

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

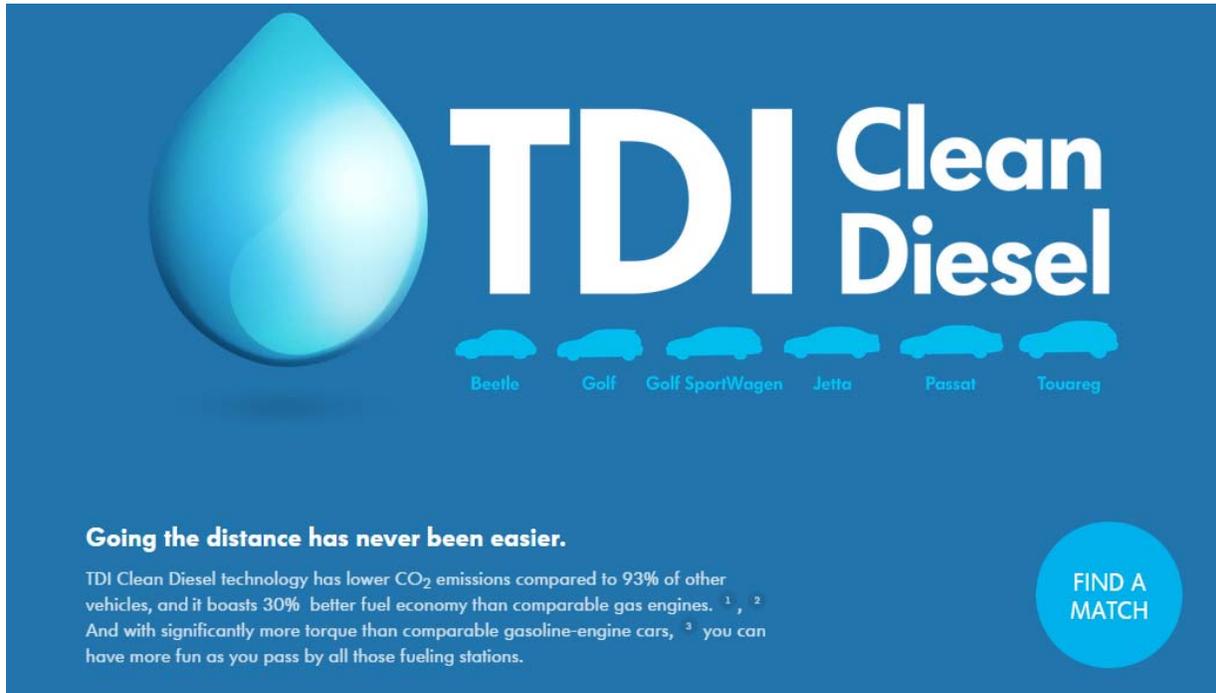
RICHARD COWELL, JR., individually,)	
and on behalf of all others similarly)	
situated,)	
)	No.
Plaintiffs,)	
)	<u>JURY TRIAL DEMANDED</u>
vs.)	
)	CLASS ACTION
VOLKSWAGEN GROUP OF)	
AMERICA, INC., and VOLKSWAGEN)	
AG.)	
)	
Defendants.)	

CLASS ACTION COMPLAINT

Plaintiff, RICHARD COWELL, JR., for himself and all similarly situated people, alleges the following:

1. Since 2009, Volkswagen Group of America, Inc. and Volkswagen AG (hereinafter collectively, “Volkswagen”) manufactured and sold cars in the United States and throughout the world with diesel engines that Volkswagen widely marketed as the “TDI® Clean Diesel engine,” which came installed in various Volkswagen and Audi models, including the Jetta, the Jetta Sportswagen, the Golf, the Audi A3, the Beetle, the Beetle convertible, the Passat, and the Golf Sportswagen (“Affected Vehicles”). Volkswagen advertised, marketed, promoted and sold these vehicles as powerful,

efficient, and clean with low emissions as a result of the “Clean Diesel” engine system as reflected in this Volkswagen web advertisement:¹



2. Under the Clean Air Act, 42 U.S.C. §§ 7401-7671q, and its implementing regulations both administered and enforced by the Environmental Protection Agency (“EPA”), manufacturers of diesel-powered cars, like Volkswagen, were required to install emission control devices so that each diesel vehicle sold in the US complies with Clean Air Act emission standards, as well as to certify that such devices are installed, operative, and meet applicable standards.

3. As discussed below, consumers, including Plaintiff and members of both Classes defined below paid an increased amount and spent a premium to purchase a

¹ <http://www.vw.com/features/clean-diesel/>.

Volkswagen or Audi with a “TDI® Clean Diesel” engine, since doing so ensured the engine was eco-friendly as well as powerful and fuel efficient.

4. It was only after an enormous investigation by state and federal regulators that anyone outside of Volkswagen learned that these “Clean Diesel” engines actually spewed 40 times the amount of emissions permitted by EPA standards. Thus, such engines were hardly the clean-operating, eco-friendly power plant that offered increased efficiency, torque, and acceleration.

5. On September 18, 2015, Phillip A. Brooks, Director, Air Enforcement Division, Office of Civil Enforcement, with the United States Environmental Protection Agency, issued a Notice of Violation, stating:

[T]he EPA has determined that VW manufactured and installed defeat devices in certain model year 2009 through 2015 diesel light-duty vehicles equipped with 2.0 liter engines. These defeat devices bypass, defeat, or render inoperative elements of the vehicles’ emission control system that exist to comply with [Clean Air Act] emission standards. **Therefore, VW violated section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B).** Additionally, the EPA has determined that, due to the existence of the defeat devices in these vehicles, these vehicles do not conform in all material respects to the vehicle specifications described in the applications for the certificates of conformity that purportedly cover them. **Therefore, VW also violated section 203(a)(1) of the CAA, 42 U.S.C. § 7522(a)(1) by selling, offering for sale, introducing into commerce, delivering for introduction into commerce, or importing these vehicles, or for causing any of the foregoing acts.**²

Director Brooks continued by explaining Volkswagen’s method of deceiving regulators, and, necessarily, consumers, which stands at the center and is at the heart of this case:

Specifically, VW manufactured and installed software in the electronic control module (ECM) of these vehicles that sensed when the vehicle was being tested for compliance with EPA emissions standards. For ease of

² See Sept. 18, 2015 Notice of Violation (emphasis added).

reference, the EPA is calling this the “switch.” The “switch” senses whether the vehicle is being tested or not based on various inputs including the position of the steering wheel, vehicle speed, the duration of the engine’s operation, and barometric pressure. These inputs precisely track the parameters of the federal test procedure used for emission testing for EPA certification purposes. During EPA emission testing, the vehicles’ ECM ran software which produced compliant emission results under an ECM calibration that VW referred to as the “dyno calibration” (referring to the equipment used in emissions testing, called a dynamometer). At all other times during normal vehicle operation, the “switch” was activated and the vehicle ECM software ran a separate “road calibration” which reduced the effectiveness of the emission control system (specifically the selective catalytic reduction or the lean NOx trap). **As a result, emissions of NOx increased by a factor of 10 to 40 times above the EPA compliant levels, depending on the type of drive cycle (e.g., city, highway).**³

As Cynthia Giles, Assistant Administrator for the Office of Enforcement and Compliance Assurance at the EPA summed up: “[u]sing a defeat device in cars to evade clean air standards is illegal and a threat to public health.”

6. As described above, Volkswagen employed sophisticated software in Affected Vehicles that detected when the vehicle was undergoing official emissions tests before turning on full emissions controls to ensure the vehicle would pass emission scrutiny. After the test and at all other times, the software would revert to limited emission control, allowing NOx emissions to reach as much as 40 times the amount permitted by EPA standards. In short, Volkswagen cheated to get the results from its product that it desired.

7. NOx emissions not only contribute to nitrogen dioxide, ground-level ozone and fine particulate pollution, NOx also carries serious health risks and are linked with asthma attacks, respiratory illness, and other maladies.

³ *Id.* (emphasis added).

8. If concealing the true emissions profile of the Affected Vehicles were not enough, Volkswagen compounded the deception by charging Plaintiff and members of both Classes a significant premium and an increased amount for the Affected Vehicles. For example, the highest level gas Jetta SE has a base MSRP of \$20,095, while the Clean Diesel TDI SEL carries an MSRP of \$26,410, representing a \$6,315 premium. Volkswagen collected such premiums across its entire affected vehicle fleet, as represented by the following chart:

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

9. Now, with the truth about Volkswagen's deception in the open and as a result of Volkswagen's conduct, the value of Affected Vehicles will drop significantly. Already, the EPA has initiated a recall covering roughly 482,000 Affected Vehicles sold in the United States since 2009 that will require Volkswagen to make the vehicles compliant with EPA emissions requirements at all times during normal operation. To do so, however, will require substantially reducing the power and efficiency of the vehicle, causing Plaintiff and members of both Classes to suffer actual harm and damages as the Affected Vehicles will no longer perform as they did when purchased and as advertised, which, in turn, will both diminish the value of every affected vehicle, including reducing the residual value of leased vehicles, thereby causing lessees to incur additional damages, not to mention causing owners and lessees of Affected Vehicles to pay more for fuel.

10. As recent as September 20, 2015, Volkswagen conceded the truth of the EPA allegations to U.S. regulators, admitting that it programmed its cars to detect when the vehicles were tested and adjust the running of the diesel engines to hide the true emissions. More recently, on September 23, 2015, Volkswagen Chief Executive Martin Winterkorn resigned his position over the matter, after apologizing for breaking the trust of Volkswagen customers and the public.

11. Accordingly, Volkswagen intentionally breached federal and state law as well as EPA rules and regulations by selling in the United States its vehicles containing devices that purposefully evaded federal and state laws, concealing from plaintiff and members of both Classes that its Affected Vehicles emit in excess of the allowable limits of pollutants under normal operating conditions, in some cases over 40 times the allowable limits, causing Plaintiff and members of both Classes to suffer damages. Had Plaintiff and members of both Classes been apprised of the “defeat device” at the time of purchase or lease of the Affected Vehicles, they would not have purchased or leased the vehicle or paid significantly less than the premium they did pay.

JURISDICTION AND VENUE

12. Jurisdiction is proper in this Court pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d), since the proposed Classes consists of 100 or more members; the aggregate amount in controversy exceeds \$5,000,000, exclusive of interest and costs; and minimal diversity exists.

13. Venue is proper in the District of New Jersey under 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to these claims occurred

in this district. Plaintiff resides in this District and Volkswagen has marketed, advertised, sold, and leased Affected Vehicles within this district.

PARTIES

14. Plaintiff Richard Cowell, Jr. resides in Burlington County, New Jersey. On April 12, 2012, he purchased a brand new 2012 Passat TDI SE from Hamilton Imports, an authorized Volkswagen dealer in Hamilton Square, New Jersey.

15. At the time he purchased the vehicle, he relied upon the representations of Volkswagen that its product was compliant with EPA requirements and was completely unaware that Volkswagen intentionally equipped his Passat with an emissions control “defeat device” in order to ensure the vehicle received EPA certification and passed emissions tests, despite at all other times emitting 40 times the amount of pollutants allowed by law. Volkswagen’s use of the “defeat device” has caused Plaintiff out-of-pocket loss, future attempted repairs, and has diminished the value of his vehicle.

16. Similarly, Volkswagen knew about and intentionally installed the “defeat device” without disclosing the presence and effect of the device to Plaintiff. Thus, Plaintiff purchased his vehicle on the reasonable, mistaken belief in reliance upon Volkswagen that his vehicle not only complied with United States emissions standards and was properly EPA certified, but would have retained all of its operating characteristics throughout its useful life.

17. Moreover, Plaintiff selected and ultimately purchased his Passat TDI based on what he learned of the “Clean Diesel” system through Volkswagens advertisements and representations. More specifically, the reason that he purchased his

Passat TDI and not another vehicle, was his understanding, informed by Volkswagen's marketing, that Volkswagen's "Clean Diesel" system had a lessened impact on the environment when compared with other similar vehicles due to lower emissions. This understanding was informed by Volkswagen's website along with Volkswagen product brochures, including a Passat brochure he was given at the dealership along with representations of Volkswagen's "Clean Diesel" system made by Volkswagen salesmen. He also learned about the purported benefits of Volkswagen's "Clean Diesel" system from Volkswagen television and radio advertisements, which characterized Volkswagen's "Clean Diesel" system as environmentally safe, powerful, and fuel efficient, which was consistent with all other representations made by Volkswagen to Plaintiff.

18. Collectively, Plaintiff recalls Volkswagen's "Clean Diesel" marketing touted the engine system as environmentally friendly given that it was clean-running with low emissions, but also efficient and powerful. He never saw any advertisements or representations containing disclosure of Volkswagen's use of a "defeat device" or that Volkswagen cheated its certification of EPA compliance. Indeed, if Volkswagen had disclosed that the "Clean Diesel" system actually emitted 40 times the allowable levels of pollutants, such as NO_x, he would not have purchased the Passat.

19. Accordingly, Plaintiff and members of each class have suffered an ascertainable loss as a result of Volkswagen's misrepresentations and omissions pertaining to the "Clean Diesel" system, including, out-of-pocket losses and future

attempted repairs, future additional fuel costs, as well as reduced performance and diminished value of the vehicle as well as other damages to be quantified and determined.

20. At no point did Volkswagen or any of its agents, dealers or representatives disclose to Plaintiff and members of both Classes of the existence of the “defeat device” prior to purchase.

21. Volkswagen Group of America, Inc. is a corporation conducting business in all 50 states and is organized under the laws of New Jersey, maintaining its principal place of business in Herndon, Virginia. At all times relevant to this case, Volkswagen marketed, manufactured, sold, distributed, leased, and warranted the affected vehicle under the Volkswagen and Audi brands throughout the United States. Volkswagen and/or its agents designed, engineered, manufactured, installed, and serviced the Clean Diesel engine systems in the Affected Vehicles, which included the “defeat device.”

22. Volkswagen AG is a foreign for-profit corporation with its principal place of business at 38436 Wolfsburg, Germany. Volkswagen AG is among the world’s largest manufacturers, owning and controlling Volkswagen and Audi brands among others. Volkswagen AG designs, manufactures, tests, markets, distributes, and sells the Affected Vehicles. Volkswagen AG delivers its products into the stream of commerce and does so with the expectation that its products will be purchased by consumers in the United States.

TOLLING OF THE STATUTE OF LIMITATIONS

23. As described herein, Plaintiff and members of both Classes were prevented by Volkswagen from learning about Volkswagen’s deception over its Clean

Diesel engine system and its use of the “defeat device” in the Affected Vehicles. Volkswagen’s deception was only brought to light through EPA and California Air Resources Board investigations. Volkswagen hid its tracks by manipulating complex software. Indeed the very function of the “defeat device” prevented members of both Classes from learning of the deception, not to mention regulators. Accordingly, Plaintiff and members of both Classes were unable to learn, through the exercise of reasonable diligence, that Volkswagen was hiding the conduct complained of herein.

24. Indeed, neither Plaintiff nor members of both Classes discovered or knew of Volkswagen’s concealment of the true emissions profile for the “Clean Diesel” engine system, which contradicted Volkswagen’s marketing and representations of the system as environmentally sound, efficient, and powerful.

25. Volkswagen is estopped from relying on any statutes of limitations in light of its continuous obligation to apprise Plaintiff and members of both Classes of Volkswagen’s conscious, affirmative concealment of the true emissions profile of its “Clean Diesel” engine system.

CLASS ACTION ALLEGATIONS

26. Plaintiff brings this action and seeks to certify and maintain it as a class action under Rules 23(a); (b)(1) and/or (b)(2); and (b)(3) of the Federal Rules of Civil Procedure on behalf of herself and a Nationwide Class (the “Nationwide Class”) defined as follows:

“All persons or entities in the United States who are current or former owners and/or lessees of one or more Defective Vehicles in the United States, which include, but are not limited to, 2009-2015 VW Jetta, 2009-2015 VW Beetle, 2009-2015 VW Golf, 2014-2015 VW Passat, and 2009-2015 Audi A3.”

27. Plaintiff seeks to represent the following statewide class or subclass (the “New Jersey Class”) defined as follows:

“All persons in the State of New Jersey who are current or former owners and/or lessees of one or more Defective Vehicles in the United States, which include, but are not limited to, 2009-2015 VW Jetta, 2009-2015 VW Beetle, 2009-2015 VW Golf, 2014-2015 VW Passat, and 2009-2015 Audi A3.”

28. Excluded from the Classes are:

- a. Defendants, including any entity or division in which Defendants have a controlling interest, along with their legal representatives, employees, officers, directors, assigns, heirs, successors, and wholly or partly owned subsidiaries or affiliates;
- b. the Judge to whom this case is assigned, the Judge’s staff, and the Judge’s immediate family;
- c. all governmental entities; and
- d. those persons who have suffered personal injuries as a result of the facts alleged herein.

29. Plaintiff reserves the right to amend the definitions of classes if discovery and further investigation reveal that any Class should be expanded, divided into additional subclasses, or modified in any other way.

NUMEROSITY AND ASCERTAINABILITY

30. This action meets the numerosity requirement of Fed. R. Civ. P. 23(a)(1), given that the amount of Affected Vehicles and owners, upon information and belief, in excess of hundreds of thousands and are geographically dispersed, making individual joinder of members of both Classes’ respective claims impracticable. While

the precise number of members of both Classes is not yet known, the precise number can be ascertained from Volkswagen's books and records and through discovery. Finally, members of both Classes can be notified of the pendency of this action by Court-approved notice methods.

TYPICALITY

31. Pursuant to Federal Rules of Civil Procedure 23 (a)(3), Plaintiff's claims are typical of the claims of members of both Classes, and arise from the same course of conduct by Volkswagen. Plaintiff, like all members of both Classes, has been damaged by Volkswagen's misconduct in that they have incurred losses relating to the "defeat devices" and Volkswagen's related misrepresentations and concealments. Furthermore, the factual bases of Volkswagen's misconduct are common to all members of both Classes and represent a common thread of misconduct resulting in injury to all members of both Classes. The relief Plaintiff seeks is typical of the relief sought for absent members of both Classes.

ADEQUACY OF REPRESENTATION

32. Plaintiff will serve as a fair and adequate class representative as his interests, as well as the interests of his counsel, do not conflict with the interest of other members of the class she seeks to represent. Further, Plaintiff has retained counsel who are competent and experienced in class action litigation.

33. Plaintiff and his counsel are committed to vigorously prosecuting this action on behalf of the Classes.

PREDOMINANCE OF COMMON ISSUES

34. There are numerous questions of law and fact common to Plaintiff and members of both Classes that predominate over any question affecting only individual members of both Classes, the answers to which will advance resolution of the litigation as to all members of both Classes. These common legal and factual issues include the following:

- a. Whether Volkswagen engaged in the conducted alleged herein;
- b. Whether Affected Vehicles contained the illegal “defeat devices;”
- c. Whether Volkswagen designed, manufactured, advertised, marketed, distributed, leased, sold or otherwise placed Affected Vehicles into the United States stream of commerce;
- d. Whether the Clean Diesel engine system contains a defect that does not comply with U.S. regulatory requirements;
- e. Whether Clean Diesel engine systems can be made to comply with U.S. regulatory requirements without substantially reducing the performance and efficiency of the Affected Vehicles;
- f. The extent to which Volkswagen knew about the “defeat device” between 2009 to the present;
- g. Whether Volkswagen’s conduct violates consumer protection statutes, warranty laws, and other laws as set forth herein;
- h. Whether Plaintiff and members of both Classes overpaid for their Affected Vehicles;

- i. Whether Affected Vehicles suffered a diminution of value as a result of Volkswagen's deceptive business practices;
- j. Whether Volkswagen made unlawful and misleading representations or material omissions with respect to the Affected Vehicles;
- k. Whether Plaintiff and other members of both Classes are entitled to equitable relief, including, but not limited to, restitution or injunctive relief; and
- l. Whether Plaintiff and other members of both Classes are entitled to damages and other monetary relief, and if so, in what amount.

SUPERIORITY

35. The class action mechanism is superior to any other available means of the fair and efficient adjudication of this case. Further, no unusual difficulties are likely to be encountered in the management of this class action. The damages suffered by Plaintiff and members of both Classes are relatively small when compared to the burden and expense required to individually litigate each claim against Volkswagen. Therefore, it is impracticable for Plaintiff and members of both Classes to individually litigate their respective claims for Volkswagen's complained-of conduct. To do so would risk inconsistent or contradictory judgments and increase delays and expense to both parties and the court system. Therefore, the class action mechanism presents considerably less management challenges and provides the efficiency of a single adjudication and comprehensive oversight by a single court.

DECLARATORY AND INJUNCTIVE RELIEF

36. Since Volkswagen has acted or refused to act on grounds generally applicable to Plaintiff and members of both Classes, final injunctive and declaratory relief is appropriate with respect to the Class as a whole.

CLAIMS FOR RELIEF

**COUNT I
FRAUD BY CONCEALMENT**

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

38. Volkswagen intentionally concealed and suppressed material facts concerning the quality and character of the Affected Vehicles. Volkswagen engaged in deception to evade federal and state vehicle emissions standards by installing the “defeat device” software which was designed by Volkswagen to conceal its vehicles’ emissions of the pollutants.

39. The software installed in the Affected Vehicles was fraudulently designed to be activated only during emissions testing. As Defendants intended, the Affected Vehicles passed emissions testing and received EPA certifications by way of deliberately false readings.

40. Plaintiff and all Class members reasonably relied upon Volkswagen’s false representations when deciding whether to purchase or lease the Affected Vehicles. Plaintiff and the other members of the Class had no way of knowing that Volkswagen’s representations were false and misleading. At all times relevant hereto, Volkswagen acted to shield the truth from Plaintiff and the other members of the Class.

41. Volkswagen also took steps to ensure that its employees did not reveal the details of its deception to regulators or consumers, including Plaintiff and the other members of both Classes. Volkswagen took those steps to falsely assure purchasers and lessors of its new and used vehicles, including Plaintiff and the other members of both Classes, that Volkswagen was a reputable manufacturer that complies with all state and federal laws.

42. Volkswagen's false representations were material to Plaintiff and the other members of both Classes because the representations concerned the quality of the Affected Vehicles, compliance with federal and state laws and regulations pertaining to clean air emissions, and the monetary value of the Affected Vehicles.

43. Volkswagen had a duty to Plaintiff and the members of both Classes to disclose the emissions deception it engaged in with respect to the Affected Vehicles. Having volunteered to provide information about the Affected Vehicles' emissions, performance and quality to Plaintiff and the members of both Classes, Volkswagen had a duty to provide the whole truth including information about its "defeat device" software and the fact that the Affected Vehicles did not really meet federal and state standards for emissions.

44. Volkswagen intentionally and actively concealed and/or suppressed the material facts pertaining to the Affected Vehicles' emissions in order to expand and protect its profits and to avoid the perception that its vehicles did not meet state and federal emissions standards. Volkswagen concealed these material facts at the expense of Plaintiff and the members of both Classes.

45. Plaintiff and the members of both Classes were unaware of the concealed material facts alleged above, and they would have acted differently if they had known those facts; they would not have purchased or leased the Affected Vehicles, would not have continued driving their heavily-polluting vehicles, or would have taken other justified affirmative steps in light of the information Volkswagen concealed from them.

46. As a direct result of Volkswagen's concealment of material facts, Plaintiff and all members of both Classes have sustained damages including:

- a. Affected Vehicles owned or leased by Plaintiff and other members of both Classes are diminished in value;
- b. Plaintiff and all members of both Classes paid a premium price for the Affected Vehicles;
- c. Plaintiff and all members of both Classes will lose the use of their Affected Vehicles for the period of time it takes Volkswagen to complete the recall repairs of the Affected Vehicles.

47. At all times relevant hereto, Volkswagen acted wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of the rights of Plaintiff and the members of both Classes. Such egregious conduct warrants an award of punitive damages to deter such conduct in the future.

**COUNT II
BREACH OF CONTRACT**

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

49. 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 Plaintiff and members of both Classes to purchase or lease their Affected Vehicles.

50. Absent those misrepresentations and omissions, Plaintiff and members of both Classes would not have purchased or leased those Affected Vehicles, would not have purchased or leased those Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the "Clean Diesel" engine system and the "defeat device." Accordingly, Plaintiff and members of both Classes overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

51. Each and every sale or lease of the Affected Vehicles constitutes a contract between Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and members of both Classes defective Affected Vehicles and by misrepresenting or failing to disclose the existence of the "defeat device," including information known to Volkswagen rendering each Affected Vehicle less safe and non-compliant with EPA rules, standards and regulations, and thus less valuable than vehicles not equipped with "Clean Diesel" engine systems and "defeat devices."

52. As a direct and proximate result of Volkswagen's breach of contract, Plaintiff and members of both Classes 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
UNJUST ENRICHMENT**

53. Plaintiff and members of both Classes incorporate by reference all preceding allegations as though fully set forth herein.

54. Plaintiff asserts this claim on behalf of himself and the Nationwide Class.

55. As a result of Volkswagen's unlawful and deceptive acts described herein, Volkswagen was enriched at the expense of Plaintiff and members of both Classes.

56. Given the circumstances, it would contravene principles of equity to permit Volkswagen to retain the ill-gotten benefits it received from Plaintiff and members of both Classes. Accordingly, it would be unjust and inequitable for Volkswagen to retain the benefit without restitution to Plaintiff and members of both Classes for the monies paid to Volkswagen for the Affected Vehicles.

**COUNT IV
BREACH OF WARRANTY**

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

58. Plaintiff asserts this claim on behalf of himself and the Nationwide Class.

59. Through Volkswagen's public statements, descriptions of the Affected Vehicles, and promises relating to the Affected Vehicles, Volkswagen expressly warranted, among other things, that the Affected Vehicles were in compliance with EPA standards and therefore fit for their intended use.

60. These warranties came in the form of publicly-made written and verbal assurances, dissemination of uniform promotional information and other written and verbal communications that were intended to create demand for the Affected Vehicles but contained material misrepresentations.

61. In particular, Volkswagen made numerous representations, descriptions, and promises to Plaintiffs and all other Class members regarding the performance and emission controls of their diesel vehicles. However, Volkswagen was well aware that they had installed defeat devices in the Affected Vehicles and therefore knew or should have known that their representations, descriptions, and promises were false.

62. Plaintiff and all Class members reasonably relied on Volkswagen's representations in purchasing Affected Vehicles. Those vehicles, however, did not perform as warranted. Unbeknownst to Plaintiffs, those vehicles included devices that caused their emission reduction systems to perform at levels worse than advertised. Those devices are defects. Accordingly, Volkswagen breached its express warranty by providing a product containing defects that were never disclosed to the Plaintiffs and the Class.

63. As a direct result of Volkswagen's breach of warranty, Plaintiffs and all members of the Class have sustained damages including:

- a. Affected Vehicles owned or leased by Plaintiffs and other members of the Classes are diminished in value;
- b. Plaintiffs and all members of the Classes paid a premium price for the Affected Vehicles;

- c. Plaintiffs and all members of the Classes will lose the use of their Affected Vehicles for the period of time it takes Volkswagen to complete the recall repairs of the Affected Vehicles; and
- d. Plaintiffs and all members of the Pennsylvania Class will incur costs associated with decreased fuel efficiency and poorer performance due to the engine adjustment required to bring Affected Vehicles into compliance with EPA standards.

**COUNT V
VIOLATION OF THE NEW JERSEY CONSUMER FRAUD ACT**

64. Plaintiff and members of both Classes incorporate by reference all preceding allegations as though fully set forth herein.

65. Plaintiff brings this claim on behalf of the New Jersey Class.

66. Plaintiff, all members of the New Jersey Class, and Volkswagen are “persons” within the meaning of N.J.S.A. § 56:8-1(d).

67. Volkswagen engaged in “sales” of “merchandise” within the meaning of N.J.S.A. § 56:8-1(c), (d).

68. The New Jersey Consumer Fraud Act (“New Jersey CFA”) makes unlawful:

[t]he act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing concealment, suppression or omission of any material fact with the intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise or real estate, or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damaged thereby . . .

N.J.S.A. § 56:8-2

69. In violation of the New Jersey CFA, Volkswagen intentionally and knowingly engaged in unconscionable and deceptive conduct with the intent that Plaintiff and all members of the New Jersey Class would rely upon Volkswagen's acts, concealment, suppression and omissions.

70. Volkswagen engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of material facts with the intent that Plaintiff and the New Jersey Class would rely upon those unlawful trade practices in connection with the purchase or lease of an Affected Vehicle.

71. Volkswagen has known about the "defeat device" software installed in the Affected Vehicles since at least 2009 when it began to market and sell vehicles it had designed to fool federal and state emissions testing. Volkswagen failed to disclose, and actively concealed, the dangers and risks posed to consumers and the public by the Affected Vehicles.

72. By failing to disclose, and actively concealing, the presence of the "defeat device" software in the Affected Vehicles, by marketing those Affected Vehicles as environmentally friendly and fuel efficient, and by presenting themselves as trustworthy companies that value environmental sustainability, Volkswagen engaged in unfair and deceptive trade practices in violation of the New Jersey CFA.

73. Volkswagen intentionally concealed information about the true emissions of the Affected Vehicles to ensure that Plaintiff and the New Jersey Class would purchase or lease the Affected Vehicles.

74. Volkswagen's unfair and deceptive conduct or practices had a tendency or capacity to mislead, tended to create a false impression in consumers, were likely to, and did in fact, deceive reasonable consumers in New Jersey including Plaintiff and the New Jersey Class about the true safety and legality of the Affected Vehicles and the true value of the Affected Vehicles.

75. To protect its profits and to avoid remediation costs and a public relations nightmare, Volkswagen concealed the health and environmental risks posed by the Affected Vehicles, and allowed unsuspecting new and used car purchasers, including Plaintiff and the New Jersey Class, to buy or lease the Affected Vehicles at an inflated price, and allowed them to continue driving those Affected Vehicles which were highly toxic to the environment and public health.

76. Volkswagen owed Plaintiff and the New Jersey Class a duty to disclose the true environmental and health effects and the true value of the Affected Vehicles.

77. Because Volkswagen fraudulently concealed the fact the Affected Vehicles do not meet the federal and state emissions standards, and the discovery of the fraud perpetrated by Volkswagen generated significant negative publicity, the value of the Affected Vehicles has been greatly diminished. In light of the stigma that now surrounds the Affected Vehicles as a direct result of Volkswagen's conduct and

admissions, the Affected Vehicles are worth significantly less than Volkswagen promised.

78. Plaintiff and the New Jersey class have suffered ascertainable loss as a direct result of Volkswagen's conduct in violation of the New Jersey CFA.

79. Plaintiff and the New Jersey Class are entitled to recover legal and/or equitable relief, including an order enjoining Volkswagen's unlawful conduct, treble damages, costs and reasonable attorneys' fees pursuant to N.J.S.A. § 56:8-19, and all other just and appropriate relief.

PRAYER FOR RELIEF

Plaintiff, on behalf of himself and all others similarly situated, requests the Court to enter judgment against Defendants, as follows:

- a. Declaring that this action is properly maintainable under Rule 23 and appointing Plaintiff to represent the Classes defined herein;
- b. Appointing Plaintiff's law firm as class counsel in this action;
- c. Declaring that Volkswagen is financially responsible for providing notice to all Class Members about the defective nature of the Affected Vehicles;
- d. Awarding Plaintiff and members of both Classes appropriate equitable relief, including an order enjoining Volkswagen from further deceptive distribution, sales, and lease practices with respect to the Affected Vehicles, and directing Volkswagen to permanently, expeditiously, and completely repair the Affected Vehicles to eliminate the illegal "defeat device;"

- e. Awarding Plaintiff and members of both Classes compensatory, exemplary, punitive and statutory damages, including interest, in an amount to be proven at trial;
- f. Declaring that Volkswagen must disgorge, for the benefit of Plaintiff and members of both Classes, all or part of the ill-gotten profits it received from the sale or lease of the Affected Vehicles, or make full restitution to Plaintiff and members of both Classes;
- g. Awarding Plaintiff and the Classes for the return of the purchase price of the Affected Vehicles, with interest from the time it was paid, for reimbursement of the reasonable expenses occasioned by the sale, for damages, and for reasonable attorney fees;
- h. Awarding attorneys' fees and costs, as allowed by law;
- i. Awarding prejudgment and postjudgment interest, as provided by law;
- j. Leave to amend this Complaint to conform to the evidence produced at trial; and
- k. Such other and further relief as the Court deems appropriate under the circumstances.

JURY TRIAL DEMAND

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

Dated: October 1, 2015

STARK & STARK

/s/ Stephen A. Corr

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Classes*

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

RICHARD COWELL, JR., individually and on behalf of all others similarly situated

(b) County of Residence of First Listed Plaintiff Burlington County, N.J. (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, Email and Telephone Number) Stephen A. Corr, Stark & Stark, 777 Township Line Road, Suite 120, Yardley, PA 19067 scorr@stark-stark.com (267) 907-9600

DEFENDANTS

VOLKSWAGEN GROUP OF AMERICA, INC. and VOLKSWAGEN, AG

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

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

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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation).

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

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

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

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 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): 28 U.S.C. 1332(d)

Brief description of cause: Consumer fraud arising from the sale of vehicles that do not comply with EPA emission standards

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 Linares DOCKET NUMBER 2:15-cv-07053

DATE 10/01/2015 SIGNATURE OF ATTORNEY OF RECORD /s/ Stephen A. Corr

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE