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13 UNITED STATES DISTRICT COURT  
14 CENTRAL DISTRICT OF CALIFORNIA

15 ALLEN DAVIS, individually and on  
16 behalf of all others similarly situated,

17 Plaintiff,

18 v.

19 VOLKSWAGEN GROUP OF  
20 AMERICA, INC., a New Jersey  
21 Corporation; AUDI USA,

22 Defendants.

Case No. **8:15-cv-1571**

CLASS ACTION COMPLAINT

**JURY TRIAL DEMANDED**

1 Plaintiff ALLEN DAVIS, individually and on behalf of all others similarly  
2 situated, alleges the following:

3 **I. FACTUAL ALLEGATIONS**

4 **A. Regulatory Framework**

5 1. The Clean Air Act, 42 U.S.C. § 7401 *et seq.*, has strict emissions  
6 standards for all vehicles introduced into the United States for commerce. All  
7 automobile manufacturers must abide by these laws and must adhere to EPA rules  
8 and regulations.

9 2. Under the Clean Air Act, the EPA administers a certification program to  
10 ensure that every vehicle introduced into the United States for commerce satisfies the  
11 applicable emission standards, including limits for the pollutant nitrogen dioxide  
12 (and other nitrogen oxides). Vehicle manufacturers must submit an application for a  
13 certificate or conformity to the EPA for each group of vehicles that they intend to  
14 place into United States commerce. *See* 40 C.F.R. § 86.1843-01. The EPA issues a  
15 certificate of conformity for all vehicles approved for introduction into United States  
16 commerce.

17 3. An application for a certificate of conformity must include a list of all  
18 auxiliary emissions control devices installed on vehicles. A “defeat device,” as  
19 defined by the EPA, is an auxiliary emission control device “that reduces the  
20 effectiveness of the emission control system under conditions which may reasonably  
21 be expected to be encountered in normal vehicle operation and use,” unless a specific  
22 exception applies. *See* 40 C.F.R. § 86.1803-01. Motor vehicles equipped with defeat  
23 devices (such as the vehicles at issue here, as alleged herein) that reduce the  
24 effectiveness of the emission control system during normal driving conditions,  
25 cannot be issued a certificate of conformity, and therefore may not be introduced into  
26 United States commerce.

**B. Discovery of the Volkswagen's "Defeat Device" by the EPA and California Air and Resources Board ("CARB")**

4. In May 2014, West Virginia University's Center for Alternative Fuel, Engines & Emissions ("CAFEE") published the results of a study commissioned by the International Council for Clean Transportation ("ICCT"). CAFEE and ICCT tested the emission levels of certain diesel vehicles while driving in "major United States population centers in the state of California," including Los Angeles, San Diego and San Francisco, and found that the levels of nitrogen oxide emissions by two of Volkswagen's diesel models, the 2012 Volkswagen Jetta, and the 2013 Volkswagen Passat, were significantly higher than permitted by federal regulation. The study was presented in San Diego, CA.

5. CAFEE and ICCT notified both the EPA and CARB of its results, which prompted CARB to initiate discussions with Defendant Volkswagen Group of America ("Volkswagen"), and conduct an investigation into the reasons behind the elevated nitrogen oxide emissions.

6. Over the course of the year, Volkswagen asserted to CARB and the EPA that the increased emissions were attributed to various technical issues and unexpected in-use conditions. Volkswagen issued a recall in December 2014 to address the issue.

7. On May 6, 2015, CARB, in coordination with the EPA, commenced confirmatory testing to determine the efficacy of the recall. Testing performed in both laboratory settings and during normal vehicle operation revealed that the recall showed only a limited benefit. Among other findings, CARB's testing of the diesel vehicles "resulted in the vehicle failing the NOx [nitrogen oxide] standard," showed that nitrogen-oxide emissions were "significantly higher than expected," and "resulted in uncontrolled NOx emissions."

1           8.     None of the potential technical issues suggested by VW explained the  
2 consistently higher test results recorded during CARB's testing. Ultimately,  
3 Volkswagen admitted to CARB and the EPA that its vehicles "were designed and  
4 manufactured with a *defeat device* to bypass, defeat, or render inoperative elements  
5 of the vehicles' control system."

6           9.     The "defeat device" that Defendants admittedly installed on certain of  
7 its diesel-model vehicles was designed to detect when the vehicle was undergoing  
8 official emissions testing, to turn full emission controls on during the test so that  
9 the emission results comply with federal standards. At all other times that the  
10 vehicle is running, the effectiveness of the vehicles' pollution-emissions-control  
11 devices would be reduced. Therefore, the vehicles would meet emissions standards  
12 in the laboratory or at a state testing station, but then emit nitrogen oxides between  
13 10 to 40 times the standard allowed under United States laws and regulations  
14 (depending on the type of drive cycle) at all other times, including during normal  
15 operation on public roads.

16           10.    Nitrogen oxide pollution contributes to nitrogen dioxide, ground-level  
17 ozone, and fine particulate matter. These pollutants have been linked to serious  
18 health risks, such as severe respiratory illness. Ozone and particulate matter exposure  
19 have been associated with premature death due to respiratory-related or  
20 cardiovascular-related effects.

21           11.    According to the EPA's September 18, 2015 Press Release, Defendants  
22 installed the Defeat Device in at least the following diesel models of their vehicles  
23 (hereinafter, "Affected Vehicles"):

- 24           - 2009 – 2015 Volkswagen Jetta;
- 25           - 2009 – 2014 Volkswagen Jetta Sportwagen;
- 26           - 2012 – 2015 Volkswagen Beetle;
- 27           - 2012 – 2015 Volkswagen Beetle Convertible;
- 28

- 2010 – 2015 Audi A3;
- 2010 – 2015 Volkswagen Golf;
- 2015 Volkswagen Golf Sportwagen;
- 2012 – 2015 Volkswagen Passat.

**C. Defendants Purposefully Installed the Defeat Device to Evade Applicable Emission Standards in the United States**

12. The software and related components used by Defendants to bypass, defeat, or render inoperative elements of the vehicles' control system is a defeat device under the EPA (hereinafter referred to as the "Defeat Device").

13. Defendants knew that the Defeat Device bypassed, defeated, or rendered inoperative elements of the vehicle to evade emission standards.

14. Defendants purposefully and intentionally installed this Defeat Device to evade clean air standards, including standards imposed by the Clean Air Act, in the Affected Vehicles. Volkswagen did not identify the Defeat Device to the EPA, CARB, or other regulatory agencies in the United States.

15. On September 22, 2015, Volkswagen AG (the parent company of Volkswagen Group of America, Inc.) issued a statement, admitting that it used a defeat device in the Affected Vehicles, therefore violating the emission standards of the EPA.

16. Defendants violated the laws of the United States and the rules and regulations of the EPA by purposefully selling in the United States vehicles that contain this Defeat Device.

**D. Defendants Charged a Premium for the Affected Vehicles, Which it Marketed and Advertised as Clean, Fuel Efficient, and Powerful**

17. Defendants expressly marketed and advertised the Affected Vehicles as "Clean Diesel" models. Cars with diesel engines are specifically marketed for their fuel economy and low carbon emissions as compared to standard gasoline engines.

1 In order to sell their cars, Defendants stated that the Affected Vehicles were clean,  
2 EPA-certified in all 50 states, and powerful.

3 18. Not only did Defendants market that the Affected Vehicles as clean, but  
4 it marketed them as cleaner than other cars containing diesel engines.

5 19. By marketing its diesel vehicles as clean, fuel efficient, and powerful,  
6 Defendants were able to charge – and did charge – a substantial premium for the  
7 Affected Vehicles. The premiums occur across all vehicles in which Defendants  
8 installed a “defeat device,” including the 2015 Volkswagen Jetta, 2015 Volkswagen  
9 Beetle, 2015 Volkswagen Golf, 2015 Golf SportWagen, 2015 Volkswagen Passat,  
10 and 2015 Audi A3.

11 **E. The Defeat Device and Other Defects Diminish the Value of the**  
12 **Affected Vehicles**

13 20. Defendants have already been ordered by the EPA to recall the Affected  
14 Vehicles and modify them so that they comply with EPA emissions requirements.  
15 However, Defendants will not be able to make the Affected Vehicles comply with  
16 emissions standards without substantially inhibiting their performance  
17 characteristics, including their torque and acceleration.

18 21. Even if Defendants is able to modify Plaintiff’s and proposed class  
19 members’ Affected Vehicles so that they comply with EPA emissions standards,  
20 Class members will nonetheless suffer actual harm and damages because their  
21 vehicles will no longer perform as they did when purchased the vehicles and as  
22 advertised. This will necessarily result in a diminution in value of every Affected  
23 Vehicle. It will also require owners of Affected Vehicles to pay more for fuel while  
24 using their affected vehicles.

25 22. As a result of Defendants’ unfair, deceptive, and fraudulent business  
26 practices, and its intentional failure to disclose that under normal operating  
27 conditions, the Affected Vehicles emit up to 40 times the emissions levels permitted  
28

1 by the EPA, owners and lessees of the Affected Vehicles have suffered losses in  
2 money and property. Had Plaintiff and proposed class members known of the “defeat  
3 device” at the time they purchased, repurchased, or leased their Affected Vehicles,  
4 they would not have purchased or leased those vehicles, or would have paid  
5 substantially less for the vehicles than they did. Moreover, if and when Defendants  
6 recall the Affected Vehicles and modify the vehicles to comply with emission  
7 standards, Plaintiff and proposed class members will be required to spend additional  
8 money on fuel, and will not enjoy the performance characteristics advertised by  
9 Defendants for their vehicles. Likewise, the Affected Vehicles will be worth less in  
10 the marketplace because of their decrease in performance and efficiency.

11 23. Plaintiff brings this action individually and on behalf of all other current  
12 and former owners or lessees of Affected Vehicles, as alleged in the Class  
13 Allegations, *infra* section IV. Plaintiff seeks damages, injunctive relief, and equitable  
14 relief as a result of Defendants’ conduct related to the Defeat Device, and other  
15 defects, including but not limited to defects related to emission levels in the Affected  
16 Vehicles, as alleged in this Complaint.

## 17 18 **II. JURISDICTION AND VENUE**

19 24. This Court has subject-matter jurisdiction pursuant to the Class Action  
20 Fairness Act, 28 U.S.C. § 1332(d), because the proposed Class consists of 100 or  
21 more members; the amount in controversy exceeds \$5,000,000, exclusive of costs  
22 and interest; and there is minimal diversity between plaintiffs and defendants. This  
23 Court also has supplemental jurisdiction over the state law claims pursuant to 28  
24 U.S.C. § 1367.

25 25. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because a  
26 substantial part of the events, acts, and omissions giving rise to Plaintiff’s claims  
27 were occurred in this district. Plaintiff resides in this district and purchased his  
28

1 Affected Vehicle in this District. Defendants have marketed, advertised, sold, and  
2 leased the Affected Vehicles within this District.

### 3 4 **III. PARTIES**

#### 5 **A. Plaintiff**

6 26. Plaintiff ALLEN DAVIS is a California resident. He resides in  
7 Huntington Beach, Orange County, CA.

8 27. Plaintiff DAVIS purchased a 2011 Audi A3 TDI from a prior owner,  
9 who purchased it from Newport Beach Audi. Plaintiff DAVIS still owns the vehicle.

10 28. Plaintiff DAVIS bought the diesel version of the Audi A3 specifically  
11 for the lower emissions, performance, and stellar fuel economy advertised and  
12 marketed by Defendants. Unbeknownst to Plaintiff DAVIS at the time of purchase,  
13 the vehicle contains the aforementioned Defeat Device.

14 29. Defendants' use of the Defeat Device has caused Plaintiff DAVIS out-  
15 of-pocket loss, future attempted repairs, and diminished value of his vehicle.  
16 Defendants knew about and purposefully used the Defeat Device, but did not  
17 disclose the Defeat Device to Plaintiff or to the vehicle's prior owner, from whom  
18 DAVIS purchased the vehicle. Plaintiff purchased his vehicle on the reasonable, but  
19 mistaken belief that his vehicle complied with United States federal laws, emissions  
20 standards, was properly certified by the EPA, and would retain all of its operating  
21 characteristics, including its performance and fuel economy, throughout its lifetime.  
22 Plaintiff has now found himself unable to resell his vehicle at the price that would  
23 have been expected prior to the discovery of Defendants' deceptive conduct.

#### 24 **B. Defendants**

25 30. Defendant Volkswagen Group of America, Inc. ("Volkswagen") is a  
26 New Jersey corporation doing business in California with its headquarters and  
27 principal place of business in Herndon, Virginia.



32. Defendants operate an emission compliance lab and test center located at 201 Del Norte Blvd, Oxnard, CA. The center is utilized as the only Volkswagen emission testing facility in the United States. According to Defendant Volkswagen Group of America's 2013 Corporate Social Responsibility Report: "As the largest technical center of its kind for the Volkswagen Group outside of Germany, the TCC plays a pivotal role in the product development food chain, acting as the final stop for many products before they are approved for production. Work at the TCC is focused on powertrain product development, governmental compliance and field quality testing."

33. Plaintiff brings this action on behalf of himself and the following class and subclass (collectively, the “Class”) pursuant to Rules 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure (collectively, the “Classes”):

9        *All persons or entities who purchased or leased an affected vehicle in*  
0        *the United States, including both former and current owners and*  
         *lessees.*

3 *All persons or entities who purchased or leased an affected vehicle in California, including both former and current owners and lessees.*

34. Excluded from the Class are Defendants, Defendants subsidiaries or affiliates; any entity in which any Defendant has a controlling interest, any and all employees of Defendants; any successor or assign of any of the Defendants; governmental entities; the judge to whom this case is assigned and his or her

1 immediate family; and all persons who make a timely election to be excluded from  
2 the Class.

3 35. Plaintiff reserves the right to revise the definitions of the Class or  
4 Subclass based upon information learned through discovery.

5 36. **Numerosity.** Pursuant to Federal Rule of Civil Procedure 23(a)(1), the  
6 members of the Class are so numerous and geographically dispersed that individual  
7 joinder of all Class members is impracticable. The precise number of Class members  
8 is unknown to Plaintiff; however, Plaintiff is informed and believes that there are not  
9 less than hundreds of thousands of members of the Class. Volkswagen has already  
10 recalled 482,000 cars in connection with the Defeat Device. The precise number and  
11 identity of Class members is ascertainable from Volkswagen's books and records.  
12 Class members may be notified of the pendency of this action by recognized, Court-  
13 approved notice dissemination methods, which may include U.S. mail, electronic  
14 mail, Internet postings, and/or published notice.

15 37. **Commonality and Predominance.** Pursuant to Federal Rule of Civil  
16 Procedure 23(a)(2) and 23(b)(3), this action involves common questions of law and  
17 fact, which predominate over any individual questions with respect to class  
18 members, including, without limitation:

- 19 a) Whether Defendants engaged in the conduct alleged herein;  
20 b) Whether the Affected Vehicles failed to comply with the applicable  
21 federal and state emissions regulations, including but not limited to  
22 regulations promulgated by the EPA;  
23 c) The length and extent to which Defendants knew of and concealed the  
24 Defeat Device;  
25 d) Whether Defendants designed, advertised, marketed, distributed, leased,  
26 sold, or otherwise placed the Affected Vehicles into the stream of  
27 commerce in the United States and California;  
28

- e) Whether Defendants advertising and marketing of the Affected Vehicles was likely to deceive or mislead consumers;
- f) Whether the existence of the Defeat Device in the Affected Vehicles would be considered material to a reasonable consumer;
- g) Whether Defendants' conduct violates the consumer-protection statutes, warranty laws, and other laws as asserted herein;
- h) Whether and to what extent Plaintiff and class Members overpaid for their Affected Vehicles;
- i) Whether and to what extent the Affected Vehicles can be modified to comply with EPA and other regulatory standards without substantially degrading the performance, fuel efficiency, and other characteristics of the Affected Vehicles;
- j) Whether and to what extent Plaintiff and class members are entitled to equitable relief, including, but not limited to restitution or injunctive relief;
- k) Whether and to what extent Plaintiff and other class members are entitled to damages and other monetary relief.

38. **Typicality.** Pursuant to Federal Rule of Civil Procedure 23(a)(3), Plaintiff's claims are typical of the claims of the Class because, among other things, all Class Members purchased or leased Affected Vehicles, and as a result were comparably injured through Volkswagen's wrongful conduct as described above.

39. **Adequacy.** Pursuant to Federal Rule of Civil Procedure 23(a)(4), Plaintiff is adequate Class representative because their interests do not conflict with the interests of the other purported Class members. Likewise, Plaintiff's counsel is competent and experienced in prosecuting complex class actions. The Class's interests will be fairly and adequately protected by Plaintiff and his counsel.

40. **Superiority.** Pursuant to Rule 23(b)(3) a class action is the best available method to adjudicate this controversy. This action involves the aforementioned

questions common to the Class. Moreover, prosecution of the action by plaintiffs will require expert testimony and targeted discovery on complex issues, and could not practically be taken on by individual litigants. Likewise Plaintiff and other Class member's damages are relatively small compared to the burden and expense that would be required to individually litigate claims. In addition, individual litigation of Class members' claims would be impracticable and unduly burdensome to the court system and has the potential to lead to inconsistent results and delay of the majority of litigant's claims. A class action provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court, presents the fewest management problems.

## V. VIOLATIONS ALLEGED

### A. Violations Alleged on Behalf of the Nationwide Class

#### COUNT I

#### Violation of the Magnuson-Moss Warranty Act

#### 15 U.S.C. §§ 2301 *et seq.*

(On Behalf of the Nationwide Class)

41. Plaintiff incorporates by reference each preceding and succeeding paragraph as though fully set forth herein.

42. Plaintiff brings this claim on behalf of himself and the Nationwide Class, as defined above, against Defendants.

43. The Affected Vehicles are "consumer products" under 15 U.S.C. § 2301(1).

44. Plaintiff and the members of the putative class are "consumers" under 15 U.S.C. § 2301(3).

45. Defendants are "suppliers" and "warrantors" within the meaning of 15 U.S.C. § 2301(4)-(5).

1           46. Defendants provided purchasers and lessees of Affected Vehicles  
2 multiple express written warranties as defined by 15 U.S.C. § 2301(6).

3           47. ***Manufacturer's Warranty.*** Defendants provided each member of the  
4 proposed class who purchased a new Affected Vehicle with a Manufacturer's  
5 Warranty, which provides "bumper-to-bumper" limited express warranty coverage  
6 for a minimum of 3 years or 36,000 miles, whichever comes first. This warranty  
7 covers emissions related repairs. This warranty is directly applicable to the Affected  
8 Vehicles.

9           48. As required by law, Defendants also provided a Federal Emissions  
10 Warranty to members of the proposed class, and a California Emissions Warranty to  
11 members of the California Subclass. Vehicles certified to meet California emissions  
12 standards and registered in states which have adopted those standards are also  
13 entitled to coverage under the California Emissions Warranty.

14           49. ***Federal Emissions Warranty.*** Consistent with federal law, Defendants  
15 provided each member of the proposed class with a "performance warranty" and a  
16 "design and defect warranty." In the event that a vehicle fails an emissions test, these  
17 warranties cover all emissions related parts for 2 years or 24,000 miles (whichever  
18 comes first), with the catalytic converter, engine control unit, and onboard diagnostic  
19 device covered for 8 years or 80,000 miles (whichever comes first). These warranties  
20 are directly applicable to the Affected Vehicles.

21           50. ***California Emissions Warranty.*** California law requires additional  
22 warranty coverage beyond that required by federal law. Under California law, all  
23 emissions related performance and parts are covered for 3 years or 50,000 miles  
24 (whichever comes first), and a vehicle-specific list of more expensive emissions  
25 related parts is covered for 7 years or 70,000 miles (whichever comes first). In  
26 addition, the 8 year or 80,000 mile coverage for the catalytic converter, engine  
27 control unit, and onboard diagnostic device required by Federal law also applies. 13  
28

1 Cal. Code. Regs. § 2038; see CAL. HEALTH & SAFETY CODE § 43205. The California  
2 Emissions Warranty provisions described here are directly applicable to the Affected  
3 Vehicles.

4 51. Defendants breached the Manufacturer's, Federal Emissions, and  
5 California Emissions Warranties by selling the Affected Vehicles with the Defeat  
6 Device, which renders the emissions control systems defective, and other defects.  
7 The Affected Vehicles thus do not comply with emissions standards set by federal  
8 laws and regulations. This device cannot be repaired or redressed without materially  
9 altering the advertised estimated fuel economy and other performance characteristics  
10 of the vehicle.

11 52. Defendants breach of warranty has deprived Plaintiff and other  
12 proposed class members of the benefit of their bargain. The amount in controversy of  
13 each Plaintiff's individual claim meets or exceeds the sum or value of \$25. In  
14 addition, the amount in controversy meets or exceeds the sum or value of \$50,000  
15 (exclusive of interests and costs) computed on the basis of all claims to be  
16 determined in this suit.

17 53. Defendants knew of the defect, and had an opportunity to disclose  
18 information concerning the Affected Vehicles' inability to perform as warranted, and  
19 to cure its breach of warranties since at least May 2014. Defendants failed to do so.  
20 Plaintiff relied to his detriment on these express warranties. Contemporaneously with  
21 the filing of this complaint, Plaintiff is making further demand of Defendant—in  
22 writing and on behalf of the proposed class—to comply with its warranty obligations  
23 and is offering to participate in an informal dispute settlement procedure.

24 54. As a direct and proximate result of Defendants' conduct, Plaintiff and  
25 other members of the proposed Class have suffered damages and continue to suffer  
26 damages, including economic damages at the point of sale, repurchase, or lease, that  
27 is, the difference between the value of the vehicle as promised and the value of the  
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1 vehicle as delivered. Plaintiff and the proposed class members are entitled to legal  
2 and equitable relief against Defendants, including damages, specific performance,  
3 attorney fees, costs, and other relief as appropriate.

## 4 5 **COUNT II**

### 6 **Fraud by Concealment**

7 (On Behalf of the Nationwide Class)

8 55. Plaintiff incorporates by reference each preceding and succeeding  
9 paragraph as though fully set forth herein.

10 56. Plaintiff brings this claim on behalf of themselves and the Nationwide  
11 Class, as defined above, against Defendant.

12 57. Since at least 2009, Defendants have intentionally concealed and  
13 suppressed the material facts that: (1) they had installed an illegal Defeat Device in  
14 the Alleged Vehicles to either bypass or render inoperative elements of the vehicle  
15 design related to compliance with federal and California emission standards, and (2)  
16 that their vehicles emit between 10 - 40 times the amount of pollution allowed under  
17 applicable laws and regulations. In addition, Defendants intentionally concealed and  
18 suppressed the material fact that the vehicles, if brought in compliance with federal  
19 and California emissions standards, would exhibit diminished performance and fuel  
20 economy, as compared to the performance and fuel economy promised by  
21 Defendants through their advertising and marketing.

22 58. Defendants had a duty to disclose these facts because they had exclusive  
23 knowledge of the material facts described above and such facts were not known or  
24 reasonably knowable by the Plaintiff and proposed class; because they actively  
25 concealed these material facts from the Plaintiff and the proposed class; and because  
26 they made representations regarding the Affected Vehicles' emissions and  
27 compliance with federal and state laws and regulations, while at the same time  
28

1 suppressing material facts regarding the vehicle's emission levels. Defendants are  
2 sophisticated manufacturers of motor vehicles selling those vehicles to a public that  
3 relies on the Defendants' expertise and truthfulness.

4 59. These facts which Defendants concealed were material because they  
5 falsely suggested that these vehicles are compliant with federal and state emissions  
6 requirements. In addition, whether the Affected Vehicles are compliant, and whether  
7 they are "clean" diesel vehicles as advertised by Defendants, directly impact the  
8 value of the Affected Vehicles purchased or leased by Plaintiff and the proposed  
9 class.

10 60. Defendants have actively concealed or suppressed these material facts  
11 since at least since 2009 with the intention to profit from the sale of these vehicles,  
12 thereby defrauding Plaintiff and consumers. Plaintiff and the proposed class had no  
13 knowledge of, and had no reason to know, that Defendants had concealed or  
14 suppressed these material facts and relied on Defendants' deceptions to their  
15 detriment. In fact, such facts were exclusively known by Defendants. Plaintiff and  
16 the proposed Nationwide Class would not have purchased the Affected Vehicles, or  
17 would have paid substantially less for them, or would have purchased alternative  
18 vehicles that did not contain the Defeat Device and other defects, had Defendants not  
19 concealed or suppressed these material facts.

20 61. As a result of Defendants' fraudulent concealment, Plaintiff and the  
21 proposed class's Affected Vehicles have lost significant value and re-salability.  
22 Plaintiff and the proposed class are thus entitled to damages in an amount to be  
23 determined at trial.

24 62. Moreover, because Defendants' conduct was wanton, deliberate,  
25 oppressive and malicious, and undertaken with reckless disregard of Plaintiff's and  
26 the proposed class's consumer and contractual rights, Plaintiff and the proposed class  
27  
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1 are entitled to an award of punitive or exemplary damages in an amount to be  
2 determined at trial.

3  
4 **B. Violations Alleged on Behalf of the California Subclass**

5 **COUNT III**

6 **Violation of the California Unfair Competition Law**

7 **CAL. BUS. & PROF. CODE §§ 17200, *et seq.***

8 (On Behalf of the California subclass)

9 63. Plaintiff incorporates by reference each preceding and succeeding  
10 paragraph as though fully set forth herein.

11 64. Plaintiff brings this Count on behalf of the California Subclass.

12 65. California's Unfair Competition Law ("UCL") proscribes acts of unfair  
13 competition, including "any unlawful, unfair or fraudulent business act or practice  
14 and unfair, deceptive, untrue or misleading advertising."

15 66. Defendants' conduct, as described herein, was and is in violation of the  
16 UCL. Defendants' conduct violates the UCL in at least the following ways:

- 17 a) By knowingly and intentionally concealing from the public, including  
18 Plaintiff and the other proposed class members, that the Affected  
19 Vehicles suffer from a design defect, while at the same time obtaining  
20 money from the public by selling and leasing said vehicles;
- 21 b) By marketing Affected Vehicles to the public, including Plaintiff and  
22 the other proposed class members, as having clean engine systems that  
23 were compliant with state and federal regulations;
- 24 c) By purposefully installing an illegal Defeat Device in the Affected  
25 Vehicles to fraudulently obtain EPA certification and cause Affected  
26 Vehicles to pass emissions tests when they did not meet applicable  
27 standard during normal operation;
- 28

- 1           d) By violating federal laws and regulations, including the Clean Air Act;  
2           and  
3           e) By violating other California laws and regulations governing vehicle  
4           emissions and emission testing requirements.

5           67. Defendants' misrepresentations and omissions alleged herein caused  
6 Plaintiff and the other proposed class members to make their purchases or leases of  
7 their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiff and  
8 the other proposed class members would not have purchased or leased these vehicles,  
9 would not have purchased or leased these Affected Vehicles at the prices they paid,  
10 or would have purchased or leased less expensive alternative vehicles that complied  
11 with EPA and California emissions standards.

12           68. Accordingly, Plaintiff and the other proposed class members have  
13 suffered injury in fact, including the loss of money or property as a result of  
14 Defendants' misrepresentations and omissions.

15           69. Plaintiff seeks to enjoin further unlawful, unfair, and/or fraudulent acts  
16 or practices by Defendants under the UCL, CAL. BUS. & PROF. CODE § 17200, *et seq.*

17           70. Plaintiff requests that this Court enter such orders or judgments as may  
18 be necessary to enjoin Defendants from continuing their unfair, unlawful, and/or  
19 deceptive practices and to restore to Plaintiff and members of the proposed class any  
20 money Defendants acquired by unfair competition, including restitution and/or  
21 restitutionary disgorgement, as provided in CAL. BUS. & PROF. CODE § 17203 and  
22 CAL. BUS. & PROF. CODE § 3345; and for such other authorized relief set forth below.

23 ///

24 ///

25 ///

26 ///

27 ///

**COUNT IV**

**Violation of the California Consumer Legal Remedies Act**

**CAL. CIVIL CODE §§ 1750, *et seq.***

(On Behalf of the California Subclass)

71. Plaintiff incorporates by reference all preceding and succeeding paragraphs as though fully set forth herein.

72. Plaintiff brings this Count on behalf of the California Subclass.

73. California's Consumers Legal Remedies Act ("CLRA"), CAL. CIVIL 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."

74. The Affected Vehicles are "goods" as defined in CAL. CIVIL CODE § 1761(a), and were sold to members of the public, including Plaintiff and other members of the proposed class, through "transactions" as defined in CAL. CIVIL CODE § 1761(e).

75. Plaintiff and the other members of the proposed class purchased their vehicles for personal, family, or household purposes and are "consumers" as defined in CAL. CIVIL CODE § 1761(d), and Plaintiff, the other members of the proposed class, and Defendants are "persons" as defined in CAL. CIVIL CODE § 1761(c).

76. As alleged above, Defendants made numerous representations concerning the benefits, efficiency, performance and safety features of the Affected Vehicles that were misleading.

77. In purchasing, repurchasing, or leasing the Affected Vehicles, Plaintiff and the other proposed Class Members were deceived by Defendants' failure to disclose that the Affected Vehicles were defective, and that they failed to comply with federal and California emissions standards.

1           78. Defendants' conduct, as described herein, was and is in violation of the  
2 CLRA. Defendants' conduct violates at least the following enumerated CLRA  
3 provisions:

- 4           a) CAL. CIVIL CODE § 1770(a)(3): Misrepresenting certification of or by another;  
5           b) CAL. CIVIL CODE § 1770(a)(5): Representing that goods have characteristics,  
6           uses, and benefits which they do not have;  
7           c) CAL. CIVIL CODE § 1770(a)(7): Representing that goods are of a particular  
8           standard, quality, or grade, if they are of another;  
9           d) CAL. CIVIL CODE § 1770(a)(9): Advertising goods with intent not to sell them  
10           as advertised; and  
11           e) CAL. CIVIL CODE § 1770(a)(16): Representing that goods have been supplied  
12           in accordance with a previous representation when they have not.

13           79. Plaintiff and the other proposed class members have suffered injury in  
14 fact and actual damages resulting from Defendants' material omissions and  
15 misrepresentations because they paid an inflated price for the Affected Vehicles,  
16 because they stand to pay additional fuel costs if and when their Affected Vehicles  
17 are made to comply with emissions standards, and because the value of their vehicles  
18 for resale has been substantially impaired.

19           80. Defendants knew, should have known, or were reckless in not knowing  
20 of the defective design and manufacture of the Affected Vehicles, and that the  
21 Affected Vehicles were not suitable for their intended use.

22           81. The facts concealed and omitted by Defendants to Plaintiff and the other  
23 proposed class members are material in that a reasonable consumer would have  
24 considered them to be important in deciding whether to purchase, repurchase, or  
25 lease the Affected Vehicles or pay a lower price. Had Plaintiff and the other  
26 proposed class members known about the defective nature of the Affected Vehicles,  
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1 they would not have purchased, repurchased, or leased the Affected Vehicles or  
2 would not have paid the prices they paid.

3 82. Plaintiff and the proposed class are entitled to equitable relief and a  
4 declaration that Defendants' conduct violates the Consumer Legal Remedies Act.

5 83. Plaintiff disclaims any request for monetary relief, including punitive  
6 damages, under the Consumer Legal Remedies Act at this time but reserve the right  
7 to seek such relief after providing Defendants with the notice required by the Act.  
8

## 9 **COUNT V**

### 10 **Violation of the California False Advertising Law**

#### 11 **CAL. BUS. & PROF. CODE §§ 17500, *et seq.***

12 (On Behalf of the California Subclass)

13 84. Plaintiff incorporates by reference all preceding and succeeding  
14 paragraphs as though fully set forth herein.

15 85. Plaintiff brings this Count on behalf of the California Subclass.

16 86. California Business & Professional Code §17500 states: "It is unlawful  
17 for any ... corporation ... with intent directly or indirectly to dispose of real or  
18 personal property ... to induce the public to enter into any obligation relating thereto,  
19 to make or disseminate or cause to be made or disseminated ... from this state before  
20 the public in any state, in any newspaper or other publication, or any advertising  
21 device, ... or in any other manner or means whatever, including over the Internet,  
22 any statement ... which is untrue or misleading, and which is known, or which by the  
23 exercise of reasonable care should be known, to be untrue or misleading."

24 87. Defendants caused to be made or disseminated through California and  
25 the United States, through advertising, marketing and other publications, statements  
26 that were untrue or misleading, and which were known, or which by the exercise of  
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1 reasonable care should have been known to Defendants, to be untrue and misleading  
2 to consumers, including Plaintiff and the other proposed class members.

3 88. Defendants violated §17500 because the misrepresentations and  
4 omissions regarding the safety, reliability, and functionality of Affected Vehicles as  
5 set forth in this Complaint were material and likely to deceive a reasonable  
6 consumer. Plaintiff and the other proposed class members have suffered an injury in  
7 fact, including the loss of money or property, as a result of Defendants' unfair,  
8 unlawful, and/or deceptive practices. In purchasing, repurchasing, or leasing their  
9 Affected Vehicles, Plaintiff and the other class members relied on the  
10 misrepresentations and/or omissions of Defendants with respect to the safety,  
11 performance and reliability of the Affected Vehicles. Defendants' representations  
12 turned out to be false because the Affected Vehicles are distributed with faulty and  
13 defective Defeat Device, rendering certain safety and emissions functions  
14 inoperative. Had Plaintiff and the other proposed class members known this, they  
15 would not have purchased, repurchased, or leased their Affected Vehicles or paid as  
16 much for them, or purchased alternative vehicles that did not contain the Defeat  
17 Device and other defects. Accordingly, Plaintiff and the other proposed class  
18 members overpaid for their Affected Vehicles and did not receive the benefit of their  
19 bargain.

20 89. All of the wrongful conduct alleged herein occurred, and continues to  
21 occur, in the course of Defendants' business. Defendants' wrongful conduct is part  
22 of a pattern or generalized course of conduct that is still perpetuated and repeated,  
23 both in the State of California and nationwide.

24 90. Plaintiff, individually and on behalf of the other proposed class  
25 members, requests that this Court enter such orders or judgments as may be  
26 necessary to enjoin Defendants from continuing its unfair, unlawful, and/or  
27 deceptive practices, and to restore to Plaintiff and the other proposed class members  
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1 any money Defendants acquired by unfair competition, including restitution and/or  
2 restitutionary disgorgement, and for such other relief set forth below.

3  
4 **COUNT VI**

5 **Fraud by Concealment (Pursuant to California Law)**

6 (On Behalf of the California Subclass)

7 91. Plaintiff realleges and incorporates by reference all preceding and  
8 succeeding paragraphs as though fully set forth herein.

9 92. This claim is brought on behalf of the California Subclass.

10 93. Defendants intentionally concealed and suppressed material facts  
11 concerning the quality of the Affected Vehicles. As alleged in this Complaint,  
12 Defendants engaged in a scheme to evade federal and state vehicle emissions  
13 standards by installing software designed to conceal its vehicles' emissions of  
14 nitrogen oxides during normal operation.

15 94. Plaintiff and the proposed class members reasonably relied upon  
16 Defendants' false representations. They had no way of knowing that Defendants'  
17 representations were false and misleading.

18 95. Defendants false representations were material to consumers, including  
19 Plaintiff and members of the proposed class, both because they concerned the quality  
20 of the Affected Vehicles, including the vehicles' compliance with applicable federal  
21 and state laws and regulations. The representations were also material in that they  
22 played a significant role in the value of the vehicles.

23 96. Defendants had a duty to disclose that the Affected Vehicles were  
24 defective and contained the Defeat Device, because Defendants had exclusive  
25 knowledge as to implementation and maintenance of its scheme, and because  
26 Defendants knew the facts were not known to or reasonably discoverable by Plaintiff  
27 or proposed class members. Defendants also had a duty to disclose that the Affected  
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1 Vehicles were defective and contained the Defeat Device because they made general  
2 affirmative representations about the qualities of their vehicles with respect to  
3 emissions standards which were misleading, deceptive, and incomplete without the  
4 disclosure of the additional facts set forth above regarding the actual nitrogen oxide  
5 emissions of the vehicles, and the existence of the Defeat Device. Defendants are  
6 sophisticated manufacturers of motor vehicles selling those vehicles to a public that  
7 relies on the Defendants' expertise and truthfulness. The omitted and concealed  
8 facts were material because they directly impact the value of the Affected Vehicles  
9 purchased or leased by Plaintiff and proposed class members.

10 97. Defendants have actively concealed and/or suppressed these material  
11 facts with the intention, in whole or in part, to profit at the expense of Plaintiff and  
12 the proposed class members.

13 98. Because of the concealment and/or suppression of the facts alleged  
14 herein, Plaintiff and proposed class members have sustained damage because they  
15 paid for and now own vehicles that are diminished in value. Defendants' conduct  
16 was a substantial factor in causing Plaintiff's and the class members' damages. Had  
17 Plaintiff and proposed class members been aware of such facts, Plaintiff the  
18 proposed class members who purchased, repurchased, or leased the Affected  
19 Vehicles would have paid less for their vehicles, would not have purchased or leased  
20 them at all, or would have purchased alternative vehicles that did not contain the  
21 defect or Defeat Device.

22 99. The value of Plaintiff's and proposed class members' vehicles has  
23 diminished as a result of Defendants' fraudulent concealment, which has made  
24 reasonable consumers reluctant to purchase any of the Affected Vehicles, or pay  
25 what otherwise would have been fair market value for the vehicles.

26 100. Defendants are liable to Plaintiff and proposed class members for  
27 damages in an amount to be proven at trial.  
28



1           101. Defendants' acts were done wantonly, maliciously, oppressively,  
2 deliberately, with intent to defraud, and/or in reckless disregard of Plaintiff and the  
3 proposed class members' rights, and in direct contradiction of the representations  
4 that Defendants made to them, in order to profit at the expense of Plaintiff and the  
5 proposed class. Defendants' conduct warrants an assessment of punitive or  
6 exemplary damages in an amount sufficient to deter such conduct in the future, to be  
7 determined at trial.

## 8 9           **VI. TOLLING OF THE STATUTES OF LIMITATIONS**

### 10           **A. Tolling Pursuant to the Discovery Rule**

11           102. Plaintiff and members of the proposed class and subclasses had no way  
12 of knowing about Defendants' deception with respect to the existence of the Defeat  
13 Device and other defects, including defects related to emission levels, in the Affected  
14 Vehicles. Defendants' conduct was only discovered as a result of investigations by  
15 the EPA and CARB, which involved sophisticated testing. Defendants were intent on  
16 expressly hiding its behavior from regulators and consumers.

17           103. Within the time period of any applicable statutes of limitation, Plaintiff  
18 and members of the proposed class and subclasses could not have discovered  
19 through the exercise of reasonable diligence that Defendants were concealing the  
20 conduct complained of herein, and misrepresenting the true emission levels of the  
21 Affected Vehicles.

22           104. Plaintiff and the other members of the proposed classes did not  
23 discover, and did not know of facts that would have caused a reasonable person to  
24 suspect that Defendants did not report information within their knowledge to federal  
25 and state authorities or consumers; nor would a reasonable and diligent investigation  
26 have disclosed that Defendants had information in their possession about the  
27 existence the Defeat Device and other defects, including defects related to emissions  
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1 levels, which were discovered by Plaintiff only shortly before this action was filed.  
2 Nor would such an investigation on the part of Plaintiff and members of the  
3 proposed classes have disclosed that Defendants actively discouraged its personnel  
4 from raising or disclosing such issues with respect to the Affected Vehicles.

5 105. For the aforementioned reasons, all applicable statutes of limitation  
6 have been tolled by operation of the Discovery Rule with respect to claims asserted  
7 herein.

8 **B. Tolling Pursuant to Defendants' Fraudulent Concealment**

9 106. All applicable statutes of limitation have also been tolled by  
10 Defendants' knowing fraudulent concealment, and denial of the facts alleged herein,  
11 throughout the time period relevant to this action.

12 107. Rather than disclosing the existence of the Defeat Device and other  
13 defects, including defects related to emission levels, Defendants falsely represented  
14 to state and federal authorities and consumers that its vehicles complied with federal  
15 and state emissions standards.

16 **C. Defendants Are Estopped from Relying on any Statutes of**  
17 **Limitation**

18 108. Defendants were under a continuous duty to disclose to Plaintiff and the  
19 other members of the proposed classes the true character, quality, and nature of  
20 emissions from the Affected Vehicles, and the existence of the Defeat Device and  
21 other defects, and the fact that the Affected Vehicles failed to comply with  
22 applicable federal and state laws and regulations.

23 109. Defendants knowingly, affirmatively, and actively concealed the true  
24 nature, quality, and character of the emissions from the Affected Vehicles, the  
25 existence of the Defeat Device and other defects, and the fact that the Affected  
26 Vehicles failed to comply with applicable federal and state laws and regulations.

1 Defendants did this to induce reliance by the public, including Plaintiff and members  
2 of the proposed class.

3 110. Plaintiff and members of the proposed class relied on Defendants'  
4 misrepresentations and deceptions to their prejudice by not bringing suit against  
5 Defendants before now.

6 111. Based on the foregoing, Defendants are estopped from relying on any  
7 statutes of limitations in defense of this action.

8  
9 **REQUEST FOR RELIEF**

10 112. WHEREFORE, Plaintiff, individually and on behalf of members of the  
11 proposed Nationwide Class and California Subclass respectfully requests that the  
12 Court enter judgment against Defendants as follows:

- 13 a) An order certifying the proposed Nationwide Class and California  
14 Subclass;
- 15 b) An order appointing Plaintiff's counsel as Class Counsel for the  
16 proposed class and subclass;
- 17 c) An order temporarily and permanently enjoining Defendants from  
18 continuing the unlawful, deceptive, fraudulent, and unfair business  
19 practices alleged in this Complaint;
- 20 d) An order requiring Defendants to either 1) buy back the Affected  
21 Vehicles at the original sale price; 2) institute a free replacement  
22 program for all Affected Vehicles; or 3) free of charge, remove all  
23 defects from the Affected Vehicles, including the Defeat Devices, and  
24 ensure that said vehicles both comply with applicable state and federal  
25 emissions standards *and* conform to all promised and previous  
26 characteristics regarding fuel efficiency and drive performance;
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- e) An order awarding costs, restitution, damages, including punitive damages, and disgorgement in an amount to be determined at trial;
- f) An order requiring Defendants to pay both pre- and post-judgment interest on any amounts awarded;
- g) An order for allowable penalties for each illegal or fraudulent business act or practice;
- h) An order awarding costs and attorneys' fees; and
- i) Such other relief that the Court deems as appropriate.

### DEMAND FOR JURY TRIAL

Plaintiff, individually and on behalf of all members of the proposed class, hereby demands a jury trial for all claims so triable.

DATED: September 30, 2015

By: 

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