout the United States that did not comply with EPA regulations;

- b. Intentionally concealed the foregoing from Plaintiffs; and/or
- c. Made incomplete representations about the safety, cleanliness, efficiency and reliability of the Affected Vehicles generally, and the use of the “defeat device” and true nature of the CleanDiesel engine system in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

454. Because Volkswagen fraudulently concealed the “defeat device” and the true cleanliness and performance of the CleanDiesel engine system, resulting in a raft of negative publicity once the use of the “defeat device” and true characteristics of the CleanDiesel engine system finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by Volkswagen’s conduct, they are now worth significantly less than they otherwise would be.

455. Volkswagen’s fraudulent use of the “defeat device” and its concealment of the true characteristics of the CleanDiesel engine system were material to Plaintiffs and the Delaware Subclass. A vehicle made by a reputable manufacturer of environmentally friendly vehicles is worth more than an otherwise comparable vehicle made by a disreputable manufacturer of environmentally dirty vehicles that conceals its polluting engines rather than promptly remedying them.

456. Plaintiff and the Delaware Subclass suffered ascertainable loss caused by Volkswagen’s misrepresentations and its concealment of and failure to disclose material information. Class members who purchased Affected Vehicles either would have paid less for their vehicles or would not have purchased or leased them at all.

457. Volkswagen had an ongoing duty to all Volkswagen and Audi customers to refrain from unfair and deceptive acts or practices under the Delaware CFA. All owners of Affected Vehicles suffered ascertainable loss in the form of diminished value of their vehicles as

a result of Volkswagen's deceptive and unfair acts and practices made in the course of Volkswagen's business.

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

459. As a direct and proximate result of Volkswagen's violations of the Delaware CFA, Plaintiff and the Delaware Subclass have suffered injury-in-fact and/or actual damage.

460. Plaintiff seeks damages under the Delaware CFA for injury resulting from the direct and natural consequences of Volkswagen's unlawful conduct. *See, e.g., Stephenson v. Capano Dev., Inc.*, 462 A.2d 1069, 1077 (Del. 1983). Plaintiff also seeks an order enjoining Volkswagen's unfair, unlawful, and/or deceptive practices, declaratory relief, attorneys' fees, and any other just and proper relief available under the Delaware CFA.

461. Volkswagen engaged in gross, oppressive or aggravated conduct justifying the imposition of punitive damages.

## **COUNT II FRAUD BY CONCEALMENT**

462. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

463. This claim is brought on behalf of the Delaware Subclass.

464. Volkswagen intentionally concealed and suppressed material facts concerning the quality of the Affected Vehicles. As alleged in this Complaint, notwithstanding references in the very model names of the subject vehicles as "Clean Diesel," or to their engines as "TDI Clean Diesel" engines, Volkswagen engaged in a secret scheme to evade federal and state vehicle emissions standards by installing software designed to conceal its vehicles' emissions of the

pollutant nitrogen oxide, which contributes to the creation of ozone and smog. The software installed on the vehicles at issue was designed nefariously to kick-in during emissions certification testing, such that the vehicles would show far lower emissions than when actually operating on the road. The result was what Volkswagen intended: vehicles passed emissions certifications by way of deliberately induced false readings. Reportedly, Volkswagen's deliberate, secret scheme resulted in noxious emissions from these vehicles at up to 40 times applicable standards.

465. Plaintiffs and Delaware Subclass members reasonably relied upon Volkswagen's false representations. They had no way of knowing that Volkswagen's representations were false and gravely misleading. As alleged herein, Volkswagen employed extremely sophisticated methods of deception. Plaintiffs and Delaware Subclass members did not, and could not, unravel Volkswagen's deception on their own.

466. Volkswagen concealed and suppressed material facts concerning what is evidently the true culture of Volkswagen—one characterized by an emphasis on profits and sales above compliance with federal and state clean air laws, and emissions regulations that are meant to protect the public and consumers. It also emphasized profits and sales over the trust that Plaintiffs and Delaware Subclass members placed in its representations. As one customer, Priya Shah, put it in a quotation cited by the *Los Angeles Times* in a September 18, 2015 article, "It's just a blatant disregard and intentional manipulation of the system. That's just a whole other level of not only lying to the government, but also lying to your consumer. People buy diesel cars from Volkswagen because they feel they are clean diesel cars." In the words of Ms. Shah, which no doubt reflect the sentiments of all other CleanDiesel vehicle buyers, "I don't want to be spewing noxious gases into the environment."

467. Necessarily, Volkswagen also took steps to ensure that its employees did not reveal the details of its scheme to regulators or consumers, including Plaintiffs and Delaware Subclass members. Volkswagen did so in order to boost the reputations of its vehicles and to falsely assure purchasers and lessors of its vehicles, including previously owned vehicles, that Volkswagen is a reputable manufacturer that complies with applicable law, including federal and state clean air laws and emissions regulations, and that its vehicles likewise comply with applicable law and regulations. Volkswagen's false representations were material to consumers, both because they concerned the quality of the Affected Vehicles, including their compliance with applicable federal and state laws and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As Volkswagen well knew, its customers, including Plaintiffs and Delaware Subclass members, highly valued that the vehicles they were purchasing or leasing were *clean* diesel cars, and they paid accordingly.

468. Volkswagen had a duty to disclose its emissions scheme because knowledge of the scheme and its details were known and/or accessible only to Volkswagen, because Volkswagen had exclusive knowledge as to implementation and maintenance of its scheme, and because Volkswagen knew the facts were not known to or reasonably discoverable by Plaintiffs or Delaware Subclass members. Volkswagen also had a duty to disclose because it made general affirmative representations about the qualities of its vehicles with respect to emissions standards, starting with references to them as *clean* diesel cars, or cars with *clean* diesel engines, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding its emissions scheme, the actual emissions of its vehicles, its actual philosophy with respect to compliance with federal and state clean air laws and emissions

regulations, and its actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs, Volkswagen had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and Delaware Subclass members. Whether a manufacturer's products comply with federal and state clean air laws and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certification testing their vehicles must pass. Volkswagen represented to Plaintiffs and Delaware Subclass members that they were purchasing *clean* diesel vehicles, and certification testing appeared to confirm this—except that, secretly, Volkswagen had subverted the testing process thoroughly.

469. Volkswagen actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect its profits and to avoid the perception that its vehicles did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost Volkswagen money, and it did so at the expense of Plaintiffs and Delaware Subclass members.

470. On information and belief, Volkswagen has still not made full and adequate disclosures, and continues to defraud Plaintiffs and Delaware Subclass members by concealing material information regarding the emissions qualities of its vehicles and its emissions scheme.

471. Plaintiffs and Delaware Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly "clean" diesel cars manufactured by Volkswagen, and/or would not have continued to drive their heavily

polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiffs' and Delaware Subclass Members' actions were justified. Volkswagen was in exclusive control of the material facts, and such facts were not known to the public, Plaintiffs, or Delaware Subclass members.

472. Because of the concealment and/or suppression of the facts, Plaintiffs and Delaware Subclass members have sustained damage because they own vehicles that are diminished in value as a result of Volkswagen's concealment of the true quality and quantity of those vehicles' emissions and Volkswagen's failure to timely disclose the actual emissions qualities and quantities of hundreds of thousands of Volkswagen- and Audi-branded vehicles and the serious issues engendered by Volkswagen's corporate policies. Had Plaintiffs and Delaware Subclass members been aware of Volkswagen's emissions scheme, and the company's callous disregard for compliance with applicable federal and state laws and regulations, Plaintiffs and Delaware Subclass members who purchased or leased new or previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

473. The value of Plaintiffs' and Delaware Subclass Members' vehicles has diminished as a result of Volkswagen's fraudulent concealment of its emissions scheme, which has greatly tarnished the Volkswagen and Audi brand names attached to Plaintiffs' and Delaware Subclass members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles. In addition, Class members are entitled to damages for loss of use, costs of additional fuel, costs of unused warranties, and other damages to be proved at trial.

474. Accordingly, Volkswagen is liable to Plaintiffs and Delaware Subclass members for damages in an amount to be proven at trial.

475. Volkswagen's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Delaware Subclass members' rights and the representations that Volkswagen made to them, in order to enrich Volkswagen. To the extent permitted under applicable law, Volkswagen's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

**COUNT III  
BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY  
(6 DEL. CODE § 2-314)**

476. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

477. Plaintiffs bring this Count on behalf of the Delaware Subclass.

478. Volkswagen is and was at all relevant times a merchant with respect to motor vehicles.

479. A warranty that the Affected Vehicles were in merchantable condition is implied by law in the instant transactions. These Affected Vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Affected Vehicles are inherently defective in that they do not comply with federal and state emissions standards, rendering certain safety and emissions functions inoperative; and the CleanDiesel engine system was not adequately designed, manufactured, and tested.

480. Volkswagen was provided notice of these issues by the investigations of the EPA and individual state regulators, numerous complaints filed against it including the instant complaint, and by numerous individual letters and communications sent by Plaintiffs and other Class members before or within a reasonable amount of time after the allegations of Affected Vehicle defects became public.

481. As a direct and proximate result of Volkswagen's breach of the warranties of merchantability, Plaintiffs and the other Class members have been damaged in an amount to be proven at trial.

**COUNT IV  
BREACH OF CONTRACT  
(BASED ON DELAWARE LAW)**

482. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

483. Plaintiff brings this Count on behalf of new vehicle or certified pre-owned vehicle purchasers in the Delaware Subclass.

484. Volkswagen's misrepresentations and omissions alleged herein, including Volkswagen's failure to disclose the existence of the CleanDiesel engine system's defect and/or defective design as alleged herein, caused Plaintiff and the other Delaware Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiff and the other Delaware Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the CleanDiesel engine system and which were not marketed as including such a system. Accordingly, Plaintiff and the other Delaware Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

485. Each and every sale or lease of an Affected Vehicle by an authorized Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the other Delaware Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose the existence of the CleanDiesel engine system's defect and/or defective design, including information known to

Volkswagen rendering each Affected Vehicle non EPA-compliant, and thus less valuable, than vehicles not equipped with a CleanDiesel engine system.

486. As a direct and proximate result of Volkswagen's breach of contract, Plaintiff and the Delaware Subclass have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

**J. Claims Brought on Behalf of the Florida Subclass**

**COUNT I  
VIOLATIONS OF THE FLORIDA DECEPTIVE & UNFAIR TRADE PRACTICES ACT  
(FLA. STAT. §§ 501.201, *et seq.*)**

487. Plaintiff Jack Sandelman ("Plaintiff," for purposes of all Florida Subclass Counts) incorporates by reference all preceding allegations as though fully set forth herein.

488. Plaintiff brings this Count on behalf of the Florida Subclass.

489. Plaintiffs are "consumers" within the meaning of Florida Unfair and Deceptive Trade Practices Act, FLA. STAT. § 501.203(7).

490. Volkswagen engaged in "trade or commerce" within the meaning of FLA. STAT. § 501.203(8).

491. Florida's Deceptive and Unfair Trade Practices Act prohibits "[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce." FLA. STAT. § 501.204(1). Volkswagen participated in unfair and deceptive trade practices that violated the FUDTPA as described herein.

492. In the course of Volkswagen's business, it willfully failed to disclose and actively concealed that the CleanDiesel Engine System was non-EPA compliant, and the use of the "defeat device" in Affected Vehicles as described above. Accordingly, Volkswagen engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or

practices as defined in FLA. STAT. § 501.204(1), including representing that Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Affected Vehicles are of a particular standard and quality when they are not; advertising Affected Vehicles with the intent not to sell them as advertised; and otherwise engaging in conduct likely to deceive.

493. In the course of its business, Volkswagen installed the “defeat device” and concealed that its CleanDiesel systems failed EPA regulations as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Volkswagen also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Affected Vehicles.

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

495. Volkswagen was also aware that it valued profits over environmental cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles throughout the United States that did not comply with EPA regulations. Volkswagen concealed this information as well.

496. By failing to disclose and by actively concealing the “defeat device” and the true cleanliness and performance of the CleanDiesel engine system, by marketing its vehicles as safe, reliable, environmentally clean, efficient, and of high quality, and by presenting itself as a reputable manufacturer that valued safety, environmental cleanliness and efficiency, and stood

behind its vehicles after they were sold, Volkswagen engaged in deceptive business practices in violation of the FUDTPA.

497. In the course of Volkswagen's business, it willfully failed to disclose and actively concealed the use of the "defeat device" and true cleanliness and efficiency of the CleanDiesel engine system and serious defects discussed above. Volkswagen compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable, environmentally clean, efficient, and of high quality, and by claiming to be a reputable manufacturer that valued safety, environmental cleanliness and efficiency, and stood behind its vehicles once they are on the road.

498. Volkswagen's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiff, about the true cleanliness and efficiency of the CleanDiesel engine system, the quality of the Volkswagen and Audi brands, the devaluing of environmental cleanliness and integrity at Volkswagen, and the true value of the Affected Vehicles.

499. Volkswagen intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiff and the Florida Subclass.

500. Volkswagen knew or should have known that its conduct violated the FUDTPA.

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

502. Volkswagen owed Plaintiffs a duty to disclose the true safety, cleanliness, efficiency and reliability of the Affected Vehicles and the devaluing of environmental cleanliness and integrity at Volkswagen, because Volkswagen:

- a. Possessed exclusive knowledge that it valued profits over environmental cleanliness, efficiency, and lawfulness, and that it

was manufacturing, selling and distributing vehicles throughout the United States that did not comply with EPA regulations;

b. Intentionally concealed the foregoing from Plaintiffs; and/or

c. Made incomplete representations about the safety, cleanliness, efficiency and reliability of the Affected Vehicles generally, and the “defeat device” and true nature of the CleanDiesel engine system in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

503. Because Volkswagen fraudulently concealed the “defeat device” and the true cleanliness and performance of the CleanDiesel engine system, resulting in a raft of negative publicity once the use of the “defeat device” and true characteristics of the CleanDiesel engine system finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by Volkswagen’s conduct, they are now worth significantly less than they otherwise would be.

504. Volkswagen’s fraudulent use of the “defeat device” and its concealment of the true characteristics of the CleanDiesel engine system were material to Plaintiffs and the Florida Subclass. A vehicle made by a reputable manufacturer of environmentally friendly vehicles is worth more than an otherwise comparable vehicle made by a disreputable manufacturer of environmentally dirty vehicles that conceals its polluting engines rather than promptly remedying them.

505. Plaintiffs and the Florida Subclass suffered ascertainable loss caused by Volkswagen’s misrepresentations and its concealment of and failure to disclose material information. Class members who purchased the Affected Vehicles either would have paid less for their vehicles or would not have purchased or leased them at all.

506. Volkswagen had an ongoing duty to all Volkswagen and Audi customers to refrain from unfair and deceptive acts or practices under the FUDTPA. All owners of Affected Vehicles suffered ascertainable loss in the form of diminished value of their vehicles as a result of Volkswagen's deceptive and unfair acts and practices made in the course of Volkswagen's business.

507. Volkswagen's violations present a continuing risk to Plaintiffs as well as to the general public. Volkswagen's unlawful acts and practices complained of herein affect the public interest.

508. As a direct and proximate result of Volkswagen's violations of the FUDTPA, Plaintiffs and the Florida Subclass have suffered injury-in-fact and/or actual damage.

509. Volkswagen's actions as set forth above occurred in the conduct of trade or commerce.

510. Plaintiff and the other Class members were injured as a result of Volkswagen's conduct in that Plaintiff and the other Class members overpaid for their Affected Vehicles and did not receive the benefit of their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of Volkswagen's misrepresentations and omissions.

**COUNT II**  
**BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**  
**(FLA. STAT. § 672.314)**

511. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

512. Plaintiffs bring this Count on behalf of the Florida Subclass.

513. Volkswagen is and was at all relevant times a merchant with respect to motor vehicles.

514. A warranty that the Affected Vehicles were in merchantable condition is implied by law in the instant transactions. These Affected Vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Affected Vehicles are inherently defective in that they do not comply with federal and state emissions standards, rendering certain safety and emissions functions inoperative; and the CleanDiesel engine system was not adequately designed, manufactured, and tested.

515. Volkswagen was provided notice of these issues by the investigations of the EPA and individual state regulators, numerous complaints filed against it including the instant complaint, and by numerous individual letters and communications sent by Plaintiffs and other Class members before or within a reasonable amount of time after the allegations of Affected Vehicle defects became public.

516. As a direct and proximate result of Volkswagen's breach of the warranties of merchantability, Plaintiffs and the other Class members have been damaged in an amount to be proven at trial.

**COUNT III**  
**BREACH OF CONTRACT**  
**(Based on Florida Law)**

517. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

518. Plaintiff brings this Count on behalf of new vehicle or certified pre-owned vehicle purchasers in the Florida Subclass.

519. Volkswagen's misrepresentations and omissions alleged herein, including Volkswagen's failure to disclose the existence of the CleanDiesel engine system's defect and/or defective design as alleged herein, caused Plaintiff and the other Florida Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and

omissions, Plaintiff and the other Florida Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the CleanDiesel engine system and which were not marketed as including such a system. Accordingly, Plaintiff and the other Florida Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

520. Each and every sale or lease of an Affected Vehicle by an authorized Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the other Florida Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose the existence of the CleanDiesel engine system's defect and/or defective design, including information known to Volkswagen rendering each Affected Vehicle non EPA-compliant, and thus less valuable, than vehicles not equipped with a CleanDiesel engine system.

521. As a direct and proximate result of Volkswagen's breach of contract, Plaintiff and the Florida Subclass have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

**COUNT IV  
FRAUDULENT CONCEALMENT  
(Based on Florida Law)**

522. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

523. Plaintiff brings this Count on behalf of the Florida Subclass.

524. Volkswagen intentionally concealed that the CleanDiesel engine systems were not EPA-compliant and used a "defeat device," or acted with reckless disregard for the truth, and

denied Plaintiff and the other Class members information that is highly relevant to their purchasing decision.

525. Volkswagen further affirmatively misrepresented to Plaintiff in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles it was selling were new, had no significant defects, complied with EPA regulations and would perform and operate properly when driven in normal usage.

526. Volkswagen knew these representations were false when made.

527. The Affected Vehicles purchased or leased by Plaintiff and the other Class members were, in fact, defective, non-EPA-compliant, unsafe, and unreliable because the Affected Vehicles contained faulty and defective CleanDiesel engine system, as alleged herein.

528. Volkswagen had a duty to disclose that these Affected Vehicles were defective, unsafe, non-EPA compliant and unreliable in that certain crucial emissions functions of the Affected Vehicles would be rendered inoperative due to the “defeat device” installed in the defective CleanDiesel engine system, because Plaintiff and the other Class members relied on Volkswagen’s material representations that the Affected Vehicles they were purchasing were safe, environmentally clean, efficient and free from defects.

529. The aforementioned concealment was material because if it had been disclosed Plaintiff and the other Class members would not have bought or leased the Affected Vehicles, or would not have bought or leased those Vehicles at the prices they paid.

530. The aforementioned representations were material because they were facts that would typically be relied on by a person purchasing or leasing a new motor vehicle. Volkswagen knew or recklessly disregarded that its representations were false because it knew that it had to use the “defeat device” in order for Affected Vehicles to pass EPA emissions

requirements. Volkswagen intentionally made the false statements in order to sell Affected Vehicles.

531. Plaintiff and the other Class members relied on Volkswagen's reputation – along with Volkswagen's failure to disclose the faulty and defective nature of the CleanDiesel engine system and Volkswagen's affirmative assurance that its Affected Vehicles were safe and reliable, and other similar false statements – in purchasing or leasing Volkswagen's Affected Vehicles.

532. As a result of their reliance, Plaintiff and the other Class members have been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase or lease and/or the diminished value of their Affected Vehicles.

533. Volkswagen's conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of Plaintiff and the other Class members. Plaintiff and the other Class members are therefore entitled to an award of punitive damages.

**K. Claims Brought on Behalf of the Georgia Subclass**

**COUNT I  
VIOLATION OF GEORGIA'S FAIR BUSINESS PRACTICES ACT  
(GA. CODE ANN. § 10-1-390, *et seq.*)**

534. Plaintiff Barry Glustoff ("Plaintiff," for purposes of all Georgia Subclass Counts) incorporates by reference all preceding allegations as though fully set forth herein.

535. Plaintiffs intend to assert a claim under the Georgia Fair Business Practices Act ("Georgia FBPA") which declares "[u]nfair or deceptive acts or practices in the conduct of consumer transactions and consumer acts or practices in trade or commerce" to be unlawful, GA. CODE. ANN. § 10-1-393(a), including but not limited to "representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not

have,” “[r]epresenting that goods or services are of a particular standard, quality, or grade ... if they are of another,” and “[a]dvertising goods or services with intent not to sell them as advertised.” GA. CODE ANN. § 10-1-393(b). Plaintiffs will make a demand in satisfaction of GA. CODE ANN. § 10-1-399, and may amend this Complaint to assert claims under the Georgia FBPA once the required 30 days have elapsed. This paragraph is included for purposes of notice only and is not intended to actually assert a claim under the Georgia FBPA.

**COUNT II**  
**VIOLATION OF GEORGIA’S UNIFORM DECEPTIVE TRADE**  
**PRACTICES ACT**  
**(GA. CODE ANN. § 10-1-370, *et seq.*)**

536. Plaintiffs reallege and incorporates by reference all paragraphs as though fully set forth herein.

537. This claim is brought only on behalf of the Georgia Subclass.

538. Volkswagen, Plaintiff, and the Georgia Subclass are “persons’ within the meaning of Georgia Uniform Deceptive Trade Practices Act (“Georgia UDTPA”), GA. CODE ANN. § 10-1-371(5).

539. The Georgia UDTPA prohibits “deceptive trade practices,” which include the “misrepresentation of standard or quality of goods or services,” and “engaging in any other conduct which similarly creates a likelihood of confusion or of misunderstanding.” GA. CODE ANN. § 10-1-372(a). By fraudulently installing the “defeat device” to make it appear that its CleanDiesel engine systems complied with EPA regulations, Volkswagen engaged in deceptive trade practices prohibited by the Georgia UDTPA.

540. In the course of its business, Volkswagen installed the “defeat device” and concealed that its CleanDiesel systems failed EPA regulations as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Volkswagen also engaged in

unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Affected Vehicles.

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

542. Volkswagen was also aware that it valued profits over environmental cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles throughout the United States that did not comply with EPA regulations. Volkswagen concealed this information as well.

543. By failing to disclose and by actively concealing the “defeat device” and the true cleanliness and performance of the CleanDiesel engine system, by marketing its vehicles as safe, reliable, environmentally clean, efficient, and of high quality, and by presenting itself as a reputable manufacturer that valued safety, environmental cleanliness and efficiency, and stood behind its vehicles after they were sold, Volkswagen engaged in deceptive business practices in violation of the Georgia UDTPA.

544. In the course of Volkswagen’s business, it willfully failed to disclose and actively concealed the use of the “defeat device” and true cleanliness and efficiency of the CleanDiesel engine system and serious defects discussed above. Volkswagen compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable, environmentally clean, efficient, and of high quality, and by claiming to be a reputable manufacturer that valued safety, environmental cleanliness and efficiency, and stood behind its vehicles once they are on the road.

545. Volkswagen's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiff, about the true cleanliness and efficiency of the CleanDiesel engine system, the quality of the Volkswagen and Audi brands, the devaluing of environmental cleanliness and integrity at Volkswagen, and the true value of the Affected Vehicles.

546. Volkswagen intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiff and the Georgia Subclass.

547. Volkswagen knew or should have known that its conduct violated the Georgia UDTPA.

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

549. Volkswagen owed Plaintiffs a duty to disclose the true safety, cleanliness, efficiency and reliability of the Affected Vehicles and the devaluing of environmental cleanliness and integrity at Volkswagen, because Volkswagen:

- a. Possessed exclusive knowledge that it valued profits over environmental cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles throughout the United States that did not comply with EPA regulations;
- b. Intentionally concealed the foregoing from Plaintiffs; and/or
- c. Made incomplete representations about the safety, cleanliness, efficiency and reliability of the Affected Vehicles generally, and the "defeat device" and true nature of the CleanDiesel engine system in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

550. Because Volkswagen fraudulently concealed the “defeat device” and the true cleanliness and performance of the CleanDiesel engine system, resulting in a raft of negative publicity once the use of the “defeat device” and true characteristics of the CleanDiesel engine system finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by Volkswagen’s conduct, they are now worth significantly less than they otherwise would be.

551. Volkswagen’s fraudulent use of the “defeat device” and its concealment of the true characteristics of the CleanDiesel engine system were material to Plaintiffs and the Georgia Subclass. A vehicle made by a reputable manufacturer of environmentally friendly vehicles is worth more than an otherwise comparable vehicle made by a disreputable manufacturer of environmentally dirty vehicles that conceals its polluting engines rather than promptly remedying them.

552. Plaintiffs and the Georgia Subclass suffered ascertainable loss caused by Volkswagen’s misrepresentations and its concealment of and failure to disclose material information. Class members who purchased the Affected Vehicles either would have paid less for their vehicles or would not have purchased or leased them at all.

553. Volkswagen had an ongoing duty to all Volkswagen and Audi customers to refrain from unfair and deceptive acts or practices under the Georgia UDTPA. All owners of Affected Vehicles suffered ascertainable loss in the form of diminished value of their vehicles as a result of Volkswagen’s deceptive and unfair acts and practices made in the course of Volkswagen’s business.

554. Volkswagen's violations present a continuing risk to Plaintiffs as well as to the general public. Volkswagen's unlawful acts and practices complained of herein affect the public interest.

555. As a direct and proximate result of Volkswagen's violations of the Georgia UDTPA, Plaintiffs and the Georgia Subclass have suffered injury-in-fact and/or actual damage.

556. Plaintiffs seek an order enjoining Volkswagen's unfair, unlawful, and/or deceptive practices, attorneys' fees, and any other just and proper relief available under the Georgia UDTPA per GA. CODE. ANN § 10-1-373.

**COUNT III  
FRAUD BY CONCEALMENT**

557. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

558. This claim is brought on behalf of the Georgia Subclass.

559. Volkswagen intentionally concealed and suppressed material facts concerning the quality of the Affected Vehicles. As alleged in this Complaint, notwithstanding references in the very model names of the subject vehicles as "CleanDiesel," or to their engines as "TDI Clean Diesel" engines, Volkswagen engaged in a secret scheme to evade federal and state vehicle emissions standards by installing software designed to conceal its vehicles' emissions of the pollutant nitrogen oxide, which contributes to the creation of ozone and smog. The software installed on the vehicles at issue was designed nefariously to kick-in during emissions certification testing, such that the vehicles would show far lower emissions than when actually operating on the road. The result was what Volkswagen intended: vehicles passed emissions certifications by way of deliberately induced false readings. Reportedly, Volkswagen's

deliberate, secret scheme resulted in noxious emissions from these vehicles at up to 40 times applicable standards.

560. Plaintiff and Georgia Subclass members reasonably relied upon Volkswagen's false representations. They had no way of knowing that Volkswagen's representations were false and gravely misleading. As alleged herein, Volkswagen employed extremely sophisticated methods of deception. Plaintiff and Georgia Subclass members did not, and could not, unravel Volkswagen's deception on their own.

561. Volkswagen concealed and suppressed material facts concerning what is evidently the true culture of Volkswagen – one characterized by an emphasis on profits and sales above compliance with federal and state clean air laws, and emissions regulations that are meant to protect the public and consumers. It also emphasized profits and sales over the trust that Plaintiff and Georgia Subclass members placed in its representations. As one customer, Priya Shah, put it in a quotation cited by the *Los Angeles Times* in a September 18, 2015 article, "It's just a blatant disregard and intentional manipulation of the system. That's just a whole other level of not only lying to the government, but also lying to your consumer. People buy diesel cars from Volkswagen because they feel they are clean diesel cars." In the words of Ms. Shah, which no doubt reflect the sentiments of all other CleanDiesel vehicle buyers, "I don't want to be spewing noxious gases into the environment."

562. Necessarily, Volkswagen also took steps to ensure that its employees did not reveal the details of its scheme to regulators or consumers, including Plaintiff and Georgia Subclass members. Volkswagen did so in order to boost the reputations of its vehicles and to falsely assure purchasers and lessors of its vehicles, including previously owned vehicles, that Volkswagen is a reputable manufacturer that complies with applicable law, including federal and

state clean air laws and emissions regulations, and that its vehicles likewise comply with applicable law and regulations. Volkswagen's false representations were material to consumers, both because they concerned the quality of the Affected Vehicles, including their compliance with applicable federal and state laws and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As Volkswagen well knew, its customers, including Plaintiff and Georgia Subclass members, highly valued that the vehicles they were purchasing or leasing were *clean* diesel cars, and they paid accordingly.

563. Volkswagen had a duty to disclose its emissions scheme because knowledge of the scheme and its details were known and/or accessible only to Volkswagen, because Volkswagen had exclusive knowledge as to implementation and maintenance of its scheme, and because Volkswagen knew the facts were not known to or reasonably discoverable by Plaintiff or Georgia Subclass members. Volkswagen also had a duty to disclose because it made general affirmative representations about the qualities of its vehicles with respect to emissions standards, starting with references to them as *clean* diesel cars, or cars with *clean* diesel engines, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding its emissions scheme, the actual emissions of its vehicles, its actual philosophy with respect to compliance with federal and state clean air laws and emissions regulations, and its actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs, Volkswagen had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiff and Georgia Subclass members. Whether a manufacturer's products comply with federal and state clean air laws and emissions regulations, and whether that manufacturer tells the truth with respect to such

compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certification testing their vehicles must pass. Volkswagen represented to Plaintiff and Georgia Subclass members that they were purchasing *clean* diesel vehicles, and certification testing appeared to confirm this – except that, secretly, Volkswagen had subverted the testing process thoroughly.

564. Volkswagen actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect its profits and to avoid the perception that its vehicles did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost Volkswagen money, and it did so at the expense of Plaintiff and Georgia Subclass members.

565. On information and belief, Volkswagen has still not made full and adequate disclosures, and continues to defraud Plaintiff and Georgia Subclass members by concealing material information regarding the emission qualities of its vehicles and its emissions scheme.

566. Plaintiff and Georgia Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly “clean” diesel cars manufactured by Volkswagen, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiff's and Georgia Subclass Members' actions were justified. Volkswagen was in exclusive control of the material facts, and such facts were not known to the public, Plaintiff, or Georgia Subclass members.

567. Because of the concealment and/or suppression of the facts, Plaintiff and Georgia Subclass members have sustained damage because they own vehicles that are diminished in

value as a result of Volkswagen's concealment of the true quality and quantity of those vehicles' emissions and Volkswagen's failure to timely disclose the actual emission qualities and quantities of hundreds of thousands of Volkswagen- and Audi-branded vehicles and the serious issues engendered by Volkswagen's corporate policies. Had Plaintiff and Georgia Subclass members been aware of Volkswagen's emissions scheme, and the company's callous disregard for compliance with applicable federal and state laws and regulations, Plaintiff and Georgia Subclass members who purchased or leased new or previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

568. The value of Plaintiff's and Georgia Subclass members' vehicles has diminished as a result of Volkswagen's fraudulent concealment of its emissions scheme, which has greatly tarnished the Volkswagen and Audi brand names attached to Plaintiff's and Georgia Subclass members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles. In addition, Class members are entitled to damages for loss of use, costs of additional fuel, costs of unused warranties, and other damages to be proved at trial.

569. Accordingly, Volkswagen is liable to Plaintiffs and Class members for damages in an amount to be proven at trial.

570. Volkswagen's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiff's and Georgia Subclass members' rights and the representations that Volkswagen made to them, in order to enrich Volkswagen. To the extent permitted under applicable law, Volkswagen's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

**COUNT IV**  
**BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**  
**(GA. CODE ANN. § 11-2-314)**

571. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

572. Plaintiffs bring this Count on behalf of the Georgia Subclass.

573. Volkswagen is and was at all relevant times a merchant with respect to motor vehicles.

574. A warranty that the Affected Vehicles were in merchantable condition is implied by law in the instant transactions. These Affected Vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Affected Vehicles are inherently defective in that they do not comply with federal and state emissions standards, rendering certain safety and emissions functions inoperative; and the CleanDiesel engine system was not adequately designed, manufactured, and tested.

575. Volkswagen was provided notice of these issues by the investigations of the EPA and individual state regulators, numerous complaints filed against it including the instant complaint, and by numerous individual letters and communications sent by Plaintiffs and other Class members before or within a reasonable amount of time after the allegations of Affected Vehicle defects became public.

576. As a direct and proximate result of Volkswagen's breach of the warranties of merchantability, Plaintiffs and the other Class members have been damaged in an amount to be proven at trial.

**COUNT V**  
**BREACH OF CONTRACT**  
**(Based on Georgia Law)**

577. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

578. Plaintiff brings this Count on behalf of new vehicle or certified pre-owned vehicle purchasers in the Georgia Subclass.

579. Volkswagen's misrepresentations and omissions alleged herein, including Volkswagen's failure to disclose the existence of the CleanDiesel engine system's defect and/or defective design as alleged herein, caused Plaintiff and the other Georgia Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiff and the other Georgia Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the CleanDiesel engine system and which were not marketed as including such a system. Accordingly, Plaintiff and the other Georgia Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

580. Each and every sale or lease of an Affected Vehicle by an authorized Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the other Georgia Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose the existence of the CleanDiesel engine system's defect and/or defective design, including information known to Volkswagen rendering each Affected Vehicle non EPA-compliant, and thus less valuable, than vehicles not equipped with a CleanDiesel engine system.

581. As a direct and proximate result of Volkswagen's breach of contract, Plaintiff and the Georgia Subclass have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

**L. Claims Brought on Behalf of the Idaho Subclass**

**COUNT I  
VIOLATION OF THE IDAHO CONSUMER PROTECTION ACT  
(IDAHO CIV. CODE § 48-601, *ET SEQ.*)**

582. Plaintiff Dorie Mallory (“Plaintiff,” for purposes of all Idaho Subclass Counts) incorporates by reference all preceding allegations as though fully set forth herein.

583. This claim is brought only on behalf of the Idaho Subclass.

584. Defendants are each a “person” under the Idaho Consumer Protection Act (“Idaho CPA”), IDAHO CIV. CODE § 48-602(1).

585. Volkswagen’s acts or practices as set forth above occurred in the conduct of “trade” or “commerce” under IDAHO CIV. CODE § 48-602(2).

586. Volkswagen participated in misleading, false, or deceptive acts that violated the Idaho CPA. By fraudulently installing the “defeat device” to make it appear that its CleanDiesel engine systems complied with EPA regulations, Volkswagen engaged in deceptive business practices prohibited by the Idaho CPA, including: (1) representing that the Affected Vehicles have characteristics, uses, and benefits which they do not have; (2) representing that the Affected Vehicles are of a particular standard, quality, and grade when they are not; (3) advertising the Affected Vehicles with the intent not to sell them as advertised; (4) engaging in acts or practices which are otherwise misleading, false, or deceptive to the consumer; and (5) engaging in any unconscionable method, act or practice in the conduct of trade or commerce. *See* IDAHO CIV. CODE § 48-603.

587. In the course of its business, Volkswagen installed the “defeat device” and concealed that its CleanDiesel systems failed EPA regulations as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Volkswagen also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud,

misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Affected Vehicles.

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

589. Volkswagen was also aware that it valued profits over environmental cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles throughout the United States that did not comply with EPA regulations. Volkswagen concealed this information as well.

590. By failing to disclose and by actively concealing the “defeat device” and the true cleanliness and performance of the CleanDiesel engine system, by marketing its vehicles as safe, reliable, environmentally clean, efficient, and of high quality, and by presenting itself as a reputable manufacturer that valued safety, environmental cleanliness and efficiency, and stood behind its vehicles after they were sold, Volkswagen engaged in deceptive business practices in violation of the Idaho CPA.

591. In the course of Volkswagen’s business, it willfully failed to disclose and actively concealed the use of the “defeat device” and true cleanliness and efficiency of the CleanDiesel engine system and serious defects discussed above. Volkswagen compounded the deception by repeatedly asserting the Affected Vehicles were safe, reliable, environmentally clean, efficient, and of high quality, and by claiming to be a reputable manufacturer that valued safety, environmental cleanliness and efficiency, and stood behind its vehicles once they are on the road.

592. Volkswagen's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiff, about the true cleanliness and efficiency of the CleanDiesel engine system, the quality of the Volkswagen and Audi brands, the devaluing of environmental cleanliness and integrity at Volkswagen, and the true value of the Affected Vehicles.

593. Volkswagen intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiff and the Idaho Subclass.

594. Volkswagen knew or should have known that its conduct violated the Idaho CPA.

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

596. Volkswagen owed Plaintiffs a duty to disclose the true safety, cleanliness, efficiency and reliability of the Affected Vehicles and the devaluing of environmental cleanliness and integrity at Volkswagen, because Volkswagen:

- a. Possessed exclusive knowledge that it valued profits over environmental cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles throughout the United States that did not comply with EPA regulations;
- b. Intentionally concealed the foregoing from Plaintiffs; and/or
- c. Made incomplete representations about the safety, cleanliness, efficiency and reliability of the Affected Vehicles generally, and the use of the "defeat device" and true nature of the CleanDiesel engine system in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

597. Because Volkswagen fraudulently concealed the "defeat device" and the true cleanliness and performance of the CleanDiesel engine system, resulting in a raft of negative

publicity once the use of the “defeat device” and true characteristics of the CleanDiesel engine system finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by Volkswagen’s conduct, they are now worth significantly less than they otherwise would be.

598. Volkswagen’s fraudulent use of the “defeat device” and its concealment of the true characteristics of the CleanDiesel engine system were material to Plaintiffs and the Idaho Subclass. A vehicle made by a reputable manufacturer of environmentally friendly vehicles is worth more than an otherwise comparable vehicle made by a disreputable manufacturer of environmentally dirty vehicles that conceals its polluting engines rather than promptly remedying them.

599. Plaintiffs and the Idaho Subclass suffered ascertainable loss caused by Volkswagen’s misrepresentations and its concealment of and failure to disclose material information. Class members who purchased the Affected Vehicles either would have paid less for their vehicles or would not have purchased or leased them at all.

600. Volkswagen had an ongoing duty to all Volkswagen and Audi customers to refrain from unfair and deceptive acts or practices under the Idaho CPA. All owners of Affected Vehicles suffered ascertainable loss in the Illinois form of the diminished value of their vehicles as a result of Volkswagen’s deceptive and unfair acts and practices made in the course of Volkswagen’s business.

601. Volkswagen’s violations present a continuing risk to Plaintiffs as well as to the general public. Volkswagen’s unlawful acts and practices complained of herein affect the public interest.

602. As a direct and proximate result of Volkswagen's violations of the Idaho CPA, Plaintiffs and the Idaho Subclass have suffered injury-in-fact and/or actual damage.

603. Pursuant to IDAHO CODE § 48-608, Plaintiffs and the Idaho Subclass seek monetary relief against Volkswagen measured as the greater of (a) actual damages in an amount to be determined at trial and (b) statutory damages in the amount of \$1,000 for each Plaintiff and each Idaho Subclass member.

604. Plaintiffs also seek an order enjoining Volkswagen's unfair, unlawful, and/or deceptive practices, attorneys' fees, and any other just and proper relief available under the Idaho CPA.

605. Plaintiffs and Idaho Subclass Members also seek punitive damages against Volkswagen because Volkswagen's conduct evidences an extreme deviation from reasonable standards. Volkswagen flagrantly, maliciously, and fraudulently misrepresented the cleanliness, efficiency and reliability of the Affected Vehicles, deceived Class Members, and concealed material facts that only they knew, all to avoid the expense and public relations nightmare of its vehicles were profound polluters when it repeatedly promised Class Members they were clean. Volkswagen's unlawful conduct constitutes malice, oppression, and fraud warranting punitive damages.

**COUNT II  
FRAUD BY CONCEALMENT**

606. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

607. This claim is brought on behalf of the Idaho Subclass.

608. Volkswagen intentionally concealed and suppressed material facts concerning the quality of the Affected Vehicles. As alleged in this Complaint, notwithstanding references in the

very model names of the subject vehicles as “Clean Diesel,” or to their engines as “TDI Clean Diesel” engines, Volkswagen engaged in a secret scheme to evade federal and state vehicle emissions standards by installing software designed to conceal its vehicles’ emissions of the pollutant nitrogen oxide, which contributes to the creation of ozone and smog. The software installed on the vehicles at issue was designed nefariously to kick-in during emissions certification testing, such that the vehicles would show far lower emissions than when actually operating on the road. The result was what Volkswagen intended: vehicles passed emissions certifications by way of deliberately induced false readings. Reportedly, Volkswagen’s deliberate, secret scheme resulted in noxious emissions from these vehicles at up to 40 times applicable standards.

609. Plaintiff and Idaho Subclass members reasonably relied upon Volkswagen’s false representations. They had no way of knowing that Volkswagen’s representations were false and gravely misleading. As alleged herein, Volkswagen employed extremely sophisticated methods of deception. Plaintiff and Idaho Subclass members did not, and could not, unravel Volkswagen’s deception on their own.

610. Volkswagen concealed and suppressed material facts concerning what is evidently the true culture of Volkswagen—one characterized by an emphasis on profits and sales above compliance with federal and state clean air laws, and emissions regulations that are meant to protect the public and consumers. It also emphasized profits and sales over the trust that Plaintiff and Idaho Subclass members placed in its representations. As one customer, Priya Shah, put it in a quotation cited by the *Los Angeles Times* in a September 18, 2015 article, “It’s just a blatant disregard and intentional manipulation of the system. That’s just a whole other level of not only lying to the government, but also lying to your consumer. People buy diesel

cars from Volkswagen because they feel they are clean diesel cars.” In the words of Ms. Shah, which no doubt reflect the sentiments of all other CleanDiesel vehicle buyers, “I don’t want to be spewing noxious gases into the environment.”

611. Necessarily, Volkswagen also took steps to ensure that its employees did not reveal the details of its scheme to regulators or consumers, including Plaintiff and Idaho Subclass members. Volkswagen did so in order to boost the reputations of its vehicles and to falsely assure purchasers and lessors of its vehicles, including previously owned vehicles, that Volkswagen is a reputable manufacturer that complies with applicable law, including federal and state clean air laws and emissions regulations, and that its vehicles likewise comply with applicable law and regulations. Volkswagen’s false representations were material to consumers, both because they concerned the quality of the Affected Vehicles, including their compliance with applicable federal and state laws and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As Volkswagen well knew, its customers, including Plaintiff and Idaho Subclass members, highly valued that the vehicles they were purchasing or leasing were *clean* diesel cars, and they paid accordingly.

612. Volkswagen had a duty to disclose its emissions scheme because knowledge of the scheme and its details were known and/or accessible only to Volkswagen, because Volkswagen had exclusive knowledge as to implementation and maintenance of its scheme, and because Volkswagen knew the facts were not known to or reasonably discoverable by Plaintiff or Idaho Subclass members. Volkswagen also had a duty to disclose because it made general affirmative representations about the qualities of its vehicles with respect to emissions standards, starting with references to them as *clean* diesel cars, or cars with *clean* diesel engines, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set

forth above regarding its emissions scheme, the actual emissions of its vehicles, its actual philosophy with respect to compliance with federal and state clean air laws and emissions regulations, and its actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs, Volkswagen had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiff and Idaho Subclass members. Whether a manufacturer's products comply with federal and state clean air laws and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certification testing their vehicles must pass. Volkswagen represented to Plaintiff and Idaho Subclass members that they were purchasing *clean* diesel vehicles, and certification testing appeared to confirm this—except that, secretly, Volkswagen had subverted the testing process thoroughly.

613. Volkswagen actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect its profits and to avoid the perception that its vehicles did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost Volkswagen money, and it did so at the expense of Plaintiff and Idaho Subclass members.

614. On information and belief, Volkswagen has still not made full and adequate disclosures, and continues to defraud Plaintiff and Idaho Subclass members by concealing material information regarding the emissions qualities of its vehicles and its emissions scheme.

615. Plaintiff and Idaho Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed

and/or suppressed facts, in that they would not have purchased purportedly “clean” diesel cars manufactured by Volkswagen, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiff’s and Idaho Subclass members’ actions were justified. Volkswagen was in exclusive control of the material facts, and such facts were not known to the public, Plaintiff, or Idaho Subclass members.

616. Because of the concealment and/or suppression of the facts, Plaintiff and Idaho Subclass members have sustained damage because they own vehicles that are diminished in value as a result of Volkswagen’s concealment of the true quality and quantity of those vehicles’ emissions and Volkswagen’s failure to timely disclose the actual emissions qualities and quantities of hundreds of thousands of Volkswagen- and Audi-branded vehicles and the serious issues engendered by Volkswagen’s corporate policies. Had Plaintiff and Idaho Subclass members been aware of Volkswagen’s emissions scheme, and the company’s callous disregard for compliance with applicable federal and state laws and regulations, Plaintiff and Idaho Subclass members who purchased or leased new or previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

617. The value of Plaintiff’s and Idaho Subclass members’ vehicles has diminished as a result of Volkswagen’s fraudulent concealment of its emissions scheme, which has greatly tarnished the Volkswagen and Audi brand names attached to Plaintiff’s and Idaho Subclass members’ vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles. In addition, Class members are entitled to damages for loss of use, costs of additional fuel, costs of unused warranties, and other damages to be proved at trial.

618. Accordingly, Volkswagen is liable to Plaintiff and Idaho Subclass members for damages in an amount to be proven at trial.

619. Volkswagen's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiff's and Idaho Subclass members' rights and the representations that Volkswagen made to them, in order to enrich Volkswagen. To the extent permitted under applicable law, Volkswagen's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

**COUNT III**  
**BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**  
**(IDAHO COM. CODE § 28-2-314)**

620. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

621. Plaintiffs bring this Count on behalf of the Idaho Subclass.

622. Volkswagen is and was at all relevant times a merchant with respect to motor vehicles.

623. A warranty that the Affected Vehicles were in merchantable condition is implied by law in the instant transactions. These Affected Vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Affected Vehicles are inherently defective in that they do not comply with federal and state emissions standards, rendering certain safety and emissions functions inoperative; and the CleanDiesel engine system was not adequately designed, manufactured, and tested.

624. Volkswagen was provided notice of these issues by the investigations of the EPA and individual state regulators, numerous complaints filed against it including the instant complaint, and by numerous individual letters and communications sent by Plaintiffs and other

Class members before or within a reasonable amount of time after the allegations of Affected Vehicle defects became public.

625. As a direct and proximate result of Volkswagen's breach of the warranties of merchantability, Plaintiffs and the other Class members have been damaged in an amount to be proven at trial.

**COUNT IV  
BREACH OF CONTRACT  
(BASED ON IDAHO LAW)**

626. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

627. Plaintiff brings this Count on behalf of new vehicle or certified pre-owned vehicle purchasers in the Idaho Subclass.

628. Volkswagen's misrepresentations and omissions alleged herein, including Volkswagen's failure to disclose the existence of the CleanDiesel engine system's defect and/or defective design as alleged herein, caused Plaintiff and the other Idaho Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiff and the other Idaho Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the CleanDiesel engine system and which were not marketed as including such a system. Accordingly, Plaintiff and the other Idaho Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

629. Each and every sale or lease of an Affected Vehicle by an authorized Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the other Idaho Subclass members

defective Affected Vehicles and by misrepresenting or failing to disclose the existence of the CleanDiesel engine system's defect and/or defective design, including information known to Volkswagen rendering each Affected Vehicle non EPA-compliant, and thus less valuable, than vehicles not equipped with a CleanDiesel engine system.

630. As a direct and proximate result of Volkswagen's breach of contract, Plaintiff and the Idaho Subclass have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

**M. Claims Brought on Behalf of the Illinois Subclass**

**COUNT I  
VIOLATION OF ILLINOIS CONSUMER FRAUD AND  
DECEPTIVE BUSINESS PRACTICES ACT  
(815 ILCS 505/1, *et seq.* and 720 ILCS 295/1A)**

631. Plaintiff Alfred Golden ("Plaintiff," for purposes of all Illinois Subclass Counts) incorporates by reference all preceding allegations as though fully set forth herein.

632. This claim is brought only on behalf of the Illinois Subclass.

633. Defendants are each a "person" as that term is defined in 815 ILCS 505/1(c).

634. Plaintiff and the Illinois Subclass are "consumers" as that term is defined in 815 ILCS 505/1(e).

635. The Illinois Consumer Fraud and Deceptive Business Practices Act ("Illinois CFA") prohibits "unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact ... in the conduct of trade or

commerce ... whether any person has in fact been misled, deceived or damaged thereby.” 815 ILCS 505/2.

636. Volkswagen participated in misleading, false, or deceptive acts that violated the Illinois CFA. By fraudulently installing the “defeat device” to make it appear that its CleanDiesel engine systems complied with EPA regulations, Volkswagen engaged in deceptive business practices prohibited by the Illinois CFA.

637. In the course of its business, Volkswagen installed the “defeat device” and concealed that its CleanDiesel systems failed EPA regulations as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Volkswagen also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Affected Vehicles.

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

639. Volkswagen was also aware that it valued profits over environmental cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles throughout the United States that did not comply with EPA regulations. Volkswagen concealed this information as well.

640. By failing to disclose and by actively concealing the “defeat device” and the true cleanliness and performance of the CleanDiesel engine system, by marketing its vehicles as safe, reliable, environmentally clean, efficient, and of high quality, and by presenting itself as a

reputable manufacturer that valued safety, environmental cleanliness and efficiency, and stood behind its vehicles after they were sold, Volkswagen engaged in unfair and deceptive business practices in violation of the Illinois CFA.

641. In the course of Volkswagen's business, it willfully failed to disclose and actively concealed the use of the "defeat device" and true cleanliness and efficiency of the CleanDiesel engine system and serious defects discussed above. Volkswagen compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable, environmentally clean, efficient, and of high quality, and by claiming to be a reputable manufacturer that valued safety, environmental cleanliness and efficiency, and stood behind its vehicles once they are on the road.

642. Volkswagen's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiff, about the true cleanliness and efficiency of the CleanDiesel engine system, the quality of the Volkswagen and Audi brands, the devaluing of environmental cleanliness and integrity at Volkswagen, and the true value of the Affected Vehicles.

643. Volkswagen intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiff and the Illinois Subclass.

644. Volkswagen knew or should have known that its conduct violated the Illinois CFA.

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

646. Volkswagen owed Plaintiffs a duty to disclose the true safety, cleanliness, efficiency and reliability of the Affected Vehicles and the devaluing of environmental cleanliness and integrity at Volkswagen, because Volkswagen:

- a. Possessed exclusive knowledge that it valued profits over environmental cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles throughout the United States that did not comply with EPA regulations;
- b. Intentionally concealed the foregoing from Plaintiffs; and/or
- c. Made incomplete representations about the safety, cleanliness, efficiency and reliability of the Affected Vehicles generally, and the use of the “defeat device” and true nature of the CleanDiesel engine system in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

647. Because Volkswagen fraudulently concealed the “defeat device” and the true cleanliness and performance of the CleanDiesel engine system, resulting in a raft of negative publicity once the use of the “defeat device” and true characteristics of the CleanDiesel engine system finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by Volkswagen’s conduct, they are now worth significantly less than they otherwise would be.

648. Volkswagen’s fraudulent use of the “defeat device” and its concealment of the true characteristics of the CleanDiesel engine system were material to Plaintiffs and the Illinois Subclass. A vehicle made by a reputable manufacturer of environmentally friendly vehicles is worth more than an otherwise comparable vehicle made by a disreputable manufacturer of environmentally dirty vehicles that conceals its polluting engines rather than promptly remedying them.

649. Plaintiffs and the Illinois Subclass suffered ascertainable loss caused by Volkswagen's misrepresentations and its concealment of and failure to disclose material information. Class members who purchased the Affected Vehicles either would have paid less for their vehicles or would not have purchased or leased them at all.

650. Volkswagen had an ongoing duty to all Volkswagen and Audi customers to refrain from unfair and deceptive acts or practices under the Illinois CFA. All owners of Affected Vehicles suffered ascertainable loss in the form of the diminished value of their vehicles as a result of Volkswagen's deceptive and unfair acts and practices made in the course of Volkswagen's business.

651. Volkswagen's violations present a continuing risk to Plaintiffs as well as to the general public. Volkswagen's unlawful acts and practices complained of herein affect the public interest.

652. As a direct and proximate result of Volkswagen's violations of the Illinois CFA, Plaintiffs and the Illinois Subclass have suffered injury-in-fact and/or actual damage.

653. Pursuant to 815 ILCS 505/10a(a), Plaintiffs and the Illinois Subclass seek monetary relief against Volkswagen in the amount of actual damages, as well as punitive damages because Volkswagen acted with fraud and/or malice and/or was grossly negligent.

654. Plaintiffs also seek an order enjoining Volkswagen's unfair and/or deceptive acts or practices, punitive damages, and attorneys' fees, and any other just and proper relief available under 815 ILCS § 505/1 *et seq.*

## **COUNT II FRAUD BY CONCEALMENT**

655. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

656. This claim is brought on behalf of the Illinois Subclass.

657. Volkswagen intentionally concealed and suppressed material facts concerning the quality of the Affected Vehicles. As alleged in this Complaint, notwithstanding references in the very model names of the subject vehicles as “Clean Diesel,” or to their engines as “TDI Clean Diesel” engines, Volkswagen engaged in a secret scheme to evade federal and state vehicle emissions standards by installing software designed to conceal its vehicles’ emissions of the pollutant nitrogen oxide, which contributes to the creation of ozone and smog. The software installed on the vehicles at issue was designed nefariously to kick-in during emissions certification testing, such that the vehicles would show far lower emissions than when actually operating on the road. The result was what Volkswagen intended: vehicles passed emissions certifications by way of deliberately induced false readings. Reportedly, Volkswagen’s deliberate, secret scheme resulted in noxious emissions from these vehicles at up to 40 times applicable standards.

658. Plaintiff and Illinois Subclass members reasonably relied upon Volkswagen’s false representations. They had no way of knowing that Volkswagen’s representations were false and gravely misleading. As alleged herein, Volkswagen employed extremely sophisticated methods of deception. Plaintiff and Illinois Subclass members did not, and could not, unravel Volkswagen’s deception on their own.

659. Volkswagen concealed and suppressed material facts concerning what is evidently the true culture of Volkswagen – one characterized by an emphasis on profits and sales above compliance with federal and state clean air laws, and emissions regulations that are meant to protect the public and consumers. It also emphasized profits and sales over the trust that Plaintiff and Illinois Subclass members placed in its representations. As one customer, Priya

Shah, put it in a quotation cited by the *Los Angeles Times* in a September 18, 2015 article, “It’s just a blatant disregard and intentional manipulation of the system. That’s just a whole other level of not only lying to the government, but also lying to your consumer. People buy diesel cars from Volkswagen because they feel they are clean diesel cars.” In the words of Ms. Shah, which no doubt reflect the sentiments of all other CleanDiesel vehicle buyers, “I don’t want to be spewing noxious gases into the environment.”

660. Necessarily, Volkswagen also took steps to ensure that its employees did not reveal the details of its scheme to regulators or consumers, including Plaintiff and Illinois Subclass members. Volkswagen did so in order to boost the reputations of its vehicles and to falsely assure purchasers and lessors of its vehicles, including previously owned vehicles, that Volkswagen is a reputable manufacturer that complies with applicable law, including federal and state clean air laws and emissions regulations, and that its vehicles likewise comply with applicable law and regulations. Volkswagen’s false representations were material to consumers, both because they concerned the quality of the Affected Vehicles, including their compliance with applicable federal and state laws and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As Volkswagen well knew, its customers, including Plaintiff and Illinois Subclass members, highly valued that the vehicles they were purchasing or leasing were *clean* diesel cars, and they paid accordingly.

661. Volkswagen had a duty to disclose its emissions scheme because knowledge of the scheme and its details were known and/or accessible only to Volkswagen, because Volkswagen had exclusive knowledge as to implementation and maintenance of its scheme, and because Volkswagen knew the facts were not known to or reasonably discoverable by Plaintiff or Illinois Subclass members. Volkswagen also had a duty to disclose because it made general

affirmative representations about the qualities of its vehicles with respect to emissions standards, starting with references to them as *clean* diesel cars, or cars with *clean* diesel engines, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding its emissions scheme, the actual emissions of its vehicles, its actual philosophy with respect to compliance with federal and state clean air laws and emissions regulations, and its actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs, Volkswagen had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiff and Illinois Subclass members. Whether a manufacturer's products comply with federal and state clean air laws and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certification testing their vehicles must pass. Volkswagen represented to Plaintiff and Illinois Subclass members that they were purchasing *clean* diesel vehicles, and certification testing appeared to confirm this – except that, secretly, Volkswagen had subverted the testing process thoroughly.

662. Volkswagen actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect its profits and to avoid the perception that its vehicles did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost Volkswagen money, and it did so at the expense of Plaintiff and Illinois Subclass members.

663. On information and belief, Volkswagen has still not made full and adequate disclosures, and continues to defraud Plaintiff and Illinois Subclass members by concealing material information regarding the emission qualities of its vehicles and its emissions scheme.

664. Plaintiff and Illinois Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly “clean” diesel cars manufactured by Volkswagen, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiff’s and Illinois Subclass members’ actions were justified. Volkswagen was in exclusive control of the material facts, and such facts were not known to the public, Plaintiff, or Illinois Subclass members.

665. Because of the concealment and/or suppression of the facts, Plaintiff and Illinois Subclass members have sustained damage because they own vehicles that are diminished in value as a result of Volkswagen’s concealment of the true quality and quantity of those vehicles’ emissions and Volkswagen’s failure to timely disclose the actual emission qualities and quantities of hundreds of thousands of Volkswagen- and Audi-branded vehicles and the serious issues engendered by Volkswagen’s corporate policies. Had Plaintiff and Illinois Subclass members been aware of Volkswagen’s emissions scheme, and the company’s callous disregard for compliance with applicable federal and state laws and regulations, Plaintiff and Illinois Subclass members who purchased or leased new or previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

666. The value of Plaintiff’s and Illinois Subclass members’ vehicles has diminished as a result of Volkswagen’s fraudulent concealment of its emissions scheme, which has greatly

tarnished the Volkswagen and Audi brand names attached to Plaintiff's and Illinois Subclass members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles. In addition, Class members are entitled to damages for loss of use, costs of additional fuel, costs of unused warranties, and other damages to be proved at trial.

667. Accordingly, Volkswagen is liable to Plaintiff and Illinois Subclass members for damages in an amount to be proven at trial.

668. Volkswagen's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiff's and Illinois Subclass members' rights and the representations that Volkswagen made to them, in order to enrich Volkswagen. To the extent permitted under applicable law, Volkswagen's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

**COUNT III**  
**BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**  
**(810 ILL. COMP. STAT. 5/2-314 AND 5/2A-212)**

669. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

670. Plaintiffs bring this Count on behalf of the Illinois Subclass.

671. Volkswagen is and was at all relevant times a merchant with respect to motor vehicles.

672. A warranty that the Affected Vehicles were in merchantable condition is implied by law in the instant transactions. These Affected Vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Affected Vehicles are inherently defective in that they do not

comply with federal and state emissions standards, rendering certain safety and emissions functions inoperative; and the CleanDiesel engine system was not adequately designed, manufactured, and tested.

673. Volkswagen was provided notice of these issues by the investigations of the EPA and individual state regulators, numerous complaints filed against it including the instant complaint, and by numerous individual letters and communications sent by Plaintiffs and other Class members before or within a reasonable amount of time after the allegations of Affected Vehicle defects became public.

674. As a direct and proximate result of Volkswagen's breach of the warranties of merchantability, Plaintiffs and the other Class members have been damaged in an amount to be proven at trial.

**COUNT IV  
BREACH OF CONTRACT  
(Based on Illinois Law)**

675. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

676. Plaintiff brings this Count on behalf of new vehicle or certified pre-owned vehicle purchasers in the Illinois Subclass.

677. Volkswagen's misrepresentations and omissions alleged herein, including Volkswagen's failure to disclose the existence of the CleanDiesel engine system's defect and/or defective design as alleged herein, caused Plaintiff and the other Illinois Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiff and the other Illinois Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the CleanDiesel engine system and which were not marketed as including such a

system. Accordingly, Plaintiff and the other Illinois Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

678. Each and every sale or lease of an Affected Vehicle by an authorized Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the other Illinois Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose the existence of the CleanDiesel engine system's defect and/or defective design, including information known to Volkswagen rendering each Affected Vehicle non EPA-compliant, and thus less valuable, than vehicles not equipped with a CleanDiesel engine system.

679. As a direct and proximate result of Volkswagen's breach of contract, Plaintiff and the Illinois Subclass have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

**N. Claims Brought on Behalf of the Indiana Subclass**

**COUNT I  
VIOLATION OF THE INDIANA DECEPTIVE CONSUMER SALES ACT  
(IND. CODE § 24-5-0.5-3)**

680. Plaintiff Cesar Olmos ("Plaintiff," for purposes of all Indiana Subclass Counts) incorporates by reference all preceding allegations as though fully set forth herein.

681. Plaintiff intends to assert a claim under Indiana's Deceptive Consumer Sales Act ("Indiana DCSA") which prohibits a person from engaging in a "deceptive trade practice," which includes representing: "(1) That such subject of a consumer transaction has sponsorship, approval, performance, characteristics, accessories, uses, or benefits that they do not have, or that a person has a sponsorship, approval, status, affiliation, or connection it does not have; (2) That such subject of a consumer transaction is of a particular standard, quality, grade, style or model,

if it is not and if the supplier knows or should reasonably know that it is not; ... (7) That the supplier has a sponsorship, approval or affiliation in such consumer transaction that the supplier does not have, and which the supplier knows or should reasonably know that the supplier does not have; ... (b) Any representations on or within a product or its packaging or in advertising or promotional materials which would constitute a deceptive act shall be the deceptive act both of the supplier who places such a representation thereon or therein, or who authored such materials, and such suppliers who shall state orally or in writing that such representation is true if such other supplier shall know or have reason to know that such representation was false.” Plaintiffs will make a demand in satisfaction of IND. CODE § 24-5-0.5-5(a)(2), and may amend this Complaint to assert claims under the CLRA once the required six months have elapsed. This paragraph is included for purposes of notice only and is not intended to actually assert a claim under the CLRA.

**COUNT II  
FRAUD BY CONCEALMENT**

682. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

683. This claim is brought on behalf of the Indiana Subclass.

684. Volkswagen intentionally concealed and suppressed material facts concerning the quality of the Affected Vehicles. As alleged in this Complaint, notwithstanding references in the very model names of the subject vehicles as “Clean Diesel,” or to their engines as “TDI Clean Diesel” engines, Volkswagen engaged in a secret scheme to evade federal and state vehicle emissions standards by installing software designed to conceal its vehicles’ emissions of the pollutant nitrogen oxide, which contributes to the creation of ozone and smog. The software installed on the vehicles at issue was designed nefariously to kick-in during emissions

certification testing, such that the vehicles would show far lower emissions than when actually operating on the road. The result was what Volkswagen intended: vehicles passed emissions certifications by way of deliberately induced false readings. Reportedly, Volkswagen's deliberate, secret scheme resulted in noxious emissions from these vehicles at up to 40 times applicable standards.

685. Plaintiff and Indiana Subclass members reasonably relied upon Volkswagen's false representations. They had no way of knowing that Volkswagen's representations were false and gravely misleading. As alleged herein, Volkswagen employed extremely sophisticated methods of deception. Plaintiff and Indiana Subclass members did not, and could not, unravel Volkswagen's deception on their own.

686. Volkswagen concealed and suppressed material facts concerning what is evidently the true culture of Volkswagen—one characterized by an emphasis on profits and sales above compliance with federal and state clean air laws, and emissions regulations that are meant to protect the public and consumers. It also emphasized profits and sales over the trust that Plaintiff and Indiana Subclass members placed in its representations. As one customer, Priya Shah, put it in a quotation cited by the *Los Angeles Times* in a September 18, 2015 article, "It's just a blatant disregard and intentional manipulation of the system. That's just a whole other level of not only lying to the government, but also lying to your consumer. People buy diesel cars from Volkswagen because they feel they are clean diesel cars." In the words of Ms. Shah, which no doubt reflect the sentiments of all other CleanDiesel vehicle buyers, "I don't want to be spewing noxious gases into the environment."

687. Necessarily, Volkswagen also took steps to ensure that its employees did not reveal the details of its scheme to regulators or consumers, including Plaintiff and Indiana

Subclass members. Volkswagen did so in order to boost the reputations of its vehicles and to falsely assure purchasers and lessors of its vehicles, including previously owned vehicles, that Volkswagen is a reputable manufacturer that complies with applicable law, including federal and state clean air laws and emissions regulations, and that its vehicles likewise comply with applicable law and regulations. Volkswagen's false representations were material to consumers, both because they concerned the quality of the Affected Vehicles, including their compliance with applicable federal and state laws and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As Volkswagen well knew, its customers, including Plaintiff and Indiana Subclass members, highly valued that the vehicles they were purchasing or leasing were *clean* diesel cars, and they paid accordingly.

688. Volkswagen had a duty to disclose its emissions scheme because knowledge of the scheme and its details were known and/or accessible only to Volkswagen, because Volkswagen had exclusive knowledge as to implementation and maintenance of its scheme, and because Volkswagen knew the facts were not known to or reasonably discoverable by Plaintiff or Indiana Subclass members. Volkswagen also had a duty to disclose because it made general affirmative representations about the qualities of its vehicles with respect to emissions standards, starting with references to them as *clean* diesel cars, or cars with *clean* diesel engines, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding its emissions scheme, the actual emissions of its vehicles, its actual philosophy with respect to compliance with federal and state clean air laws and emissions regulations, and its actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs, Volkswagen had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly

impact the value of the Affected Vehicles purchased or leased by Plaintiff and Indiana Subclass members. Whether a manufacturer's products comply with federal and state clean air laws and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certification testing their vehicles must pass. Volkswagen represented to Plaintiff and Indiana Subclass members that they were purchasing *clean* diesel vehicles, and certification testing appeared to confirm this—except that, secretly, Volkswagen had subverted the testing process thoroughly.

689. Volkswagen actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect its profits and to avoid the perception that its vehicles did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost Volkswagen money, and it did so at the expense of Plaintiff and Indiana Subclass members.

690. On information and belief, Volkswagen has still not made full and adequate disclosures, and continues to defraud Plaintiff and Indiana Subclass members by concealing material information regarding the emissions qualities of its vehicles and its emissions scheme.

691. Plaintiff and Indiana Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly "clean" diesel cars manufactured by Volkswagen, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiff's and Indiana Subclass members' actions were justified.

Volkswagen was in exclusive control of the material facts, and such facts were not known to the public, Plaintiff, or Indiana Subclass members.

692. Because of the concealment and/or suppression of the facts, Plaintiff and Indiana Subclass members have sustained damage because they own vehicles that are diminished in value as a result of Volkswagen's concealment of the true quality and quantity of those vehicles' emissions and Volkswagen's failure to timely disclose the actual emissions qualities and quantities of hundreds of thousands of Volkswagen- and Audi-branded vehicles and the serious issues engendered by Volkswagen's corporate policies. Had Plaintiff and Indiana Subclass members been aware of Volkswagen's emissions scheme, and the company's callous disregard for compliance with applicable federal and state laws and regulations, Plaintiff and Indiana Subclass members who purchased or leased new or previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

693. The value of Plaintiff's and Indiana Subclass members' vehicles has diminished as a result of Volkswagen's fraudulent concealment of its emissions scheme, which has greatly tarnished the Volkswagen and Audi brand names attached to Plaintiff's and Indiana Subclass members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles. In addition, Class members are entitled to damages for loss of use, costs of additional fuel, costs of unused warranties, and other damages to be proved at trial.

694. Accordingly, Volkswagen is liable to Plaintiff and Indiana Subclass members for damages in an amount to be proven at trial.

695. Volkswagen's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiff's and Indiana Subclass members'

rights and the representations that Volkswagen made to them, in order to enrich Volkswagen. To the extent permitted under applicable law, Volkswagen's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

**COUNT III  
BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY  
(IND. CODE § 26-1-2-314)**

696. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

697. Plaintiffs bring this Count on behalf of the Indiana Subclass.

698. Volkswagen is and was at all relevant times a merchant with respect to motor vehicles.

699. A warranty that the Affected Vehicles were in merchantable condition is implied by law in the instant transactions. These Affected Vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Affected Vehicles are inherently defective in that they do not comply with federal and state emissions standards, rendering certain safety and emissions functions inoperative; and the CleanDiesel engine system was not adequately designed, manufactured, and tested.

700. Volkswagen was provided notice of these issues by the investigations of the EPA and individual state regulators, numerous complaints filed against it including the instant complaint, and by numerous individual letters and communications sent by Plaintiffs and other Class members before or within a reasonable amount of time after the allegations of Affected Vehicle defects became public.

701. As a direct and proximate result of Volkswagen's breach of the warranties of merchantability, Plaintiffs and the other Class members have been damaged in an amount to be proven at trial.

**COUNT IV  
BREACH OF CONTRACT  
(BASED ON INDIANA LAW)**

702. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

703. Plaintiff brings this Count on behalf of new vehicle or certified pre-owned vehicle purchasers in the Indiana Subclass.

704. Volkswagen's misrepresentations and omissions alleged herein, including Volkswagen's failure to disclose the existence of the CleanDiesel engine system's defect and/or defective design as alleged herein, caused Plaintiff and the other Indiana Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiff and the other Indiana Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the CleanDiesel engine system and which were not marketed as including such a system. Accordingly, Plaintiff and the other Indiana Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

705. Each and every sale or lease of an Affected Vehicle by an authorized Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the other Indiana Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose the existence of the CleanDiesel engine system's defect and/or defective design, including information known to Volkswagen rendering each Affected Vehicle non EPA-compliant, and thus less valuable, than vehicles not equipped with a CleanDiesel engine system.

706. As a direct and proximate result of Volkswagen's breach of contract, Plaintiff and the Indiana Subclass have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

**O. Claims Brought on Behalf of the Iowa Subclass**

**COUNT I  
VIOLATIONS OF THE PRIVATE RIGHT OF ACTION  
FOR CONSUMER FRAUDS ACT  
(IOWA CODE §§ 714H.1, *ET SEQ.*)**

707. Plaintiff Britney Schnathorst ("Plaintiff," for purposes of all Iowa Subclass Counts) incorporates by reference all preceding allegations as though fully set forth herein.

708. Plaintiff brings this Count on behalf of the Iowa Subclass.

709. Defendants are each a "person" under Iowa Code § 714H.2(7).

710. Plaintiff and the Iowa Subclass are "consumers," as defined by Iowa Code § 714H.2(3), who purchased or leased one or more Affected Vehicles.

711. Volkswagen participated in unfair or deceptive acts or practices that violated Iowa's Private Right of Action for Consumer Fraud Act ("Iowa CFA"), Iowa Code § 714H.1, *et seq.*, as described herein. Volkswagen is directly liable for these violations of law.

712. By failing to disclose and actively concealing that the CleanDiesel engine systems were not EPA-complaint and used a "defeat device" in the Affected Vehicles, Volkswagen engaged in deceptive business practices prohibited by the Iowa CFA, including (1) representing that Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have, (2) representing that Affected Vehicles are of a particular standard, quality, and grade when they are not, (3) advertising Affected Vehicles with the intent not to sell them as advertised, and (4)

engaging in acts or practices which are otherwise unfair, misleading, false, or deceptive to the consumer.

713. As alleged above, Volkswagen made numerous material statements about the benefits and characteristics of the CleanDiesel engine system that were either false or misleading. Each of these statements contributed to the deceptive context of Volkswagen's unlawful advertising and representations as a whole.

714. Volkswagen knew that the CleanDiesel engine system in the Affected Vehicles were defectively designed or manufactured, did not comply with EPA regulations, and were not suitable for their intended use. Volkswagen nevertheless failed to warn Plaintiff about these defects despite having a duty to do so.

715. Volkswagen owed Plaintiff a duty to disclose the defective nature of the CleanDiesel engine system in the Affected Vehicles, because Volkswagen:

- a. Possessed exclusive knowledge of the defects rendering the Affected Vehicles non-compliant with EPA regulations;
- b. Intentionally concealed the defects associated with the CleanDiesel engine system through its deceptive marketing campaigns and "defeat device" that it designed to hide the defects in the CleanDiesel engine system; and/or
- c. Made incomplete representations about the characteristics and performance of the CleanDiesel engine system generally, while purposefully withholding material facts from Plaintiff that contradicted these representations.

716. Volkswagen's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiff, about the true performance and characteristics of the CleanDiesel engine system.

717. As a result of its violations of the Iowa CFA detailed above, Volkswagen caused actual damage to Plaintiff and, if not stopped, will continue to harm Plaintiff. Plaintiff currently

owns or leases, or within the Class Period has owned or leased, an Affected Vehicle that is defective. Defects associated with the CleanDiesel engine system have caused the value of the Affected Vehicles, including Plaintiff's Vehicle, to decrease.

718. Plaintiff and the Class sustained damages as a result of the Volkswagen's unlawful acts and are, therefore, entitled to damages and other relief as provided under Chapter 714H of the Iowa Code. Because Volkswagen's conduct was committed willfully, Plaintiff seeks treble damages as provided in Iowa Code § 714H.5(4).

719. Plaintiff also seeks court costs and attorneys' fees as a result of Volkswagen's violation of Chapter 714H as provided in Iowa Code § 714H.5(2).

**COUNT II  
BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY  
(IOWA CODE § 554.2314)**

720. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

721. Plaintiffs bring this Count on behalf of the Iowa Subclass.

722. Volkswagen is and was at all relevant times a merchant with respect to motor vehicles under Iowa Code § 554.2014.

723. A warranty that the Affected Vehicles were in merchantable condition is implied by law in the instant transactions, pursuant to Cal. Com. Code § 2314. These Affected Vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Affected Vehicles are inherently defective in that they do not comply with federal and state emissions standards, rendering certain safety and emissions functions inoperative; and the CleanDiesel engine system was not adequately designed, manufactured, and tested.

724. Volkswagen was provided notice of these issues by the investigations of the EPA and individual state regulators, numerous complaints filed against it including the instant

complaint, and by numerous individual letters and communications sent by Plaintiffs and other Class members before or within a reasonable amount of time after the allegations of Affected Vehicle defects became public.

725. As a direct and proximate result of Volkswagen's breach of the warranties of merchantability, Plaintiffs and the other Class members have been damaged in an amount to be proven at trial.

**COUNT III  
BREACH OF CONTRACT  
(BASED ON IOWA LAW)**

726. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

727. Plaintiff brings this Count on behalf of new vehicle or certified pre-owned vehicle purchasers in the Iowa Subclass.

728. Volkswagen's misrepresentations and omissions alleged herein, including Volkswagen's failure to disclose the existence of the CleanDiesel engine system's defect and/or defective design as alleged herein, caused Plaintiff and the other Iowa Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiff and the other Iowa Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the CleanDiesel engine system and which were not marketed as including such a system. Accordingly, Plaintiff and the other Iowa Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

729. Each and every sale or lease of an Affected Vehicle by an authorized Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or lessee. Volkswagen

breached these contracts by selling or leasing Plaintiff and the other Iowa Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose the existence of the CleanDiesel engine system's defect and/or defective design, including information known to Volkswagen rendering each Affected Vehicle non EPA-compliant, and thus less valuable, than vehicles not equipped with a CleanDiesel engine system.

730. As a direct and proximate result of Volkswagen's breach of contract, Plaintiff and the Iowa Subclass have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

**COUNT IV  
FRAUDULENT CONCEALMENT  
(BASED ON IOWA LAW)**

731. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

732. Plaintiff brings this Count on behalf of the Iowa Subclass.

733. Volkswagen intentionally concealed that the CleanDiesel engine systems were not EPA-compliant and used a "defeat device", or acted with reckless disregard for the truth, and denied Plaintiff and the other Class members information that is highly relevant to their purchasing decision.

734. Volkswagen further affirmatively misrepresented to Plaintiff in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles it was selling were new, had no significant defects, complied with EPA regulations and would perform and operate properly when driven in normal usage.

735. Volkswagen knew these representations were false when made.

736. The Affected Vehicles purchased or leased by Plaintiff and the other Class members were, in fact, defective, non-EPA compliant, unsafe, and unreliable because the Affected Vehicles contained faulty and defective CleanDiesel engine system, as alleged herein.

737. Volkswagen had a duty to disclose that these Affected Vehicles were defective, unsafe, non-EPA compliant and unreliable in that certain crucial emissions functions of the Affected Vehicles would be rendered inoperative due to the “defeat device” installed in the defective CleanDiesel engine system, because Plaintiff and the other Class members relied on Volkswagen’s material representations that the Affected Vehicles they were purchasing were safe, environmentally clean, efficient and free from defects.

738. The aforementioned concealment was material because if it had been disclosed Plaintiff and the other Class members would not have bought or leased the Affected Vehicles, or would not have bought or leased those Vehicles at the prices they paid.

739. The aforementioned representations were material because they were facts that would typically be relied on by a person purchasing or leasing a new motor vehicle. Volkswagen knew or recklessly disregarded that its representations were false because it knew that it had to use the “defeat device” in order for Affected Vehicles to pass EPA emissions requirements. Volkswagen intentionally made the false statements in order to sell Affected Vehicles.

740. Plaintiff and the other Class members relied on Volkswagen’s reputation – along with Volkswagen’s failure to disclose the faulty and defective nature of the CleanDiesel engine system and Volkswagen’s affirmative assurance that its Affected Vehicles were safe and reliable, and other similar false statements – in purchasing or leasing Volkswagen’s Affected Vehicles.

741. As a result of their reliance, Plaintiff and the other Class members have been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase or lease and/or the diminished value of their Affected Vehicles.

742. Volkswagen's conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of Plaintiff and the other Class members. Plaintiff and the other Class members are therefore entitled to an award of punitive damages.

**P. Claims Brought on Behalf of the Kansas Subclass**

**COUNT I  
VIOLATIONS OF THE KANSAS CONSUMER PROTECTION ACT  
(KAN. STAT. ANN. § 50-623, *ET SEQ.*)**

743. Plaintiffs Carla Berg and Aaron Joy ("Plaintiffs," for purposes of all Kansas Subclass Counts) incorporate by reference all preceding allegations as though fully set forth herein.

744. This claim is brought only on behalf of members of the Kansas Subclass.

745. Volkswagen is a "supplier" under the Kansas Consumer Protection Act ("Kansas CPA"), KAN. STAT. ANN. § 50-624(l).

746. Kansas Class Members are "consumers," within the meaning of KAN. STAT. ANN. § 50-624(b), who purchased or leased one or more Affected Vehicles.

747. The sale of the Affected Vehicles to the Kansas Class Members was a "consumer transaction" within the meaning of KAN. STAT. ANN. § 50-624(c).

748. The Kansas CPA states "[n]o supplier shall engage in any deceptive act or practice in connection with a consumer transaction," KAN. STAT. ANN. § 50-626(a), and that deceptive acts or practices include: (1) knowingly making representations or with reason to

know that “(A) Property or services have sponsorship, approval, accessories, characteristics, ingredients, uses, benefits or quantities that they do not have;” and “(D) property or services are of particular standard, quality, grade, style or model, if they are of another which differs materially from the representation;” “(2) the willful use, in any oral or written representation, of exaggeration, falsehood, innuendo or ambiguity as to a material fact;” and “(3) the willful failure to state a material fact, or the willful concealment, suppression or omission of a material fact.” The Kansas CPA also provides that “[n]o supplier shall engage in any unconscionable act or practice in connection with a consumer transaction.” KAN. STAT. ANN. § 50-627(a).

749. Volkswagen participated in misleading, false, or deceptive acts that violated the Kansas CPA. By fraudulently installing the “defeat device” to make it appear that its CleanDiesel engine systems complied with EPA regulations, Volkswagen engaged in deceptive business practices prohibited by the Kansas CPA. Volkswagen also engaged in unlawful trade practices by: (1) representing that the Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; (2) representing that the Affected Vehicles are of a particular standard and quality when they are not; (3) advertising the Affected Vehicles with the intent not to sell them as advertised; (4) willfully using, in any oral or written representation, of exaggeration, falsehood, innuendo or ambiguity as to a material fact; (5) willfully failing to state a material fact, or the willfully concealing, suppressing or omitting a material fact; and (6) otherwise engaging in an unconscionable act or practice in connection with a consumer transaction.

750. Volkswagen’s actions as set forth above occurred in the conduct of trade or commerce.

751. In the course of its business, Volkswagen installed the “defeat device” and concealed that its CleanDiesel systems failed EPA regulations as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Volkswagen also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Affected Vehicles.

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

753. Volkswagen was also aware that it valued profits over environmental cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles throughout the United States that did not comply with EPA regulations. Volkswagen concealed this information as well.

754. By failing to disclose and by actively concealing the “defeat device” and the true cleanliness and performance of the CleanDiesel engine system, by marketing its vehicles as safe, reliable, environmentally clean, efficient, and of high quality, and by presenting itself as a reputable manufacturer that valued safety, environmental cleanliness and efficiency, and stood behind its vehicles after they were sold, Volkswagen engaged in deceptive business practices in violation of the Kansas CPA.

755. In the course of Volkswagen’s business, it willfully failed to disclose and actively concealed the use of the “defeat device” and true cleanliness and efficiency of the CleanDiesel engine system and serious defects discussed above. Volkswagen compounded the deception by

repeatedly asserting that the Affected Vehicles were safe, reliable, environmentally clean, efficient, and of high quality, and by claiming to be a reputable manufacturer that valued safety, environmental cleanliness and efficiency, and stood behind its vehicles once they are on the road.

756. Volkswagen's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiff, about the true cleanliness and efficiency of the CleanDiesel engine system, the quality of the Volkswagen and Audi brands, the devaluing of environmental cleanliness and integrity at Volkswagen, and the true value of the Affected Vehicles.

757. Volkswagen intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiff and the Kansas Class.

758. Volkswagen knew or should have known that its conduct violated the Kansas CPA.

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

760. Volkswagen owed Plaintiffs a duty to disclose the true safety, cleanliness, efficiency and reliability of the Affected Vehicles and the devaluing of environmental cleanliness and integrity at Volkswagen, because Volkswagen:

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

Vehicles generally, and the “defeat device” and true nature of the CleanDiesel engine system in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

761. Because Volkswagen fraudulently concealed the “defeat device” and the true cleanliness and performance of the CleanDiesel engine system, resulting in a raft of negative publicity once the use of the “defeat device” and true characteristics of the CleanDiesel engine system finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by Volkswagen’s conduct, they are now worth significantly less than they otherwise would be.

762. Volkswagen’s fraudulent use of the “defeat device” and its concealment of the true characteristics of the CleanDiesel engine system were material to Plaintiffs and the Kansas Class. A vehicle made by a reputable manufacturer of safe vehicles is worth more than an otherwise comparable vehicle made by a disreputable manufacturer of environmentally dirty vehicles that conceals its polluting engines rather than promptly remedying them.

763. Plaintiffs and the Kansas Class suffered ascertainable loss caused by Volkswagen’s misrepresentations and its concealment of and failure to disclose material information. Class members who purchased the Affected Vehicles either would have paid less for their vehicles or would not have purchased or leased them at all.

764. Volkswagen had an ongoing duty to all Volkswagen and Audi customers to refrain from unfair and deceptive acts or practices under the Kansas CPA. All owners of Affected Vehicles suffered ascertainable loss in the form of the diminished value of their vehicles as a result of Volkswagen’s deceptive and unfair acts and practices made in the course of Volkswagen’s business.

765. Volkswagen's violations present a continuing risk to Plaintiffs as well as to the general public. Volkswagen's unlawful acts and practices complained of herein affect the public interest.

766. As a direct and proximate result of Volkswagen's violations of the Kansas CPA, Plaintiffs and the Kansas Class have suffered injury-in-fact and/or actual damage.

767. Pursuant to KAN. STAT. ANN. § 50-634, Plaintiffs and the Kansas Class seek monetary relief against Volkswagen measured as the greater of (a) actual damages in an amount to be determined at trial and (b) statutory damages in the amount of \$10,000 for each Plaintiff and each Kansas Class member

768. Plaintiff also seeks an order enjoining Volkswagen's unfair, unlawful, and/or deceptive practices, declaratory relief, attorneys' fees, and any other just and proper relief available under KAN. STAT. ANN § 50-623 *et seq.*

**COUNT II**  
**FRAUD BY CONCEALMENT**

769. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

770. This claim is brought on behalf of the Kansas Subclass.

771. Volkswagen intentionally concealed and suppressed material facts concerning the quality of the Affected Vehicles. As alleged in this Complaint, notwithstanding references in the very model names of the subject vehicles as "Clean Diesel," or to their engines as "TDI Clean Diesel" engines, Volkswagen engaged in a secret scheme to evade federal and state vehicle emissions standards by installing software designed to conceal its vehicles' emissions of the pollutant nitrogen oxide, which contributes to the creation of ozone and smog. The software installed on the vehicles at issue was designed nefariously to kick-in during emissions

certification testing, such that the vehicles would show far lower emissions than when actually operating on the road. The result was what Volkswagen intended: vehicles passed emissions certifications by way of deliberately induced false readings. Reportedly, Volkswagen's deliberate, secret scheme resulted in noxious emissions from these vehicles at up to 40 times applicable standards.

772. Plaintiff and Kansas Subclass members reasonably relied upon Volkswagen's false representations. They had no way of knowing that Volkswagen's representations were false and gravely misleading. As alleged herein, Volkswagen employed extremely sophisticated methods of deception. Plaintiff and Kansas Subclass members did not, and could not, unravel Volkswagen's deception on their own.

773. Volkswagen concealed and suppressed material facts concerning what is evidently the true culture of Volkswagen—one characterized by an emphasis on profits and sales above compliance with federal and state clean air laws, and emissions regulations that are meant to protect the public and consumers. It also emphasized profits and sales over the trust that Plaintiff and Kansas Subclass members placed in its representations. As one customer, Priya Shah, put it in a quotation cited by the *Los Angeles Times* in a September 18, 2015 article, "It's just a blatant disregard and intentional manipulation of the system. That's just a whole other level of not only lying to the government, but also lying to your consumer. People buy diesel cars from Volkswagen because they feel they are clean diesel cars." In the words of Ms. Shah, which no doubt reflect the sentiments of all other CleanDiesel vehicle buyers, "I don't want to be spewing noxious gases into the environment."

774. Necessarily, Volkswagen also took steps to ensure that its employees did not reveal the details of its scheme to regulators or consumers, including Plaintiff and Kansas

Subclass members. Volkswagen did so in order to boost the reputations of its vehicles and to falsely assure purchasers and lessors of its vehicles, including previously owned vehicles, that Volkswagen is a reputable manufacturer that complies with applicable law, including federal and state clean air laws and emissions regulations, and that its vehicles likewise comply with applicable law and regulations. Volkswagen's false representations were material to consumers, both because they concerned the quality of the Affected Vehicles, including their compliance with applicable federal and state laws and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As Volkswagen well knew, its customers, including Plaintiff and Kansas Subclass members, highly valued that the vehicles they were purchasing or leasing were *clean* diesel cars, and they paid accordingly.

775. Volkswagen had a duty to disclose its emissions scheme because knowledge of the scheme and its details were known and/or accessible only to Volkswagen, because Volkswagen had exclusive knowledge as to implementation and maintenance of its scheme, and because Volkswagen knew the facts were not known to or reasonably discoverable by Plaintiff or Kansas Subclass members. Volkswagen also had a duty to disclose because it made general affirmative representations about the qualities of its vehicles with respect to emissions standards, starting with references to them as *clean* diesel cars, or cars with *clean* diesel engines, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding its emissions scheme, the actual emissions of its vehicles, its actual philosophy with respect to compliance with federal and state clean air laws and emissions regulations, and its actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs, Volkswagen had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly

impact the value of the Affected Vehicles purchased or leased by Plaintiff and Kansas Subclass members. Whether a manufacturer's products comply with federal and state clean air laws and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certification testing their vehicles must pass. Volkswagen represented to Plaintiff and Kansas Subclass members that they were purchasing *clean* diesel vehicles, and certification testing appeared to confirm this—except that, secretly, Volkswagen had subverted the testing process thoroughly.

776. Volkswagen actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect its profits and to avoid the perception that its vehicles did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost Volkswagen money, and it did so at the expense of Plaintiff and Kansas Subclass members.

777. On information and belief, Volkswagen has still not made full and adequate disclosures, and continues to defraud Plaintiff and Kansas Subclass members by concealing material information regarding the emissions qualities of its vehicles and its emissions scheme.

778. Plaintiff and Kansas Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly "clean" diesel cars manufactured by Volkswagen, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiff's and Kansas Subclass members' actions were justified.

Volkswagen was in exclusive control of the material facts, and such facts were not known to the public, Plaintiff, or Kansas Subclass members.

779. Because of the concealment and/or suppression of the facts, Plaintiff and Kansas Subclass members have sustained damage because they own vehicles that are diminished in value as a result of Volkswagen's concealment of the true quality and quantity of those vehicles' emissions and Volkswagen's failure to timely disclose the actual emissions qualities and quantities of hundreds of thousands of Volkswagen- and Audi-branded vehicles and the serious issues engendered by Volkswagen's corporate policies. Had Plaintiff and Kansas Subclass members been aware of Volkswagen's emissions scheme, and the company's callous disregard for compliance with applicable federal and state laws and regulations, Plaintiff and Kansas Subclass members who purchased or leased new or previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

780. The value of Plaintiff's and Kansas Subclass members' vehicles has diminished as a result of Volkswagen's fraudulent concealment of its emissions scheme, which has greatly tarnished the Volkswagen and Audi brand names attached to Plaintiff's and Kansas Subclass members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles. In addition, Class members are entitled to damages for loss of use, costs of additional fuel, costs of unused warranties, and other damages to be proved at trial.

781. Accordingly, Volkswagen is liable to Plaintiff and Kansas Subclass members for damages in an amount to be proven at trial.

782. Volkswagen's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiff's and Kansas Subclass members'

rights and the representations that Volkswagen made to them, in order to enrich Volkswagen. To the extent permitted under applicable law, Volkswagen's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

**COUNT III**  
**BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**  
**(KAN. STAT. ANN. § 84-2-314)**

783. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

784. Plaintiffs bring this Count on behalf of the Kansas Subclass.

785. Volkswagen is and was at all relevant times a merchant with respect to motor vehicles.

786. A warranty that the Affected Vehicles were in merchantable condition is implied by law in the instant transactions. These Affected Vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Affected Vehicles are inherently defective in that they do not comply with federal and state emissions standards, rendering certain safety and emissions functions inoperative; and the CleanDiesel engine system was not adequately designed, manufactured, and tested.

787. Volkswagen was provided notice of these issues by the investigations of the EPA and individual state regulators, numerous complaints filed against it including the instant complaint, and by numerous individual letters and communications sent by Plaintiffs and other Class members before or within a reasonable amount of time after the allegations of Affected Vehicle defects became public.

788. As a direct and proximate result of Volkswagen's breach of the warranties of merchantability, Plaintiffs and the other Class members have been damaged in an amount to be proven at trial.

**COUNT IV  
BREACH OF CONTRACT  
(BASED ON KANSAS LAW)**

789. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

790. Plaintiff brings this Count on behalf of new vehicle or certified pre-owned vehicle purchasers in the Kansas Subclass.

791. Volkswagen's misrepresentations and omissions alleged herein, including Volkswagen's failure to disclose the existence of the CleanDiesel engine system's defect and/or defective design as alleged herein, caused Plaintiff and the other Kansas Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiff and the other Kansas Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the CleanDiesel engine system and which were not marketed as including such a system. Accordingly, Plaintiff and the other Kansas Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

792. Each and every sale or lease of an Affected Vehicle by an authorized Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the other Kansas Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose the existence of the CleanDiesel engine system's defect and/or defective design, including information known to Volkswagen rendering each Affected Vehicle non EPA-compliant, and thus less valuable, than vehicles not equipped with a CleanDiesel engine system.

793. As a direct and proximate result of Volkswagen's breach of contract, Plaintiff and the Kansas Subclass have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

**Q. Claims Brought on Behalf of the Kentucky Subclass**

**COUNT I  
VIOLATION OF THE KENTUCKY CONSUMER PROTECTION ACT  
(KY. REV. STAT. § 367.110, *et seq.*)**

794. Plaintiff Jonathon Rodgers ("Plaintiff," for purposes of all Kentucky Subclass Counts) incorporates by reference all preceding allegations as though fully set forth herein.

795. This claim is brought only on behalf of the Kentucky Subclass.

796. Volkswagen, Plaintiffs, and the Kentucky Subclass are "persons" within the meaning of the KY. REV. STAT. § 367.110(1).

797. Volkswagen engaged in "trade" or "commerce" within the meaning of KY. REV. STAT. § 367.110(2).

798. The Kentucky Consumer Protection Act ("Kentucky CPA") makes unlawful "[u]nfair, false, misleading, or deceptive acts or practices in the conduct of any trade or commerce ...." KY. REV. STAT. § 367.170(1). Volkswagen both participated in misleading, false, or deceptive acts that violated the Kentucky CPA. By fraudulently installing the "defeat device" to make it appear that its CleanDiesel engine systems complied with EPA regulations, Volkswagen engaged in deceptive business practices prohibited by the Kentucky CPA.

799. In the course of its business, Volkswagen installed the "defeat device" and concealed that its CleanDiesel systems failed EPA regulations as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Volkswagen also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud,

misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Affected Vehicles.

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

801. Volkswagen was also aware that it valued profits over environmental cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles throughout the United States that did not comply with EPA regulations. Volkswagen concealed this information as well.

802. By failing to disclose and by actively concealing the “defeat device” and the true cleanliness and performance of the CleanDiesel engine system, by marketing its vehicles as safe, reliable, environmentally clean, efficient, and of high quality, and by presenting itself as a reputable manufacturer that valued safety, environmental cleanliness and efficiency, and stood behind its vehicles after they were sold, Volkswagen engaged in deceptive business practices in violation of the Kentucky CPA.

803. In the course of Volkswagen’s business, it willfully failed to disclose and actively concealed the use of the “defeat device” and true cleanliness and efficiency of the CleanDiesel engine system and serious defects discussed above. Volkswagen compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable, environmentally clean, efficient, and of high quality, and by claiming to be a reputable manufacturer that valued safety, environmental cleanliness and efficiency, and stood behind its vehicles once they are on the road.

804. Volkswagen's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiff, about the true cleanliness and efficiency of the CleanDiesel engine system, the quality of the Volkswagen and Audi brands, the devaluing of environmental cleanliness and integrity at Volkswagen, and the true value of the Affected Vehicles.

805. Volkswagen intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiff and the Kentucky Subclass.

806. Volkswagen knew or should have known that its conduct violated the Kentucky CPA.

807. Volkswagen made material statements about the safety, cleanliness, efficiency and reliability of the Affected Vehicles and the Volkswagen and Audi brands that were either false or misleading.

808. Volkswagen owed Plaintiffs a duty to disclose the true safety, cleanliness, efficiency and reliability of the Affected Vehicles and the devaluing of environmental cleanliness and integrity at Volkswagen, because Volkswagen:

- a. Possessed exclusive knowledge that it valued profits over environmental cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles throughout the United States that did not comply with EPA regulations;
- b. Intentionally concealed the foregoing from Plaintiffs; and/or
- c. Made incomplete representations about the safety, cleanliness, efficiency and reliability of the Affected Vehicles generally, and the "defeat device" and true nature of the CleanDiesel engine system in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

809. Because Volkswagen fraudulently concealed the “defeat device” and the true cleanliness and performance of the CleanDiesel engine system, resulting in a raft of negative publicity once the use of the “defeat device” and true characteristics of the CleanDiesel engine system finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by Volkswagen’s conduct, they are now worth significantly less than they otherwise would be.

810. Volkswagen’s fraudulent use of the “defeat device” and its concealment of the true characteristics of the CleanDiesel engine system were material to Plaintiffs and the Kentucky Subclass. A vehicle made by a reputable manufacturer of environmentally friendly vehicles is worth more than an otherwise comparable vehicle made by a disreputable manufacturer of environmentally dirty vehicles that conceals its polluting engines rather than promptly remedying them.

811. Plaintiffs and the Kentucky Subclass suffered ascertainable loss caused by Volkswagen’s misrepresentations and its concealment of and failure to disclose material information. Class members who purchased the Affected Vehicles either would have paid less for their vehicles or would not have purchased or leased them at all.

812. Volkswagen had an ongoing duty to all Volkswagen and Audi customers to refrain from unfair and deceptive acts or practices under the Kentucky CPA. All owners of Affected Vehicles suffered ascertainable loss in the form of the diminished value of their vehicles as a result of Volkswagen’s deceptive and unfair acts and practices made in the course of Volkswagen’s business

813. Volkswagen's violations present a continuing risk to Plaintiffs as well as to the general public. Volkswagen's unlawful acts and practices complained of herein affect the public interest.

814. As a direct and proximate result of Volkswagen's violations of the Kentucky CPA, Plaintiffs and the Kentucky Subclass have suffered injury-in-fact and/or actual damage.

815. Pursuant to KY. REV. STAT. ANN. § 367.220, Plaintiffs and the Kentucky Subclass seek to recover actual damages in an amount to be determined at trial; an order enjoining Volkswagen's unfair, unlawful, and/or deceptive practices; declaratory relief; attorneys' fees; and any other just and proper relief available under KY. REV. STAT. ANN. § 367.220.

**COUNT II  
FRAUD BY CONCEALMENT**

816. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

817. This claim is brought on behalf of the Kentucky Subclass.

818. Volkswagen intentionally concealed and suppressed material facts concerning the quality of the Affected Vehicles. As alleged in this Complaint, notwithstanding references in the very model names of the subject vehicles as "Clean Diesel," or to their engines as "TDI Clean Diesel" engines, Volkswagen engaged in a secret scheme to evade federal and state vehicle emissions standards by installing software designed to conceal its vehicles' emissions of the pollutant nitrogen oxide, which contributes to the creation of ozone and smog. The software installed on the vehicles at issue was designed nefariously to kick-in during emissions certification testing, such that the vehicles would show far lower emissions than when actually operating on the road. The result was what Volkswagen intended: vehicles passed emissions certifications by way of deliberately induced false readings. Reportedly, Volkswagen's

deliberate, secret scheme resulted in noxious emissions from these vehicles at up to 40 times applicable standards.

819. Plaintiff and Kentucky Subclass members reasonably relied upon Volkswagen's false representations. They had no way of knowing that Volkswagen's representations were false and gravely misleading. As alleged herein, Volkswagen employed extremely sophisticated methods of deception. Plaintiff and Kentucky Subclass members did not, and could not, unravel Volkswagen's deception on their own.

820. Volkswagen concealed and suppressed material facts concerning what is evidently the true culture of Volkswagen – one characterized by an emphasis on profits and sales above compliance with federal and state clean air laws, and emissions regulations that are meant to protect the public and consumers. It also emphasized profits and sales over the trust that Plaintiff and Kentucky Subclass members placed in its representations. As one customer, Priya Shah, put it in a quotation cited by the *Los Angeles Times* in a September 18, 2015 article, "It's just a blatant disregard and intentional manipulation of the system. That's just a whole other level of not only lying to the government, but also lying to your consumer. People buy diesel cars from Volkswagen because they feel they are clean diesel cars." In the words of Ms. Shah, which no doubt reflect the sentiments of all other CleanDiesel vehicle buyers, "I don't want to be spewing noxious gases into the environment."

821. Necessarily, Volkswagen also took steps to ensure that its employees did not reveal the details of its scheme to regulators or consumers, including Plaintiff and Kentucky Subclass members. Volkswagen did so in order to boost the reputations of its vehicles and to falsely assure purchasers and lessors of its vehicles, including previously owned vehicles, that Volkswagen is a reputable manufacturer that complies with applicable law, including federal and

state clean air laws and emissions regulations, and that its vehicles likewise comply with applicable law and regulations. Volkswagen's false representations were material to consumers, both because they concerned the quality of the Affected Vehicles, including their compliance with applicable federal and state laws and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As Volkswagen well knew, its customers, including Plaintiff and Kentucky Subclass members, highly valued that the vehicles they were purchasing or leasing were *clean* diesel cars, and they paid accordingly.

822. Volkswagen had a duty to disclose its emissions scheme because knowledge of the scheme and its details were known and/or accessible only to Volkswagen, because Volkswagen had exclusive knowledge as to implementation and maintenance of its scheme, and because Volkswagen knew the facts were not known to or reasonably discoverable by Plaintiff or Kentucky Subclass members. Volkswagen also had a duty to disclose because it made general affirmative representations about the qualities of its vehicles with respect to emissions standards, starting with references to them as *clean* diesel cars, or cars with *clean* diesel engines, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding its emissions scheme, the actual emissions of its vehicles, its actual philosophy with respect to compliance with federal and state clean air laws and emissions regulations, and its actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs, Volkswagen had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiff and Kentucky Subclass members. Whether a manufacturer's products comply with federal and state clean air laws and emissions regulations, and whether that manufacturer tells the truth with respect to such

compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certification testing their vehicles must pass. Volkswagen represented to Plaintiff and Kentucky Subclass members that they were purchasing *clean* diesel vehicles, and certification testing appeared to confirm this – except that, secretly, Volkswagen had subverted the testing process thoroughly.

823. Volkswagen actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect its profits and to avoid the perception that its vehicles did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost Volkswagen money, and it did so at the expense of Plaintiff and Kentucky Subclass members.

824. On information and belief, Volkswagen has still not made full and adequate disclosures, and continues to defraud Plaintiff and Kentucky Subclass members by concealing material information regarding the emission qualities of its vehicles and its emissions scheme.

825. Plaintiff and Kentucky Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly “clean” diesel cars manufactured by Volkswagen, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiff's and Kentucky Subclass members' actions were justified. Volkswagen was in exclusive control of the material facts, and such facts were not known to the public, Plaintiff, or Kentucky Subclass members.

826. Because of the concealment and/or suppression of the facts, Plaintiff and Kentucky Subclass members have sustained damage because they own vehicles that are

diminished in value as a result of Volkswagen's concealment of the true quality and quantity of those vehicles' emissions and Volkswagen's failure to timely disclose the actual emission qualities and quantities of hundreds of thousands of Volkswagen- and Audi-branded vehicles and the serious issues engendered by Volkswagen's corporate policies. Had Plaintiff and Kentucky Subclass members been aware of Volkswagen's emissions scheme, and the company's callous disregard for compliance with applicable federal and state laws and regulations, Plaintiff and Kentucky Subclass members who purchased or leased new or previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

827. The value of Plaintiff's and Kentucky Subclass members' vehicles has diminished as a result of Volkswagen's fraudulent concealment of its emissions scheme, which has greatly tarnished the Volkswagen and Audi brand names attached to Plaintiff's and Kentucky Subclass members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles. In addition, Class members are entitled to damages for loss of use, costs of additional fuel, costs of unused warranties, and other damages to be proved at trial.

828. Accordingly, Volkswagen is liable to Plaintiff and Kentucky Subclass members for damages in an amount to be proven at trial.

829. Volkswagen's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiff's and Kentucky Subclass members' rights and the representations that Volkswagen made to them, in order to enrich Volkswagen. To the extent permitted under applicable law, Volkswagen's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

**COUNT III**  
**BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**  
**(KY. REV. STAT. § 335.2-314)**

830. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

831. Plaintiffs bring this Count on behalf of the Kentucky Subclass.

832. Volkswagen is and was at all relevant times a merchant with respect to motor vehicles.

833. A warranty that the Affected Vehicles were in merchantable condition is implied by law in the instant transactions. These Affected Vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Affected Vehicles are inherently defective in that they do not comply with federal and state emissions standards, rendering certain safety and emissions functions inoperative; and the CleanDiesel engine system was not adequately designed, manufactured, and tested.

834. Volkswagen was provided notice of these issues by the investigations of the EPA and individual state regulators, numerous complaints filed against it including the instant complaint, and by numerous individual letters and communications sent by Plaintiffs and other Class members before or within a reasonable amount of time after the allegations of Affected Vehicle defects became public.

835. As a direct and proximate result of Volkswagen's breach of the warranties of merchantability, Plaintiffs and the other Class members have been damaged in an amount to be proven at trial.

**COUNT IV**  
**BREACH OF CONTRACT**  
**(Based on Kentucky Law)**

836. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

837. Plaintiff brings this Count on behalf of new vehicle or certified pre-owned vehicle purchasers in the Kentucky Subclass.

838. Volkswagen's misrepresentations and omissions alleged herein, including Volkswagen's failure to disclose the existence of the CleanDiesel engine system's defect and/or defective design as alleged herein, caused Plaintiff and the other Kentucky Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiff and the other Kentucky Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the CleanDiesel engine system and which were not marketed as including such a system. Accordingly, Plaintiff and the other Kentucky Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

839. Each and every sale or lease of an Affected Vehicle by an authorized Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the other Kentucky Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose the existence of the CleanDiesel engine system's defect and/or defective design, including information known to Volkswagen rendering each Affected Vehicle non EPA-compliant, and thus less valuable, than vehicles not equipped with a CleanDiesel engine system.

840. As a direct and proximate result of Volkswagen's breach of contract, Plaintiff and the Kentucky Subclass have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

**R. Claims Brought on Behalf of the Louisiana Subclass**

**COUNT I  
VIOLATION OF THE LOUISIANA UNFAIR TRADE PRACTICES AND CONSUMER  
PROTECTION LAW  
(LA. REV. STAT. § 51:1401, *ET SEQ.*)**

841. Plaintiff Eric White (“Plaintiff,” for purposes of all Louisiana Subclass Counts) incorporates by reference all preceding allegations as though fully set forth herein.

842. This claim is brought on behalf of the Louisiana Subclass.

843. Volkswagen, Plaintiffs, and the Louisiana Subclass are “persons” within the meaning of the LA. REV. STAT. § 51:1402(8).

844. Plaintiffs and the Louisiana Subclass are “consumers” within the meaning of LA. REV. STAT. § 51:1402(1).

845. Volkswagen engaged in “trade” or “commerce” within the meaning of LA. REV. STAT. § 51:1402(9).

846. The Louisiana Unfair Trade Practices and Consumer Protection Law (“Louisiana CPL”) makes unlawful “deceptive acts or practices in the conduct of any trade or commerce.” LA. REV. STAT. § 51:1405(A). Volkswagen both participated in misleading, false, or deceptive acts that violated the Louisiana CPL. By fraudulently installing the “defeat device” to make it appear that its CleanDiesel engine systems complied with EPA regulations, Volkswagen engaged in deceptive business practices prohibited by the Louisiana CPL.

847. In the course of its business, Volkswagen installed the “defeat device” and concealed that its CleanDiesel systems failed EPA regulations as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Volkswagen also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that

others rely upon such concealment, suppression or omission, in connection with the sale of Affected Vehicles.

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

849. Volkswagen was also aware that it valued profits over environmental cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles throughout the United States that did not comply with EPA regulations. Volkswagen concealed this information as well.

850. According to one report from the Center for Auto Safety, some 2,004 deaths and injuries are connected with recently recalled GM-branded vehicles, and Volkswagen should have recalled the vehicles years ago.

851. By failing to disclose and by actively concealing the “defeat device” and the true cleanliness and performance of the CleanDiesel engine system, by marketing its vehicles as safe, reliable, environmentally clean, efficient, and of high quality, and by presenting itself as a reputable manufacturer that valued safety, environmental cleanliness and efficiency, and stood behind its vehicles after they were sold, Volkswagen engaged in deceptive business practices in violation of the Louisiana CPL.

852. In the course of Volkswagen’s business, it willfully failed to disclose and actively concealed the use of the “defeat device” and true cleanliness and efficiency of the CleanDiesel engine system and serious defects discussed above. Volkswagen compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable, environmentally clean,

efficient, and of high quality, and by claiming to be a reputable manufacturer that valued safety, environmental cleanliness and efficiency, and stood behind its vehicles once they are on the road.

853. Volkswagen's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiff, about the true cleanliness and efficiency of the CleanDiesel engine system, the quality of the Volkswagen and Audi brands, the devaluing of environmental cleanliness and integrity at Volkswagen, and the true value of the Affected Vehicles.

854. Volkswagen intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiff and the Louisiana Subclass.

855. Volkswagen knew or should have known that its conduct violated the Louisiana CPL.

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

857. Volkswagen owed Plaintiffs a duty to disclose the true safety, cleanliness, efficiency and reliability of the Affected Vehicles and the devaluing of environmental cleanliness and integrity at Volkswagen, because Volkswagen:

- a. Possessed exclusive knowledge that it valued profits over environmental cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles throughout the United States that did not comply with EPA regulations;
- b. Intentionally concealed the foregoing from Plaintiffs; and/or
- c. Made incomplete representations about the safety, cleanliness, efficiency and reliability of the Affected Vehicles generally, and the use of the "defeat device" and true nature of the CleanDiesel engine system in particular,

while purposefully withholding material facts from Plaintiffs that contradicted these representations.

858. Because Volkswagen fraudulently concealed the “defeat device” and the true cleanliness and performance of the CleanDiesel engine system, resulting in a raft of negative publicity once the use of the “defeat device” and true characteristics of the CleanDiesel engine system finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by Volkswagen’s conduct, they are now worth significantly less than they otherwise would be.

859. Volkswagen’s fraudulent use of the “defeat device” and its concealment of the true characteristics of the CleanDiesel engine system were material to Plaintiff and the Louisiana Subclass. A vehicle made by a reputable manufacturer of environmentally friendly vehicles is worth more than an otherwise comparable vehicle made by a disreputable manufacturer of environmentally dirty vehicles that conceals its polluting engines rather than promptly remedying them.

860. Plaintiff and the Louisiana Subclass suffered ascertainable loss caused by Volkswagen’s misrepresentations and its concealment of and failure to disclose material information. Class members who purchased the Affected Vehicles either would have paid less for their vehicles or would not have purchased or leased them at all.

861. Volkswagen had an ongoing duty to all Volkswagen and Audi customers to refrain from unfair and deceptive acts or practices under the Louisiana CPL. All owners of Affected Vehicles suffered ascertainable loss in the form of the diminished value of their vehicles as a result of Volkswagen’s deceptive and unfair acts and practices made in the course of Volkswagen’s business

862. Volkswagen's violations present a continuing risk to Plaintiffs as well as to the general public. Volkswagen's unlawful acts and practices complained of herein affect the public interest.

863. As a direct and proximate result of Volkswagen's violations of the Louisiana CPL, Plaintiff and the Louisiana Subclass have suffered injury-in-fact and/or actual damage.

864. Pursuant to LA. REV. STAT. § 51:1409, Plaintiff and the Louisiana Subclass seek to recover actual damages in an amount to be determined at trial; treble damages for Volkswagen's knowing violations of the Louisiana CPL; an order enjoining Volkswagen's unfair, unlawful, and/or deceptive practices; declaratory relief; attorneys' fees; and any other just and proper relief available under LA. REV. STAT. § 51:1409.

**COUNT II**  
**FRAUD BY CONCEALMENT**

865. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

866. This claim is brought on behalf of the Louisiana Subclass.

867. Volkswagen intentionally concealed and suppressed material facts concerning the quality of the Affected Vehicles. As alleged in this Complaint, notwithstanding references in the very model names of the subject vehicles as "Clean Diesel," or to their engines as "TDI Clean Diesel" engines, Volkswagen engaged in a secret scheme to evade federal and state vehicle emissions standards by installing software designed to conceal its vehicles' emissions of the pollutant nitrogen oxide, which contributes to the creation of ozone and smog. The software installed on the vehicles at issue was designed nefariously to kick-in during emissions certification testing, such that the vehicles would show far lower emissions than when actually operating on the road. The result was what Volkswagen intended: vehicles passed emissions

certifications by way of deliberately induced false readings. Reportedly, Volkswagen's deliberate, secret scheme resulted in noxious emissions from these vehicles at up to 40 times applicable standards.

868. Plaintiff and Louisiana Subclass members reasonably relied upon Volkswagen's false representations. They had no way of knowing that Volkswagen's representations were false and gravely misleading. As alleged herein, Volkswagen employed extremely sophisticated methods of deception. Plaintiff and Louisiana Subclass members did not, and could not, unravel Volkswagen's deception on their own.

869. Volkswagen concealed and suppressed material facts concerning what is evidently the true culture of Volkswagen—one characterized by an emphasis on profits and sales above compliance with federal and state clean air laws, and emissions regulations that are meant to protect the public and consumers. It also emphasized profits and sales over the trust that Plaintiff and Louisiana Subclass members placed in its representations. As one customer, Priya Shah, put it in a quotation cited by the *Los Angeles Times* in a September 18, 2015 article, "It's just a blatant disregard and intentional manipulation of the system. That's just a whole other level of not only lying to the government, but also lying to your consumer. People buy diesel cars from Volkswagen because they feel they are clean diesel cars." In the words of Ms. Shah, which no doubt reflect the sentiments of all other CleanDiesel vehicle buyers, "I don't want to be spewing noxious gases into the environment."

870. Necessarily, Volkswagen also took steps to ensure that its employees did not reveal the details of its scheme to regulators or consumers, including Plaintiff and Louisiana Subclass members. Volkswagen did so in order to boost the reputations of its vehicles and to falsely assure purchasers and lessors of its vehicles, including previously owned vehicles, that

Volkswagen is a reputable manufacturer that complies with applicable law, including federal and state clean air laws and emissions regulations, and that its vehicles likewise comply with applicable law and regulations. Volkswagen's false representations were material to consumers, both because they concerned the quality of the Affected Vehicles, including their compliance with applicable federal and state laws and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As Volkswagen well knew, its customers, including Plaintiff and Louisiana Subclass members, highly valued that the vehicles they were purchasing or leasing were *clean* diesel cars, and they paid accordingly.

871. Volkswagen had a duty to disclose its emissions scheme because knowledge of the scheme and its details were known and/or accessible only to Volkswagen, because Volkswagen had exclusive knowledge as to implementation and maintenance of its scheme, and because Volkswagen knew the facts were not known to or reasonably discoverable by Plaintiff or Louisiana Subclass members. Volkswagen also had a duty to disclose because it made general affirmative representations about the qualities of its vehicles with respect to emissions standards, starting with references to them as *clean* diesel cars, or cars with *clean* diesel engines, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding its emissions scheme, the actual emissions of its vehicles, its actual philosophy with respect to compliance with federal and state clean air laws and emissions regulations, and its actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs, Volkswagen had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiff and Louisiana Subclass members. Whether a manufacturer's products comply with federal and state clean air

laws and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certification testing their vehicles must pass. Volkswagen represented to Plaintiff and Louisiana Subclass members that they were purchasing *clean* diesel vehicles, and certification testing appeared to confirm this—except that, secretly, Volkswagen had subverted the testing process thoroughly.

872. Volkswagen actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect its profits and to avoid the perception that its vehicles did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost Volkswagen money, and it did so at the expense of Plaintiff and Louisiana Subclass members.

873. On information and belief, Volkswagen has still not made full and adequate disclosures, and continues to defraud Plaintiff and Louisiana Subclass members by concealing material information regarding the emissions qualities of its vehicles and its emissions scheme.

874. Plaintiff and Louisiana Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly “clean” diesel cars manufactured by Volkswagen, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiff's and Louisiana Subclass members' actions were justified. Volkswagen was in exclusive control of the material facts, and such facts were not known to the public, Plaintiff, or Louisiana Subclass members.

875. Because of the concealment and/or suppression of the facts, Plaintiff and Louisiana Subclass members have sustained damage because they own vehicles that are diminished in value as a result of Volkswagen's concealment of the true quality and quantity of those vehicles' emissions and Volkswagen's failure to timely disclose the actual emissions qualities and quantities of hundreds of thousands of Volkswagen- and Audi-branded vehicles and the serious issues engendered by Volkswagen's corporate policies. Had Plaintiff and Louisiana Subclass members been aware of Volkswagen's emissions scheme, and the company's callous disregard for compliance with applicable federal and state laws and regulations, Plaintiff and Louisiana Subclass members who purchased or leased new or previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

876. The value of Plaintiff's and Louisiana Subclass members' vehicles has diminished as a result of Volkswagen's fraudulent concealment of its emissions scheme, which has greatly tarnished the Volkswagen and Audi brand names attached to Plaintiff's and Louisiana Subclass members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles. In addition, Class members are entitled to damages for loss of use, costs of additional fuel, costs of unused warranties, and other damages to be proved at trial.

877. Accordingly, Volkswagen is liable to Plaintiff and Louisiana Subclass members for damages in an amount to be proven at trial.

878. Volkswagen's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiff's and Louisiana Subclass members' rights and the representations that Volkswagen made to them, in order to enrich Volkswagen. To the extent permitted under applicable law, Volkswagen's conduct warrants an assessment of

punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

**COUNT III  
BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY  
(LA. CIV. CODE ART. 2315)**

879. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

880. Plaintiffs bring this Count on behalf of the Louisiana Subclass.

881. Volkswagen is and was at all relevant times a merchant with respect to motor vehicles.

882. A warranty that the Affected Vehicles were in merchantable condition is implied by law in the instant transactions. These Affected Vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Affected Vehicles are inherently defective in that they do not comply with federal and state emissions standards, rendering certain safety and emissions functions inoperative; and the CleanDiesel engine system was not adequately designed, manufactured, and tested.

883. Volkswagen was provided notice of these issues by the investigations of the EPA and individual state regulators, numerous complaints filed against it including the instant complaint, and by numerous individual letters and communications sent by Plaintiffs and other Class members before or within a reasonable amount of time after the allegations of Affected Vehicle defects became public.

884. As a direct and proximate result of Volkswagen's breach of the warranties of merchantability, Plaintiffs and the other Class members have been damaged in an amount to be proven at trial.

**COUNT IV  
BREACH OF CONTRACT  
(BASED ON LOUISIANA LAW)**

885. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

886. Plaintiff brings this Count on behalf of new vehicle or certified pre-owned vehicle purchasers in the Louisiana Subclass.

887. Volkswagen's misrepresentations and omissions alleged herein, including Volkswagen's failure to disclose the existence of the CleanDiesel engine system's defect and/or defective design as alleged herein, caused Plaintiff and the other Louisiana Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiff and the other Louisiana Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the CleanDiesel engine system and which were not marketed as including such a system. Accordingly, Plaintiff and the other Louisiana Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

888. Each and every sale or lease of an Affected Vehicle by an authorized Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the other Louisiana Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose the existence of the CleanDiesel engine system's defect and/or defective design, including information known to Volkswagen rendering each Affected Vehicle non EPA-compliant, and thus less valuable, than vehicles not equipped with a CleanDiesel engine system.

889. As a direct and proximate result of Volkswagen's breach of contract, Plaintiff and the Louisiana Subclass have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

**S. Claims Brought on Behalf of the Maine Subclass**

**COUNT I  
VIOLATION OF MAINE UNFAIR TRADE PRACTICES ACT  
(ME. REV. STAT. ANN. TIT. 5 § 205-A, *et seq.*)**

890. Plaintiffs Daniel Sullivan, Thomas Buchberger and Thomas Lasko ("Plaintiffs," for purposes of all Maine Subclass Counts) incorporate by reference all preceding allegations as though fully set forth herein.

891. Plaintiffs intend to assert a claim under the Maine Unfair Trade Practices Act ("Maine UTPA") which makes unlawful "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce...." ME. REV. STAT. ANN. TIT. 5 § 207. Plaintiffs will make a demand in satisfaction of ME. REV. STAT. ANN. TIT. 5, § 213(A), and may amend this Complaint to assert claims under the Maine UTPA once the required 30 days have elapsed. This paragraph is included for purposes of notice only and is not intended to actually assert a claim under the Maine UTPA.

**COUNT II  
FRAUD BY CONCEALMENT**

892. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

893. This claim is brought on behalf of the Maine Subclass.

894. Volkswagen intentionally concealed and suppressed material facts concerning the quality of the Affected Vehicles. As alleged in this Complaint, notwithstanding references in the

very model names of the subject vehicles as “Clean Diesel,” or to their engines as “TDI Clean Diesel” engines, Volkswagen engaged in a secret scheme to evade federal and state vehicle emissions standards by installing software designed to conceal its vehicles’ emissions of the pollutant nitrogen oxide, which contributes to the creation of ozone and smog. The software installed on the vehicles at issue was designed nefariously to kick-in during emissions certification testing, such that the vehicles would show far lower emissions than when actually operating on the road. The result was what Volkswagen intended: vehicles passed emissions certifications by way of deliberately induced false readings. Reportedly, Volkswagen’s deliberate, secret scheme resulted in noxious emissions from these vehicles at up to 40 times applicable standards.

895. Plaintiff and Maine Subclass members reasonably relied upon Volkswagen’s false representations. They had no way of knowing that Volkswagen’s representations were false and gravely misleading. As alleged herein, Volkswagen employed extremely sophisticated methods of deception. Plaintiff and Maine Subclass members did not, and could not, unravel Volkswagen’s deception on their own.

896. Volkswagen concealed and suppressed material facts concerning what is evidently the true culture of Volkswagen – one characterized by an emphasis on profits and sales above compliance with federal and state clean air laws, and emissions regulations that are meant to protect the public and consumers. It also emphasized profits and sales over the trust that Plaintiff and Maine Subclass members placed in its representations. As one customer, Priya Shah, put it in a quotation cited by the *Los Angeles Times* in a September 18, 2015 article, “It’s just a blatant disregard and intentional manipulation of the system. That’s just a whole other level of not only lying to the government, but also lying to your consumer. People buy diesel

cars from Volkswagen because they feel they are clean diesel cars.” In the words of Ms. Shah, which no doubt reflect the sentiments of all other CleanDiesel vehicle buyers, “I don’t want to be spewing noxious gases into the environment.”

897. Necessarily, Volkswagen also took steps to ensure that its employees did not reveal the details of its scheme to regulators or consumers, including Plaintiff and Maine Subclass members. Volkswagen did so in order to boost the reputations of its vehicles and to falsely assure purchasers and lessors of its vehicles, including previously owned vehicles, that Volkswagen is a reputable manufacturer that complies with applicable law, including federal and state clean air laws and emissions regulations, and that its vehicles likewise comply with applicable law and regulations. Volkswagen’s false representations were material to consumers, both because they concerned the quality of the Affected Vehicles, including their compliance with applicable federal and state laws and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As Volkswagen well knew, its customers, including Plaintiff and Maine Subclass members, highly valued that the vehicles they were purchasing or leasing were *clean* diesel cars, and they paid accordingly.

898. Volkswagen had a duty to disclose its emissions scheme because knowledge of the scheme and its details were known and/or accessible only to Volkswagen, because Volkswagen had exclusive knowledge as to implementation and maintenance of its scheme, and because Volkswagen knew the facts were not known to or reasonably discoverable by Plaintiff or Maine Subclass members. Volkswagen also had a duty to disclose because it made general affirmative representations about the qualities of its vehicles with respect to emissions standards, starting with references to them as *clean* diesel cars, or cars with *clean* diesel engines, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set

forth above regarding its emissions scheme, the actual emissions of its vehicles, its actual philosophy with respect to compliance with federal and state clean air laws and emissions regulations, and its actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs, Volkswagen had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiff and Maine Subclass members. Whether a manufacturer's products comply with federal and state clean air laws and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certification testing their vehicles must pass. Volkswagen represented to Plaintiff and Maine Subclass members that they were purchasing *clean* diesel vehicles, and certification testing appeared to confirm this—except that, secretly, Volkswagen had subverted the testing process thoroughly.

899. Volkswagen actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect its profits and to avoid the perception that its vehicles did not, or could not, comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost Volkswagen money, and it did so at the expense of Plaintiff and Maine Subclass members.

900. On information and belief, Volkswagen has still not made full and adequate disclosures, and continues to defraud Plaintiff and Maine Subclass members by concealing material information regarding the emission qualities of its vehicles and its emissions scheme.

901. Plaintiff and Maine Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed

and/or suppressed facts, in that they would not have purchased purportedly “clean” diesel cars manufactured by Volkswagen, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiff’s and Maine Subclass members’ actions were justified. Volkswagen was in exclusive control of the material facts, and such facts were not known to the public, Plaintiff, or Maine Subclass members.

902. Because of the concealment and/or suppression of the facts, Plaintiff and Maine Subclass members have sustained damage because they own vehicles that are diminished in value as a result of Volkswagen’s concealment of the true quality and quantity of those vehicles’ emissions and Volkswagen’s failure to timely disclose the actual emission qualities and quantities of hundreds of thousands of Volkswagen- and Audi-branded vehicles and the serious issues engendered by Volkswagen’s corporate policies. Had Plaintiff and Maine Subclass members been aware of Volkswagen’s emissions scheme, and the company’s callous disregard for compliance with applicable federal and state laws and regulations, Plaintiff and Maine Subclass members who purchased or leased new or previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

903. The value of Plaintiff’s and Maine Subclass members’ vehicles has diminished as a result of Volkswagen’s fraudulent concealment of its emissions scheme, which has greatly tarnished the Volkswagen and Audi brand names attached to Plaintiff’s and Maine Subclass members’ vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles. In addition, Class members are entitled to damages for loss of use, costs of additional fuel, costs of unused warranties, and other damages to be proved at trial.

904. Accordingly, Volkswagen is liable to Plaintiff and Maine Subclass members for damages in an amount to be proven at trial.

905. Volkswagen's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiff's and Maine Subclass members' rights and the representations that Volkswagen made to them, in order to enrich Volkswagen. To the extent permitted under applicable law, Volkswagen's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

**COUNT III**  
**BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**  
**(ME. REV. STAT. ANN. TIT. 11 § 2-314)**

906. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

907. Plaintiffs bring this Count on behalf of the Maine Subclass.

908. Volkswagen is and was at all relevant times a merchant with respect to motor vehicles.

909. A warranty that the Affected Vehicles were in merchantable condition is implied by law in the instant transactions. These Affected Vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Affected Vehicles are inherently defective in that they do not comply with federal and state emissions standards, rendering certain safety and emissions functions inoperative; and the CleanDiesel engine system was not adequately designed, manufactured, and tested.

910. Volkswagen was provided notice of these issues by the investigations of the EPA and individual state regulators, numerous complaints filed against it including the instant complaint, and by numerous individual letters and communications sent by Plaintiffs and other

Class members before or within a reasonable amount of time after the allegations of Affected Vehicle defects became public.

911. As a direct and proximate result of Volkswagen's breach of the warranties of merchantability, Plaintiffs and the other Class members have been damaged in an amount to be proven at trial.

**COUNT IV  
BREACH OF CONTRACT  
(Based on Maine Law)**

912. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

913. Plaintiff brings this Count on behalf of new vehicle or certified pre-owned vehicle purchasers in the Maine Subclass.

914. Volkswagen's misrepresentations and omissions alleged herein, including Volkswagen's failure to disclose the existence of the CleanDiesel engine system's defect and/or defective design as alleged herein, caused Plaintiff and the other Maine Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiff and the other Maine Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the CleanDiesel engine system and which were not marketed as including such a system. Accordingly, Plaintiff and the other Maine Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

915. Each and every sale or lease of an Affected Vehicle by an authorized Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the other Maine Subclass members

defective Affected Vehicles and by misrepresenting or failing to disclose the existence of the CleanDiesel engine system's defect and/or defective design, including information known to Volkswagen rendering each Affected Vehicle non EPA-compliant, and thus less valuable, than vehicles not equipped with a CleanDiesel engine system.

916. As a direct and proximate result of Volkswagen's breach of contract, Plaintiff and the Maine Subclass have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

**T. Claims Brought on Behalf of the Maryland Subclass**

**COUNT I  
VIOLATIONS OF THE MARYLAND CONSUMER PROTECTION ACT  
(MD. CODE COM. LAW § 13-101, *ET SEQ.*)**

917. Plaintiff MaryBeth Winkler ("Plaintiff," for purposes of all Maryland Subclass Counts) incorporates by reference all preceding allegations as though fully set forth herein.

918. This claim is brought only on behalf of members of the Maryland Subclass.

919. Volkswagen, Plaintiff, and the Maryland Subclass are "persons" within the meaning of MD. CODE COM. LAW § 13-101(h).

920. The Maryland Consumer Protection Act ("Maryland CPA") provides that a person may not engage in any unfair or deceptive trade practice in the sale of any consumer good. MD. COM. LAW CODE § 13-303. Volkswagen participated in misleading, false, or deceptive acts that violated the Maryland CPA. By fraudulently installing the "defeat device" to make it appear that its CleanDiesel engine systems complied with EPA regulations, Volkswagen engaged in deceptive business practices prohibited by the Maryland CPA.

921. Volkswagen's actions as set forth above occurred in the conduct of trade or commerce.

922. In the course of its business, Volkswagen installed the “defeat device” and concealed that its CleanDiesel systems failed EPA regulations as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Volkswagen also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Affected Vehicles.

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

924. Volkswagen was also aware that it valued profits over environmental cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles throughout the United States that did not comply with EPA regulations. Volkswagen concealed this information as well.

925. By failing to disclose and by actively concealing the “defeat device” and the true cleanliness and performance of the CleanDiesel engine system, by marketing its vehicles as safe, reliable, environmentally clean, efficient, and of high quality, and by presenting itself as a reputable manufacturer that valued safety, environmental cleanliness and efficiency, and stood behind its vehicles after they were sold, Volkswagen engaged in unfair and deceptive business practices in violation of the Maryland CPA.

926. In the course of Volkswagen’s business, it willfully failed to disclose and actively concealed the use of the “defeat device” and true cleanliness and efficiency of the CleanDiesel engine system and serious defects discussed above. Volkswagen compounded the deception by

repeatedly asserting that the Affected Vehicles were safe, reliable, environmentally clean, efficient, and of high quality, and by claiming to be a reputable manufacturer that valued safety, environmental cleanliness and efficiency, and stood behind its vehicles once they are on the road.

927. Volkswagen's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiff, about the true cleanliness and efficiency of the CleanDiesel engine system, the quality of the Volkswagen brand, the devaluing of environmental cleanliness and integrity at Volkswagen, and the true value of the Affected Vehicles.

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

929. Volkswagen knew or should have known that its conduct violated the Maryland CPA.

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

931. Volkswagen owed Plaintiffs a duty to disclose the true safety, cleanliness, efficiency and reliability of the Affected Vehicles and the devaluing of environmental cleanliness and integrity at Volkswagen, because Volkswagen:

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

Vehicles generally, and the use of the “defeat device” and true nature of the CleanDiesel engine system in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

932. Because Volkswagen fraudulently concealed the “defeat device” and the true cleanliness and performance of the CleanDiesel engine system, resulting in a raft of negative publicity once the use of the “defeat device” and true characteristics of the CleanDiesel engine system finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by Volkswagen’s conduct, they are now worth significantly less than they otherwise would be.

933. Volkswagen’s fraudulent use of the “defeat device” and its concealment of the true characteristics of the CleanDiesel engine system were material to Plaintiffs and the Maryland Subclass. A vehicle made by a reputable manufacturer of environmentally friendly vehicles is worth more than an otherwise comparable vehicle made by a disreputable and dishonest manufacturer of polluting vehicles that conceals the amount its cars pollutes rather than make environmentally friendly vehicles.

934. Plaintiff and the Maryland Subclass suffered ascertainable loss caused by Volkswagen’s misrepresentations and its concealment of and failure to disclose material information. Class members who purchased the Affected Vehicles either would have paid less for their vehicles or would not have purchased or leased them at all.

935. Volkswagen had an ongoing duty to all Volkswagen and Audi customers to refrain from unfair and deceptive acts or practices under the Maryland CPA. All owners of Affected Vehicles suffered ascertainable loss in the form of the diminished value of their vehicles as a result of Volkswagen’s deceptive and unfair acts and practices made in the course of Volkswagen’s business.

936. Volkswagen's violations present a continuing risk to Plaintiffs as well as to the general public. Volkswagen's unlawful acts and practices complained of herein affect the public interest.

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

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

**COUNT II  
FRAUD BY CONCEALMENT**

939. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

940. This claim is brought on behalf of the Maryland Subclass.

941. Volkswagen intentionally concealed and suppressed material facts concerning the quality of the Affected Vehicles. As alleged in this Complaint, notwithstanding references in the very model names of the subject vehicles as "Clean Diesel," or to their engines as "TDI Clean Diesel" engines, Volkswagen engaged in a secret scheme to evade federal and state vehicle emissions standards by installing software designed to conceal its vehicles' emissions of the pollutant nitrogen oxide, which contributes to the creation of ozone and smog. The software installed on the vehicles at issue was designed nefariously to kick-in during emissions certification testing, such that the vehicles would show far lower emissions than when actually operating on the road. The result was what Volkswagen intended: vehicles passed emissions certifications by way of deliberately induced false readings. Reportedly, Volkswagen's

deliberate, secret scheme resulted in noxious emissions from these vehicles at up to 40 times applicable standards.

942. Plaintiff and Maryland Subclass members reasonably relied upon Volkswagen's false representations. They had no way of knowing that Volkswagen's representations were false and gravely misleading. As alleged herein, Volkswagen employed extremely sophisticated methods of deception. Plaintiff and Maryland Subclass members did not, and could not, unravel Volkswagen's deception on their own.

943. Volkswagen concealed and suppressed material facts concerning what is evidently the true culture of Volkswagen—one characterized by an emphasis on profits and sales above compliance with federal and state clean air laws, and emissions regulations that are meant to protect the public and consumers. It also emphasized profits and sales over the trust that Plaintiff and Maryland Subclass members placed in its representations. As one customer, Priya Shah, put it in a quotation cited by the *Los Angeles Times* in a September 18, 2015 article, "It's just a blatant disregard and intentional manipulation of the system. That's just a whole other level of not only lying to the government, but also lying to your consumer. People buy diesel cars from Volkswagen because they feel they are clean diesel cars." In the words of Ms. Shah, which no doubt reflect the sentiments of all other CleanDiesel vehicle buyers, "I don't want to be spewing noxious gases into the environment."

944. Necessarily, Volkswagen also took steps to ensure that its employees did not reveal the details of its scheme to regulators or consumers, including Plaintiff and Maryland Subclass members. Volkswagen did so in order to boost the reputations of its vehicles and to falsely assure purchasers and lessors of its vehicles, including previously owned vehicles, that Volkswagen is a reputable manufacturer that complies with applicable law, including federal and

state clean air laws and emissions regulations, and that its vehicles likewise comply with applicable law and regulations. Volkswagen's false representations were material to consumers, both because they concerned the quality of the Affected Vehicles, including their compliance with applicable federal and state laws and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As Volkswagen well knew, its customers, including Plaintiff and Maryland Subclass members, highly valued that the vehicles they were purchasing or leasing were *clean* diesel cars, and they paid accordingly.

945. Volkswagen had a duty to disclose its emissions scheme because knowledge of the scheme and its details were known and/or accessible only to Volkswagen, because Volkswagen had exclusive knowledge as to implementation and maintenance of its scheme, and because Volkswagen knew the facts were not known to or reasonably discoverable by Plaintiff or Maryland Subclass members. Volkswagen also had a duty to disclose because it made general affirmative representations about the qualities of its vehicles with respect to emissions standards, starting with references to them as *clean* diesel cars, or cars with *clean* diesel engines, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding its emissions scheme, the actual emissions of its vehicles, its actual philosophy with respect to compliance with federal and state clean air laws and emissions regulations, and its actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs, Volkswagen had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiff and Maryland Subclass members. Whether a manufacturer's products comply with federal and state clean air laws and emissions regulations, and whether that manufacturer tells the truth with respect to such

compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certification testing their vehicles must pass. Volkswagen represented to Plaintiff and Maryland Subclass members that they were purchasing *clean* diesel vehicles, and certification testing appeared to confirm this—except that, secretly, Volkswagen had subverted the testing process thoroughly.

946. Volkswagen actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect its profits and to avoid the perception that its vehicles did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost Volkswagen money, and it did so at the expense of Plaintiff and Maryland Subclass members.

947. On information and belief, Volkswagen has still not made full and adequate disclosures, and continues to defraud Plaintiff and Maryland Subclass members by concealing material information regarding the emissions qualities of its vehicles and its emissions scheme.

948. Plaintiff and Maryland Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly “clean” diesel cars manufactured by Volkswagen, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiff's and Maryland Subclass members' actions were justified. Volkswagen was in exclusive control of the material facts, and such facts were not known to the public, Plaintiff, or Maryland Subclass members.

949. Because of the concealment and/or suppression of the facts, Plaintiff and Maryland Subclass members have sustained damage because they own vehicles that are

diminished in value as a result of Volkswagen's concealment of the true quality and quantity of those vehicles' emissions and Volkswagen's failure to timely disclose the actual emissions qualities and quantities of hundreds of thousands of Volkswagen- and Audi-branded vehicles and the serious issues engendered by Volkswagen's corporate policies. Had Plaintiff and Maryland Subclass members been aware of Volkswagen's emissions scheme, and the company's callous disregard for compliance with applicable federal and state laws and regulations, Plaintiff and Maryland Subclass members who purchased or leased new or previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

950. The value of Plaintiff's and Maryland Subclass members' vehicles has diminished as a result of Volkswagen's fraudulent concealment of its emissions scheme, which has greatly tarnished the Volkswagen and Audi brand names attached to Plaintiff's and Maryland Subclass members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles. In addition, Class members are entitled to damages for loss of use, costs of additional fuel, costs of unused warranties, and other damages to be proved at trial.

951. Accordingly, Volkswagen is liable to Plaintiff and Maryland Subclass members for damages in an amount to be proven at trial.

952. Volkswagen's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiff's and Maryland Subclass members' rights and the representations that Volkswagen made to them, in order to enrich Volkswagen. To the extent permitted under applicable law, Volkswagen's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

**COUNT III**  
**BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**  
**(MD. CODE COM. LAW § 2-314)**

953. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

954. Plaintiffs bring this Count on behalf of the Maryland Subclass.

955. Volkswagen is and was at all relevant times a merchant with respect to motor vehicles.

956. A warranty that the Affected Vehicles were in merchantable condition is implied by law in the instant transactions. These Affected Vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Affected Vehicles are inherently defective in that they do not comply with federal and state emissions standards, rendering certain safety and emissions functions inoperative; and the CleanDiesel engine system was not adequately designed, manufactured, and tested.

957. Volkswagen was provided notice of these issues by the investigations of the EPA and individual state regulators, numerous complaints filed against it including the instant complaint, and by numerous individual letters and communications sent by Plaintiffs and other Class members before or within a reasonable amount of time after the allegations of Affected Vehicle defects became public.

958. As a direct and proximate result of Volkswagen's breach of the warranties of merchantability, Plaintiffs and the other Class members have been damaged in an amount to be proven at trial.

**COUNT IV**  
**BREACH OF CONTRACT**  
**(BASED ON MARYLAND LAW)**

959. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

960. Plaintiff brings this Count on behalf of new vehicle or certified pre-owned vehicle purchasers in the Maryland Subclass.

961. Volkswagen's misrepresentations and omissions alleged herein, including Volkswagen's failure to disclose the existence of the CleanDiesel engine system's defect and/or defective design as alleged herein, caused Plaintiff and the Maryland Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiff and the Maryland Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the CleanDiesel engine system and which were not marketed as including such a system. Accordingly, Plaintiff and the Maryland Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

962. Each and every sale or lease of an Affected Vehicle by an authorized Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the Maryland Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose the existence of the CleanDiesel engine system's defect and/or defective design, including information known to Volkswagen rendering each Affected Vehicle non EPA-compliant, and thus less valuable, than vehicles not equipped with a CleanDiesel engine system.

963. As a direct and proximate result of Volkswagen's breach of contract, Plaintiff and the Maryland Subclass have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

**U. Claims Brought on Behalf of the Massachusetts Subclass**

**COUNT I  
VIOLATIONS OF THE MASSACHUSETTS CONSUMER  
PROTECTION ACT  
(MASS. GEN. LAWS CH. 93A)**

964. Plaintiffs Charles Nicolosi, Andrea Franz and Donald Allen (“Plaintiffs,” for purposes of all Massachusetts Subclass Counts) incorporate by reference all preceding allegations as though fully set forth herein.

965. Plaintiffs intend to assert a claim under the Massachusetts Consumer Protection Act (“MCPA”), which makes it unlawful to engage in any “[u]nfair methods of competition or deceptive acts or practices in the conduct of any trade or commerce.” MASS. GEN. LAWS CH. 93A, § 2(1). Plaintiffs will make a demand in satisfaction of MASS. GEN. LAWS CH. 93A, § 9(3), and may amend this Complaint to assert claims under the MCPA once the required 30 days have elapsed. This paragraph is included for purposes of notice only and is not intended to actually assert a claim under the MCPA.

**COUNT II  
BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY  
(CAL. COM. CODE § 2314)**

966. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

967. Plaintiffs bring this Count on behalf of the California Subclass.

968. Volkswagen is and was at all relevant times a merchant with respect to motor vehicles under Cal. Com. Code § 2014.

969. A warranty that the Affected Vehicles were in merchantable condition is implied by law in the instant transactions, pursuant to Cal. Com. Code § 2314. These Affected Vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Affected Vehicles are inherently

defective in that they do not comply with federal and state emissions standards, rendering certain safety and emissions functions inoperative; and the CleanDiesel engine system was not adequately designed, manufactured, and tested.

970. Volkswagen was provided notice of these issues by the investigations of the EPA and individual state regulators, numerous complaints filed against it including the instant complaint, and by numerous individual letters and communications sent by Plaintiffs and other Class members before or within a reasonable amount of time after the allegations of Affected Vehicle defects became public.

971. As a direct and proximate result of Volkswagen's breach of the warranties of merchantability, Plaintiffs and the other Class members have been damaged in an amount to be proven at trial.

**COUNT III  
BREACH OF CONTRACT  
(BASED ON MASSACHUSETTS LAW)**

972. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

973. Plaintiff brings this Count on behalf of new vehicle or certified pre-owned vehicle purchasers in the Massachusetts Subclass.

974. Volkswagen's misrepresentations and omissions alleged herein, including Volkswagen's failure to disclose the existence of the CleanDiesel engine system's defect and/or defective design as alleged herein, caused Plaintiff and the Massachusetts Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiff and the Massachusetts Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the CleanDiesel engine system and which were not marketed as including

such a system. Accordingly, Plaintiff and the Massachusetts Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

975. Each and every sale or lease of an Affected Vehicle by an authorized Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the Massachusetts Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose the existence of the CleanDiesel engine system's defect and/or defective design, including information known to Volkswagen rendering each Affected Vehicle non EPA-compliant, and thus less valuable, than vehicles not equipped with a CleanDiesel engine system.

976. As a direct and proximate result of Volkswagen's breach of contract, Plaintiff and the Massachusetts Subclass have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

**COUNT IV  
FRAUDULENT CONCEALMENT  
(BASED ON MASSACHUSETTS LAW)**

977. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

978. Plaintiff brings this Count on behalf of the Massachusetts Subclass.

979. Volkswagen intentionally concealed that the CleanDiesel engine systems were not EPA-compliant and used a "defeat device," or acted with reckless disregard for the truth, and denied Plaintiff and the Massachusetts Subclass members information that is highly relevant to their purchasing decision.

980. Volkswagen further affirmatively misrepresented to Plaintiff in advertising and other forms of communication, including standard and uniform material provided with each car,

that the Affected Vehicles it was selling were new, had no significant defects, complied with EPA regulations and would perform and operate properly when driven in normal usage.

981. Volkswagen knew these representations were false when made.

982. The Affected Vehicles purchased or leased by Plaintiff and the Massachusetts Subclass members were, in fact, defective, non-EPA compliant, unsafe, and unreliable because the Affected Vehicles contained faulty and defective CleanDiesel engine system, as alleged herein.

983. Volkswagen had a duty to disclose that these Affected Vehicles were defective, unsafe, non-EPA compliant and unreliable in that certain crucial emissions functions of the Affected Vehicles would be rendered inoperative due to the “defeat device” installed in the defective CleanDiesel engine system, because Plaintiff and the Massachusetts Subclass members relied on Volkswagen’s material representations that the Affected Vehicles they were purchasing were safe, environmentally clean, efficient and free from defects.

984. The aforementioned concealment was material because if it had been disclosed Plaintiff and the Massachusetts Subclass members would not have bought or leased the Affected Vehicles, or would not have bought or leased those Vehicles at the prices they paid.

985. The aforementioned representations were material because they were facts that would typically be relied on by a person purchasing or leasing a new motor vehicle. Volkswagen knew or recklessly disregarded that its representations were false because it knew that it had to use the “defeat device” in order for Affected Vehicles to pass EPA emissions requirements. Volkswagen intentionally made the false statements in order to sell Affected Vehicles.

986. Plaintiff and the Massachusetts Subclass members relied on Volkswagen's reputation – along with Volkswagen's failure to disclose the faulty and defective nature of the CleanDiesel engine system and Volkswagen's affirmative assurance that its Affected Vehicles were safe and reliable, and other similar false statements – in purchasing or leasing Volkswagen's Affected Vehicles.

987. As a result of their reliance, Plaintiff and the Massachusetts Subclass members have been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase or lease and/or the diminished value of their Affected Vehicles.

988. Volkswagen's conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of Plaintiff and the Massachusetts Subclass members. Plaintiff and the Massachusetts Subclass members are therefore entitled to an award of punitive damages.

**V. Claims Brought on Behalf of the Michigan Subclass**

**COUNT I  
VIOLATION OF THE MICHIGAN CONSUMER PROTECTION ACT  
(MICH. COMP. LAWS § 445.903, *ET SEQ.*)**

989. Plaintiff William Preininger ("Plaintiff," for purposes of all Michigan Subclass Counts) incorporates by reference all preceding allegations as though fully set forth herein.

990. Plaintiff brings this Count on behalf of the Michigan Subclass.

991. Plaintiff and the Michigan Subclass members are "person[s]" within the meaning of the MICH. COMP. LAWS § 445.902(1)(d).

992. At all relevant times hereto, Volkswagen was a "person" engaged in "trade or commerce" within the meaning of the MICH. COMP. LAWS § 445.902(1)(d) and (g).

993. The Michigan Consumer Protection Act (“Michigan CPA”) prohibits “[u]nfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce . . . .” MICH. COMP. LAWS § 445.903(1). Volkswagen engaged in unfair, unconscionable, or deceptive methods, acts or practices prohibited by the Michigan CPA, including: “(c) Representing that goods or services have . . . characteristics . . . that they do not have . . . .;” “(e) Representing that goods or services are of a particular standard . . . if they are of another;” “(i) Making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions;” “(s) Failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer;” “(bb) Making a representation of fact or statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is;” and “(cc) Failing to reveal facts that are material to the transaction in light of representations of fact made in a positive manner.” MICH. COMP. LAWS § 445.903(1). By fraudulently installing the “defeat device” to make it appear that its CleanDiesel engine systems complied with EPA regulations, Volkswagen participated in unfair, deceptive, and unconscionable acts that violated the Michigan CPA.

994. In the course of its business, Volkswagen installed the “defeat device” and concealed that its CleanDiesel systems failed EPA regulations as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Volkswagen also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Affected Vehicles.

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

996. Volkswagen was also aware that it valued profits over environmental cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles throughout the United States that did not comply with EPA regulations. Volkswagen concealed this information as well.

997. By failing to disclose and by actively concealing the “defeat device” and the true cleanliness and performance of the CleanDiesel engine system, by marketing its vehicles as safe, reliable, environmentally clean, efficient, and of high quality, and by presenting itself as a reputable manufacturer that valued safety, environmental cleanliness and efficiency, and stood behind its vehicles after they were sold, Volkswagen engaged in unfair, unconscionable, and deceptive business practices in violation of the Michigan CPA.

998. In the course of Volkswagen’s business, it willfully failed to disclose and actively concealed the use of the “defeat device” and true cleanliness and efficiency of the CleanDiesel engine system and serious defects discussed above. Volkswagen compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable, environmentally clean, efficient, and of high quality, and by claiming to be a reputable manufacturer that valued safety, environmental cleanliness and efficiency, and stood behind its vehicles once they are on the road.

999. Volkswagen’s unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiff, about the true cleanliness and efficiency of the CleanDiesel engine system, the quality of the Volkswagen and Audi brands, the devaluing of

environmental cleanliness and integrity at Volkswagen, and the true value of the Affected Vehicles.

1000. Volkswagen intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiff and the Michigan Subclass.

1001. Volkswagen knew or should have known that its conduct violated the Michigan CPA.

1002. As alleged above, Volkswagen made material statements about the safety, cleanliness, efficiency and reliability of the Affected Vehicles and the Volkswagen and Audi brands that were either false or misleading.

1003. Volkswagen owed Plaintiffs a duty to disclose the true safety, cleanliness, efficiency and reliability of the Affected Vehicles and the devaluing of environmental cleanliness and integrity at Volkswagen, because Volkswagen:

- a. Possessed exclusive knowledge that it valued profits over environmental cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles throughout the United States that did not comply with EPA regulations;
- b. Intentionally concealed the foregoing from Plaintiffs; and/or
- c. Made incomplete representations about the safety, cleanliness, efficiency and reliability of the Affected Vehicles generally, and the use of the “defeat device” and true nature of the CleanDiesel engine system in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

1004. Because Volkswagen fraudulently concealed the “defeat device” and the true cleanliness and performance of the CleanDiesel engine system, resulting in a raft of negative publicity once the use of the “defeat device” and true characteristics of the CleanDiesel engine system finally began to be disclosed, the value of the Affected Vehicles has greatly diminished.

In light of the stigma attached to those vehicles by Volkswagen's conduct, they are now worth significantly less than they otherwise would be.

1005. Volkswagen's fraudulent use of the "defeat device" and its concealment of the true characteristics of the CleanDiesel engine system were material to Plaintiff and the Michigan Subclass. A vehicle made by a reputable manufacturer of environmentally friendly vehicles is worth more than an otherwise comparable vehicle made by a disreputable and dishonest manufacturer of polluting vehicles that conceals the amount its cars pollutes rather than make environmentally friendly vehicles.

1006. Plaintiff and the Michigan Subclass suffered ascertainable loss caused by Volkswagen's misrepresentations and its concealment of and failure to disclose material information. Class members who purchased the Affected Vehicles either would have paid less for their vehicles or would not have purchased or leased them at all.

1007. Regardless of time of purchase or lease, no Plaintiffs would have maintained and continued to drive their vehicles had they been aware of Volkswagen's misconduct. Volkswagen had an ongoing duty to all Volkswagen and Audi customers to refrain from unfair and deceptive acts or practices under the Michigan CPA. All owners of Affected Vehicles suffered ascertainable loss in the form of the diminished value of their vehicles as a result of Volkswagen's deceptive and unfair acts and practices made in the course of Volkswagen's business.

1008. Volkswagen's violations present a continuing risk to Plaintiffs as well as to the general public. Volkswagen's unlawful acts and practices complained of herein affect the public interest.

1009. As a direct and proximate result of Volkswagen's violations of the Michigan CPA, Plaintiff and the Michigan Subclass have suffered injury-in-fact and/or actual damage.

1010. Plaintiffs seek injunctive relief to enjoin Volkswagen from continuing its unfair and deceptive acts; monetary relief against Volkswagen measured as the greater of (a) actual damages in an amount to be determined at trial and (b) statutory damages in the amount of \$250 for Plaintiffs and each Michigan Subclass member; reasonable attorneys' fees; and any other just and proper relief available under MICH. COMP. LAWS § 445.911.

1011. Plaintiffs also seek punitive damages against Volkswagen because it carried out despicable conduct with willful and conscious disregard of the rights and safety of others. Volkswagen intentionally and willfully misrepresented the safety, cleanliness, efficiency and reliability of the Affected Vehicles, deceived Plaintiff and Michigan Subclass Members on life-or-death matters, and concealed material facts that only they knew, all to avoid the expense and public relations nightmare of correcting a deadly flaw in vehicles it repeatedly promised Plaintiff and Michigan Subclass Members were safe. Volkswagen's unlawful conduct constitutes malice, oppression, and fraud warranting punitive damages.

**COUNT II**  
**FRAUD BY CONCEALMENT**

1012. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1013. This claim is brought on behalf of the Michigan Subclass.

1014. Volkswagen intentionally concealed and suppressed material facts concerning the quality of the Affected Vehicles. As alleged in this Complaint, notwithstanding references in the very model names of the subject vehicles as "Clean Diesel," or to their engines as "TDI Clean Diesel" engines, Volkswagen engaged in a secret scheme to evade federal and state vehicle

emissions standards by installing software designed to conceal its vehicles' emissions of the pollutant nitrogen oxide, which contributes to the creation of ozone and smog. The software installed on the vehicles at issue was designed nefariously to kick-in during emissions certification testing, such that the vehicles would show far lower emissions than when actually operating on the road. The result was what Volkswagen intended: vehicles passed emissions certifications by way of deliberately induced false readings. Reportedly, Volkswagen's deliberate, secret scheme resulted in noxious emissions from these vehicles at up to 40 times applicable standards.

1015. Plaintiff and Michigan Subclass members reasonably relied upon Volkswagen's false representations. They had no way of knowing that Volkswagen's representations were false and gravely misleading. As alleged herein, Volkswagen employed extremely sophisticated methods of deception. Plaintiff and Michigan Subclass members did not, and could not, unravel Volkswagen's deception on their own.

1016. Volkswagen concealed and suppressed material facts concerning what is evidently the true culture of Volkswagen—one characterized by an emphasis on profits and sales above compliance with federal and state clean air laws, and emissions regulations that are meant to protect the public and consumers. It also emphasized profits and sales over the trust that Plaintiff and Michigan Subclass members placed in its representations. As one customer, Priya Shah, put it in a quotation cited by the *Los Angeles Times* in a September 18, 2015 article, "It's just a blatant disregard and intentional manipulation of the system. That's just a whole other level of not only lying to the government, but also lying to your consumer. People buy diesel cars from Volkswagen because they feel they are clean diesel cars." In the words of Ms. Shah,

which no doubt reflect the sentiments of all other CleanDiesel vehicle buyers, “I don’t want to be spewing noxious gases into the environment.”

1017. Necessarily, Volkswagen also took steps to ensure that its employees did not reveal the details of its scheme to regulators or consumers, including Plaintiff and Michigan Subclass members. Volkswagen did so in order to boost the reputations of its vehicles and to falsely assure purchasers and lessors of its vehicles, including previously owned vehicles, that Volkswagen is a reputable manufacturer that complies with applicable law, including federal and state clean air laws and emissions regulations, and that its vehicles likewise comply with applicable law and regulations. Volkswagen’s false representations were material to consumers, both because they concerned the quality of the Affected Vehicles, including their compliance with applicable federal and state laws and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As Volkswagen well knew, its customers, including Plaintiff and Michigan Subclass members, highly valued that the vehicles they were purchasing or leasing were *clean* diesel cars, and they paid accordingly.

1018. Volkswagen had a duty to disclose its emissions scheme because knowledge of the scheme and its details were known and/or accessible only to Volkswagen, because Volkswagen had exclusive knowledge as to implementation and maintenance of its scheme, and because Volkswagen knew the facts were not known to or reasonably discoverable by Plaintiff or Michigan Subclass members. Volkswagen also had a duty to disclose because it made general affirmative representations about the qualities of its vehicles with respect to emissions standards, starting with references to them as *clean* diesel cars, or cars with *clean* diesel engines, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding its emissions scheme, the actual emissions of its vehicles, its actual

philosophy with respect to compliance with federal and state clean air laws and emissions regulations, and its actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs, Volkswagen had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiff and Michigan Subclass members. Whether a manufacturer's products comply with federal and state clean air laws and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certification testing their vehicles must pass. Volkswagen represented to Plaintiff and Michigan Subclass members that they were purchasing *clean* diesel vehicles, and certification testing appeared to confirm this—except that, secretly, Volkswagen had subverted the testing process thoroughly.

1019. Volkswagen actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect its profits and to avoid the perception that its vehicles did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost Volkswagen money, and it did so at the expense of Plaintiff and Michigan Subclass members.

1020. On information and belief, Volkswagen has still not made full and adequate disclosures, and continues to defraud Plaintiff and Michigan Subclass members by concealing material information regarding the emissions qualities of its vehicles and its emissions scheme.

1021. Plaintiff and Michigan Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly "clean"

diesel cars manufactured by Volkswagen, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiff's and Michigan Subclass members' actions were justified. Volkswagen was in exclusive control of the material facts, and such facts were not known to the public, Plaintiff, or Michigan Subclass members.

1022. Because of the concealment and/or suppression of the facts, Plaintiff and Michigan Subclass members have sustained damage because they own vehicles that are diminished in value as a result of Volkswagen's concealment of the true quality and quantity of those vehicles' emissions and Volkswagen's failure to timely disclose the actual emissions qualities and quantities of hundreds of thousands of Volkswagen- and Audi-branded vehicles and the serious issues engendered by Volkswagen's corporate policies. Had Plaintiff and Michigan Subclass members been aware of Volkswagen's emissions scheme, and the company's callous disregard for compliance with applicable federal and state laws and regulations, Plaintiff and Michigan Subclass members who purchased or leased new or previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

1023. The value of Plaintiff's and Michigan Subclass members' vehicles has diminished as a result of Volkswagen's fraudulent concealment of its emissions scheme, which has greatly tarnished the Volkswagen and Audi brand names attached to Plaintiff's and Michigan Subclass members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles. In addition, Class members are entitled to damages for loss of use, costs of additional fuel, costs of unused warranties, and other damages to be proved at trial.

1024. Accordingly, Volkswagen is liable to Plaintiff and Michigan Subclass members for damages in an amount to be proven at trial.

1025. Volkswagen's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiff's and Michigan Subclass members' rights and the representations that Volkswagen made to them, in order to enrich Volkswagen. To the extent permitted under applicable law, Volkswagen's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

**COUNT III**  
**BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**  
**(MICH. COMP. LAWS § 440.2314)**

1026. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

1027. Plaintiffs bring this Count on behalf of the Michigan Subclass.

1028. Volkswagen is and was at all relevant times a merchant with respect to motor vehicles.

1029. A warranty that the Affected Vehicles were in merchantable condition is implied by law in the instant transactions. These Affected Vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Affected Vehicles are inherently defective in that they do not comply with federal and state emissions standards, rendering certain safety and emissions functions inoperative; and the CleanDiesel engine system was not adequately designed, manufactured, and tested.

1030. Volkswagen was provided notice of these issues by the investigations of the EPA and individual state regulators, numerous complaints filed against it including the instant complaint, and by numerous individual letters and communications sent by Plaintiffs and other

Class members before or within a reasonable amount of time after the allegations of Affected Vehicle defects became public.

1031. As a direct and proximate result of Volkswagen's breach of the warranties of merchantability, Plaintiffs and the other Class members have been damaged in an amount to be proven at trial.

**COUNT IV  
BREACH OF CONTRACT  
(BASED ON MICHIGAN LAW)**

1032. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

1033. Plaintiff brings this Count on behalf of new vehicle or certified pre-owned vehicle purchasers in the Michigan Subclass.

1034. Volkswagen's misrepresentations and omissions alleged herein, including Volkswagen's failure to disclose the existence of the CleanDiesel engine system's defect and/or defective design as alleged herein, caused Plaintiff and the other Michigan Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiff and the other Michigan Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the CleanDiesel engine system and which were not marketed as including such a system. Accordingly, Plaintiff and the other Michigan Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

1035. Each and every sale or lease of an Affected Vehicle by an authorized Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the other Michigan Subclass members

defective Affected Vehicles and by misrepresenting or failing to disclose the existence of the CleanDiesel engine system's defect and/or defective design, including information known to Volkswagen rendering each Affected Vehicle non EPA-compliant, and thus less valuable, than vehicles not equipped with a CleanDiesel engine system.

1036. As a direct and proximate result of Volkswagen's breach of contract, Plaintiff and the Michigan Subclass have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

**W. Claims Brought on Behalf of the Minnesota Subclass**

**COUNT I  
VIOLATION OF MINNESOTA PREVENTION  
OF CONSUMER FRAUD ACT  
(MINN. STAT. § 325F.68, *et seq.*)**

1037. Plaintiff Robert Miller ("Plaintiff," for purposes of all Minnesota Subclass Counts) incorporates by reference all preceding allegations as though fully set forth herein.

1038. This claim is brought only on behalf of the Minnesota Subclass.

1039. The Affected Vehicles constitute "merchandise" within the meaning of MINN. STAT. § 325F.68(2).

1040. The Minnesota Prevention of Consumer Fraud Act ("Minnesota CFA") prohibits "[t]he act, use, or employment by any person of any fraud, false pretense, false promise, misrepresentation, misleading statement or deceptive practice, with the intent that others rely thereon in connection with the sale of any merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby . . ." MINN. STAT. § 325F.69(1). Volkswagen participated in misleading, false, or deceptive acts that violated the Minnesota CFA. By fraudulently installing the "defeat device" to make it appear that its CleanDiesel engine systems

complied with EPA regulations, Volkswagen engaged in deceptive business practices prohibited by the Minnesota CFA.

1041. Volkswagen's actions as set forth above occurred in the conduct of trade or commerce.

1042. In the course of its business, Volkswagen installed the "defeat device" and concealed that its CleanDiesel systems failed EPA regulations as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Volkswagen also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Affected Vehicles.

1043. Volkswagen has known of its use of the "defeat device" and the true nature of its CleanDiesel engine system for at least six years, but concealed all of that information until recently.

1044. Volkswagen was also aware that it valued profits over environmental cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles throughout the United States that did not comply with EPA regulations. Volkswagen concealed this information as well.

1045. By failing to disclose and by actively concealing the "defeat device" and the true cleanliness and performance of the CleanDiesel engine system, by marketing its vehicles as safe, reliable, environmentally clean, efficient, and of high quality, and by presenting itself as a reputable manufacturer that valued safety, environmental cleanliness and efficiency, and stood

behind its vehicles after they were sold, Volkswagen engaged in deceptive business practices in violation of the Minnesota CFA.

1046. In the course of Volkswagen's business, it willfully failed to disclose and actively concealed the use of the "defeat device" and true cleanliness and efficiency of the CleanDiesel engine system and serious defects discussed above. Volkswagen compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable, environmentally clean, efficient, and of high quality, and by claiming to be a reputable manufacturer that valued safety, environmental cleanliness and efficiency, and stood behind its vehicles once they were on the road.

1047. Volkswagen's unfair or deceptive acts or practices were likely to, and did in fact, deceive reasonable consumers, including Plaintiff, about the true cleanliness and efficiency of the CleanDiesel engine system, the quality of the Volkswagen and Audi brands, the devaluing of environmental cleanliness and integrity at Volkswagen, and the true value of the Affected Vehicles.

1048. Volkswagen intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiff and the Minnesota Subclass.

1049. Volkswagen knew or should have known that its conduct violated the Minnesota CFA.

1050. As alleged above, Volkswagen made material statements about the safety, cleanliness, efficiency and reliability of the Affected Vehicles and the Volkswagen and Audi brands that were either false or misleading.

1051. Volkswagen owed Plaintiffs a duty to disclose the true safety, cleanliness, efficiency and reliability of the Affected Vehicles and the devaluing of environmental cleanliness and integrity at Volkswagen, because Volkswagen:

- a. Possessed exclusive knowledge that it valued profits over environmental cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles throughout the United States that did not comply with EPA regulations;
- b. Intentionally concealed the foregoing from Plaintiffs; and/or
- c. Made incomplete representations about the safety, cleanliness, efficiency and reliability of the Affected Vehicles generally, and the use of the “defeat device” and true nature of the CleanDiesel engine system in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

1052. Because Volkswagen fraudulently concealed the “defeat device” and the true cleanliness and performance of the CleanDiesel engine system, resulting in a raft of negative publicity once the use of the “defeat device” and true characteristics of the CleanDiesel engine system finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by Volkswagen’s conduct, they are now worth significantly less than they otherwise would be.

1053. Volkswagen’s fraudulent use of the “defeat device” and its concealment of the true characteristics of the CleanDiesel engine system were material to Plaintiff and the Minnesota Subclass. A vehicle made by a reputable manufacturer of environmentally friendly vehicles is worth more than an otherwise comparable vehicle made by a disreputable and dishonest manufacturer of polluting vehicles that conceals the amount its cars pollutes rather than make environmentally friendly vehicles.

1054. Plaintiff and the Minnesota Subclass suffered ascertainable loss caused by Volkswagen's misrepresentations and its concealment of and failure to disclose material information. Class members who purchased the Affected Vehicles either would have paid less for their vehicles or would not have purchased or leased them at all.

1055. Volkswagen had an ongoing duty to all Volkswagen and Audi customers to refrain from unfair and deceptive acts or practices under the Minnesota CFA. All owners of Affected Vehicles suffered ascertainable loss in the form of the diminished value of their vehicles as a result of Volkswagen's deceptive and unfair acts and practices made in the course of Volkswagen's business.

1056. Volkswagen's violations present a continuing risk to Plaintiffs as well as to the general public. Volkswagen's unlawful acts and practices complained of herein affect the public interest.

1057. As a direct and proximate result of Volkswagen's violations of the Minnesota CFA, Plaintiff and the Minnesota Subclass have suffered injury-in-fact and/or actual damage.

1058. Pursuant to MINN. STAT. § 8.31(3a), Plaintiff and the Minnesota Subclass seek actual damages, attorneys' fees, and any other just and proper relief available under the Minnesota CFA.

1059. Plaintiffs also seek punitive damages under MINN. STAT. § 549.20(1)(a) given the clear and convincing evidence that Volkswagen's acts show deliberate disregard for the rights or safety of others.

**COUNT II**  
**VIOLATION OF MINNESOTA UNIFORM**  
**DECEPTIVE TRADE PRACTICES ACT**  
**(MINN. STAT. § 325D.43-48, et seq.)**

1060. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1061. This claim is brought only on behalf of the Minnesota Subclass.

1062. The Minnesota Deceptive Trade Practices Act (“Minnesota DTPA”) prohibits deceptive trade practices, which occur when a person “(5) represents that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that the person does not have;” “(7) represents that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;” and “(9) advertises goods or services with intent not to sell them as advertised.” MINN. STAT. § 325D.44. In the course of the Volkswagen’s business, it installed the “defeat device” and concealed that its CleanDiesel systems failed EPA regulations and engaged in deceptive practices by representing that Affected Vehicles have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have; representing that Affected Vehicles are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another; and advertising Affected Vehicles with intent not to sell them as advertised. Volkswagen participated in misleading, false, or deceptive acts that violated the Minnesota DTPA. By fraudulently installing the “defeat device” to make it appear that its CleanDiesel engine systems complied with EPA regulations, Volkswagen engaged in deceptive business practices prohibited by the Minnesota DTPA.

1063. Volkswagen's actions as set forth above occurred in the conduct of trade or commerce.

1064. In the course of its business, Volkswagen installed the "defeat device" and concealed that its CleanDiesel systems failed EPA regulations as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Volkswagen also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Affected Vehicles.

1065. Volkswagen has known of its use of the "defeat device" and the true nature of its CleanDiesel engine system for at least six years, but concealed all of that information until recently.

1066. Volkswagen was also aware that it valued profits over environmental cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles throughout the United States that did not comply with EPA regulations. Volkswagen concealed this information as well.

1067. By failing to disclose and by actively concealing the "defeat device" and the true cleanliness and performance of the CleanDiesel engine system, by marketing its vehicles as safe, reliable, environmentally clean, efficient, and of high quality, and by presenting itself as a reputable manufacturer that valued safety, environmental cleanliness and efficiency, and stood behind its vehicles after they were sold, Volkswagen engaged in deceptive business practices in violation of the Minnesota DTPA.

1068. In the course of Volkswagen's business, it willfully failed to disclose and actively concealed the use of the "defeat device" and true cleanliness and efficiency of the CleanDiesel engine system and serious defects discussed above. Volkswagen compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable, environmentally clean, efficient, and of high quality, and by claiming to be a reputable manufacturer that valued safety, environmental cleanliness and efficiency, and stood behind its vehicles once they are on the road.

1069. Volkswagen's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiff, about the true cleanliness and efficiency of the CleanDiesel engine system, the quality of the Volkswagen brand, the devaluing of environmental cleanliness and integrity at Volkswagen, and the true value of the Affected Vehicles.

1070. Volkswagen intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiff and the Minnesota Subclass.

1071. Volkswagen knew or should have known that its conduct violated the Minnesota DTPA.

1072. As alleged above, Volkswagen made material statements about the safety, cleanliness, efficiency and reliability of the Affected Vehicles that were either false or misleading.

1073. Volkswagen owed Plaintiffs a duty to disclose the true safety, cleanliness, efficiency and reliability of the Affected Vehicles and the devaluing of environmental cleanliness and integrity at Volkswagen, because Volkswagen:

- a. Possessed exclusive knowledge that it valued profits over environmental cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles

throughout the United States that did not comply with EPA regulations;

- b. Intentionally concealed the foregoing from Plaintiffs; and/or
- c. Made incomplete representations about the safety, cleanliness, efficiency and reliability of the Affected Vehicles generally, and the use of the “defeat device” and true nature of the CleanDiesel engine system in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

1074. Because Volkswagen fraudulently concealed the “defeat device” and the true cleanliness and performance of the CleanDiesel engine system, resulting in a raft of negative publicity once the use of the “defeat device” and true characteristics of the CleanDiesel engine system finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by Volkswagen’s conduct, they are now worth significantly less than they otherwise would be.

1075. Volkswagen’s fraudulent use of the “defeat device” and its concealment of the true characteristics of the CleanDiesel engine system were material to Plaintiff and the Minnesota Subclass. A vehicle made by a reputable manufacturer of safe vehicles is worth more than an otherwise comparable vehicle made by a disreputable and dishonest manufacturer of polluting vehicles that conceals the amount its cars pollutes rather than make environmentally friendly vehicles.

1076. Plaintiff and the Minnesota Subclass suffered ascertainable loss caused by Volkswagen’s misrepresentations and its failure to disclose material information. Had they been aware of the true characteristics of the CleanDiesel engine system, and the company’s callous disregard for environmental laws and regulations, Plaintiffs either would have paid less for their

vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of Volkswagen's misconduct.

1077. Volkswagen's violations present a continuing risk to Plaintiffs as well as to the general public. Volkswagen's unlawful acts and practices complained of herein affect the public interest.

1078. As a direct and proximate result of Volkswagen's violations of the Minnesota DTPA, Plaintiff and the Minnesota Subclass have suffered injury-in-fact and/or actual damage.

1079. Pursuant to MINN. STAT. § 8.31(3a) and 325D.45, Plaintiff and the Minnesota Subclass seek actual damages, attorneys' fees, and any other just and proper relief available under the Minnesota DTPA.

1080. Plaintiffs also seek punitive damages under MINN. STAT. § 549.20(1)(a) give the clear and convincing evidence that Volkswagen's acts show deliberate disregard for the rights or safety of others.

**COUNT III  
FRAUD BY CONCEALMENT**

1081. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1082. This claim is brought on behalf of the Minnesota Subclass.

1083. Volkswagen intentionally concealed and suppressed material facts concerning the quality of the Affected Vehicles. As alleged in this Complaint, notwithstanding references in the very model names of the subject vehicles as "Clean Diesel," or to their engines as "TDI Clean Diesel" engines, Volkswagen engaged in a secret scheme to evade federal and state vehicle emissions standards by installing software designed to conceal its vehicles' emissions of the pollutant nitrogen oxide, which contributes to the creation of ozone and smog. The software

installed on the vehicles at issue was designed nefariously to kick-in during emissions certification testing, such that the vehicles would show far lower emissions than when actually operating on the road. The result was what Volkswagen intended: vehicles passed emissions certifications by way of deliberately induced false readings. Reportedly, Volkswagen's deliberate, secret scheme resulted in noxious emissions from these vehicles at up to 40 times applicable standards.

1084. Plaintiff and the Minnesota Subclass members reasonably relied upon Volkswagen's false representations. They had no way of knowing that Volkswagen's representations were false and gravely misleading. As alleged herein, Volkswagen employed extremely sophisticated methods of deception. Plaintiff and the Minnesota Subclass members did not, and could not, unravel Volkswagen's deception on their own.

1085. Volkswagen concealed and suppressed material facts concerning what is evidently the true culture of Volkswagen—one characterized by an emphasis on profits and sales above compliance with federal and state clean air laws, and emissions regulations that are meant to protect the public and consumers. It also emphasized profits and sales over the trust that Plaintiff and the Minnesota Subclass members placed in its representations. As one customer, Priya Shah, put it in a quotation cited by the *Los Angeles Times* in a September 18, 2015 article, “It’s just a blatant disregard and intentional manipulation of the system. That’s just a whole other level of not only lying to the government, but also lying to your consumer. People buy diesel cars from Volkswagen because they feel they are clean diesel cars.” In the words of Ms. Shah, which no doubt reflect the sentiments of all other CleanDiesel vehicle buyers, “I don’t want to be spewing noxious gases into the environment.”

1086. Necessarily, Volkswagen also took steps to ensure that its employees did not reveal the details of its scheme to regulators or consumers, including Plaintiff and the Minnesota Subclass members. Volkswagen did so in order to boost the reputations of its vehicles and to falsely assure purchasers and lessors of its vehicles, including previously owned vehicles, that Volkswagen is a reputable manufacturer that complies with applicable law, including federal and state clean air laws and emissions regulations, and that its vehicles likewise comply with applicable law and regulations. Volkswagen's false representations were material to consumers, both because they concerned the quality of the Affected Vehicles, including their compliance with applicable federal and state laws and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As Volkswagen well knew, its customers, including Plaintiff and the Minnesota Subclass members, highly valued that the vehicles they were purchasing or leasing were *clean* diesel cars, and they paid accordingly.

1087. Volkswagen had a duty to disclose its emissions scheme because knowledge of the scheme and its details were known and/or accessible only to Volkswagen, because Volkswagen had exclusive knowledge as to implementation and maintenance of its scheme, and because Volkswagen knew the facts were not known to or reasonably discoverable by Plaintiff or the Minnesota Subclass members. Volkswagen also had a duty to disclose because it made general affirmative representations about the qualities of its vehicles with respect to emissions standards, starting with references to them as *clean* diesel cars, or cars with *clean* diesel engines, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding its emissions scheme, the actual emissions of its vehicles, its actual philosophy with respect to compliance with federal and state clean air laws and emissions

regulations, and its actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs, Volkswagen had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiff and the Minnesota Subclass members. Whether a manufacturer's products comply with federal and state clean air laws and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certification testing their vehicles must pass. Volkswagen represented to Plaintiff and the Minnesota Subclass members that they were purchasing *clean* diesel vehicles, and certification testing appeared to confirm this—except that, secretly, Volkswagen had subverted the testing process thoroughly.

1088. Volkswagen actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect its profits and to avoid the perception that its vehicles did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost Volkswagen money, and it did so at the expense of Plaintiff and the Minnesota Subclass members.

1089. On information and belief, Volkswagen has still not made full and adequate disclosures, and continues to defraud Plaintiff and the Minnesota Subclass members by concealing material information regarding the emission qualities of its vehicles and its emissions scheme.

1090. Plaintiff and the Minnesota Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly “clean”

diesel cars manufactured by Volkswagen, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiff's and the Minnesota Subclass members' actions were justified. Volkswagen was in exclusive control of the material facts, and such facts were not known to the public, Plaintiff, or Minnesota Subclass members.

1091. Because of the concealment and/or suppression of the facts, Plaintiff and Minnesota Subclass members have sustained damage because they own vehicles that are diminished in value as a result of Volkswagen's concealment of the true quality and quantity of those vehicles' emissions and Volkswagen's failure to timely disclose the actual emission qualities and quantities of hundreds of thousands of Volkswagen- and Audi-branded vehicles and the serious issues engendered by Volkswagen's corporate policies. Had Plaintiff and the Minnesota Subclass members been aware of Volkswagen's emissions scheme, and the company's callous disregard for compliance with applicable federal and state laws and regulations, Plaintiff and Minnesota Subclass members who purchased or leased new or previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

1092. The value of Plaintiff's and Minnesota Subclass members' vehicles has diminished as a result of Volkswagen's fraudulent concealment of its emissions scheme, which has greatly tarnished the Volkswagen and Audi brand names attached to Plaintiff's and Minnesota Subclass members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles. In addition, Class members are entitled to damages for loss of use, costs of additional fuel, costs of unused warranties, and other damages to be proved at trial.

1093. Accordingly, Volkswagen is liable to Plaintiff and Minnesota Subclass members for damages in an amount to be proven at trial.

1094. Volkswagen's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiff's and Minnesota Subclass members' rights and the representations that Volkswagen made to them, in order to enrich Volkswagen. To the extent permitted under applicable law, Volkswagen's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

**COUNT IV**  
**BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**  
**(MINN. STAT. § 336.2-314)**

1095. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

1096. Plaintiffs bring this Count on behalf of the Minnesota Subclass.

1097. Volkswagen is and was at all relevant times a merchant with respect to motor vehicles.

1098. A warranty that the Affected Vehicles were in merchantable condition is implied by law in the instant transactions. These Affected Vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Affected Vehicles are inherently defective in that they do not comply with federal and state emissions standards, rendering certain safety and emissions functions inoperative; and the CleanDiesel engine system was not adequately designed, manufactured, and tested.

1099. Volkswagen was provided notice of these issues by the investigations of the EPA and individual state regulators, numerous complaints filed against it including the instant complaint, and by numerous individual letters and communications sent by Plaintiffs and other

Class members before or within a reasonable amount of time after the allegations of Affected Vehicle defects became public.

1100. As a direct and proximate result of Volkswagen's breach of the warranties of merchantability, Plaintiffs and the other Class members have been damaged in an amount to be proven at trial.

**COUNT V  
BREACH OF CONTRACT  
(BASED ON MINNESOTA LAW)**

1101. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

1102. Plaintiff brings this Count on behalf of new vehicle or certified pre-owned vehicle purchasers in the Minnesota Subclass.

1103. Volkswagen's misrepresentations and omissions alleged herein, including Volkswagen's failure to disclose the existence of the CleanDiesel engine system's defect and/or defective design as alleged herein, caused Plaintiff and the other Minnesota Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiff and the other Minnesota Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the CleanDiesel engine system and which were not marketed as including such a system. Accordingly, Plaintiff and the other Minnesota Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

1104. Each and every sale or lease of an Affected Vehicle by an authorized Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the other Minnesota Subclass

members defective Affected Vehicles and by misrepresenting or failing to disclose the existence of the CleanDiesel engine system's defect and/or defective design, including information known to Volkswagen rendering each Affected Vehicle non EPA-compliant, and thus less valuable, than vehicles not equipped with a CleanDiesel engine system.

1105. As a direct and proximate result of Volkswagen's breach of contract, Plaintiff and the Minnesota Subclass have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

**X. Claims Brought on Behalf of the Missouri Subclass**

**COUNT I  
VIOLATION OF MISSOURI MERCHANDISING PRACTICES ACT  
(MO. REV. STAT. § 407.010, *et seq.*)**

1106. Plaintiff Joseph Collesano ("Plaintiff," for purposes of all Missouri Subclass Counts) incorporates by reference all preceding allegations as though fully set forth herein.

1107. This claim is brought only on behalf of the Missouri Subclass.

1108. Volkswagen, Plaintiffs and the Missouri Subclass are "persons" within the meaning of MO. REV. STAT. § 407.010(5).

1109. Volkswagen engaged in "trade" or "commerce" in the State of Missouri within the meaning of MO. REV. STAT. § 407.010(7).

1110. The Missouri Merchandising Practices Act ("Missouri MPA") makes unlawful the "act, use or employment by any person of any deception, fraud, false pretense, misrepresentation, unfair practice, or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise." MO. REV. STAT. § 407.020.

1111. In the course of its business, Volkswagen environmental laws and regulations and, omitted, suppressed, and concealed its use of the “defeat device” as described herein. By failing to disclose these defects or facts about the defects described herein known to it or that were available to Volkswagen upon reasonable inquiry, Volkswagen deprived consumers of all material facts about the safety and functionality of their vehicle. By failing to release material facts about the defect, Volkswagen curtailed or reduced the ability of consumers to take notice of material facts about their vehicle, and/or it affirmatively operated to hide or keep those facts from consumers. 15 MO. CODE OF SERV. REG. § 60-9.110. Moreover, Volkswagen has otherwise engaged in activities with a tendency or capacity to deceive. Volkswagen also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, unfair practices, and/or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Affected Vehicles.

1112. Volkswagen has known of its use of the “defeat device” and the true characteristics of its CleanDiesel engine system, but suppressed and/or concealed all of that information until recently.

1113. Volkswagen was also aware that it valued profits over environmental cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles throughout the United States that did not comply with EPA regulations. Volkswagen omitted, suppressed, and/or concealed this information as well.

1114. By failing to disclose and by actively concealing, suppressing, or omitting the “defeat device” and the true cleanliness and performance of the CleanDiesel engine system, by marketing its vehicles as safe, reliable, environmentally clean, efficient, and of high quality, and

by presenting itself as a reputable manufacturer that valued safety, environmental cleanliness and efficiency, and stood behind its vehicles after they were sold, Volkswagen engaged in unfair and/or deceptive business practices and concealed, suppressed, and/or omitted material facts from consumers in connection with the purchase of their vehicles – all in violation of the Missouri MPA.

1115. In the course of Volkswagen’s business, it willfully failed to disclose and actively concealed, suppressed, and omitted the use of the “defeat device” and true cleanliness and efficiency of the CleanDiesel engine system and serious defects discussed above. Volkswagen compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable, environmentally clean, efficient, and of high quality, and by claiming to be a reputable manufacturer that valued safety, environmental cleanliness and efficiency, and stood behind its vehicles once they are on the road.

1116. Volkswagen’s unfair or deceptive acts or practices, including these concealments, omissions, and suppressions of material facts, had a tendency or capacity to mislead, tended to create a false impression in consumers, and did in fact deceive reasonable consumers, including Plaintiff, about the true cleanliness and efficiency of the CleanDiesel engine system, the quality of the Volkswagen and Audi brands, the devaluing of environmental cleanliness and integrity at Volkswagen, and the true value of the Affected Vehicles.

1117. Volkswagen intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiff and the Missouri Subclass, including without limitation by failing to disclose the “defeat device” in light of circumstances under which the omitted facts were necessary in order to correct the assumptions, inferences or representations being made by Volkswagen about the safety, efficiency, cleanliness or reliability

of its vehicles. Consequently, the failure to disclose such facts amounts to misleading statements pursuant to 15 MO. CODE OF SERV. REG. § 60-9.090.

1118. Because Volkswagen knew or believed that its statements regarding cleanliness, efficiency and reliability of its vehicles were not in accord with the facts and/or had no reasonable basis for such statements in light of its knowledge of these defects, Volkswagen engaged in fraudulent misrepresentations pursuant to 15 MO. CODE OF SERV. REG. 60-9.100.

1119. Volkswagen's conduct as described herein is unethical, oppressive, or unscrupulous and/or it presented a risk of substantial injury to consumers whose vehicles were operating illegally and under circumstances that rendered them unsafe. Such acts are unfair practices in violation of 15 MO. CODE OF SERV. REG. 60-8.020.

1120. Volkswagen knew or should have known that its conduct violated the Missouri MPA.

1121. As alleged above, Volkswagen made material statements about the safety, cleanliness, efficiency and reliability of the Affected Vehicles that were either false, misleading, and/or half-truths in violation of the Missouri MPA.

1122. Volkswagen owed Plaintiffs a duty to disclose the true safety, cleanliness, efficiency and reliability of the Affected Vehicles and the devaluing of environmental cleanliness and integrity at Volkswagen, because Volkswagen:

- a. Possessed exclusive knowledge that it valued profits over environmental cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles throughout the United States that did not comply with EPA regulations;
- b. Intentionally concealed the foregoing from Plaintiffs; and/or

- c. Made incomplete representations about the safety, cleanliness, efficiency and reliability of the Affected Vehicles generally, and the use of the “defeat device” and true nature of the CleanDiesel engine system in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

1123. Because Volkswagen fraudulently concealed the “defeat device” and the true cleanliness and performance of the CleanDiesel engine system, and committed these other unlawful acts in violation of the Missouri MPA, resulting in a raft of negative publicity once the use of the “defeat device” and true characteristics of the CleanDiesel engine system finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by Volkswagen’s conduct, they are now worth significantly less than they otherwise would be.

1124. Volkswagen’s misleading statements, deception, and/or concealment, suppression, or omission of the “defeat device” and true nature of the CleanDiesel engine system were material to Plaintiffs and the Missouri Subclass. A vehicle made by a reputable manufacturer of environmentally friendly vehicles is worth more than an otherwise comparable vehicle made by a disreputable and dishonest manufacturer of polluting vehicles that conceals the amount its cars pollutes rather than make environmentally friendly vehicles.

1125. Plaintiffs and the Missouri Subclass suffered ascertainable loss caused by Volkswagen’s misrepresentations and its concealment of and failure to disclose material information. Class members who purchased Affected Vehicles either would have paid less for their vehicles or would not have purchased or leased them at all.

1126. Volkswagen had an ongoing duty to all Volkswagen and Audi customers to refrain from unfair and deceptive acts or practices under the Missouri MPA. All owners of Affected Vehicles suffered ascertainable loss in the form of the diminished value of their

vehicles as a result of Volkswagen's deceptive and unfair acts and practices made in the course of Volkswagen's business.

1127. Volkswagen's violations present a continuing risk to Plaintiffs as well as to the general public. Volkswagen's unlawful acts and practices complained of herein affect the public interest.

1128. As a direct and proximate result of Volkswagen's violations of the Missouri MPA, Plaintiffs and the Missouri Subclass have suffered injury-in-fact and/or actual damage.

1129. Volkswagen is liable to Plaintiffs and the Missouri Subclass for damages in amounts to be proven at trial, including attorneys' fees, costs, and punitive damages, as well as injunctive relief enjoining Volkswagen's unfair and deceptive practices, and any other just and proper relief under MO. REV. STAT. § 407.025.

**COUNT II  
FRAUD BY CONCEALMENT**

1130. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1131. This claim is brought on behalf of the Missouri Subclass.

1132. Volkswagen intentionally concealed and suppressed material facts concerning the quality of the Affected Vehicles. As alleged in this Complaint, notwithstanding references in the very model names of the subject vehicles as "Clean Diesel," or to their engines as "TDI Clean Diesel" engines, Volkswagen engaged in a secret scheme to evade federal and state vehicle emissions standards by installing software designed to conceal its vehicles' emissions of the pollutant nitrogen oxide, which contributes to the creation of ozone and smog. The software installed on the vehicles at issue was nefariously designed to kick-in during emissions certification testing, such that the vehicles would show far lower emissions than when actually

operating on the road. The result was what Volkswagen intended: vehicles passed emissions certifications by way of deliberately induced false readings. Reportedly, Volkswagen's deliberate, secret scheme resulted in noxious emissions from these vehicles at up to 40 times applicable standards.

1133. Plaintiffs and Class members reasonably relied upon Volkswagen's false representations. They had no way of knowing that Volkswagen's representations were false and gravely misleading. As alleged herein, Volkswagen employed extremely sophisticated methods of deception. Plaintiffs and Class members did not, and could not, unravel Volkswagen's deception on their own.

1134. Volkswagen concealed and suppressed material facts concerning what is evidently the true culture of Volkswagen—one characterized by an emphasis on profits and sales above compliance with federal and state clean air laws, and emissions regulations that are meant to protect the public and consumers. It also emphasized profits and sales over the trust that Plaintiffs and Class members placed in its representations. As one customer, Priya Shah, put it in a quotation cited by the *Los Angeles Times* in a September 18, 2015 article, "It's just a blatant disregard and intentional manipulation of the system. That's just a whole other level of not only lying to the government, but also lying to your consumer. People buy diesel cars from Volkswagen because they feel they are clean diesel cars." In the words of Ms. Shah, which no doubt reflect the sentiments of all other CleanDiesel vehicle buyers, "I don't want to be spewing noxious gases into the environment."

1135. Necessarily, Volkswagen also took steps to ensure that its employees did not reveal the details of its scheme to regulators or consumers, including Plaintiffs and Class members. Volkswagen did so in order to boost the reputations of its vehicles and to falsely

assure purchasers and lessors of its vehicles, including previously owned vehicles, that Volkswagen is a reputable manufacturer that complies with applicable law, including federal and state clean air laws and emissions regulations, and that its vehicles likewise comply with applicable law and regulations. Volkswagen's false representations were material to consumers, both because they concerned the quality of the Affected Vehicles, including their compliance with applicable federal and state laws and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As Volkswagen well knew, its customers, including Plaintiffs and Class members, highly valued that the vehicles they were purchasing or leasing were *clean* diesel cars, and they paid accordingly.

1136. Volkswagen had a duty to disclose its emissions scheme because knowledge of the scheme and its details were known and/or accessible only to Volkswagen, because Volkswagen had exclusive knowledge as to implementation and maintenance of its scheme, and because Volkswagen knew the facts were not known to or reasonably discoverable by Plaintiffs or Class members. Volkswagen also had a duty to disclose because it made general affirmative representations about the qualities of its vehicles with respect to emissions standards, starting with references to them as *clean* diesel cars, or cars with *clean* diesel engines, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding its emissions scheme, the actual emissions of its vehicles, its actual philosophy with respect to compliance with federal and state clean air laws and emissions regulations, and its actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs, Volkswagen had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and Class members. Whether a

manufacturer's products comply with federal and state clean air laws and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certification testing their vehicles must pass. Volkswagen represented to Plaintiffs and Class members that they were purchasing *clean* diesel vehicles, and certification testing appeared to confirm this—except that, secretly, Volkswagen had subverted the testing process thoroughly.

1137. Volkswagen actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect its profits and to avoid the perception that its vehicles did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost Volkswagen money, and it did so at the expense of Plaintiffs and Class members.

1138. On information and belief, Volkswagen has still not made full and adequate disclosures, and continues to defraud Plaintiffs and Class members by concealing material information regarding the emission qualities of its vehicles and its emissions scheme.

1139. Plaintiffs and Class members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly "clean" diesel cars manufactured by Volkswagen, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiffs' and Class Members' actions were justified. Volkswagen was in exclusive control of the material facts, and such facts were not known to the public, Plaintiffs, or Class members.

1140. Because of the concealment and/or suppression of the facts, Plaintiffs and Class members have sustained damage because they own vehicles that are diminished in value as a result of Volkswagen's concealment of the true quality and quantity of those vehicles' emissions and Volkswagen's failure to timely disclose the actual emission qualities and quantities of hundreds of thousands of Volkswagen- and Audi-branded vehicles and the serious issues engendered by Volkswagen's corporate policies. Had Plaintiffs and Class members been aware of Volkswagen's emissions scheme, and the company's callous disregard for compliance with applicable federal and state laws and regulations, Plaintiffs and Class members who purchased or leased new or previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

1141. The value of Plaintiffs' and Class members' vehicles has diminished as a result of Volkswagen's fraudulent concealment of its emissions scheme, which has greatly tarnished the Volkswagen and Audi brand names attached to Plaintiffs' and Class members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles. In addition, Class members are entitled to damages for loss of use, costs of additional fuel, costs of unused warranties, and other damages to be proved at trial.

1142. Accordingly, Volkswagen is liable to Plaintiffs and Class members for damages in an amount to be proven at trial.

1143. Volkswagen's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Class members' rights and the representations that Volkswagen made to them, in order to enrich Volkswagen. To the extent permitted under applicable law, Volkswagen's conduct warrants an assessment of punitive

damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

**COUNT III  
BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY  
(MO. REV. STAT. § 400.2-314)**

1144. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

1145. Plaintiffs bring this Count on behalf of the Missouri Subclass.

1146. Volkswagen is and was at all relevant times a merchant with respect to motor vehicles.

1147. A warranty that the Affected Vehicles were in merchantable condition is implied by law in the instant transactions. These Affected Vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Affected Vehicles are inherently defective in that they do not comply with federal and state emissions standards, rendering certain safety and emissions functions inoperative; and the CleanDiesel engine system was not adequately designed, manufactured, and tested.

1148. Volkswagen was provided notice of these issues by the investigations of the EPA and individual state regulators, numerous complaints filed against it including the instant complaint, and by numerous individual letters and communications sent by Plaintiffs and other Class members before or within a reasonable amount of time after the allegations of Affected Vehicle defects became public.

1149. As a direct and proximate result of Volkswagen's breach of the warranties of merchantability, Plaintiffs and the other Class members have been damaged in an amount to be proven at trial.

**COUNT IV  
BREACH OF CONTRACT  
(BASED ON MISSOURI LAW)**

1150. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

1151. Plaintiff brings this Count on behalf of new vehicle or certified pre-owned vehicle purchasers in the Missouri Subclass.

1152. Volkswagen's misrepresentations and omissions alleged herein, including Volkswagen's failure to disclose the existence of the CleanDiesel engine system's defect and/or defective design as alleged herein, caused Plaintiff and the other Missouri Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiff and the other Missouri Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the CleanDiesel engine system and which were not marketed as including such a system. Accordingly, Plaintiff and the other Missouri Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

1153. Each and every sale or lease of an Affected Vehicle by an authorized Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the other Missouri Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose the existence of the CleanDiesel engine system's defect and/or defective design, including information known to Volkswagen rendering each Affected Vehicle non EPA-compliant, and thus less valuable, than vehicles not equipped with a CleanDiesel engine system.

1154. As a direct and proximate result of Volkswagen's breach of contract, Plaintiff and the Missouri Subclass have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

**Y. Claims Brought on Behalf of the Nevada Subclass**

**COUNT I  
VIOLATION OF THE NEVADA DECEPTIVE TRADE PRACTICES ACT  
(NEV. REV. STAT. § 598.0903, *et seq.*)**

1155. Plaintiff Ramon San Nicolas ("Plaintiff," for purposes of all Nevada Subclass Counts) incorporates by reference all preceding allegations as though fully set forth herein.

1156. This claim is brought only on behalf of the Nevada Subclass.

1157. The Nevada Deceptive Trade Practices Act ("Nevada DTPA"), NEV. REV. STAT. § 598.0903, *et seq.* prohibits deceptive trade practices. NEV. REV. STAT. § 598.0915 provides that a person engages in a "deceptive trade practice" if, in the course of business or occupation, the person: "5. Knowingly makes a false representation as to the characteristics, ingredients, uses, benefits, alterations or quantities of goods or services for sale or lease or a false representation as to the sponsorship, approval, status, affiliation or connection of a person therewith"; "7. Represents that goods or services for sale or lease are of a particular standard, quality or grade, or that such goods are of a particular style or model, if he or she knows or should know that they are of another standard, quality, grade, style or model"; "9. Advertises goods or services with intent not to sell or lease them as advertised"; or "15. Knowingly makes any other false representation in a transaction."

1158. Volkswagen engaged in deceptive trade practices that violated the Nevada DTPA, including: knowingly representing that Affected Vehicles have uses and benefits which they do not have; representing that Affected Vehicles are of a particular standard, quality, and grade

when they are not; advertising Affected Vehicles with the intent not to sell or lease them as advertised; representing that the subject of a transaction involving Affected Vehicles has been supplied in accordance with a previous representation when it has not; and knowingly making other false representations in a transaction.

1159. Volkswagen's actions as set forth above occurred in the conduct of trade or commerce.

1160. In the course of its business, Volkswagen installed the "defeat device" and concealed that its CleanDiesel systems failed EPA regulations as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Volkswagen also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Affected Vehicles.

1161. Volkswagen has known of its use of the "defeat device" and the true nature of its CleanDiesel engine system for at least six years, but concealed all of that information until recently.

1162. Volkswagen was also aware that it valued profits over environmental cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles throughout the United States that did not comply with EPA regulations. Volkswagen concealed this information as well.

1163. By failing to disclose and by actively concealing the "defeat device" and the true cleanliness and performance of the CleanDiesel engine system, by marketing its vehicles as safe, reliable, environmentally clean, efficient, and of high quality, and by presenting itself as a

reputable manufacturer that valued safety, environmental cleanliness and efficiency, and stood behind its vehicles after they were sold, Volkswagen engaged in deceptive business practices in violation of the Nevada DTPA.

1164. In the course of Volkswagen's business, it willfully failed to disclose and actively concealed the use of the "defeat device" and true cleanliness and efficiency of the CleanDiesel engine system and serious defects discussed above. Volkswagen compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable, environmentally clean, efficient, and of high quality, and by claiming to be a reputable manufacturer that valued safety, environmental cleanliness and efficiency, and stood behind its vehicles once they are on the road.

1165. Volkswagen's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiff, about the true cleanliness and efficiency of the CleanDiesel engine system, the quality of the Volkswagen and Audi brands, the devaluing of environmental cleanliness and integrity at Volkswagen, and the true value of the Affected Vehicles.

1166. Volkswagen intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiff and the Nevada Subclass.

1167. Volkswagen knew or should have known that its conduct violated the Nevada DTPA.

1168. As alleged above, Volkswagen made material statements about the safety, cleanliness, efficiency and reliability of the Affected Vehicles and the Volkswagen and Audi brands that were either false or misleading.

1169. Volkswagen owed Plaintiffs a duty to disclose the true safety, cleanliness, efficiency and reliability of the Affected Vehicles and the devaluing of environmental cleanliness and integrity at Volkswagen, because Volkswagen:

- a. Possessed exclusive knowledge that it valued profits over environmental cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles throughout the United States that did not comply with EPA regulations;
- b. Intentionally concealed the foregoing from Plaintiffs; and/or
- c. Made incomplete representations about the safety, cleanliness, efficiency and reliability of the Affected Vehicles generally, and the use of the “defeat device” and true nature of the CleanDiesel engine system in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

1170. Because Volkswagen fraudulently concealed the “defeat device” and the true cleanliness and performance of the CleanDiesel engine system, resulting in a raft of negative publicity once the use of the “defeat device” and true characteristics of the CleanDiesel engine system finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by Volkswagen’s conduct, they are now worth significantly less than they otherwise would be.

1171. Volkswagen’s fraudulent use of the “defeat device” and its concealment of the true characteristics of the CleanDiesel engine system were material to Plaintiffs and the Nevada Subclass. A vehicle made by a reputable manufacturer of environmentally friendly vehicles is worth more than an otherwise comparable vehicle made by a disreputable and dishonest manufacturer of polluting vehicles that conceals the amount its cars pollutes rather than make environmentally friendly vehicles.

1172. Plaintiffs and the Nevada Subclass suffered ascertainable loss caused by Volkswagen's misrepresentations and its concealment of and failure to disclose material information.

1173. Volkswagen had an ongoing duty to all Volkswagen and Audi customers to refrain from unfair and deceptive acts or practices under the Nevada DTPA. All owners of Affected Vehicles suffered ascertainable loss in the form of the diminished value of their vehicles as a result of Volkswagen's deceptive and unfair acts and practices that occurred in the course of Volkswagen's business.

1174. Volkswagen's violations present a continuing risk to Plaintiffs as well as to the general public. Volkswagen's unlawful acts and practices complained of herein affect the public interest.

1175. As a direct and proximate result of Volkswagen's violations of the Nevada DTPA, Plaintiffs and the Nevada Subclass have suffered injury-in-fact and/or actual damage.

1176. Accordingly, Plaintiffs and the Nevada Subclass seek their actual damages, punitive damages, an order enjoining Volkswagen's deceptive acts or practices, costs of Court, attorney's fees, and all other appropriate and available remedies under the Nevada Deceptive Trade Practices Act. NEV. REV. STAT. § 41.600.

**COUNT II**  
**FRAUD BY CONCEALMENT**

1177. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1178. This claim is brought on behalf of the Nevada Subclass.

1179. Volkswagen intentionally concealed and suppressed material facts concerning the quality of the Affected Vehicles. As alleged in this Complaint, notwithstanding references in the

very model names of the subject vehicles as “Clean Diesel,” or to their engines as “TDI Clean Diesel” engines, Volkswagen engaged in a secret scheme to evade federal and state vehicle emissions standards by installing software designed to conceal its vehicles’ emissions of the pollutant nitrogen oxide, which contributes to the creation of ozone and smog. The software installed on the vehicles at issue was designed nefariously to kick-in during emissions certification testing, such that the vehicles would show far lower emissions than when actually operating on the road. The result was what Volkswagen intended: vehicles passed emissions certifications by way of deliberately induced false readings. Reportedly, Volkswagen’s deliberate, secret scheme resulted in noxious emissions from these vehicles at up to 40 times applicable standards.

1180. Plaintiffs and Class members reasonably relied upon Volkswagen’s false representations. They had no way of knowing that Volkswagen’s representations were false and gravely misleading. As alleged herein, Volkswagen employed extremely sophisticated methods of deception. Plaintiffs and Class members did not, and could not, unravel Volkswagen’s deception on their own.

1181. Volkswagen concealed and suppressed material facts concerning what is evidently the true culture of Volkswagen—one characterized by an emphasis on profits and sales above compliance with federal and state clean air laws, and emissions regulations that are meant to protect the public and consumers. It also emphasized profits and sales over the trust that Plaintiffs and Class members placed in its representations. As one customer, Priya Shah, put it in a quotation cited by the *Los Angeles Times* in a September 18, 2015 article, “It’s just a blatant disregard and intentional manipulation of the system. That’s just a whole other level of not only lying to the government, but also lying to your consumer. People buy diesel cars from

Volkswagen because they feel they are clean diesel cars.” In the words of Ms. Shah, which no doubt reflect the sentiments of all other CleanDiesel vehicle buyers, “I don’t want to be spewing noxious gases into the environment.”

1182. Necessarily, Volkswagen also took steps to ensure that its employees did not reveal the details of its scheme to regulators or consumers, including Plaintiffs and Class members. Volkswagen did so in order to boost the reputations of its vehicles and to falsely assure purchasers and lessors of its vehicles, including previously owned vehicles, that Volkswagen is a reputable manufacturer that complies with applicable law, including federal and state clean air laws and emissions regulations, and that its vehicles likewise comply with applicable law and regulations. Volkswagen’s false representations were material to consumers, both because they concerned the quality of the Affected Vehicles, including their compliance with applicable federal and state laws and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As Volkswagen well knew, its customers, including Plaintiffs and Class members, highly valued that the vehicles they were purchasing or leasing were *clean* diesel cars, and they paid accordingly.

1183. Volkswagen had a duty to disclose its emissions scheme because knowledge of the scheme and its details were known and/or accessible only to Volkswagen, because Volkswagen had exclusive knowledge as to implementation and maintenance of its scheme, and because Volkswagen knew the facts were not known to or reasonably discoverable by Plaintiffs or Class members. Volkswagen also had a duty to disclose because it made general affirmative representations about the qualities of its vehicles with respect to emissions standards, starting with references to them as *clean* diesel cars, or cars with *clean* diesel engines, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth

above regarding its emissions scheme, the actual emissions of its vehicles, its actual philosophy with respect to compliance with federal and state clean air laws and emissions regulations, and its actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs, Volkswagen had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and Class members. Whether a manufacturer's products comply with federal and state clean air laws and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certification testing their vehicles must pass. Volkswagen represented to Plaintiffs and Class members that they were purchasing *clean* diesel vehicles, and certification testing appeared to confirm this—except that, secretly, Volkswagen had subverted the testing process thoroughly.

1184. Volkswagen actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect its profits and to avoid the perception that its vehicles did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost Volkswagen money, and it did so at the expense of Plaintiffs and Class members.

1185. On information and belief, Volkswagen has still not made full and adequate disclosures, and continues to defraud Plaintiffs and Class members by concealing material information regarding the emission qualities of its vehicles and its emissions scheme.

1186. Plaintiffs and Class members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly “clean” diesel cars

manufactured by Volkswagen, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiffs' and Class Members' actions were justified. Volkswagen was in exclusive control of the material facts, and such facts were not known to the public, Plaintiffs, or Class members.

1187. Because of the concealment and/or suppression of the facts, Plaintiffs and Class members have sustained damage because they own vehicles that are diminished in value as a result of Volkswagen's concealment of the true quality and quantity of those vehicles' emissions and Volkswagen's failure to timely disclose the actual emission qualities and quantities of hundreds of thousands of Volkswagen- and Audi-branded vehicles and the serious issues engendered by Volkswagen's corporate policies. Had Plaintiffs and Class members been aware of Volkswagen's emissions scheme, and the company's callous disregard for compliance with applicable federal and state laws and regulations, Plaintiffs and Class members who purchased or leased new or previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

1188. The value of Plaintiffs' and Class members' vehicles has diminished as a result of Volkswagen's fraudulent concealment of its emissions scheme, which has greatly tarnished the Volkswagen and Audi brand names attached to Plaintiffs' and Class members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles. In addition, Class members are entitled to damages for loss of use, costs of additional fuel, costs of unused warranties, and other damages to be proved at trial.

1189. Accordingly, Volkswagen is liable to Plaintiffs and Class members for damages in an amount to be proven at trial.

1190. Volkswagen's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Class members' rights and the representations that Volkswagen made to them, in order to enrich Volkswagen. To the extent permitted under applicable law, Volkswagen's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

**COUNT III**  
**BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**  
**(NEV. REV. STAT. § 104.2314)**

1191. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

1192. Plaintiffs bring this Count on behalf of the Nevada Subclass.

1193. Volkswagen is and was at all relevant times a merchant with respect to motor vehicles.

1194. A warranty that the Affected Vehicles were in merchantable condition is implied by law in the instant transactions. These Affected Vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Affected Vehicles are inherently defective in that they do not comply with federal and state emissions standards, rendering certain safety and emissions functions inoperative; and the CleanDiesel engine system was not adequately designed, manufactured, and tested.

1195. Volkswagen was provided notice of these issues by the investigations of the EPA and individual state regulators, numerous complaints filed against it including the instant complaint, and by numerous individual letters and communications sent by Plaintiffs and other

Class members before or within a reasonable amount of time after the allegations of Affected Vehicle defects became public.

1196. As a direct and proximate result of Volkswagen's breach of the warranties of merchantability, Plaintiffs and the other Class members have been damaged in an amount to be proven at trial.

**COUNT IV  
BREACH OF CONTRACT  
(BASED ON NEVADA LAW)**

1197. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

1198. Plaintiff brings this Count on behalf of new vehicle or certified pre-owned vehicle purchasers in the Nevada Subclass.

1199. Volkswagen's misrepresentations and omissions alleged herein, including Volkswagen's failure to disclose the existence of the CleanDiesel engine system's defect and/or defective design as alleged herein, caused Plaintiff and the other Nevada Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiff and the other Nevada Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the CleanDiesel engine system and which were not marketed as including such a system. Accordingly, Plaintiff and the other Nevada Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

1200. Each and every sale or lease of an Affected Vehicle by an authorized Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the other Nevada Subclass members

defective Affected Vehicles and by misrepresenting or failing to disclose the existence of the CleanDiesel engine system's defect and/or defective design, including information known to Volkswagen, rendering each Affected Vehicle non EPA-compliant, and thus less valuable, than vehicles not equipped with a CleanDiesel engine system.

1201. As a direct and proximate result of Volkswagen's breach of contract, Plaintiff and the Nevada Subclass have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

**Z. Claims on Behalf of the New Hampshire Subclass**

**COUNT I  
VIOLATION OF N.H. CONSUMER PROTECTION ACT  
(N.H. REV. STAT. ANN. § 358-A:1, *et seq.*)**

1202. Plaintiff Richard Grogan ("Plaintiff," for purposes of all New Hampshire Subclass Counts) incorporates by reference all preceding allegations as though fully set forth herein.

1203. This claim is brought only on behalf of the New Hampshire Subclass.

1204. Plaintiffs, the New Hampshire Subclass, and Volkswagen are "persons" under the New Hampshire Consumer Protection Act ("New Hampshire CPA"), N.H. REV. STAT. § 358-A:1.

1205. Volkswagen's actions as set forth herein occurred in the conduct of trade or commerce as defined under N.H. REV. STAT. § 358-A:1.

1206. The New Hampshire CPA prohibits a person, in the conduct of any trade or commerce, from using "any unfair or deceptive act or practice," including "but ... not limited to, the following: ... (V) Representing that goods or services have ... characteristics, ... uses, benefits, or quantities that they do not have;" "(VII) Representing that goods or services are of a

particular standard, quality, or grade, ... if they are of another;” and “(IX) Advertising goods or services with intent not to sell them as advertised.” N.H. REV. STAT. § 358-A:2.

1207. Volkswagen participated in unfair or deceptive acts or practices that violated the New Hampshire CPA as described above and below. By fraudulently installing the “defeat device” to make it appear that its CleanDiesel engine systems complied with EPA regulations, Volkswagen engaged in deceptive business practices prohibited by the CPA, including representing that Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Affected Vehicles are of a particular standard, quality, and grade when they are not; advertising Affected Vehicles with the intent not to sell or lease them as advertised; representing that the subject of a transaction involving Affected Vehicles has been supplied in accordance with a previous representation when it has not; and engaging in other unconscionable, false, misleading, or deceptive acts or practices in the conduct of trade or commerce.

1208. In the course of its business, Volkswagen installed the “defeat device” and concealed that its CleanDiesel systems failed EPA regulations as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Volkswagen also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Affected Vehicles.

1209. Volkswagen has known of its use of the “defeat device” and the true nature of its CleanDiesel engine system for at least six years, but concealed all of that information until recently.

1210. Volkswagen was also aware that it valued profits over environmental cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles throughout the United States that did not comply with EPA regulations. Volkswagen concealed this information as well.

1211. By failing to disclose and by actively concealing the “defeat device” and the true cleanliness and performance of the CleanDiesel engine system, by marketing its vehicles as safe, reliable, environmentally clean, efficient, and of high quality, and by presenting itself as a reputable manufacturer that valued safety, environmental cleanliness and efficiency, and stood behind its vehicles after they were sold, Volkswagen engaged in unfair and deceptive business practices in violation of the New Hampshire CPA.

1212. In the course of Volkswagen’s business, it willfully failed to disclose and actively concealed the use of the “defeat device” and true cleanliness and efficiency of the CleanDiesel engine system and serious defects discussed above. Volkswagen compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable, environmentally clean, efficient, and of high quality, and by claiming to be a reputable manufacturer that valued safety, environmental cleanliness and efficiency, and stood behind its vehicles once they are on the road.

1213. Volkswagen’s unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiff, about the true cleanliness and efficiency of the CleanDiesel engine system, the quality of the Volkswagen and Audi brands, the devaluing of environmental cleanliness and integrity at Volkswagen, and the true value of the Affected Vehicles.

1214. Volkswagen intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiff and the New Hampshire Subclass.

1215. Volkswagen knew or should have known that its conduct violated the New Hampshire CPA.

1216. As alleged above, Volkswagen made material statements about the safety, cleanliness, efficiency and reliability of the Affected Vehicles and the Volkswagen and Audi brands that were either false or misleading.

1217. Volkswagen owed Plaintiffs a duty to disclose the true safety, cleanliness, efficiency and reliability of the Affected Vehicles and the devaluing of environmental cleanliness and integrity at Volkswagen, because Volkswagen:

- a. Possessed exclusive knowledge that it valued profits over environmental cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles throughout the United States that did not comply with EPA regulations;
- b. Intentionally concealed the foregoing from Plaintiffs; and/or
- c. Made incomplete representations about the safety, cleanliness, efficiency and reliability of the Affected Vehicles generally, and the use of the “defeat device” and true nature of the CleanDiesel engine system in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

1218. Because Volkswagen fraudulently concealed the “defeat device” and the true cleanliness and performance of the CleanDiesel engine system, resulting in a raft of negative publicity once the use of the “defeat device” and true characteristics of the CleanDiesel engine system finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by Volkswagen’s conduct, they are now worth significantly less than they otherwise would be.

1219. Volkswagen’s fraudulent use of the “defeat device” and its concealment of the true characteristics of the CleanDiesel engine system were material to Plaintiffs and the New

Hampshire Subclass. A vehicle made by a reputable manufacturer of environmentally friendly vehicles is worth more than an otherwise comparable vehicle made by a disreputable and dishonest manufacturer of polluting vehicles that conceals the amount its cars pollutes rather than make environmentally friendly vehicles.

1220. Plaintiffs and the New Hampshire Subclass suffered ascertainable loss caused by Volkswagen's misrepresentations and its concealment of and failure to disclose material information.

1221. Volkswagen had an ongoing duty to all Volkswagen and Audi customers to refrain from unfair and deceptive acts or practices under the New Hampshire CPA. All owners of Affected Vehicles suffered ascertainable loss in the form of the diminished value of their vehicles as a result of Volkswagen's deceptive and unfair acts and practices that occurred in the course of Volkswagen's business.

1222. Volkswagen's violations present a continuing risk to Plaintiffs as well as to the general public. Volkswagen's unlawful acts and practices complained of herein affect the public interest.

1223. As a direct and proximate result of Volkswagen's violations of the New Hampshire CPA, Plaintiffs and the New Hampshire Subclass have suffered injury-in-fact and/or actual damage.

1224. Because Volkswagen's willful conduct caused injury to New Hampshire Subclass members' property through violations of the New Hampshire CPA, the New Hampshire Subclass seeks recovery of actual damages or \$1,000, whichever is greater, treble damages, costs and reasonable attorneys' fees, an order enjoining Volkswagen's unfair and/or deceptive acts and practices, and any other just and proper relief under N.H. REV. STAT. § 358-A:10.

**COUNT II  
FRAUD BY CONCEALMENT**

1225. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1226. This claim is brought on behalf of the New Hampshire Subclass.

1227. Volkswagen intentionally concealed and suppressed material facts concerning the quality of the Affected Vehicles. As alleged in this Complaint, notwithstanding references in the very model names of the subject vehicles as “Clean Diesel,” or to their engines as “TDI Clean Diesel” engines, Volkswagen engaged in a secret scheme to evade federal and state vehicle emissions standards by installing software designed to conceal its vehicles’ emissions of the pollutant nitrogen oxide, which contributes to the creation of ozone and smog. The software installed on the vehicles at issue was designed nefariously to kick-in during emissions certification testing, such that the vehicles would show far lower emissions than when actually operating on the road. The result was what Volkswagen intended: vehicles passed emissions certifications by way of deliberately induced false readings. Reportedly, Volkswagen’s deliberate, secret scheme resulted in noxious emissions from these vehicles at up to 40 times applicable standards.

1228. Plaintiffs and Class members reasonably relied upon Volkswagen’s false representations. They had no way of knowing that Volkswagen’s representations were false and gravely misleading. As alleged herein, Volkswagen employed extremely sophisticated methods of deception. Plaintiffs and Class members did not, and could not, unravel Volkswagen’s deception on their own.

1229. Volkswagen concealed and suppressed material facts concerning what is evidently the true culture of Volkswagen—one characterized by an emphasis on profits and sales

above compliance with federal and state clean air laws, and emissions regulations that are meant to protect the public and consumers. It also emphasized profits and sales over the trust that Plaintiffs and Class members placed in its representations. As one customer, Priya Shah, put it in a quotation cited by the *Los Angeles Times* in a September 18, 2015 article, “It’s just a blatant disregard and intentional manipulation of the system. That’s just a whole other level of not only lying to the government, but also lying to your consumer. People buy diesel cars from Volkswagen because they feel they are clean diesel cars.” In the words of Ms. Shah, which no doubt reflect the sentiments of all other CleanDiesel vehicle buyers, “I don’t want to be spewing noxious gases into the environment.”

1230. Necessarily, Volkswagen also took steps to ensure that its employees did not reveal the details of its scheme to regulators or consumers, including Plaintiffs and Class members. Volkswagen did so in order to boost the reputations of its vehicles and to falsely assure purchasers and lessors of its vehicles, including previously owned vehicles, that Volkswagen is a reputable manufacturer that complies with applicable law, including federal and state clean air laws and emissions regulations, and that its vehicles likewise comply with applicable laws and regulations. Volkswagen’s false representations were material to consumers, both because they concerned the quality of the Affected Vehicles, including their compliance with applicable federal and state laws and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As Volkswagen well knew, its customers, including Plaintiffs and Class members, highly valued that the vehicles they were purchasing or leasing were *clean* diesel cars, and they paid accordingly.

1231. Volkswagen had a duty to disclose its emissions scheme because knowledge of the scheme and its details were known and/or accessible only to Volkswagen, because Volkswagen had exclusive knowledge as to implementation and maintenance of its scheme, and because Volkswagen knew the facts were not known to or reasonably discoverable by Plaintiffs or Class members. Volkswagen also had a duty to disclose because it made general affirmative representations about the qualities of its vehicles with respect to emissions standards, starting with references to them as *clean* diesel cars, or cars with *clean* diesel engines, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding its emissions scheme, the actual emissions of its vehicles, its actual philosophy with respect to compliance with federal and state clean air laws and emissions regulations, and its actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs, Volkswagen had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and Class members. Whether a manufacturer's products comply with federal and state clean air laws and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certification testing their vehicles must pass. Volkswagen represented to Plaintiffs and Class members that they were purchasing *clean* diesel vehicles, and certification testing appeared to confirm this—except that, secretly, Volkswagen had subverted the testing process thoroughly.

1232. Volkswagen actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect its profits and to avoid the perception that its vehicles did not or could not comply with federal and state laws governing clean air and emissions, which

perception would hurt the brand's image and cost Volkswagen money, and it did so at the expense of Plaintiffs and Class members.

1233. On information and belief, Volkswagen has still not made full and adequate disclosures, and continues to defraud Plaintiffs and Class members by concealing material information regarding the emission qualities of its vehicles and its emissions scheme.

1234. Plaintiffs and Class members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly "clean" diesel cars manufactured by Volkswagen, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiffs' and Class members' actions were justified. Volkswagen was in exclusive control of the material facts, and such facts were not known to the public, Plaintiffs, or Class members.

1235. Because of the concealment and/or suppression of the facts, Plaintiffs and Class members have sustained damage because they own vehicles that are diminished in value as a result of Volkswagen's concealment of the true quality and quantity of those vehicles' emissions and Volkswagen's failure to timely disclose the actual emission qualities and quantities of hundreds of thousands of Volkswagen- and Audi-branded vehicles and the serious issues engendered by Volkswagen's corporate policies. Had Plaintiffs and Class members been aware of Volkswagen's emissions scheme, and the company's callous disregard for compliance with applicable federal and state laws and regulations, Plaintiffs and Class members who purchased or leased new or previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

1236. The value of Plaintiffs' and Class members' vehicles has diminished as a result of Volkswagen's fraudulent concealment of its emissions scheme, which has greatly tarnished the Volkswagen and Audi brand names attached to Plaintiffs' and Class members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles. In addition, Class members are entitled to damages for loss of use, costs of additional fuel, costs of unused warranties, and other damages to be proved at trial.

1237. Accordingly, Volkswagen is liable to Plaintiffs and Class members for damages in an amount to be proven at trial.

1238. Volkswagen's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Class members' rights and the representations that Volkswagen made to them, in order to enrich Volkswagen. To the extent permitted under applicable law, Volkswagen's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

**COUNT III**  
**BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**  
**(N.H. REV. STAT. ANN. § 382-A:2-314)**

1239. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

1240. Plaintiffs bring this Count on behalf of the New Hampshire Subclass.

1241. Volkswagen is and was at all relevant times a merchant with respect to motor vehicles.

1242. A warranty that the Affected Vehicles were in merchantable condition is implied by law in the instant transactions. These Affected Vehicles, when sold and at all times

thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Affected Vehicles are inherently defective in that they do not comply with federal and state emissions standards, rendering certain safety and emissions functions inoperative; and the CleanDiesel engine system was not adequately designed, manufactured, and tested.

1243. Volkswagen was provided notice of these issues by the investigations of the EPA and individual state regulators, numerous complaints filed against it including the instant complaint, and by numerous individual letters and communications sent by Plaintiffs and other Class members before or within a reasonable amount of time after the allegations of Affected Vehicle defects became public.

1244. As a direct and proximate result of Volkswagen's breach of the warranties of merchantability, Plaintiffs and the other Class members have been damaged in an amount to be proven at trial.

**COUNT IV  
BREACH OF CONTRACT  
(BASED ON NEW HAMPSHIRE LAW)**

1245. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

1246. Plaintiff brings this Count on behalf of new vehicle or certified pre-owned vehicle purchasers in the New Hampshire Subclass.

1247. Volkswagen's misrepresentations and omissions alleged herein, including Volkswagen's failure to disclose the existence of the CleanDiesel engine system's defect and/or defective design as alleged herein, caused Plaintiff and the other New Hampshire Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiff and the other New Hampshire Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased

these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the CleanDiesel Engine System and which were not marketed as including such a system. Accordingly, Plaintiff and the other New Hampshire Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

1248. Each and every sale or lease of an Affected Vehicle by an authorized Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the other New Hampshire Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose the existence of the CleanDiesel engine system's defect and/or defective design, including information known to Volkswagen rendering each Affected Vehicle non EPA-compliant, and thus less valuable, than vehicles not equipped with a CleanDiesel engine system.

1249. As a direct and proximate result of Volkswagen's breach of contract, Plaintiff and the New Hampshire Subclass have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

**AA. Claims Brought on Behalf of the New Jersey Subclass**

**COUNT I  
VIOLATIONS OF THE NEW JERSEY CONSUMER FRAUD ACT  
(N.J. STAT. ANN. §§ 56:8-1, *ET SEQ.*)**

1250. Plaintiffs John McLaughlin, Amy Clarke, Mark Gjonbalaj, Sharon Ransavage, David Rien, and Kelly Mulligan-Mahoney ("Plaintiffs," for purposes of all New Jersey Class Counts) incorporate by reference all preceding allegations as though fully set forth herein.

1251. Plaintiffs bring this Count on behalf of the New Jersey Subclass.

1252. The New Jersey Consumer Fraud Act, N.J. STAT. ANN. §§ 56:8-1, *et seq.* (“NJ CFA”), prohibits unfair or deceptive acts or practices in the conduct of any trade or commerce.

1253. In the course of Volkswagen’s business, it willfully failed to disclose and actively concealed that the CleanDiesel Engine System was non-EPA compliant, and the use of the “defeat device in Affected Vehicles as described above. Accordingly, Volkswagen engaged in unfair and deceptive trade practices, including representing that Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Affected Vehicles are of a particular standard and quality when they are not; advertising Affected Vehicles with the intent not to sell them as advertised; and otherwise engaging in conduct likely to deceive. Further, Volkswagen’s acts and practices described herein offend established public policy because the harm they cause to consumers, motorists, and pedestrians outweighs any benefit associated with such practices, and because Volkswagen fraudulently concealed the defective nature of the Affected Vehicles from consumers.

1254. Volkswagen’s actions as set forth above occurred in the conduct of trade or commerce.

1255. Volkswagen’s conduct proximately caused injuries to Plaintiff and the other New Jersey Subclass members.

1256. Plaintiff and the other New Jersey Subclass members were injured as a result of Volkswagen’s conduct in that Plaintiff and the other New Jersey Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of Volkswagen’s misrepresentations and omissions.

1257. Pursuant TO N.J. STAT. ANN. § 56:8-20, Plaintiffs will serve the New Jersey Attorney General with a copy of this Complaint.

**COUNT II**  
**BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**  
**(N.J. STAT. ANN. § 12-A:2-314)**

1258. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

1259. Plaintiffs bring this Count on behalf of the New Jersey Subclass.

1260. Volkswagen is and was at all relevant times a merchant with respect to motor vehicles.

1261. A warranty that the Affected Vehicles were in merchantable condition is implied by law in the instant transactions. These Affected Vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Affected Vehicles are inherently defective in that they do not comply with federal and state emissions standards, rendering certain safety and emissions functions inoperative; and the CleanDiesel engine system was not adequately designed, manufactured, and tested.

1262. Volkswagen was provided notice of these issues by the investigations of the EPA and individual state regulators, numerous complaints filed against it including the instant complaint, and by numerous individual letters and communications sent by Plaintiffs and other Class members before or within a reasonable amount of time after the allegations of Affected Vehicle defects became public.

1263. As a direct and proximate result of Volkswagen's breach of the warranties of merchantability, Plaintiffs and the other Class members have been damaged in an amount to be proven at trial.

**COUNT II  
BREACH OF CONTRACT  
(BASED ON NEW JERSEY LAW)**

1264. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

1265. Plaintiff brings this Count on behalf of new vehicle or certified pre-owned vehicle purchasers in the New Jersey Subclass.

1266. Volkswagen's misrepresentations and omissions alleged herein, including Volkswagen's failure to disclose the existence of the CleanDiesel engine system's defect and/or defective design as alleged herein, caused Plaintiff and the other New Jersey Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiff and the other New Jersey Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the CleanDiesel engine system and which were not marketed as including such a system. Accordingly, Plaintiff and the other New Jersey Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

1267. Each and every sale or lease of an Affected Vehicle by an authorized Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the other New Jersey Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose the existence of the CleanDiesel engine system's defect and/or defective design, including information known to Volkswagen rendering each Affected Vehicle non EPA-compliant, and thus less valuable, than vehicles not equipped with a CleanDiesel engine system.

1268. As a direct and proximate result of Volkswagen's breach of contract, Plaintiff and the New Jersey Subclass have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

**COUNT III  
FRAUDULENT CONCEALMENT**

1269. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

1270. Plaintiff brings this Count on behalf of the New Jersey Subclass.

1271. Volkswagen intentionally concealed that the CleanDiesel engine systems were not EPA-compliant and used a "defeat device", or acted with reckless disregard for the truth, and denied Plaintiff and the other New Jersey Subclass members information that is highly relevant to their purchasing decision.

1272. Volkswagen further affirmatively misrepresented to Plaintiff in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles it was selling were new, had no significant defects, complied with EPA regulations and would perform and operate properly when driven in normal usage.

1273. Volkswagen knew these representations were false when made.

1274. The Affected Vehicles purchased or leased by Plaintiff and the other New Jersey Subclass members were, in fact, defective, non-EPA compliant, unsafe, and unreliable because the Affected Vehicles contained faulty and defective CleanDiesel engine system, as alleged herein.

1275. Volkswagen had a duty to disclose that these Affected Vehicles were defective, unsafe, non-EPA compliant and unreliable in that certain crucial emissions functions of the

Affected Vehicles would be rendered inoperative due to the “defeat device” installed in the defective CleanDiesel engine system, because Plaintiff and the other New Jersey Subclass members relied on Volkswagen’s material representations that the Affected Vehicles they were purchasing were safe, environmentally clean, efficient and free from defects.

1276. The aforementioned concealment was material because if it had been disclosed Plaintiff and the other New Jersey Subclass members would not have bought or leased the Affected Vehicles, or would not have bought or leased those Vehicles at the prices they paid.

1277. The aforementioned representations were material because they were facts that would typically be relied on by a person purchasing or leasing a new motor vehicle. Volkswagen knew or recklessly disregarded that its representations were false because it knew that it had to use the “defeat device” in order for Affected Vehicles to pass EPA emissions requirements. Volkswagen intentionally made the false statements in order to sell Affected Vehicles.

1278. Plaintiff and the other New Jersey Subclass members relied on Volkswagen’s reputation – along with Volkswagen’s failure to disclose the faulty and defective nature of the CleanDiesel engine system and Volkswagen’s affirmative assurance that its Affected Vehicles were safe and reliable, and other similar false statements – in purchasing or leasing Volkswagen’s Affected Vehicles.

1279. As a result of their reliance, Plaintiff and the other New Jersey Subclass members have been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase or lease and/or the diminished value of their Affected Vehicles.

1280. Volkswagen's conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of Plaintiff and the other New Jersey Subclass members. Plaintiff and the other New Jersey Subclass members are therefore entitled to an award of punitive damages.

**BB. Claims Brought on Behalf of the New Mexico Subclass**

**COUNT I  
VIOLATIONS OF THE NEW MEXICO UNFAIR TRADE PRACTICES ACT  
(N.M. STAT. ANN. §§ 57-12-1, *ET SEQ.*)**

1281. Plaintiffs Dawn Boulware and Kyle Tisdale ("Plaintiffs," for purposes of all New Mexico Subclass Counts) incorporates by reference all preceding allegations as though fully set forth herein.

1282. This claim is brought on behalf of the New Mexico Subclass.

1283. Volkswagen, Plaintiffs and New Mexico Subclass Members are or were "person[s]" under the New Mexico Unfair Trade Practices Act ("New Mexico UTPA"), N.M. STAT. ANN. § 57-12-2.

1284. Volkswagen's actions as set forth herein occurred in the conduct of trade or commerce as defined under N.M. STAT. ANN. § 57-12-2.

1285. The New Mexico UTPA makes unlawful "a false or misleading oral or written statement, visual description or other representation of any kind knowingly made in connection with the sale, lease, rental or loan of goods or services ... by a person in the regular course of the person's trade or commerce, that may, tends to or does deceive or mislead any person," including but not limited to "failing to state a material fact if doing so deceives or tends to deceive." N.M. STAT. ANN. § 57-12-2(D). Volkswagen's acts and omissions described herein constitute unfair or deceptive acts or practices under N.M. STAT. ANN. § 57-12-2(D). In addition, Volkswagen's actions constitute unconscionable actions under N.M. STAT. ANN. § 57-12-2(E), since they took

advantage of the lack of knowledge, ability, experience, and capacity of the New Mexico Subclass Members to a grossly unfair degree.

1286. In the course of its business, Volkswagen installed the “defeat device” and concealed that its CleanDiesel systems failed EPA regulations as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Volkswagen also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Affected Vehicles.

1287. Volkswagen has known of its use of the “defeat device” and the true nature of its CleanDiesel engine system for at least six years, but concealed all of that information until recently.

1288. Volkswagen was also aware that it valued profits over environmental cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles throughout the United States that did not comply with EPA regulations. Volkswagen concealed this information as well.

1289. By failing to disclose and by actively concealing the “defeat device” and the true cleanliness and performance of the CleanDiesel engine system, by marketing its vehicles as safe, reliable, environmentally clean, efficient, and of high quality, and by presenting itself as a reputable manufacturer that valued safety, environmental cleanliness and efficiency, and stood behind its vehicles after they were sold, Volkswagen engaged in deceptive business practices in violation of the New Mexico UTPA.

1290. In the course of Volkswagen's business, it willfully failed to disclose and actively concealed the use of the "defeat device" and true cleanliness and efficiency of the CleanDiesel engine system and serious defects discussed above. Volkswagen compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable, environmentally clean, efficient, and of high quality, and by claiming to be a reputable manufacturer that valued safety, environmental cleanliness and efficiency, and stood behind its vehicles once they are on the road.

1291. Volkswagen's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiff, about the true cleanliness and efficiency of the CleanDiesel engine system, the quality of the Volkswagen brand, the devaluing of environmental cleanliness and integrity at Volkswagen, and the true value of the Affected Vehicles.

1292. Volkswagen intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiff and the New Mexico Subclass.

1293. Volkswagen knew or should have known that its conduct violated the New Mexico UTPA.

1294. As alleged above, Volkswagen made material statements about the safety, cleanliness, efficiency and reliability of the Affected Vehicles and the Volkswagen and Audi brands that were either false or misleading.

1295. Volkswagen owed Plaintiffs a duty to disclose the true safety, cleanliness, efficiency and reliability of the Affected Vehicles and the devaluing of environmental cleanliness and integrity at Volkswagen, because Volkswagen:

- a. Possessed exclusive knowledge that it valued profits over environmental cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles

throughout the United States that did not comply with EPA regulations;

- b. Intentionally concealed the foregoing from Plaintiffs; and/or
- c. Made incomplete representations about the safety, cleanliness, efficiency and reliability of the Affected Vehicles generally, and the use of the “defeat device” and true nature of the CleanDiesel engine system in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

1296. Because Volkswagen fraudulently concealed the “defeat device” and the true cleanliness and performance of the CleanDiesel engine system, resulting in a raft of negative publicity once the use of the “defeat device” and true characteristics of the CleanDiesel engine system finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by Volkswagen’s conduct, they are now worth significantly less than they otherwise would be.

1297. Volkswagen’s fraudulent use of the “defeat device” and its concealment of the true characteristics of the CleanDiesel engine system were material to Plaintiffs and the New Mexico Subclass. A vehicle made by a reputable manufacturer of environmentally friendly vehicles is worth more than an otherwise comparable vehicle made by a disreputable and dishonest manufacturer of polluting vehicles that conceals the amount its cars pollutes rather than make environmentally friendly vehicles.

1298. Plaintiffs and the New Mexico Subclass suffered ascertainable loss caused by Volkswagen’s misrepresentations and its concealment of and failure to disclose material information. Class members who purchased Affected Vehicles either would have paid less for their vehicles or would not have purchased or leased them at all.

1299. Volkswagen had an ongoing duty to all Volkswagen and Audi customers to refrain from unfair and deceptive acts or practices under the New Mexico UTPA. All owners of Affected Vehicles suffered ascertainable loss in the form of the diminished value of their vehicles as a result of Volkswagen's deceptive and unfair acts and practices that occurred in the course of Volkswagen's business.

1300. Volkswagen's violations present a continuing risk to Plaintiffs as well as to the general public. Volkswagen's unlawful acts and practices complained of herein affect the public interest.

1301. As a direct and proximate result of Volkswagen's violations of the New Mexico UTPA, Plaintiff and the New Mexico Subclass have suffered injury-in-fact and/or actual damage.

1302. New Mexico Subclass Members seek punitive damages against Volkswagen because Volkswagen's conduct was malicious, willful, reckless, wanton, fraudulent and in bad faith. Because Volkswagen's conduct was malicious, willful, reckless, wanton, fraudulent and in bad faith, it warrants punitive damages.

1303. Because Volkswagen's unconscionable, willful conduct caused actual harm to New Mexico Class Members, the New Mexico Subclass seeks recovery of actual damages or \$100, whichever is greater, discretionary treble damages, punitive damages, and reasonable attorneys' fees and costs, as well as all other proper and just relief available under N.M. STAT. ANN. § 57-12-10.

**COUNT II  
FRAUD BY CONCEALMENT**

1304. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1305. This claim is brought on behalf of the New Mexico Subclass.

1306. Volkswagen intentionally concealed and suppressed material facts concerning the quality of the Affected Vehicles. As alleged in this Complaint, notwithstanding references in the very model names of the subject vehicles as “Clean Diesel,” or to their engines as “TDI Clean Diesel” engines, Volkswagen engaged in a secret scheme to evade federal and state vehicle emissions standards by installing software designed to conceal its vehicles’ emissions of the pollutant nitrogen oxide, which contributes to the creation of ozone and smog. The software installed on the vehicles at issue was designed nefariously to kick-in during emissions certification testing, such that the vehicles would show far lower emissions than when actually operating on the road. The result was what Volkswagen intended: vehicles passed emissions certifications by way of deliberately induced false readings. Reportedly, Volkswagen’s deliberate, secret scheme resulted in noxious emissions from these vehicles at up to 40 times applicable standards.

1307. Plaintiff and New Mexico Subclass members reasonably relied upon Volkswagen’s false representations. They had no way of knowing that Volkswagen’s representations were false and gravely misleading. As alleged herein, Volkswagen employed extremely sophisticated methods of deception. Plaintiff and New Mexico Subclass members did not, and could not, unravel Volkswagen’s deception on their own.

1308. Volkswagen concealed and suppressed material facts concerning what is evidently the true culture of Volkswagen—one characterized by an emphasis on profits and sales above compliance with federal and state clean air laws, and emissions regulations that are meant to protect the public and consumers. It also emphasized profits and sales over the trust that Plaintiff and New Mexico Subclass members placed in its representations. As one customer,

Priya Shah, put it in a quotation cited by the *Los Angeles Times* in a September 18, 2015 article, “It’s just a blatant disregard and intentional manipulation of the system. That’s just a whole other level of not only lying to the government, but also lying to your consumer. People buy diesel cars from Volkswagen because they feel they are clean diesel cars.” In the words of Ms. Shah, which no doubt reflect the sentiments of all other CleanDiesel vehicle buyers, “I don’t want to be spewing noxious gases into the environment.”

1309. Necessarily, Volkswagen also took steps to ensure that its employees did not reveal the details of its scheme to regulators or consumers, including Plaintiff and New Mexico Subclass members. Volkswagen did so in order to boost the reputations of its vehicles and to falsely assure purchasers and lessors of its vehicles, including previously owned vehicles, that Volkswagen is a reputable manufacturer that complies with applicable law, including federal and state clean air laws and emissions regulations, and that its vehicles likewise comply with applicable law and regulations. Volkswagen’s false representations were material to consumers, both because they concerned the quality of the Affected Vehicles, including their compliance with applicable federal and state laws and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As Volkswagen well knew, its customers, including Plaintiff and New Mexico Subclass members, highly valued that the vehicles they were purchasing or leasing were *clean* diesel cars, and they paid accordingly.

1310. Volkswagen had a duty to disclose its emissions scheme because knowledge of the scheme and its details were known and/or accessible only to Volkswagen, because Volkswagen had exclusive knowledge as to implementation and maintenance of its scheme, and because Volkswagen knew the facts were not known to or reasonably discoverable by Plaintiff or

New Mexico Subclass members. Volkswagen also had a duty to disclose because it made general affirmative representations about the qualities of its vehicles with respect to emissions standards, starting with references to them as *clean* diesel cars, or cars with *clean* diesel engines, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding its emissions scheme, the actual emissions of its vehicles, its actual philosophy with respect to compliance with federal and state clean air laws and emissions regulations, and its actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs, Volkswagen had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiff and New Mexico Subclass members. Whether a manufacturer's products comply with federal and state clean air laws and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certification testing their vehicles must pass. Volkswagen represented to Plaintiff and New Mexico Subclass members that they were purchasing *clean* diesel vehicles, and certification testing appeared to confirm this—except that, secretly, Volkswagen had subverted the testing process thoroughly.

1311. Volkswagen actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect its profits and to avoid the perception that its vehicles did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost Volkswagen money, and it did so at the expense of Plaintiff and New Mexico Subclass members.

1312. On information and belief, Volkswagen has still not made full and adequate disclosures, and continues to defraud Plaintiff and New Mexico Subclass members by concealing material information regarding the emissions qualities of its vehicles and its emissions scheme.

1313. Plaintiff and New Mexico Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly “clean” diesel cars manufactured by Volkswagen, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiff’s and New Mexico Subclass Members’ actions were justified. Volkswagen was in exclusive control of the material facts, and such facts were not known to the public, Plaintiff, or New Mexico Subclass members.

1314. Because of the concealment and/or suppression of the facts, Plaintiff and New Mexico Subclass members have sustained damage because they own vehicles that are diminished in value as a result of Volkswagen’s concealment of the true quality and quantity of those vehicles’ emissions and Volkswagen’s failure to timely disclose the actual emissions qualities and quantities of hundreds of thousands of Volkswagen- and Audi-branded vehicles and the serious issues engendered by Volkswagen’s corporate policies. Had Plaintiff and New Mexico Subclass members been aware of Volkswagen’s emissions scheme, and the company’s callous disregard for compliance with applicable federal and state laws and regulations, Plaintiff and New Mexico Subclass members who purchased or leased new or previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

1315. The value of Plaintiff’s and New Mexico Subclass Members’ vehicles have diminished as a result of Volkswagen’s fraudulent concealment of its emissions scheme, which

has greatly tarnished the Volkswagen and Audi brand names attached to Plaintiff's and New Mexico Subclass members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles. In addition, Class members are entitled to damages for loss of use, costs of additional fuel, costs of unused warranties, and other damages to be proved at trial.

1316. Accordingly, Volkswagen is liable to Plaintiff and New Mexico Subclass members for damages in an amount to be proven at trial.

1317. Volkswagen's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiff's and New Mexico Subclass members' rights and the representations that Volkswagen made to them, in order to enrich Volkswagen. To the extent permitted under applicable law, Volkswagen's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

**COUNT III**  
**BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**  
**(N.M. STAT. ANN. § 55-2-314)**

1318. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

1319. Plaintiffs bring this Count on behalf of the New Mexico Subclass.

1320. Volkswagen is and was at all relevant times a merchant with respect to motor vehicles.

1321. A warranty that the Affected Vehicles were in merchantable condition is implied by law in the instant transactions. These Affected Vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Affected Vehicles are inherently defective in that they do not

comply with federal and state emissions standards, rendering certain safety and emissions functions inoperative; and the CleanDiesel engine system was not adequately designed, manufactured, and tested.

1322. Volkswagen was provided notice of these issues by the investigations of the EPA and individual state regulators, numerous complaints filed against it including the instant complaint, and by numerous individual letters and communications sent by Plaintiffs and other Class members before or within a reasonable amount of time after the allegations of Affected Vehicle defects became public.

1323. As a direct and proximate result of Volkswagen's breach of the warranties of merchantability, Plaintiffs and the other Class members have been damaged in an amount to be proven at trial.

**COUNT IV  
BREACH OF CONTRACT  
(BASED ON NEW MEXICO LAW)**

1324. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

1325. Plaintiff brings this Count on behalf of new vehicle or certified pre-owned vehicle purchasers in the New Mexico Subclass.

1326. Volkswagen's misrepresentations and omissions alleged herein, including Volkswagen's failure to disclose the existence of the CleanDiesel engine system's defect and/or defective design as alleged herein, caused Plaintiff and the other New Mexico Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiff and the other New Mexico Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the CleanDiesel engine system and which were not marketed as including

such a system. Accordingly, Plaintiff and the other New Mexico Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

1327. Each and every sale or lease of an Affected Vehicle by an authorized Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the other New Mexico Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose the existence of the CleanDiesel engine system's defect and/or defective design, including information known to Volkswagen rendering each Affected Vehicle non EPA-compliant, and thus less valuable, than vehicles not equipped with a CleanDiesel engine system.

1328. As a direct and proximate result of Volkswagen's breach of contract, Plaintiff and the New Mexico Subclass have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

**CC. Claims Brought on Behalf of the New York Subclass**

**COUNT I  
VIOLATIONS OF NEW YORK GENERAL BUSINESS LAW § 349  
(N.Y. GEN. BUS. LAW § 349)**

1329. Plaintiffs David Sibley, Paul Harris and Harry Walsh ("Plaintiffs," for purposes of all New York Subclass Counts) incorporates by reference all preceding allegations as though fully set forth herein.

1330. Plaintiffs bring this Count on behalf of the New York Subclass.

1331. New York's General Business Law § 349 makes unlawful "[d]eceptive acts or practices in the conduct of any business, trade or commerce."

1332. In the course of Volkswagen's business, it willfully failed to disclose and actively concealed that the CleanDiesel engine system was non-EPA compliant, and the use of the

“defeat device” in Affected Vehicles as described above. Accordingly, Volkswagen engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices as defined in N.Y. GEN. BUS. LAW § 349, including representing that Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Affected Vehicles are of a particular standard and quality when they are not; advertising Affected Vehicles with the intent not to sell them as advertised; and otherwise engaging in conduct likely to deceive.

1333. Volkswagen’s actions as set forth above occurred in the conduct of trade or commerce.

1334. Because Volkswagen’s deception takes place in the context of automobile safety, its deception affects the public interest. Further, Volkswagen’s unlawful conduct constitutes unfair acts or practices that have the capacity to deceive consumers, and that have a broad impact on consumers at large.

1335. Volkswagen’s conduct proximately caused injuries to Plaintiffs and the other Class members.

1336. Plaintiffs and the other Class members were injured as a result of Volkswagen’s conduct in that Plaintiffs and the other Class members overpaid for their Affected Vehicles and did not receive the benefit of their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of Volkswagen’s misrepresentations and omissions.

**COUNT II**  
**VIOLATIONS OF NEW YORK GENERAL BUSINESS LAW § 350**  
**(N.Y. GEN. BUS. LAW § 350)**

1337. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1338. Plaintiffs bring this Count on behalf of the New York Subclass.

1339. New York's General Business Law § 350 makes unlawful "[f]alse advertising in the conduct of any business, trade or commerce[.]" False advertising includes "advertising, including labeling, of a commodity ... if such advertising is misleading in a material respect," taking into account "the extent to which the advertising fails to reveal facts material in the light of ... representations [made] with respect to the commodity...." N.Y. GEN. BUS. LAW § 350-a.

1340. Volkswagen caused to be made or disseminated throughout New York, through advertising, marketing, and other publications, statements that were untrue or misleading, and which were known, or which by the exercise of reasonable care should have been known to Volkswagen, to be untrue and misleading to consumers, including Plaintiffs and the other Class members.

1341. Volkswagen has violated N.Y. GEN. BUS. LAW § 350 because the misrepresentations and omissions regarding that the CleanDiesel engine system was non-EPA compliant, and the use of the "defeat device" in Affected Vehicles as described above, as well as the inherently defective nature of the CleanDiesel engine system as designed and sold by Volkswagen, were material and likely to deceive a reasonable consumer.

1342. Plaintiffs and the other Class members have suffered injury, including the loss of money or property, as a result of Volkswagen's false advertising. In purchasing or leasing their Affected Vehicles, Plaintiffs and the other Class members relied on the misrepresentations and/or omissions of Volkswagen with respect to the safety, quality, functionality, and reliability of the Affected Vehicles. Volkswagen's representations turned out to be untrue because the CleanDiesel engine system installed in Affected Vehicles did not comply with EPA regulations.

Had Plaintiffs and the other Class members known this, they would not have purchased or leased their Affected Vehicles and/or paid as much for them.

1343. Accordingly, Plaintiffs and the other Class members overpaid for their Affected Vehicles and did not receive the benefit of the bargain for their Affected Vehicles, which have also suffered diminution in value.

1344. Plaintiffs, individually and on behalf of the other Class members, request that this Court enter such orders or judgments as may be necessary to enjoin Volkswagen from continuing its unfair, unlawful and/or deceptive practices. Plaintiffs and the other Class members are also entitled to recover their actual damages or \$500, whichever is greater. Because Volkswagen acted willfully or knowingly, Plaintiffs and the other Class members are entitled to recover three times actual damages, up to \$10,000.

**COUNT III  
BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY  
(N.Y. U.C.C. § 2-314)**

1345. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

1346. Plaintiffs bring this Count on behalf of the New York Subclass.

1347. Volkswagen is and was at all relevant times a merchant with respect to motor vehicles.

1348. A warranty that the Affected Vehicles were in merchantable condition is implied by law in the instant transactions. These Affected Vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Affected Vehicles are inherently defective in that they do not comply with federal and state emissions standards, rendering certain safety and emissions functions inoperative; and the CleanDiesel engine system was not adequately designed, manufactured, and tested.

1349. Volkswagen was provided notice of these issues by the investigations of the EPA and individual state regulators, numerous complaints filed against it including the instant complaint, and by numerous individual letters and communications sent by Plaintiffs and other Class members before or within a reasonable amount of time after the allegations of Affected Vehicle defects became public.

1350. As a direct and proximate result of Volkswagen's breach of the warranties of merchantability, Plaintiffs and the other Class members have been damaged in an amount to be proven at trial.

**COUNT IV  
BREACH OF CONTRACT  
(BASED ON NEW YORK LAW)**

1351. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

1352. Plaintiff brings this Count on behalf of new vehicle or certified pre-owned vehicle purchasers in the New York Subclass.

1353. Volkswagen's misrepresentations and omissions alleged herein, including Volkswagen's failure to disclose the existence of the CleanDiesel engine system's defect and/or defective design as alleged herein, caused Plaintiff and the other New York Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiff and the other New York Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the CleanDiesel engine system and which were not marketed as including such a system. Accordingly, Plaintiff and the other New York Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

1354. Each and every sale or lease of an Affected Vehicle by an authorized Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the other New York Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose the existence of the CleanDiesel engine system's defect and/or defective design, including information known to Volkswagen rendering each Affected Vehicle non EPA-compliant, and thus less valuable, than vehicles not equipped with a CleanDiesel engine system.

1355. As a direct and proximate result of Volkswagen's breach of contract, Plaintiff and the New York Subclass have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

**COUNT V  
FRAUDULENT CONCEALMENT  
(BASED ON NEW YORK LAW)**

1356. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1357. Plaintiffs bring this Count on behalf of the New York Subclass.

1358. Volkswagen intentionally concealed that the CleanDiesel engine systems were not EPA-compliant and used a "defeat device," or acted with reckless disregard for the truth, and denied Plaintiffs and the other Class members information that is highly relevant to their purchasing decision.

1359. Volkswagen further affirmatively misrepresented to Plaintiffs in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles it was selling were new, had no significant defects, complied with EPA regulations and would perform and operate properly when driven in normal usage.

1360. Volkswagen knew these representations were false when made.

1361. The Affected Vehicles purchased or leased by Plaintiffs and the other Class members were, in fact, defective, non-EPA compliant, unsafe, and unreliable because the Affected Vehicles contained faulty and defective CleanDiesel engine system, as alleged herein.

1362. Volkswagen had a duty to disclose that these Affected Vehicles were defective, unsafe, non-EPA compliant and unreliable in that certain crucial emissions functions of the Affected Vehicles would be rendered inoperative due to the “defeat device” installed in the defective CleanDiesel engine system, because Plaintiffs and the other Class members relied on Volkswagen’s material representations that the Affected Vehicles they were purchasing were safe, environmentally clean, efficient and free from defects.

1363. The aforementioned concealment was material because if it had been disclosed Plaintiffs and the other Class members would not have bought or leased the Affected Vehicles, or would not have bought or leased those Vehicles at the prices they paid.

1364. The aforementioned representations were material because they were facts that would typically be relied on by a person purchasing or leasing a new motor vehicle. Volkswagen knew or recklessly disregarded that its representations were false because it knew that it had to use the “defeat device” in order for Affected Vehicles to pass EPA emissions requirements. Volkswagen intentionally made the false statements in order to sell Affected Vehicles.

1365. Plaintiffs and the other Class members relied on Volkswagen’s reputation – along with Volkswagen’s failure to disclose the faulty and defective nature of the CleanDiesel engine system and Volkswagen’s affirmative assurance that its Affected Vehicles were safe and reliable,

and complied with environmental regulations – in purchasing or leasing Volkswagen’s Affected Vehicles.

1366. As a result of their reliance, Plaintiffs and the other Class members have been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase or lease and/or the diminished value of their Affected Vehicles.

1367. Volkswagen’s conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class members. Plaintiffs and the other Class members are therefore entitled to an award of punitive damages.

**DD. Claims Brought on Behalf of the North Carolina Subclass**

**COUNT I  
VIOLATIONS OF THE NORTH CAROLINA UNFAIR  
AND DECEPTIVE TRADE PRACTICES ACT  
(N.C. GEN. STAT. §§ 75-1.1, *et seq.*)**

1368. Plaintiff Lori Edwards (“Plaintiff,” for purposes of all North Carolina Class Counts) incorporates by reference all preceding allegations as though fully set forth herein.

1369. Plaintiff brings this Count on behalf of the North Carolina Subclass.

1370. North Carolina’s Unfair and Deceptive Trade Practices Act, N.C. GEN. STAT. §§ 75-1.1, *et seq.* (“NCUDTPA”), prohibits a person from engaging in “[u]nfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce[.]” The NCUDTPA provides a private right of action for any person injured “by reason of any act or thing done by any other person, firm or corporation in violation of” the NCUDTPA. N.C. GEN. STAT. § 75-16.

1371. Volkswagen's acts and practices complained of herein were performed in the course of Volkswagen's trade or business and thus occurred in or affected "commerce," as defined in N.C. GEN. STAT. § 75-1.1(b).

1372. In the course of Volkswagen's business, it willfully failed to disclose and actively concealed that the CleanDiesel Engine System was non-EPA compliant, and the use of the "defeat device" in Affected Vehicles as described above. Accordingly, Volkswagen engaged in unlawful trade practices, including representing that Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Affected Vehicles are of a particular standard and quality when they are not; advertising Affected Vehicles with the intent not to sell them as advertised; and otherwise engaging in conduct likely to deceive.

1373. Volkswagen's conduct proximately caused injuries to Plaintiff and the other Class members.

1374. Volkswagen acted with willful and conscious disregard of the rights and safety of others, subjecting Plaintiff and the other Class members to cruel and unjust hardship as a result, such that an award of punitive damages is appropriate.

1375. Plaintiff and the other Class members were injured as a result of Volkswagen's conduct in that Plaintiff and the other Class members overpaid for their Affected Vehicles and did not receive the benefit of their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of Volkswagen's misrepresentations and omissions.

1376. Plaintiff, individually and on behalf of the other Class members, seeks treble damages pursuant to N.C. GEN. STAT. § 75-16, and an award of attorneys' fees pursuant to N.C. GEN. STAT. § 75-16.1.

**COUNT II**  
**BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**  
**(N.C. GEN. STAT. § 25-2-314)**

1377. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

1378. Plaintiffs bring this Count on behalf of the North Carolina Subclass.

1379. Volkswagen is and was at all relevant times a merchant with respect to motor vehicles.

1380. A warranty that the Affected Vehicles were in merchantable condition is implied by law in the instant transactions. These Affected Vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Affected Vehicles are inherently defective in that they do not comply with federal and state emissions standards, rendering certain safety and emissions functions inoperative; and the CleanDiesel engine system was not adequately designed, manufactured, and tested.

1381. Volkswagen was provided notice of these issues by the investigations of the EPA and individual state regulators, numerous complaints filed against it including the instant complaint, and by numerous individual letters and communications sent by Plaintiffs and other Class members before or within a reasonable amount of time after the allegations of Affected Vehicle defects became public.

1382. As a direct and proximate result of Volkswagen's breach of the warranties of merchantability, Plaintiffs and the other Class members have been damaged in an amount to be proven at trial.

**COUNT III**  
**BREACH OF CONTRACT**  
**(BASED ON NORTH CAROLINA LAW)**

1383. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

1384. Plaintiff brings this Count on behalf of new vehicle or certified pre-owned vehicle purchasers in the North Carolina Class.

1385. Volkswagen's misrepresentations and omissions alleged herein, including Volkswagen's failure to disclose the existence of the CleanDiesel engine system's defect and/or defective design as alleged herein, caused Plaintiff and the other North Carolina Class members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiff and the other North Carolina Class members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the CleanDiesel engine system and which were not marketed as including such a system. Accordingly, Plaintiff and the other North Carolina Class members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

1386. Each and every sale or lease of an Affected Vehicle by an authorized Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the other North Carolina Class members defective Affected Vehicles and by misrepresenting or failing to disclose the existence of the CleanDiesel engine system's defect and/or defective design, including information known to Volkswagen rendering each Affected Vehicle non EPA-compliant, and thus less valuable, than vehicles not equipped with a CleanDiesel engine system.

1387. As a direct and proximate result of Volkswagen's breach of contract, Plaintiff and the North Carolina Class have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

**COUNT IV  
FRAUDULENT CONCEALMENT  
(BASED ON NORTH CAROLINA LAW)**

1388. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

1389. Plaintiff brings this Count on behalf of the North Carolina Class.

1390. Volkswagen intentionally concealed that the CleanDiesel engine systems were not EPA-compliant and used a “defeat device,” or acted with reckless disregard for the truth, and denied Plaintiff and the other Class members information that is highly relevant to their purchasing decision.

1391. Volkswagen further affirmatively misrepresented to Plaintiff in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles it was selling were new, had no significant defects, complied with EPA regulations and would perform and operate properly when driven in normal usage.

1392. Volkswagen knew these representations were false when made.

1393. The Affected Vehicles purchased or leased by Plaintiff and the other Class members were, in fact, defective, non-EPA compliant, unsafe, and unreliable because the Affected Vehicles contained faulty and defective CleanDiesel engine system, as alleged herein.

1394. Volkswagen had a duty to disclose that these Affected Vehicles were defective, unsafe, non-EPA compliant and unreliable in that certain crucial emissions functions of the Affected Vehicles would be rendered inoperative due to the “defeat device” installed in the defective CleanDiesel engine system, because Plaintiff and the other Class members relied on Volkswagen’s material representations that the Affected Vehicles they were purchasing were safe, environmentally clean, efficient and free from defects.

1395. The aforementioned concealment was material because if it had been disclosed Plaintiff and the other Class members would not have bought or leased the Affected Vehicles, or would not have bought or leased those Vehicles at the prices they paid.

1396. The aforementioned representations were material because they were facts that would typically be relied on by a person purchasing or leasing a new motor vehicle. Volkswagen knew or recklessly disregarded that its representations were false because it knew that it had to use the “defeat device” in order for Affected Vehicles to pass EPA emissions requirements. Volkswagen intentionally made the false statements in order to sell Affected Vehicles.

1397. Plaintiff and the other Class members relied on Volkswagen’s reputation – along with Volkswagen’s failure to disclose the faulty and defective nature of the CleanDiesel engine system and Volkswagen’s affirmative assurance that its Affected Vehicles were safe and reliable, and other similar false statements – in purchasing or leasing Volkswagen’s Affected Vehicles.

1398. As a result of their reliance, Plaintiff and the other Class members have been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase or lease and/or the diminished value of their Affected Vehicles.

1399. Volkswagen’s conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of Plaintiff and the other Class members. Plaintiff and the other Class members are therefore entitled to an award of punitive damages.

**EE. Claims Brought on Behalf of the Ohio Subclass**

**COUNT I  
VIOLATIONS OF THE CONSUMER SALES PRACTICES ACT  
(OHIO REV. CODE §§ 1345.01, *et seq.*)**

1400. Plaintiff Craig Lybarger (“Plaintiff,” for purposes of all Ohio Subclass Counts) incorporates by reference all preceding allegations as though fully set forth herein.

1401. Plaintiff brings this Count on behalf of the Ohio Subclass.

1402. Plaintiff and the other Ohio Subclass members are “consumers” as defined by the Ohio Consumer Sales Practices Act, Ohio Rev. Code § 1345.01 (“OCSPA”). Volkswagen is a “supplier” as defined by the OCSPA. Plaintiff’s and the other Ohio Subclass members’ purchases or leases of Affected Vehicles were “consumer transactions” as defined by the OCSPA.

1403. By failing to disclose and actively concealing that the CleanDiesel engine systems were not EPA-compliant and used a “defeat device” in the Affected Vehicles, Volkswagen engaged in deceptive business practices prohibited by the OCSPA, including (1) representing that Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have, (2) representing that Affected Vehicles are of a particular standard, quality, and grade when they are not, (3) advertising Affected Vehicles with the intent not to sell them as advertised, and (4) engaging in acts or practices which are otherwise unfair, misleading, false, or deceptive to the consumer.

1404. As alleged above, Volkswagen made numerous material statements about the benefits and characteristics of the CleanDiesel engine system that were either false or misleading. Each of these statements contributed to the deceptive context of Volkswagen’s unlawful advertising and representations as a whole.

1405. Volkswagen knew that the CleanDiesel engine system in the Affected Vehicles were defectively designed or manufactured, did not comply with EPA regulations and the Clean Air Act, and were not suitable for their intended use. Volkswagen nevertheless failed to warn Plaintiff about these defects despite having a duty to do so.

1406. Volkswagen owed Plaintiff a duty to disclose the defective nature of the CleanDiesel engine system in the Affected Vehicles, because Volkswagen:

- i) Possessed exclusive knowledge of the defects rendering the Affected Vehicles more unreliable than similar vehicles;
- ii) Intentionally concealed the use and installation of the “defeat device” that Volkswagen that it designed to hide the defects in the CleanDiesel engine system; and/or
- iii) Made incomplete representations about the characteristics and performance of the CleanDiesel engine system generally, while purposefully withholding material facts from Plaintiff that contradicted these representations.

1407. Volkswagen’s unfair or deceptive acts or practices were likely to, and did in fact, deceive reasonable consumers, including Plaintiff, about the true performance and characteristics of the CleanDiesel engine system.

1408. The Ohio Attorney General has made available for public inspection prior state court decisions which have held that the acts and omissions of Volkswagen in this Complaint, including, but not limited to, the failure to honor both implied warranties and express warranties, the making and distribution of false, deceptive, and/or misleading representations, and the concealment and/or non-disclosure of a dangerous defect, constitute deceptive sales practices in violation of the OCSPA. These cases include, but are not limited to, the following:

- a. *Mason v. Mercedes Benz USA, LLC* (OPIF #10002382);
- b. *State ex rel. Betty D. Montgomery v. Volkswagen Motor Co.* (OPIF #10002123);
- c. *State ex rel. Betty D. Montgomery v. Bridgestone/Firestone, Inc.* (OPIF #10002025);

- d. *Bellinger v. Hewlett-Packard Co.*, No. 20744, 2002 Ohio App. LEXIS 1573 (Ohio Ct. App. Apr. 10, 2002) (OPIF #10002077);
- e. *Borror v. MarineMax of Ohio*, No. OT-06-010, 2007 Ohio App. LEXIS 525 (Ohio Ct. App. Feb. 9, 2007) (OPIF #10002388);
- f. *State ex rel. Jim Petro v. Craftmatic Organization, Inc.* (OPIF #10002347);
- g. *Mark J. Craw Volkswagen, et al. v. Joseph Airport Toyota, Inc.* (OPIF #10001586);
- h. *State ex rel. William J. Brown v. Harold Lyons, et al.* (OPIF #10000304);
- i. *Brinkman v. Mazda Motor of America, Inc.* (OPIF #10001427);
- j. *Khouri v. Don Lewis* (OPIF #100001995);
- k. *Mosley v. Performance Mitsubishi aka Automanage* (OPIF #10001326);
- l. *Walls v. Harry Williams dba Butch's Auto Sales* (OPIF #10001524); and
- m. *Brown v. Spears* (OPIF #10000403).

1409. As a result of its violations of the OCSA, as detailed above, Volkswagen caused actual damage to Plaintiff and, if not stopped, will continue to harm Plaintiff. Plaintiff currently owns or leases, or within the class period has owned or leased, an Affected Vehicle that is defective. Defects associated with the CleanDiesel engine system have caused the value of Affected Vehicles to decrease.

1410. Plaintiff and the Class sustained damages as a result of Volkswagen's unlawful acts and are, therefore, entitled to damages and other relief as provided under the OCSA.

1411. Plaintiff also seeks court costs and attorneys' fees as a result of Volkswagen's violations of the OCSA as provided in Ohio Rev. Code § 1345.09.

**COUNT II**  
**BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**  
**(OHIO REV. CODE ANN. § 1302.27 (U.C.C. § 2-314))**

1412. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

1413. Plaintiffs bring this Count on behalf of the Ohio Subclass.

1414. Volkswagen is and was at all relevant times a merchant with respect to motor vehicles.

1415. A warranty that the Affected Vehicles were in merchantable condition is implied by law in the instant transactions. These Affected Vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Affected Vehicles are inherently defective in that they do not comply with federal and state emissions standards, rendering certain safety and emissions functions inoperative; and the CleanDiesel engine system was not adequately designed, manufactured, and tested.

1416. Volkswagen was provided notice of these issues by the investigations of the EPA and individual state regulators, numerous complaints filed against it including the instant complaint, and by numerous individual letters and communications sent by Plaintiffs and other Class members before or within a reasonable amount of time after the allegations of Affected Vehicle defects became public.

1417. As a direct and proximate result of Volkswagen's breach of the warranties of merchantability, Plaintiffs and the other Class members have been damaged in an amount to be proven at trial.

**COUNT III  
BREACH OF CONTRACT  
(BASED ON OHIO LAW)**

1418. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

1419. Plaintiff brings this Count on behalf of new vehicle or certified pre-owned vehicle purchasers in the Ohio Subclass.

1420. Volkswagen's misrepresentations and omissions alleged herein, including Volkswagen's failure to disclose the existence of the CleanDiesel engine system's defect and/or

defective design as alleged herein, caused Plaintiff and the other Ohio Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiff and the other Ohio Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the CleanDiesel engine system and which were not marketed as including such a system. Accordingly, Plaintiff and the other Ohio Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

1421. Each and every sale or lease of an Affected Vehicle by an authorized Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the other Ohio Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose the existence of the CleanDiesel engine system's defect and/or defective design, including information known to Volkswagen, rendering each Affected Vehicle non-EPA-compliant, and thus less valuable, than vehicles not equipped with a CleanDiesel engine system.

1422. As a direct and proximate result of Volkswagen's breach of contract, Plaintiff and the Ohio Subclass have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

**COUNT IV  
FRAUDULENT CONCEALMENT  
(BASED ON OHIO LAW)**

1423. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

1424. Plaintiff brings this Count on behalf of the Ohio Subclass.

1425. Volkswagen intentionally concealed that the CleanDiesel engine systems were not EPA-compliant and used a “defeat device,” or acted with reckless disregard for the truth, and denied Plaintiff and the other Class members information that is highly relevant to their purchasing decision.

1426. Volkswagen further affirmatively misrepresented to Plaintiff in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles it was selling were new, had no significant defects, complied with EPA regulations and would perform and operate properly when driven in normal usage.

1427. Volkswagen knew these representations were false when made.

1428. The Affected Vehicles purchased or leased by Plaintiff and the other Class members were, in fact, defective, non-EPA compliant, unsafe, and unreliable because the Affected Vehicles contained the faulty and defective CleanDiesel engine system, as alleged herein.

1429. Volkswagen had a duty to disclose that these Affected Vehicles were defective, unsafe, non-EPA compliant and unreliable in that certain crucial emissions functions of the Affected Vehicles would be rendered inoperative due to the “defeat device” installed in the defective CleanDiesel engine system, because Plaintiff and the other Class members relied on Volkswagen’s material representations that the Affected Vehicles they were purchasing were safe, environmentally clean, efficient and free from defects.

1430. The aforementioned concealment was material because if it had been disclosed Plaintiff and the other Class members would not have bought or leased the Affected Vehicles, or would not have bought or leased those Vehicles at the prices they paid.

1431. The aforementioned representations were material because they were facts that would typically be relied on by a person purchasing or leasing a new motor vehicle. Volkswagen knew or recklessly disregarded that its representations were false because it knew that it had to use the “defeat device” in order for Affected Vehicles to pass EPA emissions requirements. Volkswagen intentionally made the false statements in order to sell Affected Vehicles.

1432. Plaintiff and the other Class members relied on Volkswagen’s reputation – along with Volkswagen’s failure to disclose the faulty and defective nature of the CleanDiesel engine system and Volkswagen’s affirmative assurance that its Affected Vehicles were safe and reliable, and other similar false statements – in purchasing or leasing Volkswagen’s Affected Vehicles.

1433. As a result of their reliance, Plaintiff and the other Class members have been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase or lease and/or the diminished value of their Affected Vehicles.

1434. Volkswagen’s conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of Plaintiff and the other Class members. Plaintiff and the other Class members are therefore entitled to an award of punitive damages.

**FF. Claims Brought on Behalf of the Oregon Subclass**

**COUNT I  
VIOLATION OF THE OREGON UNLAWFUL TRADE PRACTICES ACT  
(OR. REV. STAT. §§ 646.605, *et seq.*)**

1435. Plaintiffs Joan Dudley, Thomas Ayala and David Marcyan (“Plaintiffs,” for purposes of all Oregon Subclass Counts) incorporate by reference all preceding allegations as though fully set forth herein.

1436. This claim is brought only on behalf of the Oregon Subclass.

1437. Volkswagen is a person within the meaning of OR. REV. STAT. § 646.605(4).

1438. The Affected Vehicles at issue are “goods” obtained primarily for personal family or household purposes within the meaning of OR. REV. STAT. § 646.605(6).

1439. The Oregon Unfair Trade Practices Act (“Oregon UTPA”) prohibits a person from, in the course of the person’s business, doing any of the following: “(e) Represent[ing] that ... goods ... have ... characteristics ... uses, benefits, ... or qualities that they do not have; (g) Represent[ing] that ... goods ... are of a particular standard [or] quality ... if they are of another; (i) Advertis[ing] ... goods or services with intent not to provide them as advertised;” and “(u) engag[ing] in any other unfair or deceptive conduct in trade or commerce.” OR. REV. STAT. § 646.608(1).

1440. Volkswagen engaged in unlawful trade practices, including representing that Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Affected Vehicles are of a particular standard and quality when they are not; advertising Affected Vehicles with the intent not to sell them as advertised; and engaging in other unfair or deceptive acts.

1441. Volkswagen also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Affected Vehicles.

1442. Volkswagen’s actions as set forth above occurred in the conduct of trade or commerce.

1443. Volkswagen has known of its use of the “defeat device” and the true nature of its CleanDiesel engine system for at least six years, but concealed all of that information until recently.

1444. Volkswagen was also aware that it valued profits over environmental cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles throughout the United States that did not comply with EPA regulations. Volkswagen concealed this information as well.

1445. By failing to disclose and by actively concealing the “defeat device” and the true cleanliness and performance of the CleanDiesel engine system, by marketing its vehicles as safe, reliable, environmentally clean, efficient, and of high quality, and by presenting itself as a reputable manufacturer that valued safety, environmental cleanliness and efficiency, and stood behind its vehicles after they were sold, Volkswagen engaged in deceptive business practices in violation of the Oregon UTPA.

1446. In the course of Volkswagen’s business, it willfully failed to disclose and actively concealed the use of the “defeat device” and true cleanliness and efficiency of the CleanDiesel engine system and serious defects discussed above. Volkswagen compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable, environmentally clean, efficient, and of high quality, and by claiming to be a reputable manufacturer that valued safety, environmental cleanliness and efficiency, and stood behind its vehicles once they are on the road.

1447. Volkswagen’s unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiff, about the true cleanliness and efficiency of the CleanDiesel engine system, the quality of the Volkswagen and Audi brands, the devaluing of

environmental cleanliness and integrity at Volkswagen, and the true value of the Affected Vehicles.

1448. Volkswagen intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiff and the Oregon Subclass.

1449. Volkswagen knew or should have known that its conduct violated the Oregon UTPA.

1450. As alleged above, Volkswagen made material statements about the safety, cleanliness, efficiency and reliability of the Affected Vehicles that were either false or misleading.

1451. Volkswagen owed Plaintiff a duty to disclose the true safety, cleanliness, efficiency and reliability of the Affected Vehicles, and the devaluing of environmental cleanliness and integrity at Volkswagen, because Volkswagen:

- a. Possessed exclusive knowledge that it valued profits over environmental cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles throughout the United States that did not comply with EPA regulations;
- b. Intentionally concealed the foregoing from Plaintiff; and/or
- c. Made incomplete representations about the safety, cleanliness, efficiency and reliability of the Affected Vehicles generally, and the use of the “defeat device” and true nature of the CleanDiesel engine system in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

1452. Because Volkswagen fraudulently concealed the “defeat device” and the true cleanliness and performance of the CleanDiesel engine system, resulting in a raft of negative publicity once the use of the “defeat device” and true characteristics of the CleanDiesel engine system finally began to be disclosed, the value of the Affected Vehicles has greatly diminished.

In light of the stigma attached to those vehicles by Volkswagen's conduct, they are now worth significantly less than they otherwise would be.

1453. Volkswagen's fraudulent use of the "defeat device" and its concealment of the true characteristics of the CleanDiesel engine system were material to Plaintiff and the Oregon Subclass. A vehicle made by a reputable manufacturer of environmentally friendly vehicles is worth more than an otherwise comparable vehicle made by a disreputable and dishonest manufacturer of polluting vehicles that conceals the amount its cars pollutes rather than make environmentally friendly vehicles.

1454. Plaintiff and the Oregon Subclass suffered ascertainable loss caused by Volkswagen's misrepresentations and its concealment of and failure to disclose material information.

1455. Volkswagen had an ongoing duty to all Volkswagen and Audi customers to refrain from unfair and deceptive acts or practices under the Oregon UTPA. All owners of Affected Vehicles suffered ascertainable loss in the form of the diminished value of their vehicles as a result of Volkswagen's deceptive and unfair acts and practices that occurred in the course of Volkswagen's business.

1456. Volkswagen's violations present a continuing risk to Plaintiff as well as to the general public. Volkswagen's unlawful acts and practices complained of herein affect the public interest.

1457. As a direct and proximate result of Volkswagen's violations of the Oregon UTPA, Plaintiff and the Oregon Subclass have suffered injury-in-fact and/or actual damage.

1458. Plaintiff and the Oregon Subclass are entitled to recover the greater of actual damages or \$200 pursuant to OR. REV. STAT. § 646.638(1). Plaintiff and the Oregon Subclass

are also entitled to punitive damages because Volkswagen engaged in conduct amounting to a particularly aggravated, deliberate disregard of the rights of others.

**COUNT II  
FRAUD BY CONCEALMENT**

1459. Plaintiff realleges and incorporates by reference all paragraphs as though fully set forth herein.

1460. This claim is brought on behalf of the Oregon Subclass.

1461. Volkswagen intentionally concealed and suppressed material facts concerning the quality of the Affected Vehicles. As alleged in this Complaint, notwithstanding references in the very model names of the subject vehicles as “Clean Diesel,” or to their engines as “TDI Clean Diesel” engines, Volkswagen engaged in a secret scheme to evade federal and state vehicle emissions standards by installing software designed to conceal its vehicles’ emissions of the pollutant nitrogen oxide, which contributes to the creation of ozone and smog. The software installed on the vehicles at issue was designed nefariously to kick-in during emissions certification testing, such that the vehicles would show far lower emissions than when actually operating on the road. The result was what Volkswagen intended: vehicles passed emissions certifications by way of deliberately induced false readings. Reportedly, Volkswagen’s deliberate, secret scheme resulted in noxious emissions from these vehicles at up to 40 times applicable standards.

1462. Plaintiffs and Class members reasonably relied upon Volkswagen’s false representations. They had no way of knowing that Volkswagen’s representations were false and gravely misleading. As alleged herein, Volkswagen employed extremely sophisticated methods of deception. Plaintiffs and Class members did not, and could not, unravel Volkswagen’s deception on their own.

1463. Volkswagen concealed and suppressed material facts concerning what is evidently the true culture of Volkswagen—one characterized by an emphasis on profits and sales above compliance with federal and state clean air laws, and emissions regulations that are meant to protect the public and consumers. It also emphasized profits and sales over the trust that Plaintiffs and Class members placed in its representations. As one customer, Priya Shah, put it in a quotation cited by the *Los Angeles Times* in a September 18, 2015 article, “It’s just a blatant disregard and intentional manipulation of the system. That’s just a whole other level of not only lying to the government, but also lying to your consumer. People buy diesel cars from Volkswagen because they feel they are clean diesel cars.” In the words of Ms. Shah, which no doubt reflect the sentiments of all other CleanDiesel vehicle buyers, “I don’t want to be spewing noxious gases into the environment.”

1464. Necessarily, Volkswagen also took steps to ensure that its employees did not reveal the details of its scheme to regulators or consumers, including Plaintiffs and Class members. Volkswagen did so in order to boost the reputations of its vehicles and to falsely assure purchasers and lessors of its vehicles, including previously owned vehicles, that Volkswagen is a reputable manufacturer that complies with applicable law, including federal and state clean air laws and emissions regulations, and that its vehicles likewise comply with applicable laws and regulations. Volkswagen’s false representations were material to consumers, both because they concerned the quality of the Affected Vehicles, including their compliance with applicable federal and state laws and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As Volkswagen well knew, its customers, including Plaintiffs and Class members,

highly valued that the vehicles they were purchasing or leasing were *clean* diesel cars, and they paid accordingly.

1465. Volkswagen had a duty to disclose its emissions scheme because knowledge of the scheme and its details were known and/or accessible only to Volkswagen, because Volkswagen had exclusive knowledge as to implementation and maintenance of its scheme, and because Volkswagen knew the facts were not known to or reasonably discoverable by Plaintiffs or Class members. Volkswagen also had a duty to disclose because it made general affirmative representations about the qualities of its vehicles with respect to emissions standards, starting with references to them as *clean* diesel cars, or cars with *clean* diesel engines, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding its emissions scheme, the actual emissions of its vehicles, its actual philosophy with respect to compliance with federal and state clean air laws and emissions regulations, and its actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs, Volkswagen had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and Class members. Whether a manufacturer's products comply with federal and state clean air laws and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certification testing their vehicles must pass. Volkswagen represented to Plaintiffs and Class members that they were purchasing *clean* diesel vehicles, and certification testing appeared to confirm this—except that, secretly, Volkswagen had subverted the testing process thoroughly.

1466. Volkswagen actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect its profits and to avoid the perception that its vehicles did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost Volkswagen money, and it did so at the expense of Plaintiffs and Class members.

1467. On information and belief, Volkswagen has still not made full and adequate disclosures, and continues to defraud Plaintiffs and Class members by concealing material information regarding the emission qualities of its vehicles and its emissions scheme.

1468. Plaintiffs and Class members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly "clean" diesel cars manufactured by Volkswagen, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiffs' and Class members' actions were justified. Volkswagen was in exclusive control of the material facts, and such facts were not known to the public, Plaintiffs, or Class members.

1469. Because of the concealment and/or suppression of the facts, Plaintiffs and Class members have sustained damage because they own vehicles that are diminished in value as a result of Volkswagen's concealment of the true quality and quantity of those vehicles' emissions and Volkswagen's failure to timely disclose the actual emission qualities and quantities of hundreds of thousands of Volkswagen- and Audi-branded vehicles and the serious issues engendered by Volkswagen's corporate policies. Had Plaintiffs and Class members been aware of Volkswagen's emissions scheme, and the company's callous disregard for compliance with

applicable federal and state laws and regulations, Plaintiffs and Class members who purchased or leased new or previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

1470. The value of Plaintiffs' and Class members' vehicles has diminished as a result of Volkswagen's fraudulent concealment of its emissions scheme, which has greatly tarnished the Volkswagen and Audi brand names attached to Plaintiffs' and Class members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles. In addition, Class members are entitled to damages for loss of use, costs of additional fuel, costs of unused warranties, and other damages to be proved at trial.

1471. Accordingly, Volkswagen is liable to Plaintiffs and Class members for damages in an amount to be proven at trial.

1472. Volkswagen's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Class members' rights and the representations that Volkswagen made to them, in order to enrich Volkswagen. To the extent permitted under applicable law, Volkswagen's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

**COUNT III**  
**BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**  
**(OR. REV. STAT. § 72.3140)**

1473. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

1474. Plaintiffs bring this Count on behalf of the Oregon Subclass.

1475. Volkswagen is and was at all relevant times a merchant with respect to motor vehicles.

1476. A warranty that the Affected Vehicles were in merchantable condition is implied by law in the instant transactions. These Affected Vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Affected Vehicles are inherently defective in that they do not comply with federal and state emissions standards, rendering certain safety and emissions functions inoperative; and the CleanDiesel engine system was not adequately designed, manufactured, and tested.

1477. Volkswagen was provided notice of these issues by the investigations of the EPA and individual state regulators, numerous complaints filed against it including the instant complaint, and by numerous individual letters and communications sent by Plaintiffs and other Class members before or within a reasonable amount of time after the allegations of Affected Vehicle defects became public.

1478. As a direct and proximate result of Volkswagen's breach of the warranties of merchantability, Plaintiffs and the other Class members have been damaged in an amount to be proven at trial.

**COUNT IV  
BREACH OF CONTRACT  
(BASED ON OREGON LAW)**

1479. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

1480. Plaintiff brings this Count on behalf of new vehicle or certified pre-owned vehicle purchasers in the Oregon Subclass.

1481. Volkswagen's misrepresentations and omissions alleged herein, including Volkswagen's failure to disclose the existence of the CleanDiesel engine system's defect and/or defective design as alleged herein, caused Plaintiff and the other Oregon Subclass members to

make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiff and the other Oregon Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the CleanDiesel engine system and which were not marketed as including such a system. Accordingly, Plaintiff and the other Oregon Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

1482. Each and every sale or lease of an Affected Vehicle by an authorized Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the other Oregon Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose the existence of the CleanDiesel engine system's defect and/or defective design, including information known to Volkswagen, rendering each Affected Vehicle non-EPA-compliant, and thus less valuable, than vehicles not equipped with a CleanDiesel engine system.

1483. As a direct and proximate result of Volkswagen's breach of contract, Plaintiff and the Oregon Subclass have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

**GG. Claims Brought on Behalf of the Pennsylvania Subclass**

**COUNT I  
VIOLATION OF THE PENNSYLVANIA UNFAIR TRADE PRACTICES  
AND CONSUMER PROTECTION LAW  
(73 P.S. § 201-1, *et seq.*)**

1484. Plaintiff Brian Bialecki ("Plaintiff," for purposes of all Pennsylvania Subclass Counts) incorporates by reference all preceding allegations as though fully set forth herein.

1485. This claim is brought only on behalf of the Pennsylvania Subclass.

1486. Plaintiffs purchased or leased their Affected Vehicles primarily for personal, family or household purposes within the meaning of 73 P.S. § 201-9.2.

1487. All of the acts complained of herein were perpetrated by Volkswagen in the course of trade or commerce within the meaning of 73 P.S. § 201-2(3).

1488. The Pennsylvania Unfair Trade Practices and Consumer Protection Law (“Pennsylvania CPL”) prohibits unfair or deceptive acts or practices, including: (i) “Representing that goods or services have ... characteristics, .... Benefits or qualities that they do not have;” (ii) “Representing that goods or services are of a particular standard, quality or grade ... if they are of another;” (iii) “Advertising goods or services with intent not to sell them as advertised;” and (iv) “Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or misunderstanding.” 73 P.S. § 201-2(4).

1489. Volkswagen engaged in unlawful trade practices, including representing that Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Affected Vehicles are of a particular standard and quality when they are not; advertising Affected Vehicles with the intent not to sell them as advertised; and engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding.

1490. In the course of its business, Volkswagen installed the “defeat device” and concealed that its CleanDiesel systems failed EPA regulations as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Volkswagen also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that

others rely upon such concealment, suppression or omission, in connection with the sale of Affected Vehicles.

1491. Volkswagen has known of its use of the “defeat device” and the true nature of its CleanDiesel engine system for at least six years, but concealed all of that information until recently.

1492. Volkswagen was also aware that it valued profits over environmental cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles throughout the United States that did not comply with EPA regulations. Volkswagen concealed this information as well.

1493. By failing to disclose and by actively concealing the “defeat device” and the true cleanliness and performance of the CleanDiesel engine system, by marketing its vehicles as safe, reliable, environmentally clean, efficient, and of high quality, and by presenting itself as a reputable manufacturer that valued safety, environmental cleanliness and efficiency, and stood behind its vehicles after they were sold, Volkswagen engaged in unfair and deceptive business practices in violation of the Pennsylvania CPL.

1494. In the course of Volkswagen’s business, it willfully failed to disclose and actively concealed the use of the “defeat device” and true cleanliness and efficiency of the CleanDiesel engine system and serious defects discussed above. Volkswagen compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable, environmentally clean, efficient, and of high quality, and by claiming to be a reputable manufacturer that valued safety, environmental cleanliness and efficiency, and stood behind its vehicles once they are on the road.

1495. Volkswagen’s unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiff, about the true cleanliness and efficiency of

the CleanDiesel engine system, the quality of the Volkswagen and Audi brands, the devaluing of environmental cleanliness and integrity at Volkswagen, and the true value of the Affected Vehicles.

1496. Volkswagen intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiff and the Pennsylvania Subclass.

1497. Volkswagen knew or should have known that its conduct violated the Pennsylvania CPL.

1498. As alleged above, Volkswagen made material statements about the safety, cleanliness, efficiency and reliability of the Affected Vehicles and the Volkswagen and Audi brands that were either false or misleading.

1499. Volkswagen owed Plaintiffs a duty to disclose the true safety, cleanliness, efficiency and reliability of the Affected Vehicles and the devaluing of environmental cleanliness and integrity at Volkswagen, because Volkswagen:

- a. Possessed exclusive knowledge that it valued profits over environmental cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles throughout the United States that did not comply with EPA regulations;
- b. Intentionally concealed the foregoing from Plaintiffs; and/or
- c. Made incomplete representations about the safety, cleanliness, efficiency and reliability of the Affected Vehicles generally, and the use of the “defeat device” and true nature of the CleanDiesel engine system in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

1500. Because Volkswagen fraudulently concealed the “defeat device” and the true cleanliness and performance of the CleanDiesel engine system, resulting in a raft of negative publicity once the use of the “defeat device” and true characteristics of the CleanDiesel engine

system finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by Volkswagen's conduct, they are now worth significantly less than they otherwise would be.

1501. Volkswagen's fraudulent use of the "defeat device" and its concealment of the true characteristics of the CleanDiesel engine system were material to Plaintiffs and the Pennsylvania Subclass. A vehicle made by a reputable manufacturer of environmentally friendly vehicles is worth more than an otherwise comparable vehicle made by a disreputable and dishonest manufacturer of polluting vehicles that conceals the amount its cars pollutes rather than make environmentally friendly vehicles.

1502. Plaintiffs and the Pennsylvania Subclass suffered ascertainable loss caused by Volkswagen's misrepresentations and its concealment of and failure to disclose material information.

1503. Volkswagen had an ongoing duty to all Volkswagen and Audi customers to refrain from unfair and deceptive acts or practices under the Pennsylvania CPL. All owners of Affected Vehicles suffered ascertainable loss in the form of the diminished value of their vehicles as a result of Volkswagen's deceptive and unfair acts and practices that occurred in the course of Volkswagen's business.

1504. Volkswagen's violations present a continuing risk to Plaintiffs as well as to the general public. Volkswagen's unlawful acts and practices complained of herein affect the public interest.

1505. As a direct and proximate result of Volkswagen's violations of the Pennsylvania CPL, Plaintiffs and the Pennsylvania Subclass have suffered injury-in-fact and/or actual damage.

1506. Volkswagen is liable to Plaintiffs and the Pennsylvania Subclass for treble their actual damages or \$100, whichever is greater, and attorneys' fees and costs. 73 P.S. § 201-9.2(a). Plaintiffs and the Pennsylvania Subclass are also entitled to an award of punitive damages given that Volkswagen's conduct was malicious, wanton, willful, oppressive, or exhibited a reckless indifference to the rights of others.

**COUNT II  
FRAUD BY CONCEALMENT**

1507. Plaintiff realleges and incorporates by reference all paragraphs as though fully set forth herein.

1508. This claim is brought on behalf of the Pennsylvania Subclass.

1509. Volkswagen intentionally concealed and suppressed material facts concerning the quality of the Affected Vehicles. As alleged in this Complaint, notwithstanding references in the very model names of the subject vehicles as "Clean Diesel," or to their engines as "TDI Clean Diesel" engines, Volkswagen engaged in a secret scheme to evade federal and state vehicle emissions standards by installing software designed to conceal its vehicles' emissions of the pollutant nitrogen oxide, which contributes to the creation of ozone and smog. The software installed on the vehicles at issue was designed nefariously to kick-in during emissions certification testing, such that the vehicles would show far lower emissions than when actually operating on the road. The result was what Volkswagen intended: vehicles passed emissions certifications by way of deliberately induced false readings. Reportedly, Volkswagen's deliberate, secret scheme resulted in noxious emissions from these vehicles at up to 40 times applicable standards.

1510. Plaintiffs and Class members reasonably relied upon Volkswagen's false representations. They had no way of knowing that Volkswagen's representations were false and

gravely misleading. As alleged herein, Volkswagen employed extremely sophisticated methods of deception. Plaintiffs and Class members did not, and could not, unravel Volkswagen's deception on their own.

1511. Volkswagen concealed and suppressed material facts concerning what is evidently the true culture of Volkswagen—one characterized by an emphasis on profits and sales above compliance with federal and state clean air laws, and emissions regulations that are meant to protect the public and consumers. It also emphasized profits and sales over the trust that Plaintiffs and Class members placed in its representations. As one customer, Priya Shah, put it in a quotation cited by the *Los Angeles Times* in a September 18, 2015 article, “It’s just a blatant disregard and intentional manipulation of the system. That’s just a whole other level of not only lying to the government, but also lying to your consumer. People buy diesel cars from Volkswagen because they feel they are clean diesel cars.” In the words of Ms. Shah, which no doubt reflect the sentiments of all other CleanDiesel vehicle buyers, “I don’t want to be spewing noxious gases into the environment.”

1512. Necessarily, Volkswagen also took steps to ensure that its employees did not reveal the details of its scheme to regulators or consumers, including Plaintiffs and Class members. Volkswagen did so in order to boost the reputations of its vehicles and to falsely assure purchasers and lessors of its vehicles, including previously owned vehicles, that Volkswagen is a reputable manufacturer that complies with applicable law, including federal and state clean air laws and emissions regulations, and that its vehicles likewise comply with applicable law and regulations. Volkswagen’s false representations were material to consumers, both because they concerned the quality of the Affected Vehicles, including their compliance with applicable federal and state laws and regulations regarding clean air and emissions, and also

because the representations played a significant role in the value of the vehicles. As Volkswagen well knew, its customers, including Plaintiffs and Class members, highly valued that the vehicles they were purchasing or leasing were *clean* diesel cars, and they paid accordingly.

1513. Volkswagen had a duty to disclose its emissions scheme because knowledge of the scheme and its details were known and/or accessible only to Volkswagen, because Volkswagen had exclusive knowledge as to implementation and maintenance of its scheme, and because Volkswagen knew the facts were not known to or reasonably discoverable by Plaintiffs or Class members. Volkswagen also had a duty to disclose because it made general affirmative representations about the qualities of its vehicles with respect to emissions standards, starting with references to them as *clean* diesel cars, or cars with *clean* diesel engines, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding its emissions scheme, the actual emissions of its vehicles, its actual philosophy with respect to compliance with federal and state clean air laws and emissions regulations, and its actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs, Volkswagen had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and Class members. Whether a manufacturer's products comply with federal and state clean air laws and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certification testing their vehicles must pass. Volkswagen represented to Plaintiffs and Class members that they were purchasing *clean* diesel vehicles, and certification testing appeared to confirm this—except that, secretly, Volkswagen had subverted the testing process thoroughly.

1514. Volkswagen actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect its profits and to avoid the perception that its vehicles did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost Volkswagen money, and it did so at the expense of Plaintiffs and Class members.

1515. On information and belief, Volkswagen has still not made full and adequate disclosures, and continues to defraud Plaintiffs and Class members by concealing material information regarding the emission qualities of its vehicles and its emissions scheme.

1516. Plaintiffs and Class members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly "clean" diesel cars manufactured by Volkswagen, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiffs' and Class members' actions were justified. Volkswagen was in exclusive control of the material facts, and such facts were not known to the public, Plaintiffs, or Class members.

1517. Because of the concealment and/or suppression of the facts, Plaintiffs and Class members have sustained damage because they own vehicles that are diminished in value as a result of Volkswagen's concealment of the true quality and quantity of those vehicles' emissions and Volkswagen's failure to timely disclose the actual emission qualities and quantities of hundreds of thousands of Volkswagen- and Audi-branded vehicles and the serious issues engendered by Volkswagen's corporate policies. Had Plaintiffs and Class members been aware of Volkswagen's emissions scheme, and the company's callous disregard for compliance with

applicable federal and state laws and regulations, Plaintiffs and Class members who purchased or leased new or previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

1518. The value of Plaintiffs' and Class members' vehicles has diminished as a result of Volkswagen's fraudulent concealment of its emissions scheme, which has greatly tarnished the Volkswagen and Audi brand names attached to Plaintiffs' and Class members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles. In addition, Class members are entitled to damages for loss of use, costs of additional fuel, costs of unused warranties, and other damages to be proved at trial.

1519. Accordingly, Volkswagen is liable to Plaintiffs and Class members for damages in an amount to be proven at trial.

1520. Volkswagen's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Class members' rights and the representations that Volkswagen made to them, in order to enrich Volkswagen. To the extent permitted under applicable law, Volkswagen's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

**COUNT III**  
**BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**  
**(13 PA. CONS. STAT. ANN. § 2314)**

1521. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

1522. Plaintiffs bring this Count on behalf of the Pennsylvania Subclass.

1523. Volkswagen is and was at all relevant times a merchant with respect to motor vehicles.

1524. A warranty that the Affected Vehicles were in merchantable condition is implied by law in the instant transactions. These Affected Vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Affected Vehicles are inherently defective in that they do not comply with federal and state emissions standards, rendering certain safety and emissions functions inoperative; and the CleanDiesel engine system was not adequately designed, manufactured, and tested.

1525. Volkswagen was provided notice of these issues by the investigations of the EPA and individual state regulators, numerous complaints filed against it including the instant complaint, and by numerous individual letters and communications sent by Plaintiffs and other Class members before or within a reasonable amount of time after the allegations of Affected Vehicle defects became public.

1526. As a direct and proximate result of Volkswagen's breach of the warranties of merchantability, Plaintiffs and the other Class members have been damaged in an amount to be proven at trial.

**COUNT IV  
BREACH OF CONTRACT  
(BASED ON PENNSYLVANIA LAW)**

1527. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

1528. Plaintiff brings this Count on behalf of new vehicle or certified pre-owned vehicle purchasers in the Pennsylvania Subclass.

1529. Volkswagen's misrepresentations and omissions alleged herein, including Volkswagen's failure to disclose the existence of the CleanDiesel engine system's defect and/or defective design as alleged herein, caused Plaintiff and the other Pennsylvania Subclass members

to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiff and the other Pennsylvania Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the CleanDiesel engine system and which were not marketed as including such a system. Accordingly, Plaintiff and the other Pennsylvania Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

1530. Each and every sale or lease of an Affected Vehicle by an authorized Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the other Pennsylvania Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose the existence of the CleanDiesel engine system's defect and/or defective design, including information known to Volkswagen rendering each Affected Vehicle non-EPA-compliant, and thus less valuable, than vehicles not equipped with a CleanDiesel engine system.

1531. As a direct and proximate result of Volkswagen's breach of contract, Plaintiff and the Pennsylvania Subclass have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

**HH. Claims Brought on Behalf of the Rhode Island Subclass**

**COUNT I  
VIOLATION OF THE RHODE ISLAND UNFAIR TRADE PRACTICES  
AND CONSUMER PROTECTION ACT  
(R.I. GEN. LAWS § 6-13.1, *ET SEQ.*)**

1532. Plaintiff Luis Moreno ("Plaintiff," for purposes of all Rhode Island Subclass Counts) incorporates by reference all preceding allegations as though fully set forth herein.

1533. This claim is brought on behalf of the Rhode Island Subclass.

1534. Plaintiffs are persons who purchased or leased one or more Affected Vehicles primarily for personal, family, or household purposes within the meaning of R.I. GEN. LAWS § 6-13.1-5.2(a).

1535. Rhode Island's Unfair Trade Practices and Consumer Protection Act ("Rhode Island CPA") prohibits "unfair or deceptive acts or practices in the conduct of any trade or commerce" including: "(v) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have"; "(vii) Representing that goods or services are of a particular standard, quality, or grade ..., if they are of another"; "(ix) Advertising goods or services with intent not to sell them as advertised"; "(xii) Engaging in any other conduct that similarly creates a likelihood of confusion or of misunderstanding"; "(xiii) Engaging in any act or practice that is unfair or deceptive to the consumer"; and "(xiv) Using any other methods, acts or practices which mislead or deceive members of the public in a material respect." R.I. GEN. LAWS § 6-13.1-1(6).

1536. Volkswagen engaged in unlawful trade practices, including: (1) representing that the Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; (2) representing that the Affected Vehicles are of a particular standard and quality when they are not; (3) advertising the Affected Vehicles with the intent not to sell them as advertised; and (4) otherwise engaging in conduct that is unfair or deceptive and likely to deceive.

1537. Volkswagen's actions as set forth above occurred in the conduct of trade or commerce.

1538. In the course of its business, Volkswagen installed the "defeat device" and concealed that its CleanDiesel systems failed EPA regulations as described herein and otherwise

engaged in activities with a tendency or capacity to deceive. Volkswagen also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Affected Vehicles.

1539. Volkswagen has known of its use of the “defeat device” and the true nature of its CleanDiesel engine system for at least six years, but concealed all of that information until recently.

1540. Volkswagen was also aware that it valued profits over environmental cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles throughout the United States that did not comply with EPA regulations. Volkswagen concealed this information as well.

1541. By failing to disclose and by actively concealing the “defeat device” and the true cleanliness and performance of the CleanDiesel engine system, by marketing its vehicles as safe, reliable, environmentally clean, efficient, and of high quality, and by presenting itself as a reputable manufacturer that valued safety, environmental cleanliness and efficiency, and stood behind its vehicles after they were sold, Volkswagen engaged in unfair and deceptive business practices in violation of the Rhode Island CPA.

1542. In the course of Volkswagen’s business, it willfully failed to disclose and actively concealed the use of the “defeat device” and true cleanliness and efficiency of the CleanDiesel engine system and serious defects discussed above. Volkswagen compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable, environmentally clean,

efficient, and of high quality, and by claiming to be a reputable manufacturer that valued safety, environmental cleanliness and efficiency, and stood behind its vehicles once they are on the road.

1543. Volkswagen's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs, about the true cleanliness and efficiency of the CleanDiesel engine system, the quality of the Volkswagen and Audi brands, the devaluing of environmental cleanliness and integrity at Volkswagen, and the true value of the Affected Vehicles.

1544. Volkswagen intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Rhode Island Class.

1545. Volkswagen knew or should have known that its conduct violated the Rhode Island CPA.

1546. As alleged above, Volkswagen made material statements about the safety, cleanliness, efficiency and reliability of the Affected Vehicles and the Volkswagen and Audi brands that were either false or misleading.

1547. Volkswagen owed Plaintiffs a duty to disclose the true safety, cleanliness, efficiency and reliability of the Affected Vehicles and the devaluing of environmental cleanliness and integrity at Volkswagen, because Volkswagen:

- a. Possessed exclusive knowledge that it valued profits over environmental cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles throughout the United States that did not comply with EPA regulations;
- b. Intentionally concealed the foregoing from Plaintiffs; and/or
- c. Made incomplete representations about the safety, cleanliness, efficiency and reliability of the Affected Vehicles generally, and the use of the "defeat device" and true nature of the CleanDiesel engine system in particular,

while purposefully withholding material facts from Plaintiffs that contradicted these representations.

1548. Because Volkswagen fraudulently concealed the “defeat device” and the true cleanliness and performance of the CleanDiesel engine system, resulting in a raft of negative publicity once the use of the “defeat device” and true characteristics of the CleanDiesel engine system finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by Volkswagen’s conduct, they are now worth significantly less than they otherwise would be.

1549. Volkswagen’s fraudulent use of the “defeat device” and its concealment of the true characteristics of the CleanDiesel engine system were material to Plaintiffs and the Rhode Island Class. A vehicle made by a reputable manufacturer of environmentally friendly vehicles is worth more than an otherwise comparable vehicle made by a disreputable and dishonest manufacturer of polluting vehicles that conceals the amount its cars pollutes rather than make environmentally friendly vehicles.

1550. Plaintiffs and the Rhode Island Class suffered ascertainable loss caused by Volkswagen’s misrepresentations and its concealment of and failure to disclose material information. Plaintiffs who purchased the Affected Vehicles either would have paid less for their vehicles or would not have purchased or leased them at all.

1551. Volkswagen’s unlawful acts and practices complained of herein affect the public interest.

1552. As a direct and proximate result of Volkswagen’s violations of the Rhode Island CPA, Plaintiffs and the Rhode Island Class have suffered injury-in-fact and/or actual damage.

1553. Plaintiffs and the Rhode Island Class are entitled to recover the greater of actual damages or \$200 pursuant to R.I. GEN. LAWS § 6-13.1-5.2(a). Plaintiffs also seek punitive

damages in the discretion of the Court because of Volkswagen's egregious disregard of consumer and public safety and its long-running concealment of the serious safety defects and their tragic consequences.

**COUNT II  
FRAUD BY CONCEALMENT**

1554. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1555. This claim is brought on behalf of the Rhode Island Subclass.

1556. Volkswagen intentionally concealed and suppressed material facts concerning the quality of the Affected Vehicles. As alleged in this Complaint, notwithstanding references in the very model names of the subject vehicles as "Clean Diesel," or to their engines as "TDI Clean Diesel" engines, Volkswagen engaged in a secret scheme to evade federal and state vehicle emissions standards by installing software designed to conceal its vehicles' emissions of the pollutant nitrogen oxide, which contributes to the creation of ozone and smog. The software installed on the vehicles at issue was designed nefariously to kick-in during emissions certification testing, such that the vehicles would show far lower emissions than when actually operating on the road. The result was what Volkswagen intended: vehicles passed emissions certifications by way of deliberately induced false readings. Reportedly, Volkswagen's deliberate, secret scheme resulted in noxious emissions from these vehicles up to 40 times applicable standards.

1557. Plaintiffs and Class members reasonably relied upon Volkswagen's false representations. They had no way of knowing that Volkswagen's representations were false and gravely misleading. As alleged herein, Volkswagen employed extremely sophisticated methods

of deception. Plaintiffs and Class members did not, and could not, unravel Volkswagen's deception on their own.

1558. Volkswagen concealed and suppressed material facts concerning what is evidently the true culture of Volkswagen—one characterized by an emphasis on profits and sales above compliance with federal and state clean air laws, and emissions regulations that are meant to protect the public and consumers. It also emphasized profits and sales over the trust that Plaintiffs and Class members placed in its representations. As one customer, Priya Shah, put it in a quotation cited by the *Los Angeles Times* in a September 18, 2015 article, “It’s just a blatant disregard and intentional manipulation of the system. That’s just a whole other level of not only lying to the government, but also lying to your consumer. People buy diesel cars from Volkswagen because they feel they are clean diesel cars.” In the words of Ms. Shah, which no doubt reflect the sentiments of all other CleanDiesel vehicle buyers, “I don’t want to be spewing noxious gases into the environment.”

1559. Necessarily, Volkswagen also took steps to ensure that its employees did not reveal the details of its scheme to regulators or consumers, including Plaintiffs and Class members. Volkswagen did so in order to boost the reputations of its vehicles and to falsely assure purchasers and lessors of its vehicles, including previously owned vehicles, that Volkswagen is a reputable manufacturer that complies with applicable law, including federal and state clean air laws and emissions regulations, and that its vehicles likewise comply with applicable law and regulations. Volkswagen’s false representations were material to consumers, both because they concerned the quality of the Affected Vehicles, including their compliance with applicable federal and state laws and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As Volkswagen

well knew, its customers, including Plaintiffs and Class members, highly valued that the vehicles they were purchasing or leasing were *clean* diesel cars, and they paid accordingly.

1560. Volkswagen had a duty to disclose its emissions scheme because knowledge of the scheme and its details were known and/or accessible only to Volkswagen, because Volkswagen had exclusive knowledge as to implementation and maintenance of its scheme, and because Volkswagen knew the facts were not known to or reasonably discoverable by Plaintiffs or Class members. Volkswagen also had a duty to disclose because it made general affirmative representations about the qualities of its vehicles with respect to emissions standards, starting with references to them as *clean* diesel cars, or cars with *clean* diesel engines, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding its emissions scheme, the actual emissions of its vehicles, its actual philosophy with respect to compliance with federal and state clean air laws and emissions regulations, and its actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs, Volkswagen had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and Class members. Whether a manufacturer's products comply with federal and state clean air laws and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certification testing their vehicles must pass. Volkswagen represented to Plaintiffs and Class members that they were purchasing *clean* diesel vehicles, and certification testing appeared to confirm this—except that, secretly, Volkswagen had subverted the testing process thoroughly.

1561. Volkswagen actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect its profits and to avoid the perception that its vehicles did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost Volkswagen money, and it did so at the expense of Plaintiffs and Class members.

1562. On information and belief, Volkswagen has still not made full and adequate disclosures, and continues to defraud Plaintiffs and Class members by concealing material information regarding the emissions qualities of its vehicles and its emissions scheme.

1563. Plaintiffs and Class members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly "clean" diesel cars manufactured by Volkswagen, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiffs' and Class Members' actions were justified. Volkswagen was in exclusive control of the material facts, and such facts were not known to the public, Plaintiffs, or Class members.

1564. Because of the concealment and/or suppression of the facts, Plaintiffs and Class members have sustained damage because they own vehicles that are diminished in value as a result of Volkswagen's concealment of the true quality and quantity of those vehicles' emissions and Volkswagen's failure to timely disclose the actual emissions qualities and quantities of hundreds of thousands of Volkswagen- and Audi-branded vehicles and the serious issues engendered by Volkswagen's corporate policies. Had Plaintiffs and Class members been aware of Volkswagen's emissions scheme, and the company's callous disregard for compliance with

applicable federal and state laws and regulations, Plaintiffs and Class members who purchased or leased new or previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

1565. The value of Plaintiffs' and Class Members' vehicles has diminished as a result of Volkswagen's fraudulent concealment of its emissions scheme, which has greatly tarnished the Volkswagen and Audi brand names attached to Plaintiffs' and Class members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles. In addition, Class members are entitled to damages for loss of use, costs of additional fuel, costs of unused warranties, and other damages to be proved at trial.

1566. Accordingly, Volkswagen is liable to Plaintiffs and Class members for damages in an amount to be proven at trial.

1567. Volkswagen's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Class members' rights and the representations that Volkswagen made to them, in order to enrich Volkswagen. To the extent permitted under applicable law, Volkswagen's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

**COUNT III**  
**BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**  
**(R.I. GEN. LAWS § 6A-2-314)**

1568. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

1569. Plaintiffs bring this Count on behalf of the Rhode Island Subclass.

1570. Volkswagen is and was at all relevant times a merchant with respect to motor vehicles.

1571. A warranty that the Affected Vehicles were in merchantable condition is implied by law in the instant transaction. These Affected Vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Affected Vehicles are inherently defective in that they do not comply with federal and state emissions standards, rendering certain safety and emissions functions inoperative; and the CleanDiesel engine system was not adequately designed, manufactured, and tested.

1572. Volkswagen was provided notice of these issues by the investigations of the EPA and individual state regulators, numerous complaints filed against it including the instant complaint, and by numerous individual letters and communications sent by Plaintiffs and other Class members before or within a reasonable amount of time after the allegations of Affected Vehicle defects became public.

1573. As a direct and proximate result of Volkswagen's breach of the warranties of merchantability, Plaintiffs and the other Class members have been damaged in an amount to be proven at trial.

**COUNT IV  
BREACH OF CONTRACT  
(BASED ON RHODE ISLAND LAW)**

1574. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

1575. Plaintiff brings this Count on behalf of new vehicle or certified pre-owned vehicle purchasers in the Rhode Island Subclass.

1576. Volkswagen's misrepresentations and omissions alleged herein, including Volkswagen's failure to disclose the existence of the CleanDiesel engine system's defect and/or defective design as alleged herein, caused Plaintiff and the other Rhode Island Subclass members

to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiff and the other Rhode Island Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the CleanDiesel engine system and which were not marketed as including such a system. Accordingly, Plaintiff and the other Rhode Island Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

1577. Each and every sale or lease of an Affected Vehicle by an authorized Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the other Rhode Island Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose the existence of the CleanDiesel engine system's defect and/or defective design, including information known to Volkswagen rendering each Affected Vehicle non EPA-compliant, and thus less valuable, than vehicles not equipped with a CleanDiesel engine system.

1578. As a direct and proximate result of Volkswagen's breach of contract, Plaintiff and the Rhode Island Subclass have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

## **II. Claims Brought on Behalf of the Tennessee Subclass**

### **COUNT I VIOLATION OF TENNESSEE CONSUMER PROTECTION ACT (TENN. CODE ANN. § 47-18-101, *ET SEQ.*)**

1579. Plaintiff Steve Mortillaro ("Plaintiff," for purposes of all Tennessee Subclass Counts) incorporates by reference all preceding allegations as though fully set forth herein.

1580. This claim is brought on behalf of the Tennessee Subclass.

1581. Plaintiff and the Tennessee Class are “natural persons” and “consumers” within the meaning of TENN. CODE ANN. § 47-18-103(2).

1582. Defendants are each a “person” within the meaning of TENN. CODE ANN. § 47-18-103(2).

1583. Volkswagen’s conduct complained of herein affected “trade,” “commerce” or “consumer transactions” within the meaning of TENN. CODE ANN. § 47-18-103(19).

1584. The Tennessee Consumer Protection Act (“Tennessee CPA”) prohibits “[u]nfair or deceptive acts or practices affecting the conduct of any trade or commerce,” including but not limited to: “Representing that goods or services have ... characteristics, [or] ... benefits ... that they do not have...;” “Representing that goods or services are of a particular standard, quality or grade... if they are of another;” and “Advertising goods or services with intent not to sell them as advertised.” TENN. CODE ANN. § 47-18-104. Volkswagen violated the Tennessee CPA by engaging in unfair or deceptive acts, including representing that Affected Vehicles have characteristics or benefits that they did not have; representing that Affected Vehicles are of a particular standard, quality, or grade when they are of another; and advertising Affected Vehicles with intent not to sell them as advertised.

1585. In the course of its business, Volkswagen installed the “defeat device” and concealed that its CleanDiesel systems failed EPA regulations as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Volkswagen also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Affected Vehicles.

1586. Volkswagen has known of its use of the “defeat device” and the true nature of its CleanDiesel engine system for at least six years, but concealed all of that information until recently.

1587. Volkswagen was also aware that it valued profits over environmental cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles throughout the United States that did not comply with EPA regulations. Volkswagen concealed this information as well.

1588. By failing to disclose and by actively concealing the “defeat device” and the true cleanliness and performance of the CleanDiesel engine system, by marketing its vehicles as safe, reliable, environmentally clean, efficient, and of high quality, and by presenting itself as a reputable manufacturer that valued safety, environmental cleanliness and efficiency, and stood behind its vehicles after they were sold, Volkswagen engaged in unfair and deceptive business practices in violation of the Tennessee CPA.

1589. In the course of Volkswagen’s business, it willfully failed to disclose and actively concealed the use of the “defeat device” and true cleanliness and efficiency of the CleanDiesel engine system and serious defects discussed above. Volkswagen compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable, environmentally clean, efficient, and of high quality, and by claiming to be a reputable manufacturer that valued safety, environmental cleanliness and efficiency, and stood behind its vehicles once they are on the road.

1590. Volkswagen’s unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiff, about the true cleanliness and efficiency of the CleanDiesel engine system, the quality of the Volkswagen and Audi brands, the devaluing of

environmental cleanliness and integrity at Volkswagen, and the true value of the Affected Vehicles.

1591. Volkswagen intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiff and the Tennessee Class.

1592. Volkswagen knew or should have known that its conduct violated the Tennessee CPA.

1593. As alleged above, Volkswagen made material statements about the safety, cleanliness, efficiency and reliability of the Affected Vehicles and the Volkswagen and Audi brands that were either false or misleading.

1594. Volkswagen owed Plaintiff a duty to disclose the true safety, cleanliness, efficiency and reliability of the Affected Vehicles and the devaluing of environmental cleanliness and integrity at Volkswagen, because Volkswagen:

- a. Possessed exclusive knowledge that it valued profits over environmental cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles throughout the United States that did not comply with EPA regulations;
- b. Intentionally concealed the foregoing from Plaintiff; and/or
- c. Made incomplete representations about the safety, cleanliness, efficiency and reliability of the Affected Vehicles generally, and the use of the “defeat device” and true nature of the CleanDiesel engine system in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

1595. Because Volkswagen fraudulently concealed the “defeat device” and the true cleanliness and performance of the CleanDiesel engine system, resulting in a raft of negative publicity once the use of the “defeat device” and true characteristics of the CleanDiesel engine system finally began to be disclosed, the value of the Affected Vehicles has greatly diminished.

In light of the stigma attached to those vehicles by Volkswagen's conduct, they are now worth significantly less than they otherwise would be.

1596. Volkswagen's fraudulent use of the "defeat device" and its concealment of the true characteristics of the CleanDiesel engine system were material to Plaintiff and the Tennessee Class. A vehicle made by a reputable manufacturer of environmentally friendly vehicles is worth more than an otherwise comparable vehicle made by a disreputable and dishonest manufacturer of polluting vehicles that conceals the amount its cars pollutes rather than make environmentally friendly vehicles.

1597. Plaintiff and the Tennessee Class suffered ascertainable loss caused by Volkswagen's misrepresentations and its concealment of and failure to disclose material information. Plaintiffs who purchased the Affected Vehicles either would have paid less for their vehicles or would not have purchased or leased them at all.

1598. Volkswagen's unlawful acts and practices complained of herein affect the public interest.

1599. As a direct and proximate result of Volkswagen's violations of the Tennessee CPA, Plaintiff and the Tennessee Class have suffered injury-in-fact and/or actual damage.

1600. Pursuant to TENN. CODE § 47-18-109(a), Plaintiff and the Tennessee Class seek monetary relief against Volkswagen measured as actual damages in an amount to be determined at trial, treble damages as a result of Volkswagen's willful or knowing violations, and any other just and proper relief available under the Tennessee CPA.

**COUNT II  
FRAUD BY CONCEALMENT**

1601. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1602. This claim is brought on behalf of the Tennessee Subclass.

1603. Volkswagen intentionally concealed and suppressed material facts concerning the quality of the Affected Vehicles. As alleged in this Complaint, notwithstanding references in the very model names of the subject vehicles as “Clean Diesel,” or to their engines as “TDI Clean Diesel” engines, Volkswagen engaged in a secret scheme to evade federal and state vehicle emissions standards by installing software designed to conceal its vehicles’ emissions of the pollutant nitrogen oxide, which contributes to the creation of ozone and smog. The software installed on the vehicles at issue was designed nefariously to kick-in during emissions certification testing, such that the vehicles would show far lower emissions than when actually operating on the road. The result was what Volkswagen intended: vehicles passed emissions certifications by way of deliberately induced false readings. Reportedly, Volkswagen’s deliberate, secret scheme resulted in noxious emissions from these vehicles up to 40 times applicable standards.

1604. Plaintiffs and Class members reasonably relied upon Volkswagen’s false representations. They had no way of knowing that Volkswagen’s representations were false and gravely misleading. As alleged herein, Volkswagen employed extremely sophisticated methods of deception. Plaintiffs and Class members did not, and could not, unravel Volkswagen’s deception on their own.

1605. Volkswagen concealed and suppressed material facts concerning what is evidently the true culture of Volkswagen—one characterized by an emphasis on profits and sales above compliance with federal and state clean air laws, and emissions regulations that are meant to protect the public and consumers. It also emphasized profits and sales over the trust that Plaintiffs and Class members placed in its representations. As one customer, Priya Shah, put it

in a quotation cited by the *Los Angeles Times* in a September 18, 2015 article, “It’s just a blatant disregard and intentional manipulation of the system. That’s just a whole other level of not only lying to the government, but also lying to your consumer. People buy diesel cars from Volkswagen because they feel they are clean diesel cars.” In the words of Ms. Shah, which no doubt reflect the sentiments of all other CleanDiesel vehicle buyers, “I don’t want to be spewing noxious gases into the environment.”

1606. Necessarily, Volkswagen also took steps to ensure that its employees did not reveal the details of its scheme to regulators or consumers, including Plaintiffs and Class members. Volkswagen did so in order to boost the reputations of its vehicles and to falsely assure purchasers and lessors of its vehicles, including previously owned vehicles, that Volkswagen is a reputable manufacturer that complies with applicable law, including federal and state clean air laws and emissions regulations, and that its vehicles likewise comply with applicable law and regulations. Volkswagen’s false representations were material to consumers, both because they concerned the quality of the Affected Vehicles, including their compliance with applicable federal and state laws and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As Volkswagen well knew, its customers, including Plaintiffs and Class members, highly valued that the vehicles they were purchasing or leasing were *clean* diesel cars, and they paid accordingly.

1607. Volkswagen had a duty to disclose its emissions scheme because knowledge of the scheme and its details were known and/or accessible only to Volkswagen, because Volkswagen had exclusive knowledge as to implementation and maintenance of its scheme, and because Volkswagen knew the facts were not known to or reasonably discoverable by Plaintiffs or Class members. Volkswagen also had a duty to disclose because it made general affirmative

representations about the qualities of its vehicles with respect to emissions standards, starting with references to them as *clean* diesel cars, or cars with *clean* diesel engines, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding its emissions scheme, the actual emissions of its vehicles, its actual philosophy with respect to compliance with federal and state clean air laws and emissions regulations, and its actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs, Volkswagen had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and Class members. Whether a manufacturer's products comply with federal and state clean air laws and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certification testing their vehicles must pass. Volkswagen represented to Plaintiffs and Class members that they were purchasing *clean* diesel vehicles, and certification testing appeared to confirm this—except that, secretly, Volkswagen had subverted the testing process thoroughly.

1608. Volkswagen actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect its profits and to avoid the perception that its vehicles did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost Volkswagen money, and it did so at the expense of Plaintiffs and Class members.

1609. On information and belief, Volkswagen has still not made full and adequate disclosures, and continues to defraud Plaintiffs and Class members by concealing material information regarding the emissions qualities of its vehicles and its emissions scheme.

1610. Plaintiffs and Class members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly “clean” diesel cars manufactured by Volkswagen, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiffs’ and Class Members’ actions were justified. Volkswagen was in exclusive control of the material facts, and such facts were not known to the public, Plaintiffs, or Class members.

1611. Because of the concealment and/or suppression of the facts, Plaintiffs and Class members have sustained damage because they own vehicles that are diminished in value as a result of Volkswagen’s concealment of the true quality and quantity of those vehicles’ emissions and Volkswagen’s failure to timely disclose the actual emissions qualities and quantities of hundreds of thousands of Volkswagen- and Audi-branded vehicles and the serious issues engendered by Volkswagen’s corporate policies. Had Plaintiffs and Class members been aware of Volkswagen’s emissions scheme, and the company’s callous disregard for compliance with applicable federal and state laws and regulations, Plaintiffs and Class members who purchased or leased new or previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

1612. The value of Plaintiffs’ and Class Members’ vehicles has diminished as a result of Volkswagen’s fraudulent concealment of its emissions scheme, which has greatly tarnished the Volkswagen and Audi brand names attached to Plaintiffs’ and Class members’ vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles. In addition, Class members

are entitled to damages for loss of use, costs of additional fuel, costs of unused warranties, and other damages to be proved at trial.

1613. Accordingly, Volkswagen is liable to Plaintiffs and Class members for damages in an amount to be proven at trial.

1614. Volkswagen's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Class members' rights and the representations that Volkswagen made to them, in order to enrich Volkswagen. To the extent permitted under applicable law, Volkswagen's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

**COUNT III  
BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**

1615. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

1616. Plaintiffs bring this Count on behalf of the Tennessee Subclass.

1617. Volkswagen is and was at all relevant times a merchant with respect to motor vehicles.

1618. A warranty that the Affected Vehicles were in merchantable condition is implied by law in the instant transactions. These Affected Vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Affected Vehicles are inherently defective in that they do not comply with federal and state emissions standards, rendering certain safety and emissions functions inoperative; and the CleanDiesel engine system was not adequately designed, manufactured, and tested.

1619. Volkswagen was provided notice of these issues by the investigations of the EPA and individual state regulators, numerous complaints filed against it including the instant complaint, and by numerous individual letters and communications sent by Plaintiffs and other Class members before or within a reasonable amount of time after the allegations of Affected Vehicle defects became public.

1620. As a direct and proximate result of Volkswagen's breach of the warranties of merchantability, Plaintiffs and the other Class members have been damaged in an amount to be proven at trial.

**COUNT IV  
BREACH OF CONTRACT  
(BASED ON TENNESSEE LAW)**

1621. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

1622. Plaintiff brings this Count on behalf of new vehicle or certified pre-owned vehicle purchasers in the Tennessee Subclass.

1623. Volkswagen's misrepresentations and omissions alleged herein, including Volkswagen's failure to disclose the existence of the CleanDiesel engine system's defect and/or defective design as alleged herein, caused Plaintiff and the other Tennessee Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiff and the other Tennessee Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the CleanDiesel engine system and which were not marketed as including such a system. Accordingly, Plaintiff and the other Tennessee Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

1624. Each and every sale or lease of an Affected Vehicle by an authorized Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the other Tennessee Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose the existence of the CleanDiesel engine system's defect and/or defective design, including information known to Volkswagen rendering each Affected Vehicle non EPA-compliant, and thus less valuable, than vehicles not equipped with a CleanDiesel engine system.

1625. As a direct and proximate result of Volkswagen's breach of contract, Plaintiff and the Tennessee Subclass have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

**JJ. Claims Brought on Behalf of the Texas Subclass**

**COUNT I  
VIOLATIONS OF THE DECEPTIVE TRADE PRACTICES ACT  
(TEX. BUS. & COM. CODE §§ 17.41, *et seq.*)**

1626. Plaintiff Angela Wagner ("Plaintiff," for purposes of all Texas Subclass Counts) incorporate by reference all preceding allegations as though fully set forth herein.

1627. Plaintiff intends to assert a claim under the Texas Deceptive Trade Practices Act ("TDTPA"), which makes it unlawful to commit "[f]alse, misleading, or deceptive acts or practices in the conduct of any trade or commerce." TEX. BUS. & COM. CODE § 17.46. Plaintiffs will make a demand in satisfaction of TEX. BUS. & COM. CODE § 17.45(2), and may amend this Complaint to assert claims under the TDTPA once the required 60 days have elapsed. This paragraph is included for purposes of notice only and is not intended to actually assert a claim under the TDTPA.

**COUNT II**  
**BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**  
**(TEX. BUS. & COM. CODE § 2.314)**

1628. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

1629. Plaintiffs bring this Count on behalf of the Texas Subclass.

1630. Volkswagen is and was at all relevant times a merchant with respect to motor vehicles.

1631. A warranty that the Affected Vehicles were in merchantable condition is implied by law in the instant transactions. These Affected Vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Affected Vehicles are inherently defective in that they do not comply with federal and state emissions standards, rendering certain safety and emissions functions inoperative; and the CleanDiesel engine system was not adequately designed, manufactured, and tested.

1632. Volkswagen was provided notice of these issues by the investigations of the EPA and individual state regulators, numerous complaints filed against it including the instant complaint, and by numerous individual letters and communications sent by Plaintiffs and other Class members before or within a reasonable amount of time after the allegations of Affected Vehicle defects became public.

1633. As a direct and proximate result of Volkswagen's breach of the warranties of merchantability, Plaintiffs and the other Class members have been damaged in an amount to be proven at trial.

**COUNT III**  
**BREACH OF CONTRACT**  
**(BASED ON TEXAS LAW)**

1634. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1635. Plaintiff brings this Count on behalf of new vehicle or certified pre-owned vehicle purchasers in the Texas Subclass.

1636. Volkswagen's misrepresentations and omissions alleged herein, including Volkswagen's failure to disclose the existence of the CleanDiesel engine system's defect and/or defective design as alleged herein, caused Plaintiffs and the other Texas Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiffs and the other Texas Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the CleanDiesel engine system and which were not marketed as including such a system. Accordingly, Plaintiff and the other Texas Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

1637. Each and every sale or lease of an Affected Vehicle by an authorized Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the other Texas Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose the existence of the CleanDiesel engine system's defect and/or defective design, including information known to Volkswagen rendering each Affected Vehicle non EPA-compliant, and thus less valuable, than vehicles not equipped with a CleanDiesel engine system.

1638. As a direct and proximate result of Volkswagen's breach of contract, Plaintiff and the Texas Subclass have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

**COUNT IV  
FRAUD BY CONCEALMENT**

1639. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1640. This claim is brought on behalf of the Texas Subclass.

1641. Volkswagen intentionally concealed and suppressed material facts concerning the quality of the Affected Vehicles. As alleged in this Complaint, notwithstanding references in the very model names of the subject vehicles as “Clean Diesel,” or to their engines as “TDI Clean Diesel” engines, Volkswagen engaged in a secret scheme to evade federal and state vehicle emissions standards by installing software designed to conceal its vehicles’ emissions of the pollutant nitrogen oxide, which contributes to the creation of ozone and smog. The software installed on the vehicles at issue was designed nefariously to kick-in during emissions certification testing, such that the vehicles would show far lower emissions than when actually operating on the road. The result was what Volkswagen intended: vehicles passed emissions certifications by way of deliberately induced false readings. Reportedly, Volkswagen’s deliberate, secret scheme resulted in noxious emissions from these vehicles at up to 40 times applicable standards.

1642. Plaintiffs and Class members reasonably relied upon Volkswagen’s false representations. They had no way of knowing that Volkswagen’s representations were false and gravely misleading. As alleged herein, Volkswagen employed extremely sophisticated methods of deception. Plaintiffs and Class members did not, and could not, unravel Volkswagen’s deception on their own.

1643. Volkswagen concealed and suppressed material facts concerning what is evidently the true culture of Volkswagen—one characterized by an emphasis on profits and sales

above compliance with federal and state clean air laws, and emissions regulations that are meant to protect the public and consumers. It also emphasized profits and sales over the trust that Plaintiffs and Class members placed in its representations. As one customer, Priya Shah, put it in a quotation cited by the *Los Angeles Times* in a September 18, 2015 article, “It’s just a blatant disregard and intentional manipulation of the system. That’s just a whole other level of not only lying to the government, but also lying to your consumer. People buy diesel cars from Volkswagen because they feel they are clean diesel cars.” In the words of Ms. Shah, which no doubt reflect the sentiments of all other CleanDiesel vehicle buyers, “I don’t want to be spewing noxious gases into the environment.”

1644. Necessarily, Volkswagen also took steps to ensure that its employees did not reveal the details of its scheme to regulators or consumers, including Plaintiffs and Class members. Volkswagen did so in order to boost the reputations of its vehicles and to falsely assure purchasers and lessors of its vehicles, including previously owned vehicles, that Volkswagen is a reputable manufacturer that complies with applicable law, including federal and state clean air laws and emissions regulations, and that its vehicles likewise comply with applicable law and regulations. Volkswagen’s false representations were material to consumers, both because they concerned the quality of the Affected Vehicles, including their compliance with applicable federal and state laws and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As Volkswagen well knew, its customers, including Plaintiffs and Class members, highly valued that the vehicles they were purchasing or leasing were *clean* diesel cars, and they paid accordingly.

1645. Volkswagen had a duty to disclose its emissions scheme because knowledge of the scheme and its details were known and/or accessible only to Volkswagen, because

Volkswagen had exclusive knowledge as to implementation and maintenance of its scheme, and because Volkswagen knew the facts were not known to or reasonably discoverable by Plaintiffs or Class members. Volkswagen also had a duty to disclose because it made general affirmative representations about the qualities of its vehicles with respect to emissions standards, starting with references to them as *clean* diesel cars, or cars with *clean* diesel engines, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding its emissions scheme, the actual emissions of its vehicles, its actual philosophy with respect to compliance with federal and state clean air laws and emissions regulations, and its actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs, Volkswagen had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and Class members. Whether a manufacturer's products comply with federal and state clean air laws and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certification testing their vehicles must pass. Volkswagen represented to Plaintiffs and Class members that they were purchasing *clean* diesel vehicles, and certification testing appeared to confirm this—except that, secretly, Volkswagen had subverted the testing process thoroughly.

1646. Volkswagen actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect its profits and to avoid the perception that its vehicles did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost Volkswagen money, and it did so at the expense of Plaintiffs and Class members.

1647. On information and belief, Volkswagen has still not made full and adequate disclosures, and continues to defraud Plaintiffs and Class members by concealing material information regarding the emission qualities of its vehicles and its emissions scheme.

1648. Plaintiffs and Class members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly “clean” diesel cars manufactured by Volkswagen, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiffs’ and Class members’ actions were justified. Volkswagen was in exclusive control of the material facts, and such facts were not known to the public, Plaintiffs, or Class members.

1649. Because of the concealment and/or suppression of the facts, Plaintiffs and Class members have sustained damage because they own vehicles that are diminished in value as a result of Volkswagen’s concealment of the true quality and quantity of those vehicles’ emissions and Volkswagen’s failure to timely disclose the actual emission qualities and quantities of hundreds of thousands of Volkswagen- and Audi-branded vehicles and the serious issues engendered by Volkswagen’s corporate policies. Had Plaintiffs and Class members been aware of Volkswagen’s emissions scheme, and the company’s callous disregard for compliance with applicable federal and state laws and regulations, Plaintiffs and Class members who purchased or leased new or previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

1650. The value of Plaintiffs’ and Class members’ vehicles has diminished as a result of Volkswagen’s fraudulent concealment of its emissions scheme, which has greatly tarnished the

Volkswagen and Audi brand names attached to Plaintiffs' and Class members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles. In addition, Class members are entitled to damages for loss of use, costs of additional fuel, costs of unused warranties, and other damages to be proved at trial.

1651. Accordingly, Volkswagen is liable to Plaintiffs and Class members for damages in an amount to be proven at trial.

1652. Volkswagen's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Class members' rights and the representations that Volkswagen made to them, in order to enrich Volkswagen. To the extent permitted under applicable law, Volkswagen's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

**KK. Claims Brought on Behalf of the Utah Subclass**

**COUNT I  
VIOLATION OF UTAH CONSUMER SALES PRACTICES ACT  
(UTAH CODE ANN. § 13-11-1, *ET SEQ.*)**

1653. Plaintiff Heather LeMelle ("Plaintiff," for purposes of all Utah Subclass Counts) incorporates by reference all preceding allegations as though fully set forth herein.

1654. This claim is brought on behalf of the Utah Class.

1655. Volkswagen is a "supplier" under the Utah Consumer Sales Practices Act ("Utah CSPA"), UTAH CODE ANN. § 13-11-3.

1656. Utah Class Members are "persons" under UTAH CODE ANN. § 13-11-3.

1657. The sale of the Affected Vehicles to the Utah Class Members was a "consumer transaction" within the meaning of UTAH CODE ANN. § 13-11-3.

1658. The Utah CSPA makes unlawful any “deceptive act or practice by a supplier in connection with a consumer transaction” under UTAH CODE ANN. § 13-11-4. Specifically, “a supplier commits a deceptive act or practice if the supplier knowingly or intentionally: (a) indicates that the subject of a consumer transaction has sponsorship, approval, performance characteristics, accessories, uses, or benefits, if it has not” or “(b) indicates that the subject of a consumer transaction is of a particular standard, quality, grade, style, or model, if it is not.” UTAH CODE ANN. § 13-11-4. “An unconscionable act or practice by a supplier in connection with a consumer transaction” also violates the Utah CSPA. UTAH CODE ANN. § 13-11-5.

1659. Volkswagen committed deceptive acts or practices in the conduct of trade or commerce, by, among other things, engaging in unconscionable acts, representing that the Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; and representing that the Affected Vehicles are of a particular standard, quality, and grade when they are not

1660. In the course of its business, Volkswagen installed the “defeat device” and concealed that its CleanDiesel systems failed EPA regulations as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Volkswagen also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Affected Vehicles.

1661. Volkswagen has known of its use of the “defeat device” and the true nature of its CleanDiesel engine system for at least six years, but concealed all of that information until recently.

1662. Volkswagen was also aware that it valued profits over environmental cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles throughout the United States that did not comply with EPA regulations. Volkswagen concealed this information as well.

1663. By failing to disclose and by actively concealing the “defeat device” and the true cleanliness and performance of the CleanDiesel engine system, by marketing its vehicles as safe, reliable, environmentally clean, efficient, and of high quality, and by presenting itself as a reputable manufacturer that valued safety, environmental cleanliness and efficiency, and stood behind its vehicles after they were sold, Volkswagen engaged in deceptive business practices in violation of the Utah CSPA.

1664. In the course of Volkswagen’s business, it willfully failed to disclose and actively concealed the use of the “defeat device” and true cleanliness and efficiency of the CleanDiesel engine system and serious defects discussed above. Volkswagen compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable, environmentally clean, efficient, and of high quality, and by claiming to be a reputable manufacturer that valued safety, environmental cleanliness and efficiency, and stood behind its vehicles once they are on the road.

1665. Volkswagen’s unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs, about the true cleanliness and efficiency of the CleanDiesel engine system, the quality of the Volkswagen brand, the devaluing of environmental cleanliness and integrity at Volkswagen, and the true value of the Affected Vehicles.

1666. Volkswagen intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Utah Class.

1667. Volkswagen knew or should have known that its conduct violated the Utah CSPA.

1668. As alleged above, Volkswagen made material statements about the safety, cleanliness, efficiency and reliability of the Affected Vehicles and the Volkswagen and Audi brands that were either false or misleading.

1669. Volkswagen owed Plaintiffs a duty to disclose the true safety, cleanliness, efficiency and reliability of the Affected Vehicles and the devaluing of environmental cleanliness and integrity at Volkswagen, because Volkswagen:

- a. Possessed exclusive knowledge that it valued profits over environmental cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles throughout the United States that did not comply with EPA regulations;
- b. Intentionally concealed the foregoing from Plaintiffs; and/or
- c. Made incomplete representations about the safety, cleanliness, efficiency and reliability of the Affected Vehicles generally, and the use of the “defeat device” and true nature of the CleanDiesel engine system in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

1670. Because Volkswagen fraudulently concealed the “defeat device” and the true cleanliness and performance of the CleanDiesel engine system, resulting in a raft of negative publicity once the use of the “defeat device” and true characteristics of the CleanDiesel engine system finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by Volkswagen’s conduct, they are now worth significantly less than they otherwise would be.

1671. Volkswagen’s fraudulent use of the “defeat device” and its concealment of the true characteristics of the CleanDiesel engine system were material to Plaintiffs and the Utah

Class. A vehicle made by a reputable manufacturer of environmentally friendly vehicles is worth more than an otherwise comparable vehicle made by a disreputable and dishonest manufacturer of polluting vehicles that conceals the amount its cars pollutes rather than make environmentally friendly vehicles.

1672. Plaintiffs and the Utah Class suffered ascertainable loss caused by Volkswagen's misrepresentations and its concealment of and failure to disclose material information. Plaintiffs who purchased the Affected Vehicles either would have paid less for their vehicles or would not have purchased or leased them at all.

1673. Volkswagen had an ongoing duty to all Volkswagen and Audi customers to refrain from unfair and deceptive acts or practices under the Utah CSPA. All owners of Affected Vehicles suffered ascertainable loss in the form of the diminished value of their vehicles as a result of Volkswagen's deceptive and unfair acts and practices that occurred in the course of Volkswagen's business.

1674. Volkswagen's violations present a continuing risk to Plaintiffs as well as to the general public. Volkswagen's unlawful acts and practices complained of herein affect the public interest.

1675. As a direct and proximate result of Volkswagen's violations of the Utah CSPA, Plaintiffs and the Utah Class have suffered injury-in-fact and/or actual damage.

1676. Pursuant to UTAH CODE ANN. § 13-11-4, Plaintiffs and the Utah Class seek monetary relief against Volkswagen measured as the greater of (a) actual damages in an amount to be determined at trial and (b) statutory damages in the amount of \$2,000 for each Plaintiff and each Utah Class member, reasonable attorneys' fees, and any other just and proper relief available under the Utah CSPA.

**COUNT II  
FRAUD BY CONCEALMENT**

1677. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1678. This claim is brought on behalf of the Utah Subclass.

1679. Volkswagen intentionally concealed and suppressed material facts concerning the quality of the Affected Vehicles. As alleged in this Complaint, notwithstanding references in the very model names of the subject vehicles as “Clean Diesel,” or to their engines as “TDI Clean Diesel” engines, Volkswagen engaged in a secret scheme to evade federal and state vehicle emissions standards by installing software designed to conceal its vehicles’ emissions of the pollutant nitrogen oxide, which contributes to the creation of ozone and smog. The software installed on the vehicles at issue was designed nefariously to kick-in during emissions certification testing, such that the vehicles would show far lower emissions than when actually operating on the road. The result was what Volkswagen intended: vehicles passed emissions certifications by way of deliberately induced false readings. Reportedly, Volkswagen’s deliberate, secret scheme resulted in noxious emissions from these vehicles at up to 40 times applicable standards.

1680. Plaintiffs and Class members reasonably relied upon Volkswagen’s false representations. They had no way of knowing that Volkswagen’s representations were false and gravely misleading. As alleged herein, Volkswagen employed extremely sophisticated methods of deception. Plaintiffs and Class members did not, and could not, unravel Volkswagen’s deception on their own.

1681. Volkswagen concealed and suppressed material facts concerning what is evidently the true culture of Volkswagen—one characterized by an emphasis on profits and sales

above compliance with federal and state clean air laws, and emissions regulations that are meant to protect the public and consumers. It also emphasized profits and sales over the trust that Plaintiffs and Class members placed in its representations. As one customer, Priya Shah, put it in a quotation cited by the *Los Angeles Times* in a September 18, 2015 article, “It’s just a blatant disregard and intentional manipulation of the system. That’s just a whole other level of not only lying to the government, but also lying to your consumer. People buy diesel cars from Volkswagen because they feel they are clean diesel cars.” In the words of Ms. Shah, which no doubt reflect the sentiments of all other CleanDiesel vehicle buyers, “I don’t want to be spewing noxious gases into the environment.”

1682. Necessarily, Volkswagen also took steps to ensure that its employees did not reveal the details of its scheme to regulators or consumers, including Plaintiffs and Class members. Volkswagen did so in order to boost the reputations of its vehicles and to falsely assure purchasers and lessors of its vehicles, including previously owned vehicles, that Volkswagen is a reputable manufacturer that complies with applicable law, including federal and state clean air laws and emissions regulations, and that its vehicles likewise comply with applicable law and regulations. Volkswagen’s false representations were material to consumers, both because they concerned the quality of the Affected Vehicles, including their compliance with applicable federal and state laws and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As Volkswagen well knew, its customers, including Plaintiffs and Class members, highly valued that the vehicles they were purchasing or leasing were *clean* diesel cars, and they paid accordingly.

1683. Volkswagen had a duty to disclose its emissions scheme because knowledge of the scheme and its details were known and/or accessible only to Volkswagen, because

Volkswagen had exclusive knowledge as to implementation and maintenance of its scheme, and because Volkswagen knew the facts were not known to or reasonably discoverable by Plaintiffs or Class members. Volkswagen also had a duty to disclose because it made general affirmative representations about the qualities of its vehicles with respect to emissions standards, starting with references to them as *clean* diesel cars, or cars with *clean* diesel engines, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding its emissions scheme, the actual emissions of its vehicles, its actual philosophy with respect to compliance with federal and state clean air laws and emissions regulations, and its actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs, Volkswagen had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and Class members. Whether a manufacturer's products comply with federal and state clean air laws and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certification testing their vehicles must pass. Volkswagen represented to Plaintiffs and Class members that they were purchasing *clean* diesel vehicles, and certification testing appeared to confirm this—except that, secretly, Volkswagen had subverted the testing process thoroughly.

1684. Volkswagen actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect its profits and to avoid the perception that its vehicles did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost Volkswagen money, and it did so at the expense of Plaintiffs and Class members.

1685. On information and belief, Volkswagen has still not made full and adequate disclosures, and continues to defraud Plaintiffs and Class members by concealing material information regarding the emissions qualities of its vehicles and its emissions scheme.

1686. Plaintiffs and Class members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly “clean” diesel cars manufactured by Volkswagen, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiffs’ and Class Members’ actions were justified. Volkswagen was in exclusive control of the material facts, and such facts were not known to the public, Plaintiffs, or Class members.

1687. Because of the concealment and/or suppression of the facts, Plaintiffs and Class members have sustained damage because they own vehicles that are diminished in value as a result of Volkswagen’s concealment of the true quality and quantity of those vehicles’ emissions and Volkswagen’s failure to timely disclose the actual emissions qualities and quantities of hundreds of thousands of Volkswagen- and Audi-branded vehicles and the serious issues engendered by Volkswagen’s corporate policies. Had Plaintiffs and Class members been aware of Volkswagen’s emissions scheme, and the company’s callous disregard for compliance with applicable federal and state laws and regulations, Plaintiffs and Class members who purchased or leased new or previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

1688. The value of Plaintiffs’ and Class Members’ vehicles has diminished as a result of Volkswagen’s fraudulent concealment of its emissions scheme, which has greatly tarnished the

Volkswagen and Audi brand names attached to Plaintiffs' and Class members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles. In addition, Class members are entitled to damages for loss of use, costs of additional fuel, costs of unused warranties, and other damages to be proved at trial.

1689. Accordingly, Volkswagen is liable to Plaintiffs and Class members for damages in an amount to be proven at trial.

1690. Volkswagen's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Class members' rights and the representations that Volkswagen made to them, in order to enrich Volkswagen. To the extent permitted under applicable law, Volkswagen's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

**COUNT III**  
**BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**  
**(UTAH CODE ANN. § 70A-2-314)**

1691. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

1692. Plaintiffs bring this Count on behalf of the Utah Subclass.

1693. Volkswagen is and was at all relevant times a merchant with respect to motor vehicles.

1694. A warranty that the Affected Vehicles were in merchantable condition is implied by law in the instant transactions. These Affected Vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Affected Vehicles are inherently defective in that they do not

comply with federal and state emissions standards, rendering certain safety and emissions functions inoperative; and the CleanDiesel engine system was not adequately designed, manufactured, and tested.

1695. Volkswagen was provided notice of these issues by the investigations of the EPA and individual state regulators, numerous complaints filed against it including the instant complaint, and by numerous individual letters and communications sent by Plaintiffs and other Class members before or within a reasonable amount of time after the allegations of Affected Vehicle defects became public.

1696. As a direct and proximate result of Volkswagen's breach of the warranties of merchantability, Plaintiffs and the other Class members have been damaged in an amount to be proven at trial.

**COUNT IV  
BREACH OF CONTRACT  
(BASED ON UTAH LAW)**

1697. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

1698. Plaintiff brings this Count on behalf of new vehicle or certified pre-owned vehicle purchasers in the Utah Subclass.

1699. Volkswagen's misrepresentations and omissions alleged herein, including Volkswagen's failure to disclose the existence of the CleanDiesel engine system's defect and/or defective design as alleged herein, caused Plaintiff and the other Utah Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiff and the other Utah Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the CleanDiesel engine system and which were not marketed as including such a

system. Accordingly, Plaintiff and the other Utah Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

1700. Each and every sale or lease of an Affected Vehicle by an authorized Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the other Utah Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose the existence of the CleanDiesel engine system's defect and/or defective design, including information known to Volkswagen rendering each Affected Vehicle non EPA-compliant, and thus less valuable, than vehicles not equipped with a CleanDiesel engine system.

1701. As a direct and proximate result of Volkswagen's breach of contract, Plaintiff and the Utah Subclass have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

**LL. Claims Brought on Behalf of the Vermont Subclass**

**COUNT I  
VIOLATION OF VERMONT CONSUMER FRAUD ACT  
(VT. STAT. ANN. TIT. 9, § 2451 *ET SEQ.*)**

1702. Plaintiff Catherine Roberts ("Plaintiff," for purposes of all Vermont Subclass Counts) incorporates by reference all preceding allegations as though fully set forth herein.

1703. This claim is brought on behalf of the Vermont Subclass.

1704. Volkswagen is a seller within the meaning of VT. STAT. ANN. TIT. 9, § 2451(a)(c).

1705. The Vermont Consumer Fraud Act ("Vermont CFA") makes unlawful "[u]nfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce..." VT. STAT. ANN. TIT. 9, § 2453(a). Volkswagen engaged in unfair and deceptive acts or practices

in trade or commerce in violation of the Vermont CFA by fraudulently installing the “defeat device” to make it appear that its CleanDiesel engine systems complied with EPA regulations.

1706. In the course of its business, Volkswagen installed the “defeat device” and concealed that its CleanDiesel systems failed EPA regulations as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Volkswagen also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Affected Vehicles.

1707. Volkswagen has known of its use of the “defeat device” and the true nature of its CleanDiesel engine system for at least six years, but concealed all of that information until recently.

1708. Volkswagen was also aware that it valued profits over environmental cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles throughout the United States that did not comply with EPA regulations. Volkswagen concealed this information as well.

1709. By failing to disclose and by actively concealing the “defeat device” and the true cleanliness and performance of the CleanDiesel engine system, by marketing its vehicles as safe, reliable, environmentally clean, efficient, and of high quality, and by presenting itself as a reputable manufacturer that valued safety, environmental cleanliness and efficiency, and stood behind its vehicles after they were sold, Volkswagen engaged in unfair and deceptive business practices in violation of the Vermont CFA.

1710. In the course of Volkswagen's business, it willfully failed to disclose and actively concealed the use of the "defeat device" and true cleanliness and efficiency of the CleanDiesel engine system and serious defects discussed above. Volkswagen compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable, environmentally clean, efficient, and of high quality, and by claiming to be a reputable manufacturer that valued safety, environmental cleanliness and efficiency, and stood behind its vehicles once they are on the road.

1711. Volkswagen's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiff, about the true cleanliness and efficiency of the CleanDiesel engine system, the quality of the Volkswagen and Audi brands, the devaluing of environmental cleanliness and integrity at Volkswagen, and the true value of the Affected Vehicles.

1712. Volkswagen intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiff and the Vermont Subclass.

1713. Volkswagen knew or should have known that its conduct violated the Vermont CFA.

1714. As alleged above, Volkswagen made material statements about the safety, cleanliness, efficiency and reliability of the Affected Vehicles and the Volkswagen and Audi brands that were either false or misleading.

1715. Volkswagen owed Plaintiff a duty to disclose the true safety, cleanliness, efficiency and reliability of the Affected Vehicles and the devaluing of environmental cleanliness and integrity at Volkswagen, because Volkswagen:

- a. Possessed exclusive knowledge that it valued profits over environmental cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles

throughout the United States that did not comply with EPA regulations;

- b. Intentionally concealed the foregoing from Plaintiff; and/or
- c. Made incomplete representations about the safety, cleanliness, efficiency and reliability of the Affected Vehicles generally, and the use of the “defeat device” and true nature of the CleanDiesel engine system in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

1716. Because Volkswagen fraudulently concealed the “defeat device” and the true cleanliness and performance of the CleanDiesel engine system, resulting in a raft of negative publicity once the use of the “defeat device” and true characteristics of the CleanDiesel engine system finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by Volkswagen’s conduct, they are now worth significantly less than they otherwise would be.

1717. Volkswagen’s fraudulent use of the “defeat device” and its concealment of the true characteristics of the CleanDiesel engine system were material to Plaintiff and the Vermont Class. A vehicle made by a reputable manufacturer of environmentally friendly vehicles is worth more than an otherwise comparable vehicle made by a disreputable and dishonest manufacturer of polluting vehicles that conceals the amount its cars pollutes rather than make environmentally friendly vehicles.

1718. Plaintiff and the Vermont Subclass suffered ascertainable loss caused by Volkswagen’s misrepresentations and its concealment of and failure to disclose material information. Plaintiffs who purchased the Affected Vehicles either would have paid less for their vehicles or would not have purchased or leased them at all.

1719. Volkswagen had an ongoing duty to all Volkswagen and Audi customers to refrain from unfair and deceptive acts or practices under the Vermont CFA. All owners of

Affected Vehicles suffered ascertainable loss in the form of the diminished value of their vehicles as a result of Volkswagen's deceptive and unfair acts and practices that occurred in the course of Volkswagen's business.

1720. Volkswagen's violations present a continuing risk to Plaintiff as well as to the general public. Volkswagen's unlawful acts and practices complained of herein affect the public interest.

1721. As a direct and proximate result of Volkswagen's violations of the Vermont CFA, Plaintiff and the Vermont Subclass have suffered injury-in-fact and/or actual damage.

1722. Plaintiff and the Vermont Subclass are entitled to recover "appropriate equitable relief" and "the amount of [their] damages, or the consideration or the value of the consideration given by [them], reasonable attorney's fees, and exemplary damages not exceeding three times the value of the consideration given by [them]" pursuant to VT. STAT. ANN. TIT. 9, § 2461(b).

## **COUNT II FRAUD BY CONCEALMENT**

1723. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1724. This claim is brought on behalf of the Vermont Subclass.

1725. Volkswagen intentionally concealed and suppressed material facts concerning the quality of the Affected Vehicles. As alleged in this Complaint, notwithstanding references in the very model names of the subject vehicles as "Clean Diesel," or to their engines as "TDI Clean Diesel" engines, Volkswagen engaged in a secret scheme to evade federal and state vehicle emissions standards by installing software designed to conceal its vehicles' emissions of the pollutant nitrogen oxide, which contributes to the creation of ozone and smog. The software installed on the vehicles at issue was designed nefariously to kick-in during emissions

certification testing, such that the vehicles would show far lower emissions than when actually operating on the road. The result was what Volkswagen intended: vehicles passed emissions certifications by way of deliberately induced false readings. Reportedly, Volkswagen's deliberate, secret scheme resulted in noxious emissions from these vehicles up to 40 times applicable standards.

1726. Plaintiffs and Class members reasonably relied upon Volkswagen's false representations. They had no way of knowing that Volkswagen's representations were false and gravely misleading. As alleged herein, Volkswagen employed extremely sophisticated methods of deception. Plaintiffs and Class members did not, and could not, unravel Volkswagen's deception on their own.

1727. Volkswagen concealed and suppressed material facts concerning what is evidently the true culture of Volkswagen—one characterized by an emphasis on profits and sales above compliance with federal and state clean air laws, and emissions regulations that are meant to protect the public and consumers. It also emphasized profits and sales over the trust that Plaintiffs and Class members placed in its representations. As one customer, Priya Shah, put it in a quotation cited by the *Los Angeles Times* in a September 18, 2015 article, "It's just a blatant disregard and intentional manipulation of the system. That's just a whole other level of not only lying to the government, but also lying to your consumer. People buy diesel cars from Volkswagen because they feel they are clean diesel cars." In the words of Ms. Shah, which no doubt reflect the sentiments of all other CleanDiesel vehicle buyers, "I don't want to be spewing noxious gases into the environment."

1728. Necessarily, Volkswagen also took steps to ensure that its employees did not reveal the details of its scheme to regulators or consumers, including Plaintiffs and Class

members. Volkswagen did so in order to boost the reputations of its vehicles and to falsely assure purchasers and lessors of its vehicles, including previously owned vehicles, that Volkswagen is a reputable manufacturer that complies with applicable law, including federal and state clean air laws and emissions regulations, and that its vehicles likewise comply with applicable law and regulations. Volkswagen's false representations were material to consumers, both because they concerned the quality of the Affected Vehicles, including their compliance with applicable federal and state laws and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As Volkswagen well knew, its customers, including Plaintiffs and Class members, highly valued that the vehicles they were purchasing or leasing were *clean* diesel cars, and they paid accordingly.

1729. Volkswagen had a duty to disclose its emissions scheme because knowledge of the scheme and its details were known and/or accessible only to Volkswagen, because Volkswagen had exclusive knowledge as to implementation and maintenance of its scheme, and because Volkswagen knew the facts were not known to or reasonably discoverable by Plaintiffs or Class members. Volkswagen also had a duty to disclose because it made general affirmative representations about the qualities of its vehicles with respect to emissions standards, starting with references to them as *clean* diesel cars, or cars with *clean* diesel engines, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding its emissions scheme, the actual emissions of its vehicles, its actual philosophy with respect to compliance with federal and state clean air laws and emissions regulations, and its actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs, Volkswagen had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the

value of the Affected Vehicles purchased or leased by Plaintiffs and Class members. Whether a manufacturer's products comply with federal and state clean air laws and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certification testing their vehicles must pass. Volkswagen represented to Plaintiffs and Class members that they were purchasing *clean* diesel vehicles, and certification testing appeared to confirm this—except that, secretly, Volkswagen had subverted the testing process thoroughly.

1730. Volkswagen actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect its profits and to avoid the perception that its vehicles did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost Volkswagen money, and it did so at the expense of Plaintiffs and Class members.

1731. On information and belief, Volkswagen has still not made full and adequate disclosures, and continues to defraud Plaintiffs and Class members by concealing material information regarding the emissions qualities of its vehicles and its emissions scheme.

1732. Plaintiffs and Class members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly “clean” diesel cars manufactured by Volkswagen, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiffs' and Class Members' actions were justified. Volkswagen was in exclusive control of the material facts, and such facts were not known to the public, Plaintiffs, or Class members.

1733. Because of the concealment and/or suppression of the facts, Plaintiffs and Class members have sustained damage because they own vehicles that are diminished in value as a result of Volkswagen's concealment of the true quality and quantity of those vehicles' emissions and Volkswagen's failure to timely disclose the actual emissions qualities and quantities of hundreds of thousands of Volkswagen- and Audi-branded vehicles and the serious issues engendered by Volkswagen's corporate policies. Had Plaintiffs and Class members been aware of Volkswagen's emissions scheme, and the company's callous disregard for compliance with applicable federal and state laws and regulations, Plaintiffs and Class members who purchased or leased new or previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

1734. The value of Plaintiffs' and Class members' vehicles has diminished as a result of Volkswagen's fraudulent concealment of its emissions scheme, which has greatly tarnished the Volkswagen and Audi brand names attached to Plaintiffs' and Class members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles. In addition, Class members are entitled to damages for loss of use, costs of additional fuel, costs of unused warranties, and other damages to be proved at trial.

1735. Accordingly, Volkswagen is liable to Plaintiffs and Class members for damages in an amount to be proven at trial.

1736. Volkswagen's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Class members' rights and the representations that Volkswagen made to them, in order to enrich Volkswagen. To the extent permitted under applicable law, Volkswagen's conduct warrants an assessment of punitive

damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

**COUNT III  
BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY  
(CAL. COM. CODE § 2314)**

1737. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

1738. Plaintiffs bring this Count on behalf of the Vermont Subclass.

1739. Volkswagen is and was at all relevant times a merchant with respect to motor vehicles.

1740. A warranty that the Affected Vehicles were in merchantable condition is implied by law in the instant transactions. These Affected Vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Affected Vehicles are inherently defective in that they do not comply with federal and state emissions standards, rendering certain safety and emissions functions inoperative; and the CleanDiesel engine system was not adequately designed, manufactured, and tested.

1741. Volkswagen was provided notice of these issues by the investigations of the EPA and individual state regulators, numerous complaints filed against it including the instant complaint, and by numerous individual letters and communications sent by Plaintiffs and other Class members before or within a reasonable amount of time after the allegations of Affected Vehicle defects became public.

1742. As a direct and proximate result of Volkswagen's breach of the warranties of merchantability, Plaintiffs and the other Class members have been damaged in an amount to be proven at trial.

**COUNT IV  
BREACH OF CONTRACT  
(BASED ON VERMONT LAW)**

1743. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

1744. Plaintiff brings this Count on behalf of new vehicle or certified pre-owned vehicle purchasers in the Vermont Subclass.

1745. Volkswagen's misrepresentations and omissions alleged herein, including Volkswagen's failure to disclose the existence of the CleanDiesel engine system's defect and/or defective design as alleged herein, caused Plaintiff and the other Vermont Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiff and the other Vermont Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the CleanDiesel engine system and which were not marketed as including such a system. Accordingly, Plaintiff and the other Vermont Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

1746. Each and every sale or lease of an Affected Vehicle by an authorized Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the other Vermont Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose the existence of the CleanDiesel engine system's defect and/or defective design, including information known to Volkswagen rendering each Affected Vehicle non EPA-compliant, and thus less valuable, than vehicles not equipped with a CleanDiesel engine system.

1747. As a direct and proximate result of Volkswagen's breach of contract, Plaintiff and the Vermont Subclass have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

**MM. Claims Brought on Behalf of the Washington Subclass**

**COUNT I  
VIOLATION OF THE WASHINGTON CONSUMER PROTECTION ACT  
(WASH. REV. CODE ANN. §§ 19.86.010, *ET SEQ.*)**

1748. Plaintiffs Kurt Mallory, Matthew Mikulsky and Chad Dial ("Plaintiffs," for purposes of all Washington Subclass Counts) incorporate by reference all preceding allegations as though fully set forth herein.

1749. Plaintiffs bring this Count on behalf of the Washington Subclass.

1750. Volkswagen, Plaintiffs, and the Washington Subclass are a "person" under WASH. REV. CODE ANN. § 19.86.010(1) ("Washington CPA").

1751. Volkswagen engaged in "trade" or "commerce" under WASH. REV. CODE ANN. § 19.86.010(2).

1752. In the course of its business, Volkswagen installed the "defeat device" and concealed that its CleanDiesel systems failed EPA regulations as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Volkswagen also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Affected Vehicles.

1753. Volkswagen has known of its use of the “defeat device” and the true nature of its CleanDiesel engine system for at least six years, but concealed all of that information until recently.

1754. Volkswagen was also aware that it valued profits over environmental cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles throughout the United States that did not comply with EPA regulations. Volkswagen concealed this information as well.

1755. By failing to disclose and by actively concealing the “defeat device” and the true cleanliness and performance of the CleanDiesel engine system, by marketing its vehicles as safe, reliable, environmentally clean, efficient, and of high quality, and by presenting itself as a reputable manufacturer that valued safety, environmental cleanliness and efficiency, and stood behind its vehicles after they were sold, Volkswagen engaged in deceptive business practices in violation of the Washington CPA.

1756. In the course of Volkswagen’s business, it willfully failed to disclose and actively concealed the use of the “defeat device” and true cleanliness and efficiency of the CleanDiesel engine system and serious defects discussed above. Volkswagen compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable, environmentally clean, efficient, and of high quality, and by claiming to be a reputable manufacturer that valued safety, environmental cleanliness and efficiency, and stood behind its vehicles once they are on the road.

1757. Volkswagen’s unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs, about the true cleanliness and efficiency of the CleanDiesel engine system, the quality of the Volkswagen and Audi brands, the devaluing of environmental cleanliness and integrity at Volkswagen, and the true value of the Affected Vehicles.

1758. Volkswagen intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiff and the Wyoming Subclass.

1759. Volkswagen knew or should have known that its conduct violated the Washington CPA.

1760. As alleged above, Volkswagen made material statements about the safety, cleanliness, efficiency and reliability of the Affected Vehicles and the Volkswagen and Audi brands that were either false or misleading.

1761. Volkswagen owed Plaintiffs a duty to disclose the true safety, cleanliness, efficiency, and reliability of the Affected Vehicles and the devaluing of environmental cleanliness and integrity at Volkswagen, because Volkswagen:

- a. Possessed exclusive knowledge that it valued profits over environmental cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles throughout the United States that did not comply with EPA regulations;
- b. Intentionally concealed the foregoing from Plaintiffs; and/or
- c. Made incomplete representations about the safety, cleanliness, efficiency and reliability of the Affected Vehicles generally, and the use of the “defeat device” and true nature of the CleanDiesel engine system in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

1762. Because Volkswagen fraudulently concealed the “defeat device” and the true cleanliness and performance of the CleanDiesel engine system, resulting in a raft of negative publicity once the use of the “defeat device” and true characteristics of the CleanDiesel engine system finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by Volkswagen’s conduct, they are now worth significantly less than they otherwise would be.

1763. Volkswagen’s fraudulent use of the “defeat device” and its concealment of the true characteristics of the CleanDiesel engine system were material to Plaintiffs and the Washington Subclass. A vehicle made by a reputable manufacturer of environmentally friendly

vehicles is worth more than an otherwise comparable vehicle made by a disreputable and dishonest manufacturer of polluting vehicles that conceals the amount its cars pollutes rather than make environmentally friendly vehicles.

1764. Plaintiffs and the Washington Subclass suffered ascertainable loss caused by Volkswagen's misrepresentations and its concealment of and failure to disclose material information. Plaintiffs who purchased the Affected Vehicles either would have paid less for their vehicles or would not have purchased or leased them at all.

1765. Volkswagen's actions constituted a generalized course of deception that impacts the public interest because Plaintiffs and the Washington Subclass members were injured in exactly the same way as millions of others purchasing and/or leasing Volkswagen vehicles, and the failure to follow the practices pertaining to motor vehicle warranties in WASH. REV. CODE § 19.118 is recognized by statute as matters vitally affecting the public interest. All of the wrongful conduct alleged herein occurred, and continues to occur, in the conduct of Volkswagen's business and has the potential for repetition.

1766. As a direct and proximate result of Volkswagen's violations of the Washington CPA, Plaintiffs and the Washington Subclass have suffered injury-in-fact and/or actual damage.

1767. Volkswagen's actions as set forth above induced Plaintiffs and the Washington Subclass members to purchase their Affected Vehicles from Volkswagen and/or pay a higher price for their Affected Vehicles than they otherwise would have.

1768. Plaintiffs and the Washington Class members were injured as a result of Volkswagen's conduct. Due to Volkswagen's deceptive or unfair conduct, Plaintiffs and the Washington Class members overpaid for their Affected Vehicles and did not receive the benefit of their bargain. Their vehicles have also suffered a diminution in value.

1769. Pursuant to WASH. REV. CODE § 19.86.095, Plaintiffs will serve the Washington Attorney General with a copy of this complaint as Plaintiffs and the Washington Class members seek injunctive relief.

1770. As a direct and proximate result of Volkswagen's breach of contract, Plaintiff and the Washington Class have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, attorneys' fees, costs, treble damages, and other damages allowed by law.

**COUNT II  
FRAUD BY CONCEALMENT**

1771. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1772. This claim is brought on behalf of the Washington Subclass.

1773. Volkswagen intentionally concealed and suppressed material facts concerning the quality of the Affected Vehicles. As alleged in this Complaint, notwithstanding references in the very model names of the subject vehicles as "Clean Diesel," or to their engines as "TDI Clean Diesel" engines, Volkswagen engaged in a secret scheme to evade federal and state vehicle emissions standards by installing software designed to conceal its vehicles' emissions of the pollutant nitrogen oxide, which contributes to the creation of ozone and smog. The software installed on the vehicles at issue was designed nefariously to kick-in during emissions certification testing, such that the vehicles would show far lower emissions than when actually operating on the road. The result was what Volkswagen intended: vehicles passed emissions certifications by way of deliberately induced false readings. Reportedly, Volkswagen's deliberate, secret scheme resulted in noxious emissions from these vehicles up to 40 times applicable standards.

1774. Plaintiffs and Class members reasonably relied upon Volkswagen's false representations. They had no way of knowing that Volkswagen's representations were false and gravely misleading. As alleged herein, Volkswagen employed extremely sophisticated methods of deception. Plaintiffs and Class members did not, and could not, unravel Volkswagen's deception on their own.

1775. Volkswagen concealed and suppressed material facts concerning what is evidently the true culture of Volkswagen—one characterized by an emphasis on profits and sales above compliance with federal and state clean air laws, and emissions regulations that are meant to protect the public and consumers. It also emphasized profits and sales over the trust that Plaintiffs and Class members placed in its representations. As one customer, Priya Shah, put it in a quotation cited by the *Los Angeles Times* in a September 18, 2015 article, "It's just a blatant disregard and intentional manipulation of the system. That's just a whole other level of not only lying to the government, but also lying to your consumer. People buy diesel cars from Volkswagen because they feel they are clean diesel cars." In the words of Ms. Shah, which no doubt reflect the sentiments of all other CleanDiesel vehicle buyers, "I don't want to be spewing noxious gases into the environment."

1776. Necessarily, Volkswagen also took steps to ensure that its employees did not reveal the details of its scheme to regulators or consumers, including Plaintiffs and Class members. Volkswagen did so in order to boost the reputations of its vehicles and to falsely assure purchasers and lessors of its vehicles, including previously owned vehicles, that Volkswagen is a reputable manufacturer that complies with applicable law, including federal and state clean air laws and emissions regulations, and that its vehicles likewise comply with applicable law and regulations. Volkswagen's false representations were material to consumers,

both because they concerned the quality of the Affected Vehicles, including their compliance with applicable federal and state laws and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As Volkswagen well knew, its customers, including Plaintiffs and Class members, highly valued that the vehicles they were purchasing or leasing were *clean* diesel cars, and they paid accordingly.

1777. Volkswagen had a duty to disclose its emissions scheme because knowledge of the scheme and its details were known and/or accessible only to Volkswagen, because Volkswagen had exclusive knowledge as to implementation and maintenance of its scheme, and because Volkswagen knew the facts were not known to or reasonably discoverable by Plaintiffs or Class members. Volkswagen also had a duty to disclose because it made general affirmative representations about the qualities of its vehicles with respect to emissions standards, starting with references to them as *clean* diesel cars, or cars with *clean* diesel engines, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding its emissions scheme, the actual emissions of its vehicles, its actual philosophy with respect to compliance with federal and state clean air laws and emissions regulations, and its actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs, Volkswagen had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and Class members. Whether a manufacturer's products comply with federal and state clean air laws and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certification testing their vehicles must pass. Volkswagen represented to Plaintiffs and Class members that they

were purchasing *clean* diesel vehicles, and certification testing appeared to confirm this—except that, secretly, Volkswagen had subverted the testing process thoroughly.

1778. Volkswagen actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect its profits and to avoid the perception that its vehicles did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost Volkswagen money, and it did so at the expense of Plaintiffs and Class members.

1779. On information and belief, Volkswagen has still not made full and adequate disclosures, and continues to defraud Plaintiffs and Class members by concealing material information regarding the emissions qualities of its vehicles and its emissions scheme.

1780. Plaintiffs and Class members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly “clean” diesel cars manufactured by Volkswagen, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiffs' and Class Members' actions were justified. Volkswagen was in exclusive control of the material facts, and such facts were not known to the public, Plaintiffs, or Class members.

1781. Because of the concealment and/or suppression of the facts, Plaintiffs and Class members have sustained damage because they own vehicles that are diminished in value as a result of Volkswagen's concealment of the true quality and quantity of those vehicles' emissions and Volkswagen's failure to timely disclose the actual emissions qualities and quantities of hundreds of thousands of Volkswagen- and Audi-branded vehicles and the serious issues

engendered by Volkswagen's corporate policies. Had Plaintiffs and Class members been aware of Volkswagen's emissions scheme, and the company's callous disregard for compliance with applicable federal and state laws and regulations, Plaintiffs and Class members who purchased or leased new or previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

1782. The value of Plaintiffs' and Class Members' vehicles has diminished as a result of Volkswagen's fraudulent concealment of its emissions scheme, which has greatly tarnished the Volkswagen and Audi brand names attached to Plaintiffs' and Class members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles. In addition, Class members are entitled to damages for loss of use, costs of additional fuel, costs of unused warranties, and other damages to be proved at trial.

1783. Accordingly, Volkswagen is liable to Plaintiffs and Class members for damages in an amount to be proven at trial.

1784. Volkswagen's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Class members' rights and the representations that Volkswagen made to them, in order to enrich Volkswagen. To the extent permitted under applicable law, Volkswagen's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

**COUNT III**  
**BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**  
**(REV. CODE WASH. § 62A.2-614)**

1785. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

1786. Plaintiffs bring this Count on behalf of the Washington Subclass.

1787. Volkswagen is and was at all relevant times a merchant with respect to motor vehicles.

1788. A warranty that the Affected Vehicles were in merchantable condition is implied by law in the instant transactions. These Affected Vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Affected Vehicles are inherently defective in that they do not comply with federal and state emissions standards, rendering certain safety and emissions functions inoperative; and the CleanDiesel engine system was not adequately designed, manufactured, and tested.

1789. Volkswagen was provided notice of these issues by the investigations of the EPA and individual state regulators, numerous complaints filed against it including the instant complaint, and by numerous individual letters and communications sent by Plaintiffs and other Class members before or within a reasonable amount of time after the allegations of Affected Vehicle defects became public.

1790. As a direct and proximate result of Volkswagen's breach of the warranties of merchantability, Plaintiffs and the other Class members have been damaged in an amount to be proven at trial.

**COUNT IV**  
**BREACH OF CONTRACT**  
**(BASED ON WASHINGTON LAW)**

1791. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

1792. Plaintiff brings this Count on behalf of new vehicle or certified pre-owned vehicle purchasers in the Washington Subclass.

1793. Volkswagen's misrepresentations and omissions alleged herein, including Volkswagen's failure to disclose the existence of the CleanDiesel engine system's defect and/or defective design as alleged herein, caused Plaintiff and the other Washington Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiff and the other Washington Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the CleanDiesel engine system and which were not marketed as including such a system. Accordingly, Plaintiff and the other Washington Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

1794. Each and every sale or lease of an Affected Vehicle by an authorized Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the other Washington Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose the existence of the CleanDiesel engine system's defect and/or defective design, including information known to Volkswagen rendering each Affected Vehicle non EPA-compliant, and thus less valuable, than vehicles not equipped with a CleanDiesel engine system.

**NN. Claims Brought on Behalf of the Wisconsin Subclass**

**COUNT I  
VIOLATIONS OF THE WISCONSIN  
DECEPTIVE TRADE PRACTICES ACT  
(WIS. STAT. § 110.18)**

1795. Plaintiff Ryan Geier (“Plaintiff,” for purposes of all Wisconsin Subclass Counts) incorporates by reference all preceding allegations as though fully set forth herein.

1796. This claim is brought only on behalf of the Wisconsin Subclass.

1797. Volkswagen is a “person, firm, corporation or association” within the meaning of WIS. STAT. § 100.18(1).

1798. Plaintiff and Wisconsin Subclass Members are members of “the public” within the meaning of WIS. STAT. § 100.18(1). Plaintiff and Wisconsin Subclass Members purchased or leased one or more Affected Vehicles.

1799. The Wisconsin Deceptive Trade Practices Act (“Wisconsin DTPA”) prohibits a “representation or statement of fact which is untrue, deceptive or misleading.” WIS. STAT. § 100.18(1). By fraudulently installing the “defeat device” to make it appear that its CleanDiesel engine systems complied with EPA regulations, Volkswagen engaged in unfair and deceptive acts and practices and violated the Wisconsin DTPA.

1800. In the course of its business, Volkswagen installed the “defeat device” and concealed that its CleanDiesel systems failed EPA regulations as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Volkswagen also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Affected Vehicles.

1801. Volkswagen has known of its use of the “defeat device” and the true nature of its CleanDiesel engine system for at least six years, but concealed all of that information until recently.

1802. Volkswagen was also aware that it valued profits over environmental cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles throughout the United States that did not comply with EPA regulations. Volkswagen concealed this information as well.

1803. By failing to disclose and by actively concealing the “defeat device” and the true cleanliness and performance of the CleanDiesel engine system, by marketing its vehicles as safe, reliable, environmentally clean, efficient, and of high quality, and by presenting itself as a reputable manufacturer that valued safety, environmental cleanliness and efficiency, and stood behind its vehicles after they were sold, Volkswagen engaged in deceptive business practices in violation of the Wisconsin DTPA.

1804. In the course of Volkswagen’s business, it willfully failed to disclose and actively concealed the use of the “defeat device” and true cleanliness and efficiency of the CleanDiesel engine system and serious defects discussed above. Volkswagen compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable, environmentally clean, efficient, and of high quality, and by claiming to be a reputable manufacturer that valued safety, environmental cleanliness and efficiency, and stood behind its vehicles once they are on the road.

1805. Volkswagen’s unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiff about the true cleanliness and efficiency of the CleanDiesel engine system, the quality of the Volkswagen and Audi brands, the devaluing of

environmental cleanliness and integrity at Volkswagen, and the true value of the Affected Vehicles.

1806. Volkswagen intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiff and the Wisconsin Subclass.

1807. Volkswagen knew or should have known that its conduct violated the Wisconsin DTPA.

1808. As alleged above, Volkswagen made material statements about the safety, cleanliness, efficiency and reliability of the Affected Vehicles and the Volkswagen and Audi brands that were either false or misleading.

1809. Volkswagen owed Plaintiffs a duty to disclose the true safety, cleanliness, efficiency and reliability of the Affected Vehicles and the devaluing of environmental cleanliness and integrity at Volkswagen, because Volkswagen:

- a. Possessed exclusive knowledge that it valued profits over environmental cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles throughout the United States that did not comply with EPA regulations;
- b. Intentionally concealed the foregoing from Plaintiffs; and/or
- c. Made incomplete representations about the safety, cleanliness, efficiency and reliability of the Affected Vehicles generally, and the use of the “defeat device” and true nature of the CleanDiesel engine system in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

1810. Because Volkswagen fraudulently concealed the “defeat device” and the true cleanliness and performance of the CleanDiesel engine system, resulting in a raft of negative publicity once the use of the “defeat device” and true characteristics of the CleanDiesel engine system finally began to be disclosed, the value of the Affected Vehicles has greatly diminished.

In light of the stigma attached to those vehicles by Volkswagen's conduct, they are now worth significantly less than they otherwise would be.

1811. Volkswagen's fraudulent use of the "defeat device" and its concealment of the true characteristics of the CleanDiesel engine system were material to Plaintiffs and the Wisconsin Subclass. A vehicle made by a reputable manufacturer of environmentally clean vehicles is worth more than an otherwise comparable vehicle made by a disreputable and dishonest manufacturer of polluting vehicles that conceals the amount its cars pollutes rather than make environmentally friendly vehicles.

1812. Plaintiff and the Wisconsin Subclass suffered ascertainable loss caused by Volkswagen's misrepresentations and its concealment of and failure to disclose material information.

1813. Volkswagen had an ongoing duty to all Volkswagen and Audi customers to refrain from unfair and deceptive acts or practices under the Wisconsin DTPA. All owners of Affected Vehicles suffered ascertainable loss in the form of the diminished value of their vehicles as a result of Volkswagen's deceptive and unfair acts and practices that occurred in the course of Volkswagen's business.

1814. Volkswagen's violations present a continuing risk to Plaintiffs as well as to the general public. Volkswagen's unlawful acts and practices complained of herein affect the public interest.

1815. As a direct and proximate result of Volkswagen's violations of the Wisconsin DTPA, Plaintiff and the Wisconsin Subclass have suffered injury-in-fact and/or actual damage.

1816. Plaintiff and the Wisconsin Subclass are entitled to damages and other relief provided for under WIS. STAT. § 100.18(11)(b)(2). Because Volkswagen's conduct was

committed knowingly and/or intentionally, Plaintiff and the Wisconsin Subclass are entitled to treble damages.

1817. Plaintiff and the Wisconsin Subclass also seek court costs and attorneys' fees under WIS. STAT. § 110.18(11)(b)(2).

**COUNT II  
FRAUD BY CONCEALMENT**

1818. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1819. This claim is brought on behalf of the Wisconsin Subclass.

1820. Volkswagen intentionally concealed and suppressed material facts concerning the quality of the Affected Vehicles. As alleged in this Complaint, notwithstanding references in the very model names of the subject vehicles as "Clean Diesel," or to their engines as "TDI Clean Diesel" engines, Volkswagen engaged in a secret scheme to evade federal and state vehicle emissions standards by installing software designed to conceal its vehicles' emissions of the pollutant nitrogen oxide, which contributes to the creation of ozone and smog. The software installed on the vehicles at issue was designed nefariously to kick-in during emissions certification testing, such that the vehicles would show far lower emissions than when actually operating on the road. The result was what Volkswagen intended: vehicles passed emissions certifications by way of deliberately induced false readings. Reportedly, Volkswagen's deliberate, secret scheme resulted in noxious emissions from these vehicles at up to 40 times applicable standards.

1821. Plaintiffs and Class members reasonably relied upon Volkswagen's false representations. They had no way of knowing that Volkswagen's representations were false and gravely misleading. As alleged herein, Volkswagen employed extremely sophisticated methods

of deception. Plaintiffs and Class members did not, and could not, unravel Volkswagen's deception on their own.

1822. Volkswagen concealed and suppressed material facts concerning what is evidently the true culture of Volkswagen—one characterized by an emphasis on profits and sales above compliance with federal and state clean air laws, and emissions regulations that are meant to protect the public and consumers. It also emphasized profits and sales over the trust that Plaintiffs and Class members placed in its representations. As one customer, Priya Shah, put it in a quotation cited by the *Los Angeles Times* in a September 18, 2015 article, “It’s just a blatant disregard and intentional manipulation of the system. That’s just a whole other level of not only lying to the government, but also lying to your consumer. People buy diesel cars from Volkswagen because they feel they are clean diesel cars.” In the words of Ms. Shah, which no doubt reflect the sentiments of all other CleanDiesel vehicle buyers, “I don’t want to be spewing noxious gases into the environment.”

1823. Necessarily, Volkswagen also took steps to ensure that its employees did not reveal the details of its scheme to regulators or consumers, including Plaintiffs and Class members. Volkswagen did so in order to boost the reputations of its vehicles and to falsely assure purchasers and lessors of its vehicles, including previously owned vehicles, that Volkswagen is a reputable manufacturer that complies with applicable law, including federal and state clean air laws and emissions regulations, and that its vehicles likewise comply with applicable law and regulations. Volkswagen’s false representations were material to consumers, both because they concerned the quality of the Affected Vehicles, including their compliance with applicable federal and state laws and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As Volkswagen

well knew, its customers, including Plaintiffs and Class members, highly valued that the vehicles they were purchasing or leasing were *clean* diesel cars, and they paid accordingly.

1824. Volkswagen had a duty to disclose its emissions scheme because knowledge of the scheme and its details were known and/or accessible only to Volkswagen, because Volkswagen had exclusive knowledge as to implementation and maintenance of its scheme, and because Volkswagen knew the facts were not known to or reasonably discoverable by Plaintiffs or Class members. Volkswagen also had a duty to disclose because it made general affirmative representations about the qualities of its vehicles with respect to emissions standards, starting with references to them as *clean* diesel cars, or cars with *clean* diesel engines, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding its emissions scheme, the actual emissions of its vehicles, its actual philosophy with respect to compliance with federal and state clean air laws and emissions regulations, and its actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs, Volkswagen had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and Class members. Whether a manufacturer's products comply with federal and state clean air laws and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certification testing their vehicles must pass. Volkswagen represented to Plaintiffs and Class members that they were purchasing *clean* diesel vehicles, and certification testing appeared to confirm this—except that, secretly, Volkswagen had subverted the testing process thoroughly.

1825. Volkswagen actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect its profits and to avoid the perception that its vehicles did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost Volkswagen money, and it did so at the expense of Plaintiffs and Class members.

1826. On information and belief, Volkswagen has still not made full and adequate disclosures, and continues to defraud Plaintiffs and Class members by concealing material information regarding the emission qualities of its vehicles and its emissions scheme.

1827. Plaintiffs and Class members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly "clean" diesel cars manufactured by Volkswagen, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiffs' and Class Members' actions were justified. Volkswagen was in exclusive control of the material facts, and such facts were not known to the public, Plaintiffs, or Class members.

1828. Because of the concealment and/or suppression of the facts, Plaintiffs and Class members have sustained damage because they own vehicles that are diminished in value as a result of Volkswagen's concealment of the true quality and quantity of those vehicles' emissions and Volkswagen's failure to timely disclose the actual emission qualities and quantities of hundreds of thousands of Volkswagen- and Audi-branded vehicles and the serious issues engendered by Volkswagen's corporate policies. Had Plaintiffs and Class members been aware of Volkswagen's emissions scheme, and the company's callous disregard for compliance with

applicable federal and state laws and regulations, Plaintiffs and Class members who purchased or leased new or previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

1829. The value of Plaintiffs' and Class members' vehicles has diminished as a result of Volkswagen's fraudulent concealment of its emissions scheme, which has greatly tarnished the Volkswagen and Audi brand names attached to Plaintiffs' and Class members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles. In addition, Class members are entitled to damages for loss of use, costs of additional fuel, costs of unused warranties, and other damages to be proved at trial.

1830. Accordingly, Volkswagen is liable to Plaintiffs and Class members for damages in an amount to be proven at trial.

1831. Volkswagen's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Class members' rights and the representations that Volkswagen made to them, in order to enrich Volkswagen. To the extent permitted under applicable law, Volkswagen's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

**COUNT III  
BREACH OF CONTRACT  
(BASED ON WISCONSIN LAW)**

1832. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

1833. Plaintiff brings this Count on behalf of new vehicle or certified pre-owned vehicle purchasers in the Wisconsin Subclass.

1834. Volkswagen's misrepresentations and omissions alleged herein, including Volkswagen's failure to disclose the existence of the CleanDiesel engine system's defect and/or defective design as alleged herein, caused Plaintiff and the other Wisconsin Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiff and the other Wisconsin Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the CleanDiesel engine system and which were not marketed as including such a system. Accordingly, Plaintiff and the other Wisconsin Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

1835. Each and every sale or lease of an Affected Vehicle by an authorized Volkswagen dealer constitutes a contract between Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the other Wisconsin Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose the existence of the CleanDiesel engine system's defect and/or defective design, including information known to Volkswagen rendering each Affected Vehicle non EPA-compliant, and thus less valuable, than vehicles not equipped with a CleanDiesel engine system.

1836. As a direct and proximate result of Volkswagen's breach of contract, Plaintiff and the Wisconsin Subclass have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

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

- A. Certification of the proposed Nationwide Class and Subclasses, including appointment of Plaintiffs' counsel as Class Counsel;
- B. An order temporarily and permanently enjoining Volkswagen from continuing the unlawful, deceptive, fraudulent, and unfair business practices alleged in this Complaint;
- C. Injunctive relief in the form of a recall or free replacement program;
- D. Injunctive relief in the form of environmental remediation to offset the harm caused by the illegal emissions of the CleanDiesel engine systems;
- E. Costs, restitution, damages, including punitive damages, and disgorgement in an amount to be determined at trial;
- F. An order requiring Volkswagen to pay both pre- and post-judgment interest on any amounts awarded;
- G. An award of costs and attorneys' fees; and
- H. Such other or further relief as may be appropriate.

**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a jury trial for all claims so triable.

CARELLA, BYRNE, CECCHI, OLSTEIN,  
BRODY & AGNELLO, P.C.

/s/ James E. Cecchi

JAMES E. CECCHI

DATED: October 16, 2015

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*Attorneys for Plaintiffs and the proposed class and subclasses*

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**

AMY CLARKE, et al.

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

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

CARELLA, BYRNE, CECCHI, OLSTEIN, BRODY & AGNELLO, P.C.  
5 Becker Farm Road, Roseland, New Jersey 07068  
(973) 994-1700

**DEFENDANTS**

VOLKSWAGEN GROUP OF AMERICA, INC. and VOLKSWAGEN AC

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

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

Attorneys (If Known)

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

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

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

- |   |                                       |                            |   |                            |                                       |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
|   | <b>PTF</b>                            | <b>DEF</b>                 |   | <b>PTF</b>                 | <b>DEF</b>                            |
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input checked="" 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	<b>PERSONAL INJURY</b> <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	<b>PERSONAL INJURY</b> <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 <b>PERSONAL PROPERTY</b> <input checked="" type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other  <b>LABOR</b> <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  <b>IMMIGRATION</b> <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  <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark  <b>SOCIAL SECURITY</b> <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))  <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

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

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

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d)

Brief description of cause:  
Consumer action brought by owners or lessees of Volkswagen diesel vehicles that exceed emissions limits.

**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 Jose L. Linares DOCKET NUMBER 15-6985

DATE 10/16/15 SIGNATURE OF ATTORNEY OF RECORD /s/ James E. Cecchi