

1 STUART G. GROSS (#251019)
sgross@grosskleinlaw.com
2 BENJAMIN KLEIN (*pro hac to be filed*)
bklein@grosskleinlaw.com
3 DANIEL C. GOLDBERG (#287923)
dgoldberg@grosskleinlaw.com
4 **GROSS & KLEIN**
5 The Embarcadero
6 Pier 9, Suite 100
San Francisco, CA 94111
7 t (415) 671-4628
f (415) 480-6688

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9 *Attorneys for Plaintiffs*

10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**

12
13 **ROBERT E. DRURY III and ERIC D. CHASE,**
14 on behalf of themselves and all others similarly
15 situated,

16 **Plaintiffs,**

17 v.

18 **VOLKSWAGEN GROUP OF AMERICA,**
19 **INC.,**

20 **Defendant.**

Case No.

COMPLAINT

DEMAND FOR JURY TRIAL

1 Plaintiffs Robert E. Drury III and Eric D. Chase (“Plaintiffs”), individually and on behalf
2 of all others similarly situated (the “Class”), alleges the following against Volkswagen Group of
3 America, Inc. (“Defendant” or “Volkswagen”), upon personal knowledge as to their own actions
4 and his counsel’s investigation, and upon information and belief as to all other matters, as
5 follows:

6 **FACTUAL ALLEGATIONS**

7 1. This action concerns Defendant’s intentional deception of regulators and
8 consumers by admittedly installing so-called defeat devices on over 482,000 diesel Volkswagen
9 and Audi vehicles sold in the United States since 2009 (“Affected Vehicles”). Although the
10 Affected Vehicles were marketed as environmentally-friendly “clean diesels” that also yielded
11 high fuel efficiency and impressive performance, these representations were an intentionally and
12 knowingly false. The Affected Vehicles were not able to achieve the emissions levels required by
13 the EPA **and** provide the advertised performance.

15 2. In order to get around this inconvenient truth, Volkswagen decided to cheat; it
16 installed illegal software designed to falsify the vehicles’ emissions. This software – the defeat
17 device – detects when the vehicle is undergoing official emissions testing and turns full emissions
18 controls on only during the test. Then, as soon as the test is over, the software switches the
19 vehicle back to road calibration in order to provide the consumer with the desired performance.
20 This results in cars that meet emissions standards in the laboratory or state testing station, but
21 during normal operation emit nitrogen oxides (NOx) at up to 40 times the standard allowed under
22 United States laws and regulations. NOx pollution contributes to nitrogen dioxide, ground-level
23 ozone, and fine particulate matter. Exposure to these pollutants has been linked with serious
24 health dangers, including asthma attacks and other respiratory illness serious enough to send
25 people to the hospital. Ozone and particulate matter exposure have been associated with
26 premature death due to respiratory-related or cardiovascular-related effects. Children, the elderly,
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1 and people with preexisting respiratory illness are at acute risk of health effects from these
2 pollutants.

3 3. Just days ago, Volkswagen was forced to admit what it had done, and the
4 companies CEO was forced to resign.

5 4. Volkswagen's conduct violates federal and state law, and is a breach of applicable
6 warranties. The Clean Air Act has strict emissions standards for vehicles and it requires vehicle
7 manufacturers to certify to the EPA that the vehicles sold in the United States meet applicable
8 federal emissions standards to control air pollution. Every vehicle sold in the United States must
9 be covered by an EPA issued certificate of conformity. Under federal law, cars equipped with
10 defeat devices, which reduce the effectiveness of emissions control system during normal driving
11 conditions, cannot be certified. By manufacturing and selling cars with defeat devices that
12 allowed for higher levels of emissions that were certified to EPA, Volkswagen violated the Clean
13 Air Act, defrauded its customers, and engaged in unfair competition under state and federal law.
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15 5. According to a Notice of Violation ("NOV") issues by the EPA, Volkswagen
16 installed its "defeat device" in at least the following diesel models of its vehicles: Model Year
17 ("MY") 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2014-
18 2015 VW Passat; and MY 2009-2015 Audi A3. Discovery may reveal that additional vehicle
19 models and model years are properly included as Affected Vehicles.
20

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

2 7. These premiums occur across all of the vehicles in which Volkswagen installed its
3 “defeat device” for emissions testing. The table below sets forth the price premium for each base,
4 mid-level and top-line trim for each affected model:
5

CleanDiesel Price Premiums			
Model	Base	Mid-level	Top-line
<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

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11 8. Volkswagen has been ordered by the EPA to recall the Affected Vehicles and
12 repair them so that they comply with EPA emissions requirements at all times during normal
13 operation. However, Volkswagen will not be able to make the Affected Vehicles comply with
14 emissions standards without substantially degrading their performance characteristics, including
15 their horsepower and their efficiency.
16

17 9. As a result of Volkswagen’s unfair, deceptive, and/or fraudulent business
18 practices, and its failure to disclose that under normal operating conditions the Affected Vehicles
19 emit 40 times the allowed levels, owners and/or lessees of the Affected Vehicles have suffered
20 losses in money and/or property. Had Plaintiffs and Class members known of the “defeat device”
21 at the time they purchased or leased their Affected Vehicles, they would not have purchased or
22 leased those vehicles, or would have paid substantially less for the vehicles than they did.
23

24 10. Moreover, when and if Volkswagen recalls the Affected Vehicles and degrades the
25 CleanDiesel engine performance in order to make the Affected Vehicles compliant with EPA
26 standards, Plaintiffs and Class members will be required to spend additional sums on fuel and will
27 not obtain the performance characteristics of their vehicles when purchased. Moreover, affected
28

1 vehicles will necessarily be worth less in the marketplace because of their decrease in
2 performance and efficiency.

3 11. Plaintiffs bring this action individually and on behalf of all other current and
4 former owners or lessees of Affected Vehicles. Plaintiffs seeks damage, injunctive relief, and
5 equitable relief for the conduct of Volkswagen related to the “defeat device,” as alleged in this
6 Complaint.
7

8 JURISDICTION

9 12. This Court has jurisdiction pursuant to the Class Action Fairness Act, 28 U.S.C. §
10 1332(d), because the proposed Class consists of 100 or more members; the amount in controversy
11 exceeds \$5,000,000, exclusive of costs and interest; and minimal diversity exists. This Court also
12 has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.
13

14 13. This Court may exercise jurisdiction over Volkswagen because Volkswagen is
15 registered to conduct business in California; has minimum contacts in California; and
16 intentionally avails itself of the markets within California through the promotion, sale, marketing,
17 and distribution of its vehicles, thus rendering the exercise of jurisdiction by this Court proper and
18 necessary.
19

20 VENUE

21 14. Venue is proper in this District under 28 U.S.C. § 1391 because a substantial part
22 of the events or omissions giving rise to Plaintiffs claims occurred in this District and because
23 Volkswagen resides in the District. Plaintiff Drury resides in this District, leased his Affected
24 Vehicle in this District, and Volkswagen has marketed, advertised, sold, and leased the Affected
25 Vehicles within this District.
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PARTIES**I. Plaintiffs****A. Plaintiff Robert E. Drury III**

15. Plaintiff Robert E. Drury III is an individual residing in San Francisco County, California. In August 2013, Mr. Drury leased a 2013 Volkswagen Jetta Sportwagen TDI from Oakland VW. Mr. Drury still leases this vehicle. Mr. Drury became interested in leasing the vehicle after seeing Defendant's advertising and promotion materials that touted that fuel efficiency and environmentally friendly characteristics of the vehicle. Mr. Drury relied on Defendant's statements that the Sportwagen was a clean, low-emission vehicle, a key factor in his decision to purchase the car.

16. Mr. Drury also considered purchasing a Toyota Prius for many of the same reasons that he was interest in the Sportwagen; namely, its high fuel efficiency and environmentally friendly characteristics. Ultimately, Mr. Drury chose the Sportwagen, in large part because he believed that it was more fun to drive, and performed better than the Prius. As a result of these perceived characteristics, Mr. Drury chose the Sportwagen over the Prius even though the Prius was cheaper.

17. Unknown to Mr. Drury, at the time he purchased his Spotwagen it was equipped with an emissions control "defeat device" which caused his vehicle to get an undue EPA certification and pass emissions tests, but at all other times emit 40 times the allowed level of pollutants, including NOx.

18. Mr. Drury would not have paid a premium to lease the Sportwagen if he had known the truth about its fuel efficiency and emissions; in fact, he would not have leased it at all. He believes that Volkswagen lied to him, and given his concern for the environment, he is less likely to drive the car as frequently now that he knows it is emitting pollutants well beyond the

1 lawful limit.

2 **B. Plaintiff Eric D. Chase**

3 19. Plaintiff Eric D. Chase is an individual residing in Chittenden County, Vermont.
4 In 2010, Mr. Chase purchased a new 2010 Volkswagen Jetta TDI CleanDiesel from Louis
5 Motors, an authorized Volkswagen dealer in South Burlington, Vermont. Mr. Chase purchased,
6 and still owns, this vehicle. Unknown to Mr. Chase, at the time he purchased his vehicle, it was
7 equipped with an emissions control “defeat device” which caused his vehicle to get an undue
8 EPA certification and pass emissions tests, but at all other times emit 40 times the allowed level
9 of pollutants, including NOx.
10

11 20. The use of the “defeat device” by Volkswagen has caused Mr. Chase out-of-pocket
12 loss, future attempted repairs, and diminished value of his vehicle. Volkswagen knew about and
13 purposefully used the “defeat device,” but did not disclose the “defeat device” and its effects to
14 Mr. Chase, so Mr. Chase purchased his vehicle on the reasonable, but mistaken, belief that his
15 vehicle complied with United States emissions standards, was properly EPA certified, and would
16 retain all of its operating characteristics throughout its useful life.
17

18 21. Mr. Chase selected and ultimately purchased his vehicle, in part, because of the
19 “CleanDiesel” system, as represented through advertisements and representations made by
20 Volkswagen. Specifically, prior to his purchase of the vehicle, Mr. Chase viewed advertising
21 materials regarding the CleanDiesel and a representative of Louis Motors made verbal
22 representations about the CleanDiesel system to him. Mr. Chase recalls that the advertisements
23 and representations touted the cleanliness of the engine system for the environment and the
24 efficiency and power/performance of the engine system.
25

26 22. None of the advertisements reviewed or representations received by Mr. Chase
27 contained any disclosure relating to the “defeat device” or that Volkswagen had purposefully
28

1 falsified its certification of EPA compliance. Had Volkswagen disclosed that the CleanDiesel in
2 his vehicle actually emitted 40 times the permitted levels of pollutants, including NOx, he would
3 not have purchased his vehicle with the CleanDiesel engine, or would have paid less for the
4 vehicle.

5
6 23. Mr. Chase has suffered an ascertainable loss as a result of Volkswagen's omissions
7 and/or misrepresentations associated with the CleanDiesel engine system, including but not
8 limited to, out-of-pocket loss and future attempted repairs, future additional fuel costs, and
9 diminished value of his vehicle.

10 24. Neither Volkswagen nor any of its agents, dealers, or other representatives
11 informed Mr. Chase of the existence of the "defeat device" and/or defective design of the
12 CleanDiesel engine prior to purchase.

13 **II. Defendant Volkswagen Group of America, Inc.**

14
15 25. Volkswagen Group of America, Inc. ("Volkswagen") is a corporation doing
16 business in all 50 states (including the District of Columbia) and is organized under the laws of
17 the State of New Jersey, with its principal place of business located at 2200 Ferdinand Porsche
18 Dr., Herndon, Virginia 20171. At all times relevant to this action, Volkswagen manufactured,
19 distributed, sold, leased, and warranted the Affected Vehicles under the Volkswagen and Audi
20 brand names throughout the United States. Volkswagen and/or its agents designed, manufactured,
21 and installed the CleanDiesel engine systems in the Affected Vehicles, which included the "defeat
22 device." Volkswagen also developed and disseminated the owner's manuals and warranty
23 booklets, advertisements, and other promotional materials relating to the Affected Vehicles.

24 **TOLLING OF THE STATUTE OF LIMITATIONS**

25 **I. Discovery Rule Tolling**

26
27 26. Class members had no way of knowing about Volkswagen's deception with
28

1 respect to its CleanDiesel engine system and “defeat device.” It took a federal investigation to
2 uncover Volkswagen’s deception, which involved sophisticated software manipulation on
3 Volkswagen’s part.

4 27. As reported by the *New York Times* on September 19, 2015, the International
5 Council on Clean Transportation, a research group, first notices the difference between
6 Volkswagen’s emissions in testing laboratories and in normal use on the road. In International
7 Council on Clean Transportation brought the defeat device issue to the attention of the EPA. The
8 EPA, in turn, conducted further tests on the vehicles, and ultimately uncovered the unlawful use
9 of the defeat device software. Plainly, Volkswagen was intent on expressly hiding its behavior
10 from regulators and consumers. This is the quintessential case for tolling.

11 28. Within the time period of any applicable statutes of limitation, Plaintiff and
12 members of the proposed classes could not have discovered through the exercise of reasonable
13 diligence that Volkswagen was concealing the conduct complained of herein and misrepresenting
14 the Company’s true position with respect to the emissions qualities of its vehicles.

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

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

5
6 **II. Fraudulent Concealment Tolling**

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

10 32. Instead of disclosing its emissions scheme, or that the emissions from the Affected
11 Vehicles were far worse than represented, Volkswagen falsely represented that its vehicles
12 complied with federal and state emissions standards, and that it was a reputable manufacturer
13 whose representations could be trusted.

14
15 **III. Estoppel**

16 33. Volkswagen was under a continuous duty to disclose to Plaintiffs and the other
17 Class members the true character, quality, and nature of emissions from the Affected Vehicles,
18 and of those vehicles' failure to comply with applicable federal and state law.

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

21 35. Although Volkswagen was also under a continuous duty to disclose to Plaintiffs
22 and Class members that it had engaged in the scheme complained of herein to evade federal and
23 state emissions and clean air standards, Volkswagen chose to deliberately flout federal and state
24 law regulating vehicle emissions and clean air.

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26 36. Based on the foregoing, Volkswagen is estopped from relying on any statutes of
27 limitations in defense of this action.
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CLASS ALLEGATIONS

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2 37. Plaintiffs brings this action on behalf of himself and as a class action, pursuant to
3 the provisions of Rules 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure on behalf
4 of the following class (the “Class”):

5 All persons or entities in the United States who are current or former owners and/or
6 lessees of an “Affected Vehicle.” Affected Vehicles include, without limitation: MY
7 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2014-
8 2015 VW Passat; and MY 2009-2015 Audi A3.

9 38. Excluded from the Class are individuals who have personal injury claims resulting
10 from the “defeat device” in the CleanDiesel system. Also excluded from the Class are
11 Volkswagen and its subsidiaries and affiliates; all persons who make a timely election to be
12 excluded from the Class; governmental entities; and the judge to whom this case is assigned and
13 his/her immediate family. Plaintiffs reserve the right to revise the Class definition based upon
14 information learned through discovery.

15 39. Certification of Plaintiffs’ claims for class-wide treatment is appropriate because
16 Plaintiffs can prove the elements of their claims on a class-wide basis using the same evidence as
17 would be used to prove those elements in individual actions alleging the same claim.

18 40. This action has been brought and may be properly maintained on behalf of each of
19 the Classes proposed herein under Federal Rule of Civil Procedure 23.
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21 41. **Numerosity**. Federal Rule of Civil Procedure 23(a)(1): The members of the Class
22 are so numerous and geographically dispersed that individual joinder of all Class members is
23 impracticable. While Plaintiffs are informed and believe that there are not less than hundreds of
24 thousands of members of the Class, the precise number of Class members is unknown to
25 Plaintiffs, but may be ascertained from Volkswagen’s books and records. Class members may be
26 notified of the pendency of this action by recognized, Court-approved notice dissemination
27 methods, which may include U.S. mail, electronic mail, Internet postings, and/or published
28

1 notice.

2 42. **Commonality and Predominance**: Federal Rule of Civil Procedure 23(a)(2) and
3 23(b)(3): This action involves common questions of law and fact, which predominate over any
4 questions affecting individual Class members, including, without limitation: a) Whether
5 Volkswagen engaged in the conduct alleged herein; b) Whether Volkswagen designed,
6 advertised, marketed, distributed, leased, sold, or otherwise placed Affected Vehicles into the
7 stream of commerce in the United States; c) Whether the CleanDiesel engine system in the
8 Affected Vehicles contains a defect in that it does not comply with US EPA requirements; d)
9 Whether the CleanDiesel engine systems in Affected Vehicles can be made to comply with EPA
10 standards without substantially degrading the performance and/or efficiency of the Affected
11 Vehicles; e) Whether Volkswagen knew about the “defeat device” and, if so, how long
12 Volkswagen has known; f) Whether Volkswagen designed, manufactured, marketed, and
13 distributed Affected Vehicles with a “defeat device”; g) Whether Volkswagen’s conduct violates
14 consumer protection statutes, warranty laws, and other laws as asserted herein; h) Whether
15 Plaintiff sand the other Class members overpaid for their Affected Vehicles; k) Whether Plaintiffs
16 and the other Class members are entitled to equitable relief, including, but not limited to,
17 restitution or injunctive relief; and l) Whether Plaintiffs and the other Class members are entitled
18 to damages and other monetary relief and, if so, in what amount.

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

25 44. **Adequacy**: Federal Rule of Civil Procedure 23(a)(4): Plaintiffs are adequate Class
26 representatives because their interests do not conflict with the interests of the other members of
27 the Classes they seeks to represent; Plaintiffs have retained counsel competent and experienced in
28

1 complex class action litigation; and Plaintiffs intends to prosecute this action vigorously. The
2 Classes' interests will be fairly and adequately protected by Plaintiffs and their counsel.

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

7
8 46. **Superiority**: Federal Rule of Civil Procedure 23(b)(3): A class action is superior
9 to any other available means for the fair and efficient adjudication of this controversy, and no
10 unusual difficulties are likely to be encountered in the management of this class action. The
11 damages or other financial detriment suffered by Plaintiffs and the other Class members are
12 relatively small compared to the burden and expense that would be required to individually
13 litigate their claims against Volkswagen, so it would be impracticable for Class members to
14 individually seek redress for Volkswagen's wrongful conduct. Even if Class members could
15 afford individual litigation, the court system could not. Individualized litigation creates a
16 potential for inconsistent or contradictory judgments, and increases the delay and expense to all
17 parties and the court system. By contrast, the class action device presents far fewer management
18 difficulties, and provides the benefits of single adjudication, economy of scale, and
19 comprehensive supervision by a single court.
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22 **COUNT I**
23 **FRAUD BY CONCEALMENT**
24 **(Common Law)**

25 47. Plaintiffs reallege and incorporates by reference all paragraphs as though fully set
26 forth herein.

27 48. Plaintiffs bring this count on behalf of themselves and the nationwide members of
28 the Class.

1 49. Volkswagen intentionally concealed and suppressed material facts concerning the
2 quality of the Affected Vehicles. As alleged in this Complaint, notwithstanding references in the
3 very model names of the subject vehicles as “Clean Diesel,” or to their engines as “TDI Clean
4 Diesel” engines, Volkswagen engaged in deception to evade federal and state vehicle emissions
5 standards by installing software designed to conceal its vehicles’ emissions of the pollutant
6 nitrogen oxide, which contributes to the creation of ozone and smog.
7

8 50. The software installed on the vehicles at issue was designed to turn on only during
9 emissions certification testing, such that the vehicles would show far lower emissions than when
10 actually operating on the road. The result was that vehicles passed emissions certifications by way
11 of deliberately induced false readings. Thus, Volkswagen’s deliberate, deceptive scheme resulted
12 in noxious emissions from these vehicles at 40 times applicable federal standards.
13

14 51. Plaintiffs and Class members reasonably relied upon Volkswagen’s false
15 representations. They had no way of knowing that Volkswagen’s representations were false and
16 gravely misleading. As alleged herein, Volkswagen employed extremely sophisticated methods
17 of deception. Plaintiffs and the Class members did not, and could not, unravel Volkswagen’s
18 deception on their own.
19

20 52. Volkswagen deliberately concealed and suppressed material facts concerning what
21 is evidently the true culture of Volkswagen—one characterized by an emphasis on profits and
22 sales above compliance with federal and state clean air law, and emissions regulations that are
23 meant to protect the public and consumers. It also emphasized profits and sales about the trust
24 that Plaintiffs and Class members placed in its representations.
25

26 53. As representative customer, John Decker, put it in a quotation cited by the *New*
27 *York Times* in a September 21, 2015 article, “I feel totally ripped off. It just reeks of fraud and
28 that they intentionally misled the buyers of their vehicles into thinking these were clean diesels,

1 environmentally good cars, that were fun to drive. In the words of Mr. Decker, “[i]f the reason
2 they are fun to drive is that they are spewing up to 40 times the amount of pollutants they are
3 supposed to be, I just find it outrageous, frankly.”

4 54. Volkswagen also took steps to ensure that its employees did not reveal the details
5 of its scheme to regulators or consumers, including Plaintiffs and Class members. Volkswagen
6 did so in order to boost the reputations of its vehicles and to falsely assure purchasers and lessors
7 of its vehicles, including certified previously owned vehicles, that Volkswagen is a reputable
8 manufacturer that complies with applicable law, including federal and state clean air law and
9 emissions regulations, and that its vehicles likewise comply with applicable law and regulations.

10 55. Volkswagen’s false representations were material to consumers, both because they
11 concerned the quality of the affected vehicles, including their compliance with applicable federal
12 and state law and regulations regarding clean air and emissions, and also because the
13 representations played a significant role in the value of the vehicles. As Volkswagen well knew,
14 its customers, including Plaintiffs and Class members, highly valued that the vehicles they were
15 purchasing or leasing were *clean* diesel cars, and they paid accordingly.

16 56. Volkswagen had a duty to disclose the emissions scheme it engaged in with
17 respect to the vehicles at issue because knowledge of the scheme and its details were known
18 and/or accessible only to Volkswagen, because Volkswagen had exclusive knowledge as to
19 implementation and maintenance of its scheme, and because Volkswagen knew the facts were not
20 known to or reasonably discoverable by Plaintiffs or Class members.

21 57. Volkswagen also had a duty to disclose because it made general affirmative
22 representations about the qualities of its vehicles with respect to emissions standards, starting
23 with references to them as *clean* diesel cars, or cars with *clean* diesel engines, which were
24 misleading, deceptive, and incomplete without the disclosure of the additional facts set forth
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1 above regarding its emissions scheme, the actual emissions of its vehicles, its actual philosophy
2 with respect to compliance with federal and state clean air law and emissions regulations, and its
3 actual practices with respect to the vehicles at issue.

4 58. Having volunteered to provide information to Plaintiffs, Volkswagen had the duty
5 to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were
6 material because they directly impact the value of the Affected Vehicles purchased or leased by
7 Plaintiffs and Class members. Whether a manufacturer's products comply with federal and state
8 clean air law and emissions regulations, and whether that manufacturer tells the truth with respect
9 to such compliance or non-compliance, are material concerns to a consumer, including with
10 respect to the emissions certifications testing their vehicles must pass. Volkswagen represented
11 to Plaintiffs and Class members that they were purchasing *clean* diesel vehicles, and certification
12 testing appeared to confirm this—except that, secretly, Volkswagen had subverted the testing
13 process thoroughly.

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

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

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

6
7 62. Because of the concealment and/or suppression of the facts, Plaintiffs and Class
8 members have sustained damage because they own vehicles that are diminished in value as a
9 result of Volkswagen's concealment of the true quality and quantity of those vehicles' emissions
10 and Volkswagen's failure to timely disclose the actual emissions qualities and quantities of
11 hundreds of thousands of Volkswagen- and Audi-branded vehicles and the serious issues
12 engendered by Volkswagen's corporate policies. Had Plaintiffs and Class members been aware of
13 Volkswagen's emissions schemes with regard to the vehicles at issue, and the company's callous
14 disregard for compliance with applicable federal and state law and regulations, Plaintiffs and
15 Class members who purchased or leased new or certified previously owned vehicles would have
16 paid less for their vehicles or would not have purchased or leased them at all.

17
18 63. The value of Plaintiffs' and Class members' vehicles has diminished as a result of
19 Volkswagen's fraudulent concealment of its emissions scheme, which has greatly tarnished the
20 Volkswagen and Audi brand names attached to Plaintiffs' and Class members' vehicles and made
21 any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what
22 otherwise would have been fair market value for the vehicles.

23
24 64. Accordingly, Volkswagen is liable to Plaintiffs and Class members for damages in
25 an amount to be proven at trial.

26
27 65. Volkswagen's acts were done wantonly, maliciously, oppressively, deliberately,
28 with intent to defraud, and in reckless disregard of Plaintiffs' and Class members' rights and the

1 representations that Volkswagen made to them, in order to enrich Volkswagen. Volkswagen's
2 conduct warrants an assessment of punitive damages in an amount sufficient to deter such
3 conduct in the future, which amount is to be determined according to proof.

4
5 **COUNT II**
6 **VIOLATION OF THE MAGNUSSON-MOSS WARRANTY ACT**
7 **(15 U.S.C. §§ 2301 et seq.)**

8 66. Plaintiffs incorporate by reference all preceding allegations as though fully set
9 forth herein.

10 67. Plaintiffs bring this count on behalf of the nationwide members of the Class.

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

12 69. Plaintiffs and the members of the putative class are "consumers" under 15 U.S.C.
13 § 2301(3)

14 70. Defendant is a "supplier" and "warrantor" within the meaning of 15 U.S.C. §
15 2301(4)-(5).

16 71. Defendant provided purchasers and lessees of Affected Vehicles multiple written
17 warranties as defined by 15 U.S.C. § 2301(6).

18 72. **Manufacturer's Warranty.** Defendant provided Plaintiffs and each member of
19 the Class who purchased or leased a new Class Vehicle with a Manufacturer's Warranty, which
20 provides "bumper-to-bumper" limited express warranty coverage for a minimum of 3 years or
21 36,000 miles, whichever comes first. This warranty covers emissions related repairs. This
22 warranty is directly applicable to the Affected Vehicles.

23 73. As required by law, Defendant also provided a Federal Emissions Warranty to
24 members of the Class and a California Emissions Warranty to the California members of the
25 Class. Vehicles certified to meet California emissions standards and registered in states which
26 have adopted those standards are also entitled to coverage under the California Emissions
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28

1 Warranty.

- 2 a. **Federal Emissions Warranty** – Consistent with federal law, Defendants provided
3 Plaintiffs and the Class members with a “performance warranty” and a “design and
4 defect warranty.” In the event that a vehicle fails an emissions test, these warranties
5 cover all emissions related parts for 2 years or 24,000 miles (whichever comes first),
6 with the catalytic converter, engine control unit, and onboard diagnostic device
7 covered for 8 years or 80,000 miles (whichever comes first). These warranties are
8 directly applicable to the Affected Vehicles.
- 9
- 10 b. **California Emissions Warranty** – California law requires additional warranty
11 coverage beyond that required by federal law. Under California law, all emissions
12 related performance and parts are covered for 3 years or 50,000 miles (whichever
13 comes first), and a vehicle-specific list of more expensive emissions related parts is
14 covered for 7 years or 70,000 miles (whichever comes first). In addition, the 8 year of
15 80,000 miles coverage for the catalytic converter, engine control unit, and onboard
16 diagnostic device required by Federal law also applies. 13 Cal. Code. Regs. § 2038;
17 see Cal. Health & Safety Code § 43205. The California Emissions Warranty
18 provisions described here cover vehicles up to 14,000 pounds GVWR, and are directly
19 applicable to the Affected Vehicles.

20

21

22 74. Defendant breached these warranties by selling the Affected Vehicles with a defeat
23 device which renders the emissions control systems defective, and the Affected Vehicles thus do
24 not comply with emissions standards set by federal law. This device cannot be repaired or
25 redressed without materially altering the advertised estimated fuel economy and other
26 performance characteristics of the vehicle.

27 75. Volkswagen’s breach of warranty has deprived Plaintiffs and other Class members
28

1 of the benefit of their bargain. The amount in controversy of the Plaintiffs' individual claims
2 meets or exceeds the sum or value of \$50,000 (exclusive of interest and costs) computed on the
3 basis of all claims to be determined in this suit.

4 76. Defendant has an opportunity to disclose information concerning the Affected
5 Vehicles inability to perform as warranted, and to cure its breach of warranties, at least since May
6 2014, in response to inquiries by the EPA. And yet Defendant failed to do so.

7 77. As a direct and proximate result of Defendant's conduct, Plaintiffs and other Class
8 members have suffered damages and continue to suffer damages, including economic damages at
9 the point of sale or lease, that is, the different between the value of the vehicle as promised and
10 the value of the vehicle as delivered. Plaintiffs and members of the Class are entitled to legal and
11 equitable relief against Defendant, including damages, specific performance, attorneys' fees,
12 costs, and other relief as appropriate.

13
14
15 **COUNT III**
16 **BREACH OF CONTRACT**

17 78. Plaintiffs incorporate by reference all preceding allegations as though fully set
18 forth herein.

19 79. Plaintiffs bring this Count on behalf of the nationwide members of the Class.

20 80. Volkswagen's misrepresentations and omissions alleged herein, including
21 Volkswagen's failure to disclose the existence of the "defeat device" and/or defective design as
22 alleged herein, caused Plaintiffs and the other Class members to make their purchases or leases of
23 their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiffs and the other
24 Class members would not have purchased or leased these Affected Vehicles, would not have
25 purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased
26 or leased less expensive alternative vehicles that did not contain the CleanDiesel engine system
27 and the "defeat device." Accordingly, Plaintiffs and the other Class members overpaid for their
28

1 Affected Vehicles and did not receive the benefit of their bargain.

2 81. Each and every sale or lease of an Affected Vehicle constitutes a contract between
3 Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or
4 leasing Plaintiffs and the other Class members defective Affected Vehicles and by
5 misrepresenting or failing to disclose the existence of the “defeat device” and/or defective design,
6 including information known to Volkswagen rendering each Affected Vehicle less safe and
7 emissions compliant, and thus less valuable, than vehicles not equipped with CleanDiesel engine
8 systems and “defeat devices.”

9
10 82. As a direct and proximate result of Volkswagen’s breach of contract, Plaintiffs and
11 the Class members have been damaged in an amount to be proven at trial, which shall include, but
12 is not limited to, all compensatory damages, incidental and consequential damages, and other
13 damages allowed by law.
14

15 **COUNT IV**
16 **VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW**
17 **(Cal. Bus. & Prof. Code §§ 17200, et seq.)**

18 83. Plaintiffs incorporate by reference all preceding allegations as though fully set
19 forth herein.

20 84. Plaintiffs bring this Count on behalf of the California members of the Class.

21 85. California’s Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code §§ 17200,
22 *et seq.*, proscribes acts of unfair competition, including “any unlawful, unfair or fraudulent
23 business act or practice and unfair, deceptive, untrue or misleading advertising.”

24 86. Volkswagen’s conduct, as described herein, was and is in violation of the UCL.
25 Volkswagen’s conduct violates the UCL in at least the following ways:

- 26 a. By knowingly and intentionally concealing from Plaintiffs and the other Class
27 members that the Affected Vehicles suffer from a design defect while obtaining
28

1 money from Plaintiffs and the Class;

2 b. By marketing Affected Vehicles as possessing functional and defect-free, EPA
3 compliant CleanDiesel engine systems;

4 c. By purposefully installing an illegal “defeat device” in the Affected Vehicles to
5 fraudulently obtain EPA certification and cause Affected Vehicles to pass emissions
6 tests when in truth and fact they did not pass such tests;

7 d. By violating federal laws, including the Clean Air Act; and

8 e. By violating other California laws, including California laws governing vehicle
9 emissions and emission testing requirements.
10

11 87. Volkswagen’s misrepresentations and omissions alleged herein caused Plaintiffs
12 and Class members to make their purchases or leases of their Affected Vehicles. Absent those
13 misrepresentations and omissions, Plaintiffs and the other Class members would not have
14 purchased or leased these vehicles, would not have purchased or leased these Affected Vehicles at
15 the prices they paid, and/or would have purchased or leased less expensive alternative vehicles
16 that did not contain CleanDiesel engine systems that failed to comply with EPA and state
17 emissions standards.
18

19 88. Accordingly, Plaintiffs and the other Class members have suffered injury in fact
20 including lost money or property as a result of Volkswagen’s misrepresentations and omissions.
21

22 89. Plaintiffs seek to enjoin further unlawful, unfair, and/or fraudulent acts or practices
23 by Volkswagen under Cal. Bus. & Prof. Code § 17200.

24 90. Plaintiffs requests that this Court enter such orders or judgments as may be
25 necessary to enjoin Volkswagen from continuing its unfair, unlawful, and/or deceptive practices
26 and to restore to Plaintiffs and members of the Class any money it acquired by unfair competition,
27 including restitution and/or restitutionary disgorgement, as provided in Cal. Bus. & Prof. Code §
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1 17203 and Cal. Civ. Code § 3345; and for such other relief set forth below.

2 **COUNT V**
3 **VIOLATION OF CALIFORNIA CONSUMERS LEGAL REMEDIES ACT**
4 **(Cal. Civ. Code §§ 1750, *et seq.*)**

5 91. Plaintiffs incorporate by reference all preceding allegations as though fully set
6 forth herein.

7 92. Plaintiffs brings this Count on behalf of the California members of the Class.

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

12 94. The Affected Vehicles are “goods” as defined in Cal. Civ. Code § 1761(a).

13 95. Plaintiffs and the other California Class members are “consumers” as defined in
14 Cal. Civ. Code § 1761(d), and Plaintiffs, the other California Class members, and Volkswagen are
15 “persons” as defined in Cal. Civ. Code § 1761(c).

16 96. As alleged above, Volkswagen made numerous representations concerning the
17 benefits, efficiency, performance and safety features of CleanDiesel engine systems that were
18 misleading.
19

20 97. In purchasing or leasing the Affected Vehicles, Plaintiffs and the other California
21 Class members were deceived by Volkswagen’s failure to disclose that the Affected Vehicles
22 were equipped with defective CleanDiesel engine systems that failed EPA and California
23 emissions standards.
24

25 98. Volkswagen’s conduct, as described hereinabove, was and is in violation of the
26 CLRA. Volkswagen’s conduct violates at least the following enumerated CLRA provisions:

27 a. Cal. Civ. Code § 1770(a)(5): Representing that goods have characteristics, uses, and
28

1 benefits which they do not have;

2 b. Cal. Civ. Code § 1770(a)(7): Representing that goods are of a particular standard,
3 quality, or grade, if they are of another;

4 c. Cal. Civ. Code § 1770(a)(9): Advertising goods with intent not to sell them as
5 advertised; and

6 d. Cal. Civ. Code § 1770(a)(16): Representing that goods have been supplied in
7 accordance with a previous representation when they have not.
8

9 99. Plaintiffs and the other California Class members have suffered injury in fact and
10 actual damages resulting from Volkswagen's material omissions and misrepresentations because
11 they paid an inflated purchase or lease price for the Affected Vehicles and because they stand to
12 pay additional fuel costs if and when their Affected Vehicles are made to comply with emissions
13 standards.
14

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

18 101. The facts concealed and omitted by Volkswagen to Plaintiffs and the other Class
19 members are material in that a reasonable consumer would have considered them to be important
20 in deciding whether to purchase or lease the Affected Vehicles or pay a lower price. Had
21 Plaintiffs and the other Class members known about the defective nature of the Affected
22 Vehicles, they would not have purchased or leased the Affected Vehicles or would not have paid
23 the prices they paid.
24

25 102. Plaintiffs and the other California Class members' injuries were proximately
26 caused by Volkswagen's fraudulent and deceptive business practices.

27 103. Plaintiffs and the California Class members are entitled to equitable relief and a
28

1 declaration that Defendant's conduct violates the CLRA.

2 104. Plaintiffs disclaim any request for monetary relief, including punitive damages,
3 under the CLRA at this time but reserve the right to seek such relief after providing Defendant
4 with notice as required by the Act.

5
6 **COUNT VI**
7 **VIOLATION OF CALIFORNIA FALSE ADVERTISING LAW**
8 **(Cal. Bus. & Prof. Code §§ 17500, et seq.)**

9 105. Plaintiffs incorporate by reference all preceding allegations as though fully set
10 forth herein.

11 106. Plaintiffs bring this Count on behalf of the California members of the Class.

12 107. California Bus. & Prof. Code § 17500 states:

13 "It is unlawful for any ... corporation ... with intent directly or indirectly to dispose of
14 real or personal property ... to induce the public to enter into any obligation relating
15 thereto, to make or disseminate or cause to be made or disseminated ... from this state
16 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."

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

22
23 109. Volkswagen has violated § 17500 because the misrepresentations and omissions
24 regarding the safety, reliability, and functionality of Affected Vehicles as set forth in this
25 Complaint were material and likely to deceive a reasonable consumer.

26 110. Plaintiffs and the other Class members have suffered an injury in fact, including
27 the loss of money or property, as a result of Volkswagen's unfair, unlawful, and/or deceptive
28

1 practices. In purchasing or leasing their Affected Vehicles, Plaintiffs and the other Class
2 members relied on the misrepresentations and/or omissions of Volkswagen with respect to the
3 safety, performance and reliability of the Affected Vehicles. Volkswagen's representations
4 turned out not to be true because the Affected Vehicles are distributed with faulty and defective
5 CleanDiesel engine systems, rendering certain safety and emissions functions inoperative. Had
6 Plaintiffs and the other Class members known this, they would not have purchased or leased their
7 Affected Vehicles and/or paid as much for them. Accordingly, Plaintiffs and the other Class
8 members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.
9

10 111. All of the wrongful conduct alleged herein occurred, and continues to occur, in the
11 conduct of Volkswagen's business. Volkswagen's wrongful conduct is part of a pattern or
12 generalized course of conduct that is still perpetuated and repeated, both in the State of California
13 and nationwide.
14

15 112. Plaintiffs, individually and on behalf of the other Class members, requests that this
16 Court enter such orders or judgments as may be necessary to enjoin Volkswagen from continuing
17 their unfair, unlawful, and/or deceptive practices and to restore to Plaintiffs and the other Class
18 members any money Volkswagen acquired by unfair competition, including restitution and/or
19 restitutionary disgorgement, and for such other relief set forth below.
20

21 **COUNT VII**
22 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
23 **(Cal. Com. Code § 2314)**

24 113. Plaintiffs incorporate by reference all preceding allegations as though fully set
25 forth herein.

26 114. Plaintiffs bring this Count on behalf of the California members of the Class.

27 115. Volkswagen is and was at all relevant times a merchant with respect to motor
28 vehicles under Cal. Com. Code § 2104.

1 116. A warranty that the Affected Vehicles were in merchantable condition was implied
2 by law in the instant transaction, pursuant to Cal. Com. Code § 2314.

3 117. These Affected Vehicles, when sold and at all times thereafter, were not in
4 merchantable condition and are not fit for the ordinary purpose for which cars are used.
5 Specifically, the Affected Vehicles are inherently defective in that they do not comply with
6 federal and state emissions standards, rendering certain safety and emissions functions
7 inoperative; and the CleanDiesel engine system was not adequately designed, manufactured, and
8 tested.
9

10 118. Volkswagen was provided notice of these issues by the investigations of the EPA
11 and individual state regulators.

12 119. Plaintiffs and the other Class members have had sufficient direct dealings with
13 either Volkswagen or their agents (dealerships) to establish privity of contract between Plaintiffs
14 and the other Class members. Notwithstanding this, privity is not required in this case because
15 Plaintiffs and the other Class members are intended third-party beneficiaries of contracts between
16 Volkswagen and its dealers; specifically, they are the intended beneficiaries of Volkswagen's
17 implied warranties. The dealers were not intended to be the ultimate consumers of the Affected
18 Vehicles and have no rights under the warranty agreements provided with the Affected Vehicles;
19 the warranty agreements were designed for and intended to benefit the ultimate consumers only.
20 Finally, privity is also not required because Plaintiffs' and the other Class members' Affected
21 Vehicles are dangerous instrumentalities due to the aforementioned defects and nonconformities.
22

23 120. As a direct and proximate result of Volkswagen's breach of the warranties of
24 merchantability, Plaintiffs and the other Class members have been damaged in an amount to be
25 proven at trial.
26
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28

1 **COUNT VIII**
2 **VIOLATION OF SONG-BEVERLY CONSUMER WARRANTY ACT FOR BREACH OF**
3 **IMPLIED WARRANTY OF MERCHANTABILITY**
4 **(Cal. Civ. Code §§ 1791.1 & 1792)**

5 121. Plaintiffs incorporate by reference all preceding allegations as though fully set
6 forth herein.

7 122. Plaintiffs bring this Count on behalf of the California Class members.

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

10 124. The Affected Vehicles are “consumer goods” within the meaning of Cal. Civ.
11 Code § 1791(a).

12 125. Volkswagen is a “manufacturer” of the Affected Vehicles within the meaning of
13 Cal. Civ. Code § 1791(j).

14 126. Volkswagen impliedly warranted to Plaintiffs and the other Class members that its
15 Affected Vehicles were “merchantable” within the meaning of Cal. Civ. Code §§ 1791.1(a) &
16 1792, however, the Affected Vehicles do not have the quality that a buyer would reasonably
17 expect.

18 127. Cal. Civ. Code § 1791.1(a) states: “Implied warranty of merchantability” or
19 “implied warranty that goods are merchantable” means that the consumer goods meet each of the
20 following: (1) Pass without objection in the trade under the contract description. (2) Are fit for
21 the ordinary purposes for which such goods are used. (3) Are adequately contained, packaged,
22 and labeled. (4) Conform to the promises or affirmations of fact made on the container or label.

23 128. The Affected Vehicles would not pass without objection in the automotive trade
24 because of they do not pass EPA and state law emissions regulations.

25 129. Because of the “defeat device” falsely causes Affected Vehicles to obtain EPA
26 certification and pass emissions tests when in fact they omit 40 times the permitted level of NOx,
27
28

1 they are not safe to drive and thus not fit for ordinary purposes.

2 130. The Affected Vehicles are not adequately labeled because the labeling fails to
3 disclose the “defeat device” that causes emissions systems of the Affected Vehicles to become
4 inoperative during normal use.

5 131. Volkswagen breached the implied warranty of merchantability by manufacturing
6 and selling Affected Vehicles containing the “defeat device.” Furthermore, Volkswagen’s
7 fraudulent use of the “defeat device” has caused Plaintiffs and the other Class members to not
8 receive the benefit of their bargain and have caused Affected Vehicles to depreciate in value.

9 132. As a direct and proximate result of Volkswagen’s breach of the implied warranty
10 of merchantability, Plaintiffs and the other Class members received goods whose dangerous and
11 dysfunctional condition substantially impairs their value to Plaintiffs and the other Class
12 members.

13 133. Plaintiffs and the other Class members have been damaged as a result of the
14 diminished value of Volkswagen’s products, the products’ malfunctioning, and the nonuse of
15 their Affected Vehicles.

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

20 135. Pursuant to Cal. Civ. Code § 1794, Plaintiffs and the other Class members are
21 entitled to costs and attorneys’ fees.

22
23 **COUNT IX**
24 **VIOLATION OF THE VERMONT CONSUMER FRAUD ACT**
25 **(9 V.S.A. §§ 2451 *et seq.*)**

26 136. Plaintiffs restate the allegations contained in the paragraphs above as it fully set
27
28

1 forth herein.

2 137. Plaintiffs bring this count on behalf of the Vermont members of the Class.

3 138. Plaintiffs and the Vermont members of the Class are “consumers” and Defendant
4 is a “seller” of “goods,” all as defined in 9 V.S.A. §2451a.

5 139. Defendant was regularly and principally engaged in the sale of automobiles at all
6 times relevant to this action.

7 140. Vermont’s Consumer Fraud Act (“CFA”) seeks to protect consumers from fraud
8 and deceptive conduct , making sellers liable for the “failure to sell any goods or services in the
9 manner and of the nature advertised and offered.”

10 141. Volkswagen’s conduct, as described herein, was and is in violation of the CFA.
11 Volkswagen’s conduct violates the CFA, and was unfair, immoral, unethical, oppressive, or
12 unscrupulous in at least the following ways:

- 13
- 14 a. By knowingly and intentionally concealing from Plaintiffs and the other Class
15 members that the Affected Vehicles suffer from a design defect while obtaining
16 money from Plaintiffs and the Class;
 - 17 b. By marketing Affected Vehicles as possessing functional and defect-free, EPA
18 compliant CleanDiesel engine systems;
 - 19 c. By purposefully installing an illegal “defeat device” in the Affected Vehicles to
20 fraudulently obtain EPA certification and cause Affected Vehicles to pass
21 emissions tests when in truth and fact they did not pass such tests;
 - 22 d. By violating federal laws, including the Clean Air Act; and
 - 23 e. By violating other Vermont laws, including Vermont laws governing vehicle
24 emissions and emission testing requirements.

25 142. Volkswagen’s misrepresentations and omissions alleged herein caused Plaintiffs
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1 and Class members to make their purchases or leases of their Affected Vehicles. Absent those
2 misrepresentations and omissions, Plaintiffs and the other Class members would not have
3 purchased or leased these vehicles, would not have purchased or leased these Affected Vehicles at
4 the prices they paid, and/or would have purchased or leased less expensive alternative vehicles
5 that did not contain CleanDiesel engine systems that failed to comply with EPA and state
6 emissions standards.
7

8 143. Accordingly, as a direct result of Defendant's violations of 9 V.S.A. §§ 2451 *et*
9 *seq.* Plaintiffs and the other Class members have suffered injury in fact including lost money or
10 property in an amount to be determined at trial, and pursuant to 9 V.S.A. § 2461, Plaintiffs and
11 the members of the Class are entitled to exemplary damages and attorneys' fees.
12

13 **REQUEST FOR RELIEF**

14 WHEREFORE, Plaintiffs, individually and on behalf of members of the Class, respectfully
15 request that the Court enter judgment in their favor and against Volkswagen, as follows:

- 16 A. Certification of the proposed Class, including appointment of Plaintiffs' counsel as Class
17 Counsel;
- 18 B. An order temporarily and permanently enjoining Volkswagen from continuing the
19 unlawful, deceptive, fraudulent, and unfair business practices alleged in this Complaint;
- 20 C. Injunctive relief in the form of a recall or free replacement program;
- 21 D. Costs, restitution, damages, including punitive damages, and disgorgement in an amount
22 to be determined at trial;
- 23 E. An order requiring Volkswagen to pay both pre- and post-judgment interest on any
24 amounts awarded;
- 25 F. An award of costs and attorneys' fees; and
- 26 G. Such other or further relief as may be appropriate.
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Dated: September 24, 2015

GROSS & KLEIN

By: /s/ Stuart G. Gross
STUART G. GROSS
Counsel for Plaintiffs

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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial for all claims so triable.

Dated: September 24, 2015

GROSS & KLEIN

By: /s/ Stuart G. Gross
STUART G. GROSS

Counsel for Plaintiffs

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

Robert E. Drury III and Eric D. Chase, on behalf of themselves and all others similarly situated.

(b) County of Residence of First Listed Plaintiff San Francisco (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

See Attachment A

DEFENDANTS

Volkswagen Group of America, Inc.

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)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, 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)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Labor, etc.

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): 15 U.S.C. § 2301, et seq.

Brief description of cause: Breach of Warranty, Fraud, breach of contract, and unfair business, etc, for installation of illegal software

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 Phyllis J. Hamilton DOCKET NUMBER 4:15-cv-04278-PJH*

DATE September 24, 2015 SIGNATURE OF ATTORNEY OF RECORD s/ Stuart G. Gross

(Place an "X" in One Box Only)

- SAN FRANCISCO/OAKLAND, SAN JOSE, EUREKA

*Approximately 80 related cases filed.

ATTACHMENT A

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The following attorneys represent Plaintiffs:

STUART G. GROSS (#251019)

sgross@grosskleinlaw.com

BENJAMIN KLEIN (*pro hac to be filed*)

bklein@grosskleinlaw.com

DANIEL C. GOLDBERG (#287923)

dgoldberg@grosskleinlaw.com

GROSS & KLEIN

The Embarcadero

Pier 9, Suite 100

San Francisco, CA 94111

t (415) 671-4628

f (415) 480-6688

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of California

Robert E. Drury III and Eric D. Chase, on behalf of themselves and all others similarly situated

Plaintiff

v.

Volkswagen Group of America, Inc.

Defendant

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Volkswagen Group of America, Inc. 2200 Ferdinand Porsche Dr. Herndon, VA 20171

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: