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12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**
14 **SAN FRANCISCO DIVISION**

15 JOSHUA M. ETS-HOKIN, individually and on
16 behalf of those similarly situated,

17 Plaintiffs,

18 vs.

19 VOLKSWAGEN AG, AUDI AG,
20 VOLKSWAGEN OF AMERICA, INC., AUDI
21 OF AMERICA, INC.,

22 Defendants.

Case No.:

**CLASS ACTION COMPLAINT FOR
EQUITABLE, INJUNCTIVE, AND
DECLARATORY RELIEF,
RESTITUTION, AND DAMAGES**

DEMAND FOR A JURY TRIAL

- 23 **1) Fraud and Fraudulent Inducement**
- 24 **2) Negligent Misrepresentation and Omission**
- 25 **3) Breach of Contract**
- 26 **4) Breach of Implied Warranty**
- 27 **5) Breach of Magnuson Moss Warranty Act**
- 28 **6) Unjust Enrichment**
- 7) Violation of California’s Unfair Competition Law (Unfair Business Practice Cal. Bus. & Prof. Code §§ 17200, et seq.) (Unfair Business Practice);**
- 8) Violation of California’s Consumers Legal Remedies Act (Cal. Civil Code §§ 1750, et seq.);**

1 Plaintiff, JOSHUA M. ETS-HOKIN, by and through his undersigned counsel,
2 individually and on behalf of all others similarly situated, hereby sets forth in this Individual and
3 Class Action Complaint claims for equitable, injunctive and declaratory relief, restitution, and
4 damages.

5 **INTRODUCTION**

6 1. The Clean Air Act, and the Amendments thereto, (Title 1-1990 and Title 2 2004)
7 established national emission standards, which some states, such as California, have made even
8 stricter. This case is about an extraordinary and deliberate manipulation by Defendants to evade
9 these standards, defraud their customers, and regulatory agencies. On September 3, 2015
10 Defendants Volkswagen AG, Audi AG, Volkswagen of America, Inc., Audi of America, Inc.
11 (hereafter “VW Group”) admitted that for more than seven years, it has been intentionally,
12 deliberately, and maliciously designing, manufacturing, and distributing hundreds of thousands
13 of its purportedly “clean diesel” vehicles with a software algorithm embedded in the engine
14 control module, the sole purpose of which was to detect when a federally mandated emissions
15 test was being conducted and to cause the vehicles’ emissions system to switch to an operating
16 mode that would enable the vehicle to appear to pass the federal and state clean air emissions
17 standards. The cleverly designed program alerted the engine control module, (ECM), to
18 command the emissions system to run in a special operating mode when emissions testing was
19 occurring. In other words, when the local Smog certification station hooked up the SMOG test
20 equipment, the operating mode would switch to a different program, and fool the SMOG
21 equipment enabling the vehicle to pass the federally and state mandated testing. At all other
22 time times, the engine control module would command the emissions system to operate in such a
23 way that the clean diesel vehicles would emit up to 40 times the quantity of nitrogen oxides
24 allowed for by federal and state emissions standards. In so doing, Defendants have introduced
25 half a million automobiles into the United States market that flagrantly violate this country’s
26 Clean Air Act.

27 2. Nitrogen oxides are known to be a family of highly reactive gases that are
28 significantly involved in atmospheric reactions with volatile organic compounds that produce
ozone. Breathing ozone has been linked to a variety of health problems including chest pain,
coughing, throat irritation, and congestion, and can worsen health conditions such as bronchitis,

1 emphysema, and asthma. What is worse, children are at the greatest risk of experiencing
2 negative health conditions from exposure to ozone. The Clean Air Act related regulations and
3 state laws was established to reduce nitrogen oxides and other pollutants.

4 3. Defendants perpetrated this fraud beginning in 2009. Defendants touted the 2.0
5 TDI Clean Diesel engine as “good for the environment”, “a fantastic power train” that “gives
6 very good fuel economy,” and most astounding of all, that “it puts out 25% less greenhouse gas
7 emission than what a gasoline engine would...cuts out the particulate emissions by 90% and the
8 emissions of nitrogen oxide by 95%.” While boasting about all the advantages the Clean Diesel
9 Engine supposedly had, the truth was completely different. In a remarkable display of arrogance
10 and greed, Defendants programed the ECM to cheat; defrauding the consumers, the federal and
11 state regulatory agencies alike.

12 4. Defendants used this fraud to allow them to position VW as the market leader in
13 automotive diesel sales in the United States, capturing 78% of the market by 2013 according to
14 its own documents. And while it was perpetrating this fraud, it was taking shots at other
15 automakers who were caught inflating the real-world mileage performance, as reflected in the
16 statements of Volkswagen Group of America’s technical strategy manager, Doug Skorupski,
17 who, in a September 14, 2013 press release, stated that “Volkswagen’s sales of TDI clean-diesel
18 models may be benefitting from the increasing problems that other auto brands have encountered
19 in elevating the real-world mileage performance of some of their cars with the fuel economy they
20 advertise.”

21 5. Defendants’ commitment to their fraud knew no boundaries. Even when the first
22 indication surfaced that Defendants’ clean diesel cars were violating clean air emissions
23 standards under real-world operating conditions in May 2014, and the EPA and CARB launched
24 their investigations, Defendants vehemently denied any wrongdoing, manufactured “technical
25 issues” to throw investigators off the trail, and even purported to develop a fix and announced a
26 voluntary recall in December 2014 that it claimed would remedy the irregularities identified by
27 the regulators.

28 6. When federal and state regulators identified the purported voluntary recall as what
it was, a sham fix, and threatened to withhold Certificates of Conformity for all future VW diesel
automobiles, only then did Volkswagen Group of America finally admit that, since the 2009

1 model year, it had been engineering its vehicles to be able to identify and circumvent federally
2 mandated emissions testing. This from the company that on January 12, 2008 – immediately
3 prior to the introduction of its 2.0L TDI clean diesel engine – issued the “Volkswagen Group
4 Environmental Principles Products” in which the Chairman of the Board defined the corporate
5 objective of “climate protection” and “reduc[tion of] greenhouse gas emissions.”

6 7. Defendants defrauded consumers, United States and state regulators, the
7 marketplace, and most importantly to this case, Joshua M. Ets-Hokin and others similarly
8 situated each of whom has purchased or leased a VW or Audi vehicle equipped with a 2.0L TDI
9 Clean Diesel engine.

10 8. This Class Action is brought on behalf of all Consumers in the United States
11 (collectively “Plaintiffs,” “Class,” “Class Members,” “Consumers,” “Owners” of AFFECTED
12 VEHICLES), and including a defined California sub-class (collectively “California Sub-Class”)
13 who purchased an AFFECTED VEHICLES, as defined in Paragraph 9 below, which vehicles
14 have been developed, designed, manufactured, assembled, tested, marketed, promoted,
15 advertised, sold, warranted, distributed, and serviced by Defendants VOLSWAGEN AG and
16 VOLKSWAGEN of AMERICA, INC. (collectively “VW”) and/or AUDI AG and AUDI of
17 AMERICA, INC. (collectively “AUDI”).

18 9. AFFECTED VEHICLES are herein collectively defined to include all diesel
19 powered model year 2009-2015 VW Jetta; 2009-2015 VW Beetle; 2009-2015 VW Golf, 2014-
20 2015 VW Passat; and 2009-2015 Audi A3. AFFECTED VEHICLES were designed
21 manufactured, tested for U.S. federal and California emissions and fuel economy standards,
22 marketed distributed and sold to consumers since 2009. Defendants have admitted to this
23 egregious course of conduct, and agreed to recall AFFECTED VEHICLES for the purpose of
24 removing the concealed embedded software so as to render said VEHICLES lawful to own and
25 operate in the United States and California. But, Plaintiff and the Classes would not have
26 purchased or paid as much for said VEHICLES, and have and will lose money due to their
27 inability to sell their VEHICLES at their preexisting market value, in part, because their
28 VEHICLES will, post-recall, not perform in the manner promised and offered at the time of
their purchase.

1 10. At all times relevant to this action, Defendants intentionally, recklessly, and/or
2 negligently concealed, suppressed, and omitted the defects, disadvantages, lack of
3 merchantability, and illegality of their AFFECTED VEHICLES. At all times relevant to this
4 action, Defendants designed, tested, marketed, sold, distributed, advertised, warranted, serviced
5 and maintained such VEHICLES as merchantable and legal for sale, and meeting certain
6 performance standards, when, in fact, Defendants had reason to know, and did know, that their
7 AFFECTED VEHICLES were not merchantable for lawful sale in the United States and
8 California, and would not perform as represented if rendered merchantable and lawful for sale
9 and use. This information was intentionally concealed and withheld from the CLASSES, and
10 the U.S. and California governments.

11 11. Pursuant to Rules 23(b)(2), and/or 23(b)(3) and/or 23 (c)(4)of the Federal Rules
12 of Civil Procedure, Plaintiffs will seek certification of a national Consumer Class consisting of:

13 All consumer residents of the United States who own an AFFECTED VEHICLE.
14 Excluded from the Class are all Persons who are employees, directors, officers,
15 and agents of Defendants, or their respective subsidiaries and affiliated
16 companies, as well as the judges, clerks, and staff members of the United States
17 District Court for the Northern District of California, the Ninth Circuit Court of
18 Appeals, the United States Supreme Court, and their immediate family members.
19 Also excluded from the Class are all claims for personal injury relating in any
20 way to the use of AFFECTED VEHICLES.

21 12. Pursuant to Rules 23(b)(2), and/or 23(b)(3) and/or Rule 23 (c)(4)of the Federal
22 Rules of Civil Procedure, Plaintiffs will seek certification of a national Consumer Class
23 consisting of:

24 All consumer residents of California who own an AFFECTED VEHICLE and
25 seek relief under California’s Unfair Competition Law (“UCL”) and Consumer
26 Legal Remedies act (“CLRA”). Excluded from the Class are all Persons who are
27 employees, directors, officers, and agents of Defendants, or their respective
28 subsidiaries and affiliated companies, as well as the judges, clerks, and staff
members of the United States District Court for the Northern District of
California, the Ninth Circuit Court of Appeals, the United States Supreme Court,
and their immediate family members. Also excluded from the Class are all
claims for personal injury relating in any way to the use of AFFECTED
VEHICLES.

13. This is a Class Action filed on behalf of a national Class of Consumers residing
in the United States and California who own one or more AFFECTED VEHICLES. This action
seeks injunctive and declaratory relief, damages, restitution, and disgorgement of profits arising

1 out of Defendants' admitted fraudulent and wrongful conduct resulting in the distribution, sale,
2 and use of AFFECTED VEHICLES.

3 **JURISDICTION AND VENUE**

4 14. The United States District Court for the Northern District of California has
5 subject matter jurisdiction over this action under the Class Action Fairness Act and the matter in
6 controversy exceeds the sum or value of \$5,000,000.00 exclusive of interests and costs. 28
7 U.S.C. § 1332(d)(2)(A). None of the causes of action stated here has been assigned or
8 otherwise given to any other court or tribunal.

9 15. Venue is proper in this District pursuant to 28 U.S.C. 1391(a), (b) and (c), U.S.C.
10 1407 and 28 U.S.C. 22. Defendants do substantial business in the State of California, and
11 within this Federal Judicial District, are registered to and in fact are doing business within the
12 State of California and otherwise maintain requisite minimum contacts with the State of
13 California. Additionally, Defendants distribute in this district, receives substantial
14 compensation and profits from sales, maintenance, and service of AFFECTED VEHICLES in
15 this District, and have and continue to conceal and make material omissions in this District so as
16 to subject them to in personal jurisdiction in this District. Furthermore, venue is proper in this
17 District because, like many other Class members, significant and material aspects of the
18 transaction relating to Plaintiffs' purchase of their AFFECTED VEHICLE occurred within and
19 were otherwise connected to this judicial district.

20 **PLAINTIFFS**

21 16. Plaintiff ETS-HOKIN resides within San Francisco County, State of California.
22 He owns a 2010 VW Jetta, purchased in this judicial district at Royal Motors in San Francisco.

23 17. Plaintiff brings this action individually and as a Class action for owners of
24 AFFECTED VEHICLES whose vehicles are unmerchantable and unlawful to own, register, and
25 operate in light of Defendants admitted wrongful conduct, and who have lost money and
26 suffered injury in fact as a result. Plaintiff acts not only for himself but as representative of a
27 Class and Sub-Class of similarly situated individuals who fall within the description set forth in
28 paragraphs 11 and 12, above.

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DEFENDANTS

18. Defendants VOLKSWAGEN AG and AUDI AG are active corporations and business entities with their domicile and principal places of business in Germany, which companies oversee, direct and coordinate all of VW's and AUDI's including design, development, testing, marketing, distribution and sale of AFFECTED VEHICLES, throughout the world including the U.S. and California markets.

19. Defendants VOLKSWAGEN of AMERICA, INC. and AUDI of AMERICA, INC. are active New Jersey corporations with their principle place of business in Virginia which direct and coordinates all of VW's and AUDI's including design, development, testing, marketing, distribution and sale of AFFECTED VEHICLES, throughout the U.S. and California markets.

CLASS ALLEGATIONS

20. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiffs seek certification of a national Class and California sub-class defined as follows:

NATIONAL CLASS

21. All consumer residents of the United States who own or lease an AFFECTED VEHICLE.

22. Excluded from the Class are all Persons who are employees, directors, officers, and agents of Defendants, or their respective subsidiaries and affiliated companies, as well as the judges, clerks, and staff members of the United States District Court for the Northern District of California, the Ninth Circuit Court of Appeals, the United States Supreme Court, and their immediate family members. Also excluded from the Class are all claims for personal injury relating in any way to the use of AFFECTED VEHICLES.

CALIFORNIA SUB-CLASS

23. All consumer residents of the State of California who own or lease an AFFECTED VEHICLE.

1 24. Excluded from the Class are all Persons who are employees, directors, officers,
2 and agents of Defendants, or their respective subsidiaries and affiliated companies, as well as the
3 judges, clerks, and staff members of the United States District Court for the Northern District of
4 California, the Ninth Circuit Court of Appeals, the United States Supreme Court, and their
5 immediate family members. Also excluded from the Class are all claims for personal injury
6 relating in any way to the use of AFFECTED VEHICLES.

7 25. This action has been brought and may properly be maintained and certified as a
8 Class action because:

- 9 (a) The questions and issues of law or fact are of a common or general
10 interest, affecting a large Class of individuals and the public at large;
- 11 (b) The Classes consist of a sufficiently large group of individuals, believed
12 to exceed 500,000 members, and is so large that it is impractical to join
13 all members of the Classes before the Court as individual plaintiffs. Plaintiffs are informed and believe that the identity of Class members is readily ascertainable from various sources including the examination of Defendants' ownership records, and/or via simple notice by publication;
- 14 (c) The questions of law or fact common to the Classes are substantially
15 similar and predominate over those questions affecting only specific members of the Classes;
- 16 (d) The Classes are united by a community of interest in obtaining
17 appropriate equitable relief including injunctive relief, recall of AFFECTED VEHICLES, restitution, damages, and other available relief designed to redress the wrongful conduct of Defendants;
- 18 (e) Plaintiff is a member of the Classes, and his claims are typical of the
19 Classes;
- 20 (f) Named Plaintiff will fairly and adequately represent the claims of the
21 Classes, and protect the interests of members without exercising personal
22 interest or otherwise acting in a manner inconsistent with the best
23 interests of the Classes generally;
- 24 (g) Named Plaintiff has retained attorneys experienced in the litigation of
25 Classes and representative claims and in the area of consumer protection
26 litigation who have agreed to and will responsibly and vigorously
27 advocate on behalf of the Classes as a whole;
- 28 (h) Without Class certification, the prosecution of separate consumer actions
by individual members of the Classes would be impracticable and financially difficult, and create a risk of repetitive, inconsistent and varying adjudications. This would have the effect of establishing incompatible standards of conduct for Defendants, discouraging the prosecution of meritorious but small claims, and/or result in adjudications which would be dispositive of the interests of other Class members not parties to the adjudication, or otherwise substantially impair the ability of

Class members to protect their rights and interests;

- (i) Defendants acted or refused to act on grounds generally applicable to the Classes, thereby making the award of equitable relief and/or restitution appropriate to the Classes as a whole;
- (j) The Class action procedure is superior to other methods of adjudication, and specifically designed to result in the fair, uniform and efficient adjudication of the claims presented by this complaint. This Class action will facilitate judicial economy and preclude the undue financial, administrative and procedural burdens which would necessarily result from a multiplicity of individual actions.

COMMON FACTUAL ALLEGATIONS

A. Overview of Federal Emissions Requirements

26. Among the emissions subjected to EPA requirements under the Clean Air Act (“CAA”) and California law and regulations are a vehicle’s emission of nitrogen oxides (NOx) during normal operation. NOx can be dangerous to human health and has been linked with ozone depletion and other deleterious environmental effects. The CAA and the regulations promulgated thereunder aim to protect human health and the environment by reducing emissions of NOx and other pollutants from motor vehicles.

27. To enforce the CAA, the EPA administers a certification program that requires every vehicle sold in the United States to receive a certificate of conformity, which attests that the vehicle’s emissions meet federal emissions requirements.

28. Part of the application process to attain a certificate of conformity requires an applicant to identify and explain any system or device that may reduce the effectiveness of a vehicle’s emission control system. 40 C.F.R. § 86.1844-01(d)(11).

29. A “defeat device” (as used herein, a “device” includes a “system”) is an auxiliary emission control device “that reduces the effectiveness of the emission control system under conditions which may reasonably be expected to be encountered in normal vehicle operation and use[.]” 40 C.F.R. § 86.1803-01.

30. Because defeat devices circumvent the very purpose of the CAA and regulations promulgated thereunder, it is a violation of federal law to manufacture, sell, or install them in vehicles. *See* 42 U.S.C. § 7522(a)(3)(B); 40 C.F.R. § 86.1854-12(a)(3)(ii). Consequently, vehicles equipped with such devices cannot be certified under the EPA’s regulations, and

1 cannot be sold in the United States. *See* 42 U.S.C. §§ 7522(a); 40 C.F.R. § 86-1854-12(a).

2 **B. Defendants’ Deceptive Scheme To Flout Federal Emissions Requirements**

3 31. Beginning at least as early as 2009, Defendants marketed a number of four
4 cylinder vehicles equipped with diesel engines as “eco-friendly and fuel-efficient vehicles”
5 (collectively, the “AFFECTED VEHICLES”). Defendants asserted that these vehicles were
6 highly rated according to strict EPA emissions standards.

7 32. Because these “green” AFFECTED VEHICLES featured supposedly unique or
8 superior efficiency and performance characteristics, Defendants charged a premium for these
9 vehicles over comparable models that did not share these purported characteristics. And, of
10 course, Defendants represented that all of the AFFECTED VEHICLES were certified in
11 accordance with EPA emissions standards.

12 33. Defendants’ representations were false and fraudulent, and their conduct
13 unlawful and unfair. Contrary to its clear and express representations, the AFFECTED
14 VEHICLES did not possess superior eco-friendly or related performance characteristics.
15 Defendants omitted the material fact that it developed and secretly installed software that
16 masked the AFFECTED VEHICLES’ true emissions in normal operating conditions. Thus, the
17 software constituted a defeat device under the CAA. In essence, Defendants faked the
18 AFFECTED VEHICLES’ emissions results to obtain certificates of conformity and the right to
19 sell the vehicles in the United States, and then went ahead and touted those faked emissions
20 results as justification to charge a premium in the marketplace.

21 **C. Plaintiff’s Experience In Purchasing AFFECTED VEHICLES**

22 34. Plaintiff purchased a 2010 VW Jetta from Royal Motors in San Francisco. He
23 saw VW advertisements and product literature that touted the vehicle as emission compliant,
24 high gas mileage, powerful acceleration response and power, and good for the environment
25 because of low emissions, among other representations. Plaintiff relied upon such statements
26 from Defendants and/ or stated by others due to Defendants representations. Plaintiff’s decision
27 to purchase was predicated upon Defendants’ statements.

28 35. At no time prior to September 3, 2015 did Plaintiff learn that Defendants

1 statements were false, and that Defendants fraudulently altered and programed the ECM to
2 evade regulatory emission testing. Defendants' fraudulent conduct and ongoing omissions of the
3 true capabilities of the vehicle caused Plaintiff to retain the vehicle, and suffer monetary loss.

4 36. Plaintiff and the Class members would not have purchased the vehicle but for
5 Defendants' fraudulent conduct and ongoing omission of the true conditions and capabilities of
6 the vehicle.

7 **D. Fraudulent Concealment and Tolling**

8 37. Upon information and belief, Defendants have affirmatively concealed from
9 Plaintiff and other Class members its unlawful conduct. VW Group planned and implemented
10 its unlawful scheme in private, and affirmatively strove to avoid discussing or disclosing same,
11 and took other actions to hide and conceal the unlawful conduct.

12 38. For instance, Defendants were under a duty imposed by federal law to disclose to
13 Plaintiff and other Class members the true nature, character, and quality of emissions from the
14 AFFECTED VEHICLES , and compliance status with federal emissions requirements. VW
15 Group did not disclose these true facts to Plaintiff and other Class members, or the EPA. Indeed,
16 Plaintiff and other members of the Class did not know, nor had any way to know through the
17 exercise of reasonable diligence, about Defendants' wrongful conduct as alleged herein until the
18 EPA Case disclosed its investigation on or about September 03,2015, which up until that point
19 had been non-public.

20 39. Because of the above, Plaintiffs and other Class members did not discover, nor
21 could they discover through reasonable diligence, Defendants' deceptive, fraudulent, and
22 unlawful conduct alleged herein. Defendants' false and misleading explanations, or
23 obfuscations, lulled Plaintiff and Class members into believing that the prices paid for
24 purchased or leased AFFECTED VEHICLES were consistent with their fraudulent
25 misrepresentations and omissions, and unlawful and unfair conduct.

26 40. As a result of Defendants' affirmative and other acts of concealment, any
27 applicable statute of limitations affecting the rights of Plaintiff and other Class members has
28 been tolled. Plaintiff and other Class members exercised reasonable diligence by among other

1 things promptly investigating the allegations contained herein after sufficient information was
2 discoverable. Despite other efforts, Plaintiff was unable to discover, and could not have
3 discovered, the unlawful conduct alleged herein at the time it occurred or at an earlier time so as
4 to enable this complaint to be filed sooner.

5 41. Because Defendants, and each of them, were obligated to comply with federal
6 emissions requirements, it is estopped from being able to assert any statute of limitations
7 defense in this action.

8 42. Defendants' unlawful, unfair, and fraudulent conduct alleged herein and the
9 effects thereof are continuing and, as a direct and proximate result, Plaintiff and Class members
10 have and continue to suffer ascertainable loss of money, damages, and other injury.

11 **FIRST CLAIM FOR RELIEF**
12 **Fraud and Fraudulent Inducement**
13 **(On Behalf of the National Class)**

14 43. Plaintiff repeats the preceding paragraphs as if set forth fully herein. Defendants
15 affirmatively misrepresented and/or did not disclose sufficient facts to render non-misleading its
16 statements about the emissions certification, efficiency, and performance characteristics of the
17 AFFECTED VEHICLES. These misrepresentations or omissions include, inter alia, whether the
18 AFFECTED VEHICLES truly passed federal emissions requirements (they did not), or
19 possessed the efficiency and performance characteristics advertised (they did not).

20 44. Defendants knew, or reasonably should have known, that their representations
21 alleged herein were materially false or misleading, or that omission of material facts rendered
22 such representations false or misleading. Defendants also knew, or had reason to know, that its
23 misrepresentations and omissions would induce Class members to purchase or lease
24 AFFECTED VEHICLES.

25 45. Defendants' misrepresentations or omissions were material and a substantial
26 factor in Plaintiff's and Class members' purchasing or leasing AFFECTED VEHICLES.

27 46. Defendants intended its misrepresentations or omissions to induce Plaintiff and
28 Class members to purchase or lease AFFECTED VEHICLES, or had reckless disregard for
same.

1 47. But for these misrepresentations (or omissions), Plaintiff and Class members
2 would not have purchased or leased AFFECTED VEHICLES, and/or would have purchased or
3 leased them at cheaper prices.

4 48. Plaintiff and Class members were justified in relying on Defendants'
5 misrepresentations. The same or substantively identical misrepresentations were communicated,
6 and/or the same or substantively identical omissions were not communicated, to each Class
7 member, including through promotional materials prepared and disseminated by Defendants. To
8 the extent applicable, reliance can be presumed in these circumstances.

9 49. Plaintiff and Class members were damaged by reason of Defendants'
10 misrepresentations or omissions alleged herein.

11 **SECOND CLAIM FOR RELIEF**
12 **Negligent Misrepresentation and Omission**
13 **(On Behalf of the National Class)**

14 50. Plaintiff repeats the preceding paragraphs as if set forth fully herein.

15 51. Defendants had or undertook a duty to accurately and truthfully represent to
16 consumers the truth regarding Defendants' statements about the AFFECTED VEHICLES'
17 emissions
18 certifications, efficiency, and performance characteristics.

19 52. Defendants failed to exercise ordinary care in making representations concerning
20 the AFFECTED VEHICLES' certifiability, efficiency, and performance characteristics.

21 53. Defendants negligently misrepresented or omitted the Affected Vehicle's true
22 certifiability, efficiency, and performance characteristics.

23 54. Defendants' statements were false at the time the misrepresentations were made
24 (or the omissions were not made).

25 55. Defendants knew, or reasonably should have known, that their representations
26 alleged herein were materially false or misleading, or that omission of material facts rendered
27 such representations false or misleading. Defendants also knew, or had reason to know, that
28 their misrepresentations and omissions would induce Class members to purchase or lease
AFFECTED VEHICLES.

1 56. As a direct and proximate result of Defendants' acts and omissions described
2 herein, Plaintiff and other Class members have suffered harm, and will continue to do so.

3 57. Defendants' misrepresentations or omissions were material and a substantial
4 factor in Plaintiff's and Class members' purchasing or leasing AFFECTED VEHICLES.

5 58. But for these misrepresentations (or omissions), Plaintiff and Class members
6 would not have purchased or leased AFFECTED VEHICLES, and/or would have purchased or
7 leased them at cheaper prices.

8 59. Plaintiff and Class members were justified in relying on Defendants'
9 misrepresentations. The same or substantively identical misrepresentations were communicated,
10 and/or the same or substantively identical omissions were not communicated, to each Class
11 member, including through promotional materials prepared and disseminated by Defendants. To
12 the extent applicable, reliance can be presumed in these circumstances.

13 60. Plaintiff and Class members were damaged by reason of Defendants'
14 misrepresentations or omissions alleged herein.

15 **THIRD CLAIM FOR RELIEF**
16 **Breach of Contract**
17 **(On Behalf of the National Class)**

18 61. Plaintiff repeats the preceding paragraphs as if set forth fully herein.

19 62. Each and every sale or lease of an Affected Vehicle constitutes a contract
20 between Defendants and the purchaser or lessee. These sale or lease agreements are
21 standardized forms prepared by Defendants, do not vary or do not substantially vary in pertinent
22 materials respects, and are thrust upon the class members by Defendants and thus constitute
23 contracts of adhesion.

24 63. Upon information and belief, Defendants' sales and lease agreements provide
25 that the AFFECTED VEHICLES being sold or leased comply with related warranties, including
26 those concerning CAA and EPA regulatory compliance.

27 64. Defendants materially breached these contracts by, *inter alia*, selling or leasing
28 Plaintiff and the other class members defective or non-conforming AFFECTED VEHICLES
and by misrepresenting or failing to disclose the existence of the "defeat device" and/or

1 defective design, including information known to Defendants rendering each Affected Vehicle
2 Case less safe and emissions compliant, and thus less valuable than vehicles not equipped with
3 Clean Diesel engine systems and “defeat devices.”

4 65. Plaintiff and class members are entitled to recover all damages proximately
5 caused by Defendants’ breach, including compensatory, incidental, and consequential damages,
6 and pre- and post-judgment interest. Damages may be quantified on a classwide basis. Also, or
7 in the alternative, Plaintiff and the class members are entitled to restitution, disgorgement,
8 rescission, and similar equitable relief. Any provisions in the sales and lease agreements to the
9 contrary are unconscionable, severable, voidable, and/or void.

10 66. Further, by common law or statute, the sales and lease agreements impose upon
11 each party a duty of good faith and fair dealing. Good faith and fair dealing, in connection with
12 executing contracts and discharging performance and other duties according to their terms,
13 means preserving the spirit – not merely the letter – of the bargain. Put differently, the parties to
14 a contract are mutually obligated to comply with the substance of their contract in addition to its
15 form. Evading the spirit of the bargain and abusing the power to specify terms constitute
16 examples of bad faith in the performance of contracts.

17 67. Subterfuge and evasion violate the obligation of good faith in performance even
18 when an actor believes their conduct to be justified. Bad faith may be overt or may consist of
19 inaction, and fair dealing may require more than honesty. Examples of bad faith are evasion of
20 the spirit of the bargain, willful rendering of imperfect performance, abuse of a power to specify
21 terms, and interference with or failure to cooperate in the other party’s performance.

22 68. Defendants have breached not only the sales and lease agreements but the
23 covenant of good faith and fair dealing in those agreements through its wrongful actions alleged
24 herein.

25 69. Plaintiff and the class members have sustained damages as a result of
26 Defendants’ breach of the sales and lease agreements and the covenant of good faith and fair
27 dealing under each sales and lease agreement.

28 70. Defendants’ fraud as alleged herein amounts to an illusory promise rendering any

1 agreement unenforceable, unconscionable, void, and/or voidable.

2 **FOURTH CLAIM FOR RELIEF**
3 **Breach of Implied Warranty**
4 **(On Behalf of the National Class)**

5 71. Plaintiff repeats the preceding paragraphs as if set forth fully herein.

6 72. Defendants impliedly warranted that the AFFECTED VEHICLES were of
7 merchantable quality, fit for their intended or ordinary purpose, and/or were compliant with
8 CAA and EPA emissions standards.

9 73. The AFFECTED VEHICLES failed to conform to Defendants' implied warranty
10 regarding their functionality as alleged herein, including but not limited to the vehicles'
11 certifiability, efficiency, and performance.

12 74. As a direct and proximate result of Defendants' false and misleading
13 representations and warranties, Plaintiff and other Class members suffered significant injury
14 when Defendants sold them vehicles that, it is now clear, are worth far less than the price
15 Plaintiffs and other Class members paid for them.

16 **FIFTH CLAIM FOR RELIEF**
17 **Breach of Magnuson-Moss Warranty Act**
18 **(On Behalf of the National Class)**

19 75. Plaintiff repeats the preceding paragraphs as if set forth fully herein.

20 76. This Court has jurisdiction to decide claims brought under 15 U.S.C. § 2301 by
21 virtue of 28 U.S.C. § 2301(3).

22 77. Defendants' AFFECTED VEHICLES are a "consumer product," as that term is
23 defined in 15 U.S.C. § 2301(1).

24 78. Plaintiffs and other Class members are "consumers," as that term is defined in 15
25 U.S.C. § 2301(3).

26 79. Defendants are a "warrantor" and "supplier" as those terms are defined in 15
27 U.S.C. § 2301(4) and (5).

28 80. 15 U.S.C. § 2310(d)(1) provides a cause of action for any consumer who is
damaged by the failure of a warrantor to comply with an implied warranty.

81. Defendants provided Plaintiff and other Class members with "implied

1 warranties,” as that term is defined in 15 U.S.C. § 2301(7).

2 82. Defendants have breached these implied warranties as described above. Without
3 limitation, Defendants’ AFFECTED VEHICLES are defective as alleged herein, which resulted
4 in the problems and failures also described above.

5 83. By Defendants’ conduct as described herein, including Defendants’ knowledge
6 of the defects inherent in the vehicles and its action, and inaction, in the face of the knowledge,
7 Defendants have failed to comply with its obligations under its written and implied promises,
8 warranties, and representations.

9 84. In its capacity as a warrantor, and by the conduct described herein, any attempts
10 by Defendants to limit the implied warranties in a manner that would exclude coverage of the
11 defective software and systems is unconscionable and any such effort to disclaim, or otherwise
12 limit, liability for the defective the software and supporting systems is null and void.

13 85. All jurisdictional prerequisites have been satisfied.

14 86. Plaintiffs and class members are in privity with Defendants in that they
15 purchased the AFFECTED VEHICLES (including the software in question) from Defendants or
16 its agents.

17 87. As a result of Defendants’ breach of implied warranties, Plaintiff and other Class
18 members are entitled to revoke their acceptance of the vehicles, obtain damages and equitable
19 relief, and obtain costs pursuant to 15 U.S.C. §2310.

20 **SIXTH CLAIM FOR RELIEF**
21 **Unjust Enrichment**
22 **(On Behalf of the National Class)**

23 88. Plaintiff repeats the preceding paragraphs as if set forth fully herein.

24 89. By means of Defendants’ wrongful conduct alleged herein, Defendants
25 knowingly induced Plaintiff and class members to purchase or lease AFFECTED VEHICLES.

26 90. Defendants knowingly received and retained wrongful benefits from Plaintiff and
27 class members. In so doing, Defendants acted intentionally or with conscious disregard for the
28 rights of Plaintiff and class members.

91. As a result of Defendants’ wrongful conduct as alleged herein, Defendants have

1 been unjustly enriched at the expense, and to the detriment, of Plaintiff and class members.

2 92. Defendants' unjust enrichment is traceable to, and resulted directly and
3 proximately from, the wrongful conduct alleged herein.

4 93. It is unfair and inequitable for Defendants to be permitted to retain the benefits it
5 received, and is still receiving, without justification, from the wrongful conduct alleged herein.
6 Defendants' retention of such benefits under the circumstances is inequitable.

7 94. The financial benefits derived by Defendants rightfully belong to Plaintiff and
8 class members, in whole or in part. Defendants should be compelled to account for and disgorge
9 in a common fund for the benefit of Plaintiff and class members all wrongful or inequitable
10 proceeds received from them. A constructive trust should be imposed upon all wrongful or
11 inequitable sums received by Defendants traceable to Plaintiff and the class members.

12 95. Plaintiff and class members have no adequate remedy at law.

13 96. Defendants' fraud as alleged herein amounts to an illusory promise rendering any
14 agreement unenforceable, unconscionable, void, or voidable.

15 **SEVENTH CLAIM FOR RELIEF**
16 **Unfair Business Practices- Cal. Business & Professions Code §17200**
17 **(On Behalf of the California Class)**

18 97. Plaintiff repeats the preceding paragraphs as though set forth fully herein.

19 98. California Business & Professions Code section 17200 (UCL) precludes unfair
20 competition, i.e., the employment of any unlawful, unfair or fraudulent business acts or
21 practices; and any unfair, deceptive, untrue or misleading advertising violating Cal. Bus. &
22 Prof. Code section 17500. This prohibition extends to any act, omission or conduct or pattern
23 of activity engaged in within California which affects the rights of consumers within the State
of California and elsewhere.

24 99. In marketing and selling the AFFECTED VEHICLES, and in otherwise causing
25 the AFFECTED VEHICLES to be placed into and maintained in the stream of commerce for
26 use by consumers in the United States without disclosing the altered ECM and program that
27 allowed the vehicle to fraudulently pass Federal and State emissions standard, and Defendants'
28 ongoing concealment and omission of the true capabilities of the AFFECTED VEHICLES,

1 Defendants knowingly made available a product that was not compliant with Federal and State
2 emission standards.

3 100. Defendants' failure to disclose the fraudulent manipulation of the ECM and
4 deceptive rigging of emission tests mislead consumers because the failure to disclose this
5 deceptive conduct was and remains material to all owners of AFFECTED VEHICLES.
6 Plaintiffs and reasonable consumers attach significant importance and influence to owning or
7 leasing vehicles that are legally compliant with Federal and State emission standards, and have
8 resale value consistent with emission compliant vehicles.

9 101. Additionally, Plaintiffs and the class members allege that Defendants' conduct as
10 described herein meets the requirements to state a claim under the "fraudulent" prong of the
11 UCL because Defendants' conduct constitutes a cause of action for fraudulent omission. Here,
12 the undisclosed facts regarding the fraudulent rigging of Federal and State emissions testing are
13 material to Plaintiffs because emission compliant vehicles are required by law, and Plaintiffs
14 and the class members will expend significant money in correcting Defendants alterations, or
15 may lose all value if the vehicle cannot be corrected or loses power and gas mileage due to
16 corrective measures.

17 102. The aforementioned conduct is unlawful within the meaning of the UCL in that
18 Defendants has and continues to violate Cal. Civil Code section 1750, et seq. (hereinafter
19 "CLRA") to the extent that Defendants represented, by the fraudulent manipulation of the ECM,
20 and omission and concealment the ongoing fraud , that the AFFECTED VEHICLES: (a) had
21 characteristics, uses or benefits that the vehicles did not have in violation of Section 1770(a)(5)
22 of the CLRA; and (b) were of a particular standard, quality or grade when they were of another
23 in violation of 1770(a)(7) of the CLRA.

24 103. Defendants' conduct is unfair within the meaning of the UCL in that the alleged
25 consumer injury is substantial, causing the vehicles to be non-compliant with Federal and State
26 emission and regulatory standards. There is no countervailing benefit to Defendants to conduct
27 itself in the wrongful manner alleged herein.

28 104. But for the unfair competition of Defendants, the PLAINTIFF Class Members

1 would not have purchased or leased the AFFECTED VEHICLES.

2 105. PLAINTIFF and the class members have and will continue to suffer injury in
3 fact and lose money as a direct result of Defendants' unfair competition in that the AFFECTED
4 VEHICLES are not compliant with Federal and State emissions standards and associated
5 regulations, rendering the vehicles valueless and/or significantly reduced in value due to
6 corrective measures required to make the vehicles compliant.

7 106. As a result of Defendants' unfair competition, Plaintiffs and the class members
8 are entitled to appropriate equitable relief including injunctive relief, and available monetary
9 relief in the form of restitution (including fluid recovery when certified as a Class action).
10 Plaintiffs are also entitled to recover penalties as well as an award of attorneys' fees for
11 prosecuting this action.

12 **EIGHTH CLAIM FOR RELIEF**
13 **(Violation of the Consumers Legal Remedies Act – Cal. Civ. Code § 1750 et seq.)**
14 **(On Behalf of California Class)**

15 107. Plaintiff repeats the preceding paragraphs as set forth fully herein.

16 108. California Civil Code Section 1750, et seq., precludes Defendants from
17 representing that goods have characteristics and benefits which they do not have or were of a
18 particular standard, quality or grade when they were of another in transactions which are
19 intended to result, or which have resulted, in the sale and use of AFFECTED VEHICLES.

20 109. In engaging in the conduct described herein, as more specifically set forth in
21 paragraphs 1-10 of this Complaint, Defendants violated the Consumers Legal Remedies Act
22 including Civil Code section 1770(a)(5) and (a)(7), engaging in conduct likely to and, in fact,
23 misleading Plaintiffs and the class members.

24 110. Were it not for the misconduct of Defendants, Plaintiffs and the class members
25 would not have purchased or warranted AFFECTED VEHICLES, or continued to use
26 AFFECTED VEHICLES without corrective repairs.

27 111. Plaintiffs and members of the Class have suffered and will continue to suffer
28 injury in fact, and lose money and suffer damages as a direct result of Defendants' unfair
competition in that each has expended money to purchase and/or warrant AFFECTED

1 VEHICLES, and have or will be caused to expend money associated with effecting repairs the
2 vehicle so that they may be safely operated.

3 112. Plaintiff and the Class will amend this Complaint to include a claim for damages
4 upon expiration of the thirty day notice pursuant to Cal. Civil Code section 1782.

5 **RELIEF REQUESTED**

6 WHEREFORE, Plaintiffs and the Classes pray judgment against Defendants hereinafter
7 as follows:

8 1. Certification of the action as a class action under Rule 23 of the Federal Rules of
9 Civil Procedure and appointment of Plaintiff as Class Representative and his counsel of record
10 as Class Counsel;

11 2. An order requiring Defendant to pay Mr. Ets-Hokin and other Class and Subclass
12 members an amount of actual, statutory, and restitution in an amount to be determined at trial,
13 and where allowed by law;

14 3. An order granting equitable relief in the form of restitution and/or disgorgement of
15 all unlawful or illegal profits received by Defendant as a result of the unlawful, unfair and/or
16 deceptive conduct alleged herein;

17 4. An order granting Plaintiffs' reasonable costs and attorneys' fees; and

18 5. An order granting such other relief as may be just and proper.

19 **JURY TRIAL DEMAND**

20 Plaintiff hereby demands a jury trial for all individual and Class claims so triable.

21 Dated: October 1, 2015

Respectfully submitted,

22 By: /s/Jeffrey Cereghino
23 Jeffrey B. Cereghino, SBN 99480
24 Email: jcereghino@ramolson.com
25 Michael F. Ram, SBN 104805
26 Email: mram@ramolson.com
27 RAM, OLSON, CEREGHINO
& KOPCZYNSKI LLP
28 555 Montgomery Street, Suite 820
San Francisco, California 94111
Telephone: 415-433-4949
Facsimile: 415-433-7311

Attorneys for Plaintiffs and the Proposed Class

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
JOSHUA M. ETS-HOKIN, individually and on behalf of those 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)
Jeffrey B. Cereghino, SBN 99480, Ram, Olson, Cereghino & Kopczynski
 555 Montgomery Street, Suite 820, San Francisco, CA 94111
 Tel: 415-433-4949

DEFENDANTS
VOLKSWAGEN AG, AUDI AG, VOLKSWAGEN OF AMERICA, INC., AUDI 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)

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

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input checked="" type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157
			PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
			IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

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

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

VI. CAUSE OF ACTION Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. section 1332(d); 28 U.S.C. section 1391

Brief description of cause:
Fraudulent concealment of vehicle defect

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 Hon. Nathanael M. Cousins DOCKET NUMBER 5:15-cv-04482-NC

DATE 10/02/2015 SIGNATURE OF ATTORNEY OF RECORD /s/ Jeffrey B. Cereghino

IX. DIVISIONAL ASSIGNMENT (Civil L.R. 3-2) (Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; NOTE: federal question actions take precedence over diversity cases.)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

JOSHUA M. ETS-HOKIN, individually and on behalf of those similarly situated,

Plaintiff(s)

v.

VOLKSWAGEN AG, AUDI AG, VOLKSWAGEN GROUP OF AMERICA, INC., AUDI OF AMERICA, INC.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) VOLKSWAGEN AG, AUDI AG, VOLKSWAGEN GROUP OF AMERICA, INC., AUDI OF AMERICA, INC. 2710 GATEWAY OAKS DR STE 150N SACRAMENTO CA 95833

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: Jeffrey B. Cereghino (SBN 99480) Ram, Olson, Cereghino & Kopczynski LLP 555 Montgomery Street, Suite 820 San Francisco, CA 94111 Tel: 415-433-4949

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: