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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

KAREN FIORELLI, STEVEN C.
MENDOZA, MARTIN SCHMIDT,
PAUL SACAMANO, DEBORAH
MCCROHON and WENDY
BRANZBURG, Individually and on
behalf of others similarly situated,

Plaintiffs,

v.

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

Defendants.

Case No.

CLASS ACTION

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiffs Karen Fiorelli, Steven C. Mendoza, Martin Schmidt, Paul Sacamano, Deborah McCrohon and Wendy Branzburg (“Plaintiffs”), individually and on behalf of all others similarly situated (the “Class”), allege the following:

I. INTRODUCTION

1. As Volkswagen USA CEO, Michael Horn, publicly admitted on September 21, 2015, *“Volkswagen has broken the trust of our customers, and the public here in America.”* Horn further publicly admitted on behalf of Volkswagen: *“So let’s be clear about this: our company was dishonest with the EPA and the California Air Resources Board, and with all of you,”* Horn continued. *“And in my German words, we’ve totally screwed up. We must fix those cars, and prevent this from ever happening again, and we have to make things right—with the government, the public, our customers, our employees, and also very importantly our dealers.”* This action is brought over an unprecedented case of criminal fraud perpetrated on consumers and regulators by one of the world’s largest auto manufacturers, Volkswagen. Except as noted otherwise, Defendant Volkswagen and Defendant Volkswagen AG are hereinafter referred to as “the Volkswagen Defendants.”

2. The Volkswagen Defendants “screwed up” by intentionally and deceptively installing computer software and “defeat devices” that work by switching on the full emissions control systems in the Volkswagen Defendants’ cars only when the car is undergoing periodic emissions testing and only front wheels turning. The technology needed to control emissions from the Volkswagen Defendants’ cars to meet state and federal emissions regulations reduces their performance, limiting acceleration, torque, and fuel efficiency.

3. To hide this, the computer software and defeat devices disable the emissions control systems in the car once the car has completed its emissions test. While that might have made the

cars more fun to drive, it resulted in the Volkswagen Defendants' cars sending up to 40 times as much pollution into the environment as is allowed under the Clean Air Act and state regulations.

4. As of September 21, 2015, The New York Times reported that while it is possible to lower the levels of nitrogen oxide emitted by diesel engines, the software Volkswagen installed instead:

“[S]idestepped this trade-off by giving a misleadingly low nitrogen- oxide reading during [standard emissions] tests. The software measured factors like the position of the steering wheel, the vehicle's speed and even barometric pressure to sense when the car was being tested....”

5. Volkswagen has admitted that approximately 11 million vehicles worldwide are affected by its deception. Defendants' stocks have plummeted and it reportedly is “setting aside the equivalent of half a year's profits—6.5 billion euros, or about \$7.3 billion” in a preemptive maneuver to downplay public scrutiny. In a statement issued on September 18, 2015, by the Executive Committee of Volkswagen AG's Supervisory Board, the Committee confessed that it “recognizes...the economic damage caused [by the manipulation of the emissions data.]”

6. For over six years, the Volkswagen Defendants have intentionally and systematically deceived and cheated their customers, lied to the government, and misled the public about the efficacy of their four cylinder diesel-engine vehicles sold under the Volkswagen and Audi brands. The Volkswagen Defendants have marketed their so-called “clean diesel” vehicles as high performing, fuel efficient, and environmentally-friendly. In truth, the Volkswagen Defendants' clean diesel vehicles are anything but clean.

7. Instead, the Affected Vehicles, defined below, emit noxious pollutants at up to 40 times the legal limit allowed under federal and state law. In order to conceal this inconvenient truth from regulators and the public, the Volkswagen Defendants installed a sophisticated software algorithm, or “defeat device,” in the Affected Vehicles that instructs them to cheat on emissions

tests; that is, to engage full emissions controls only when undergoing official emissions testing. At all other times, the emissions controls are de-activated, and the vehicles emit extremely high, and illegal, levels of pollutants. “Truth in Engineering” is Audi’s official slogan. Ironically, these Audis (and Volkswagens) were engineered to deceive.

8. This case arises because the Volkswagen Defendants purposefully and intentionally breached the laws of the United States and the rules and regulations of various states and the EPA by selling in the United States Volkswagen and Audi vehicles that purposefully evaded federal and state laws. As stated by Cynthia Giles, Assistant Administrator for the Office of Enforcement and Compliance Assurance at the EPA: “*Using a defeat device in cars to evade clean air standards is illegal and a threat to public health.*”¹ Yet that is exactly what the Volkswagen Defendants did in their 2009-2015 Volkswagen and Audi Clean Diesel vehicles.

9. The Volkswagen Defendants violations are explained in EPA’s Notice of Violation (“NOV”), as well as a letter from the California Air Resources Board (“CARB”).

10. As detailed in the EPA’s September 18, 2015 Notice of Violation (“NOV”), sophisticated software in the Volkswagen and Audi diesel vehicles sold by the Volkswagen Defendants in the United States detects when the vehicle is undergoing official emissions testing and enables full emissions controls during the test. But otherwise, at all other times that the vehicle is running, the emissions controls are disabled. This results in cars that meet emissions standards in the laboratory or testing station, but during normal operation emit nitrogen oxides (NOx) at up to 40 times the standard allowed under federal and state laws and regulations. The software algorithm used by the Volkswagen Defendants to switch from one mode to the other is a defeat device as defined by the Clean Air Act.

¹ See Sept. 18, 2015 EPA News Release.

11. The Volkswagen Defendants have admitted that the “defeat device” was present in approximately 482,000 Affected Vehicles sold in the United States, and more than 11 million vehicles worldwide.

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

13. As used in this Complaint, the “Affected Vehicles” refer to Volkswagen and Audi vehicles identified in the EPA’s NOV sold in the United States with four cylinder, Type EA 189 and EA 288 diesel engines, which share a common, uniform, deceitful, and harmful design, in that they (A) emit high and illegal levels of pollutants in normal operation; (B) are equipped with a defeat device enabling them to bypass emissions regulations; and (C) cannot deliver the advertised combination of low emissions, fuel economy, and high performance for which they were marketed and advertised. The Affected Vehicles include at least the following makes and model years:

- 2009 – 2015 Volkswagen Jetta
- 2009 – 2014 Volkswagen Jetta SportWagen
- 2012 – 2015 Volkswagen Beetle
- 2012 – 2015 Volkswagen Beetle Convertible
- 2010 – 2015 Volkswagen Golf
- 2015 Volkswagen Golf SportWagen
- 2012 – 2015 Volkswagen Passat
- 2010 – 2015 Audi A3

14. Plaintiffs are among those who were deceived and cheated by the Volkswagen Defendants and who purchased and/or leased a Class Vehicle based on the Volkswagen Defendants' misrepresentations and omissions.

15. Plaintiff Fiorelli brings this action individually, and on behalf of a Class of all persons similarly situated in the United States who purchased or leased an Affected Vehicle and a Subclass of New Jersey a residents who purchased or leased an Affected Vehicle (the "Class Members").

16. Plaintiff Mendoza brings this action individually, and on behalf of a Class of all persons similarly situated in the United States who purchased or leased an Affected Vehicle and a Subclass of California a residents who purchased or leased an Affected Vehicle (the "Class Members").

17. Plaintiff Schmidt brings this action individually, and on behalf of a Class of all persons similarly situated in the United States who purchased or leased an Affected Vehicle and a Subclass of California a residents who purchased or leased an Affected Vehicle (the "Class Members").

18. Plaintiff Sacamano brings this action individually, and on behalf of a Class of all persons similarly situated in the United States who purchased or leased an Affected Vehicle and a Subclass of Maryland a residents who purchased or leased an Affected Vehicle (the "Class Members").

19. Plaintiff McCrohon brings this action individually, and on behalf of a Class of all persons similarly situated in the United States who purchased or leased an Affected Vehicle and a Subclass of Massachusetts a residents who purchased or leased an Affected Vehicle (the "Class Members").

20. Plaintiff Branzburg brings this action individually, and on behalf of a Class of all persons similarly situated in the United States who purchased or leased an Affected Vehicle and a Subclass of Pennsylvania residents who purchased or leased an Affected Vehicle (the “Class Members”).

21. Plaintiffs seek the return of the premium that they paid for a Clean Diesel over the cost of the same model and trim of car with a gasoline engine; restitution of the purchase price of their Affected Vehicles should any “fix” installed by the Volkswagen Defendants result in a degradation of performance and/or fuel efficiency; compensation for any additional sums spent on fuel or maintenance as a result of any “fix”; restitution for purchase of extended warranties that will go unused; and a lump sum for remediation of the environmental damage Plaintiffs and the Class unwittingly contributed to by driving cars that they believed were clean, but were in fact in violation of state and EPA regulations and the Clean Air Act.

II. PARTIES

A. Plaintiffs

22. Plaintiff Karen Fiorelli is a citizen of and domiciliary of the State of New Jersey residing in the Red Bank, Monmouth County, New Jersey. In 2011, Plaintiff Fiorelli purchased a 2011 Volkswagen Jetta TDI from an authorized Volkswagen dealer in Linden, New Jersey. Plaintiff Fiorelli still owns her Affected Vehicle. Plaintiff Fiorelli still owns her Affected Vehicle. Unknown to Plaintiff Fiorelli, at the time the vehicle was purchased, it was equipped with an emission control “defeat device” which caused the 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. The use of the “defeat device” by Volkswagen has caused Plaintiff Fiorelli out-of-pocket loss, future attempted repairs, and diminished value of her vehicle. The Volkswagen Defendants

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

23. Plaintiff Steven C. Mendoza is a citizen of and domiciliary of the State of California residing in the Fort Irwin, San Bernardino County, California. On January 17, 2015, Plaintiff Mendoza purchased a 2011 Volkswagen Jetta Sportwagen TDI from an authorized Volkswagen dealer in Moreno Valley, California. Plaintiff Mendoza still owns his Affected Vehicle. Unknown to Plaintiff Mendoza, at the time the vehicle was purchased, it was equipped with an emission control “defeat device” which caused the 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. The use of the “defeat device” by the Volkswagen Defendants has caused Plaintiff Mendoza out-of-pocket loss, future attempted repairs, and diminished value of his vehicle. The Volkswagen Defendants knew about and purposefully used the “defeat device,” but did not disclose the “defeat device” and its effects to Plaintiff Mendoza, so Plaintiff Mendoza purchased his vehicle on the reasonable, but mistaken, belief that his vehicle complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life.

24. Plaintiff Martin Schmidt is a citizen of and domiciliary of the State of California residing in the Solano Beach, San Diego County, California. Plaintiff Schmidt purchased a 2012 Volkswagen Jetta Sportwagen TDI from an authorized Volkswagen dealer in Murietta, California. Plaintiff Schmidt still owns his Affected Vehicle. Unknown to Plaintiff Schmidt, at the time the vehicle was purchased, it was equipped with an emission control “defeat device” which caused the

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

25. Plaintiff Paul Sacamano is a citizen of and domiciliary of the State of Maryland residing in the Baltimore, Maryland. Plaintiff Sacamano leased a 2015 Volkswagen Golf TDI from an authorized Volkswagen dealer in Parkville, Maryland. Plaintiff is still a lessee of his Affected Vehicle. Unknown to Plaintiff Sacamano, at the time the vehicle was purchased, it was equipped with an emission control “defeat device” which caused the 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. The use of the “defeat device” by Volkswagen has caused Plaintiff out-of-pocket loss, future attempted repairs, and diminished value of his vehicle. Volkswagen knew about and purposefully used the “defeat device,” but did not disclose the “defeat device” and its effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life.

26. Plaintiff Deborah McCrohon is a citizen of and domiciliary of the Commonwealth of Massachusetts, residing in the Worcester, Massachusetts. On September 26, 2009, Plaintiff McCrohon purchased a 2010 Volkswagen Jetta Sportwagen TDI from an authorized Volkswagen

dealer in Westborough, Massachusetts. Plaintiff McCrohon still owns her Affected Vehicle. Plaintiff Fiorelli still owns her Affected Vehicle. Unknown to Plaintiff McCrohon, at the time the vehicle was purchased, it was equipped with an emission control “defeat device” which caused the 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. The use of the “defeat device” by Volkswagen has caused Plaintiff McCrohon out-of-pocket loss, future attempted repairs, and diminished value of her vehicle. The Volkswagen Defendants knew about and purposefully used the “defeat device,” but did not disclose the “defeat device” and its effects to Plaintiff McCrohon, so Plaintiff McCrohon purchased her vehicle on the reasonable, but mistaken, belief that her vehicle complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life.

27. Plaintiff Wendy Branzburg is a citizen of and domiciliary of the State of Pennsylvania residing in the Bala Cynwyd, Pennsylvania. On April 5, 2013, Plaintiff Branzburg purchased a 2012 Volkswagen Jetta Sportswagen TDI from an authorized Volkswagen dealer in Ardmore, New Jersey. Plaintiff Branzburg still owns her Affected Vehicle. Plaintiff Branzburg still owns her Affected Vehicle. Unknown to Plaintiff Branzburg, at the time the vehicle was purchased, it was equipped with an emission control “defeat device” which caused the 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. The use of the “defeat device” by Volkswagen has caused Plaintiff Branzburg out-of-pocket loss, future attempted repairs, and diminished value of her vehicle. The Volkswagen Defendants knew about and purposefully used the “defeat device,” but did not disclose the “defeat device” and its effects to Plaintiff Branzburg, so Plaintiff Branzburg purchased her vehicle on the reasonable, but mistaken, belief that her vehicle complied with United

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

B. Defendants

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

29. Defendant Volkswagen AG is a stock corporation organized and existing under the laws of the Federal Republic of Germany, with its principle place of business located in Wolfsburg, Lower Saxony, Germany. Defendant Volkswagen AG is the parent corporation of Volkswagen Group of America, Inc.

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

III. JURISDICTION

31. Jurisdiction arises under 28 U.S.C. § 1331 based upon the federal RICO claims pursuant to 18 U.S.C. § 1961 *et seq.* and there is supplemental jurisdiction over the state-law claims pursuant to 28 U.S.C. § 1367. Jurisdiction is also proper in this Court pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d), because Plaintiffs and many members of the proposed Plaintiff Class are citizens and domiciliaries of states different from Volkswagen’s and Volkswagen AG’s

respective home states, and the aggregate amount in controversy exceeds \$5,000,000, exclusive of interest and costs.

32. This Court has personal jurisdiction over Defendant Volkswagen Group of America, Inc., because it conducts business in Michigan and has sufficient minimum contacts with Michigan.

33. This Court has specific jurisdiction over Volkswagen AG because it has purposefully availed itself of this forum by directing its agents and distributor – Volkswagen Group of America, Inc. – to take action here.

34. Volkswagen AG is the sole owner of Volkswagen Group of America, Inc. It uses its agent, Volkswagen Group of America, Inc., to sell its cars in the United States. Not only does Volkswagen AG use its agent, Volkswagen Group of America, Inc., to perform this critical work, it also intimately directs the actions of Volkswagen Group of America, Inc., ranging from minute production line decisions to broad marketing strategies.

35. The remarkable level of centralized and intimate control Volkswagen AG and former CEO Winterkorn exert over Volkswagen Group of America, Inc. is well documented. Volkswagen AG itself describes this highly-centralized structure in its corporate governance document as follows: Volkswagen AG “*targets and requirements [are] laid down by the Board of Management of Volkswagen AG or the Group Board of Management [and] must be complied with in accordance with the applicable legal framework.*” This top-down governance manifests in Volkswagen AG’s intimate management of Volkswagen Group of America, Inc. For example, in 2011, when Dr. Winterkorn visited the newly built Volkswagen plant in Tennessee, Bloomberg Business reported that “*he berated staff for hanging chrome parts for air vents, doors and gear shifts on the wall. To check that they uniformly glistened before agreeing to use them in the sedan,*

he wanted them displayed on a table with light shining down at the same angle that customers would see the parts in the car.”

36. That single plant in Chattanooga, Tennessee is not Volkswagen AG’s only plant in the United States, and it conducts final assembly of only one of the numerous models that Volkswagen AG sells in the United States. Even then, the majority of components and parts are manufactured in Volkswagen AG factories in Europe and around the world, or purchased from vendors, and shipped to Tennessee to be assembled. The other models that Volkswagen Group of America, Inc. markets and sells in the United States, including vehicles at issue in this lawsuit, are assembled elsewhere in the world, including in Puebla, Mexico and Ingolstadt and Wolfsburg, Germany. The 2.0 liter TDI engines that each of the affected vehicles uses are among the components manufactured by Volkswagen AG factories outside the United States, as are the exhaust system components used to regulate emissions. In sum, Volkswagen AG exerts significant, and sometimes total, control over the design, technology, marketing, and manufacturing of the vehicles it sells through Volkswagen Group of America, Inc.

37. Bloomberg Business has also noted that “[d]ecision-making at Volkswagen is highly centralized. Winterkorn and a couple dozen managers vet product plans in Wolfsburg, including detailed lists of components that differentiate between new and standardized parts. Winterkorn was aiming to loosen that structure by pushing more authority to brand and regional managers.” Volkswagen AG’s attempts to decentralize are not new; indeed as far back as 2007

38. The New York Times reported that Volkswagen AG was undergoing a “*broad reorganization that would centralize control over its myriad brands [including Volkswagen Group of America, Inc.] and cement the power of its new chief executive, Martin Winterkorn.*” Whatever decentralization Mr. Winterkorn was hoping to accomplish, however, has not come to pass, as he

has now stepped down as Volkswagen's CEO. In short, Volkswagen AG tightly controls the actions of its agent, Volkswagen Group of America, Inc., to perform the critical task of selling its cars in the United States. As a result, this Court has specific jurisdiction over Volkswagen AG.

39. This Court has have personal jurisdiction over the Volkswagen Defendants as they, *inter alia*, transact business in this State contracted to supply services or things in this State; committed a tortious action in this State; and caused a tortious injury in this State.

IV. VENUE

40. Venue is proper in this District under 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this District.

V. FACTUAL BACKGROUND

41. This case arises from the Volkswagen Defendants' unprecedented, and until recently successful, efforts to deceive and cheat consumers, deceive the public, as well as to knowingly and intentionally violate and attempt to bypass federal and state regulations.

A. The Volkswagen Defendants Marketed the Affected Vehicles As Possessing Eco-Friendly, Fuel Efficient Diesel Engines.

42. Diesel vehicles are generally more fuel efficient and powerful than gasoline engines. Diesel engines, however, emit higher levels of certain pollutants as a by-product of combustion.

43. The Volkswagen Defendants, in the face of continued improved governmental; regulations to address a cleaner environment, attempted to address this problem with their so-called "clean diesel" vehicles. In an effort to make the Affected Vehicles more marketable and induce consumers to pay premium prices, the Volkswagen Defendants claimed their clean diesel TDI (turbocharged direct injection) engines combined fuel efficiency and high performance with

low emissions. The combination of these three characteristics was the primary selling point for the Affected Vehicles and was the centerpiece of the Volkswagen Defendants' advertising efforts.

44. The Volkswagen Defendants expressly marketed and advertised their Clean Diesel models as extraordinarily clean, EPA certified in all 50 states, and powerful.

45. The Volkswagen Defendants broadly boasted about the performance and environmental cleanliness of their engine systems. In an October 2008 press release, the Volkswagen Defendants bragged:

The Jetta TDI is amongst the ten most fuel efficient vehicles on the US market. In the recently published "Fuel Economy Guide 2009" the EPA (Environmental Protection Agency) listed the Jetta TDI in the top ten low consumption and low emissions vehicles. In the current edition of the publication, the Jetta 2.0 l Clean TDI, introduced to the market two months ago, is praised particularly for its excellent consumption figures - it has a fuel consumption of 5.7 litre per 100 kilometre. Moreover, the Jetta Clean TDI also fulfils stringent Californian emission standards. This was achieved through modifications within the engine and by implementing an exhaust treatment system developed especially by the Volkswagen Defendants and which reduces nitrogen oxide emission (NOx) by up to 90 percent. The central element of the exhaust treatment system is the NOx storage catalytic converter.²

46. Since introducing the 2.0L TDI Clean Diesel engine in 2008, the Volkswagen Defendants have touted it as a "*fantastic power train*" that "*gives very good fuel economy*" and "*is also good for the environment because it puts out 25% less greenhouse gas emissions than what a gasoline engine would . . . cuts out the particulate emissions by 90% and the emissions of nitrous oxide are cut by 95% . . . [and is] clean enough to be certified in all 50 states.*"³

47. The TDI Clean Diesel engines are turbocharged and directly inject fuel into each cylinder via fuel injectors. The Volkswagen Defendants have stated, "[t]he superior qualities of

² See http://www.volkswagenag.com/content/vwcorp/info_center/en/news/2008/10/vw_in_fuel_economy_guide.html (last accessed Sept. 23, 2015) (emphasis added).

³ Statement of Volkswagen Group of America, Inc.'s Chief Operating Officer Mark Barnes, to The Business Insider, October 9, 2009.

the 2.0 Liter TDI engine with common rail injection systems are oriented towards future challenges in acoustics, comfort, and exhaust gas after-treatment . . . confirming Volkswagen’s role as a pioneer in diesel technology.”

48. The Volkswagen Defendants also claimed that TDI Clean Diesel models “*typically have a higher resale value versus comparable gasoline vehicles.*”

49. The Volkswagen Defendants advertising, which keyed on the unique combination of clean, efficient and highly performing, was very effective. In fact, Volkswagen has become the largest manufacturer and seller of light duty diesel passenger vehicles in the United States.

50. Some advertisements, for example, specifically emphasized the low emissions and eco-friendliness of the vehicles:





Not that kind of diesel.

These are not the kind of diesel engines that you find spewing sooty exhaust like an old 18-wheeler. Clean diesel vehicles meet the strictest EPA standards in the U.S. Plus, TDI technology helps reduce sooty emissions by up to 90%," giving you a fuel-efficient and eco-conscious vehicle.

Joyride further.

TDI vehicles use clean diesel fuel and advanced engineering to achieve up to 43 miles per gallon with a range of up to 795 miles.* That's up to 30% better fuel economy than comparable gas engines. You'll probably notice it when you take up to 30% fewer trips to the pump. Visit thinkblue.volkswagen.com to learn driving tips that can help you save even more fuel.



51. Others touted the combination of fuel efficiency and power:



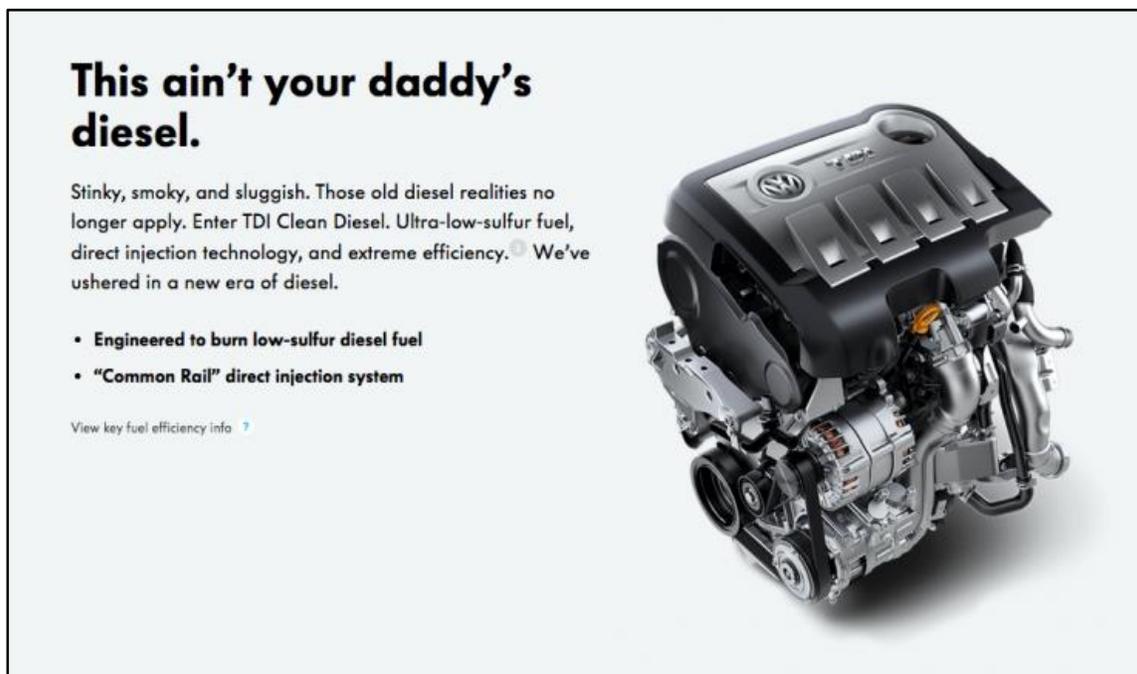
Volkswagen Turbo Diesel Injection.

Less fuel consumption with added engine power.



Das Auto.

52. Yet others addressed the full package, implying that in contrast to the “stinky, smoky, and sluggish” diesel vehicles of old, the Volkswagen Defendants’ new diesel vehicles were clean, efficient, and powerful all at once:



53. The foregoing print advertisements were distributed via the United States mail and via the internet, a means of interstate and international wire communications.

54. Volkswagen also ran similar advertisements on television and on the Internet.⁴

55. The Volkswagen Defendants’ efforts were a resounding success, as Volkswagens and Audis became the highest-selling diesel passenger cars in the United States.

⁴ An example of a commercial touting how “clean” Volkswagen diesels is available at <https://www.youtube.com/watch?v=WNS2nvkjARk> (last visited September 22, 2015). Examples of commercials touting the fuel efficiency of Volkswagen diesels are available at <https://www.youtube.com/watch?v=a2CNHVXvNRo> and <https://www.youtube.com/watch?v=wj3if2gRWYE> (last visited September 22, 2015). An example of a commercial touting the performance of Volkswagen diesels is available at <https://www.youtube.com/watch?v=0VA51xWXZ3g> (last visited September 22, 2015).

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

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

58. The Volkswagen Defendants continued their aggressive campaign to dupe their customers into believing their cars were clean and environmentally friendly. In advertisements appearing on their webpage as recent as September 21, 2015, the Volkswagen Defendants extended the deceit. These ads are only now being stripped from Volkswagen’s websites and other sites such as Youtube.com.



59. The Volkswagen Defendants now dubious concern for the environment extended beyond their Clean Diesel campaigns. On the “Environment” page of their website, the Volkswagen Defendants claim that they takes “environmental responsibility very seriously. When it comes to making our cars as green as possible, Volkswagen has an integrated strategy focused on reducing fuel consumption and emissions, building the world’s cleanest diesel engines and developing totally new power systems, which utilize new fuel alternatives.”

60. The Volkswagen Defendants trumpeted their apparent environmental bona fides when the Audi A3 TDI and Volkswagen Jetta TDI were named the 2010 Green Car of the Year and the 2009 Green Car of the Year. Ironically, a key feature of the most recent Clean Diesel advertisements was “Promise kept.”⁵

61. On the Volkswagen Clean Diesel webpage, it continued to mislead consumers, touting the supposedly reduced greenhouse gas emission of the Clean Diesel engine system.⁶

62. On their website to promote its “clean” diesel technology, www.clearlybetterdiesel.org, the Volkswagen Defendants falsely claimed that their Clean Diesel engine system reduces smog and “meets the highest standards in all 50 states, thanks to ultralow sulfur diesel (ULSD) fuel and innovative engine technology that burns cleaner.”

B. The Volkswagen Defendants Deliberately Concealed The Excessive, Unlawful Emission Levels.

63. For years, the Volkswagen Defendants failed to disclose to the public and to consumers the presence of the defeat devices in the Affected Vehicles and the true nature of their Affected Vehicles’ performance and emissions.

⁵ See <http://www.vw.com/features/clean-diesel/> (last visited Sept. 21, 2015). The content has since been removed.

⁶ See <http://www.audiusa.com/technology/efficiency/tdi?csref=116751439289858719> (last visited Sept. 21, 2015). The content has since been removed.

64. The Clean Air Act, enacted in 1970, is a comprehensive federal law that regulates air emissions from stationary and mobile sources. 42 U.S.C. § 7401, et seq. Congress determined that “the increasing use of motor vehicles . . . has resulted in mounting dangers to the public health and welfare.” CAA § 101(a)(2), 42 U.S.C. § 7401(a)(2). The Clean Air Act and the regulations under it, as well as state regulations, were passed and are intended to reduce the emission of NOx and other pollutants, thereby protecting human health and the environment.

65. As noted in the EPA’s official press release, NOx is dangerous:

NOx pollution contributes to nitrogen dioxide, ground-level ozone, and fine particulate matter. Exposure to these pollutants has been linked with a range of serious health effects, including increased asthma attacks and other respiratory illnesses that can be serious enough to send people to the hospital. Exposure to ozone and particulate matter have also been associated with premature death due to respiratory-related or cardiovascular-related effects. Children, the elderly, and people with pre-existing respiratory disease are particularly at risk for health effects of these pollutants.⁷

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

67. The Clean Air Act has strict emissions standards for vehicles and it requires vehicle manufacturers to certify to the EPA that the vehicles sold in the United States meet applicable federal emissions standards to control air pollution. Every vehicle sold in the United States must be covered by an EPA issued certificate of conformity.

⁷ See 2015 Press Releases, EPA, *EPA, California Notify Volkswagen of Clean Air Act Violations*, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, (September 18, 2015), <http://yosemite.epa.gov/opa/admpress.nsf/21b8983ffa5d0e4685257dd4006b85e2/dfc8e33b5ab162b985257ec40057813b!OpenDocument>. Plaintiff request that the Court take judicial notice of these public admissions under Fed. R. Evid. 201.

68. The Clean Air Act makes it a violation for “any person to manufacture or sell, or offer to sell, or install, any part or component intended for use with, or as part of, any motor vehicle or motor vehicle engine, where a principal effect of the part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this subchapter, and where the person knows or should know that such part or component is being offered for sale or installed for such use or put to such use.”

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

70. Under federal law, cars equipped with defeat devices, which reduce the effectiveness of the emissions control system during normal driving conditions, cannot be certified. EPA, *Advisory Circular Number 24: Prohibition on use of Emission Control Defeat Device* (Dec. 11, 1972); *see also* 40 C.F.R. §§ 86.1809-01, 86-1809, 86-1809-12.

71. As detailed in the EPA’s NOV, sophisticated software in the Volkswagen and Audi diesel vehicles sold by the Volkswagen Defendants in the United States detects when the vehicle is undergoing official emissions testing and enables full emissions controls on only during the test and it detects that only the front wheels are turning. But otherwise, that is at all other times that the vehicle is running, the emissions controls are disabled. This results in cars that meet emissions

standards in the laboratory or state testing station, but during normal operation emit nitrogen oxides (NO_x) at up to 40 times the standard allowed under United States laws and regulations.

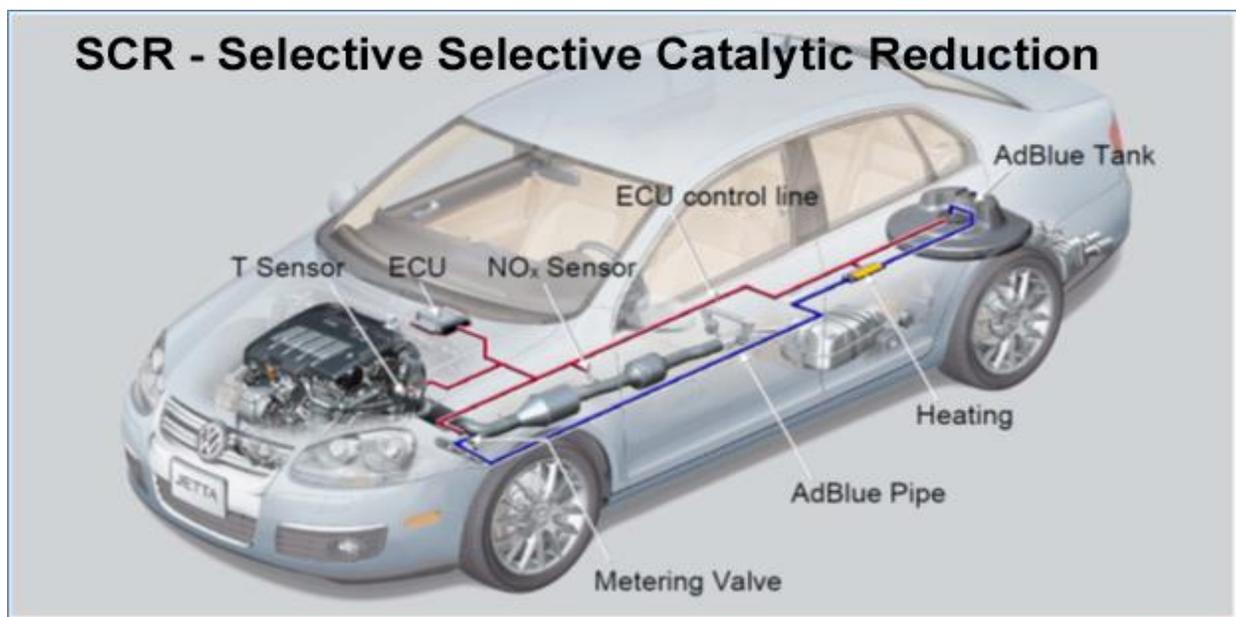
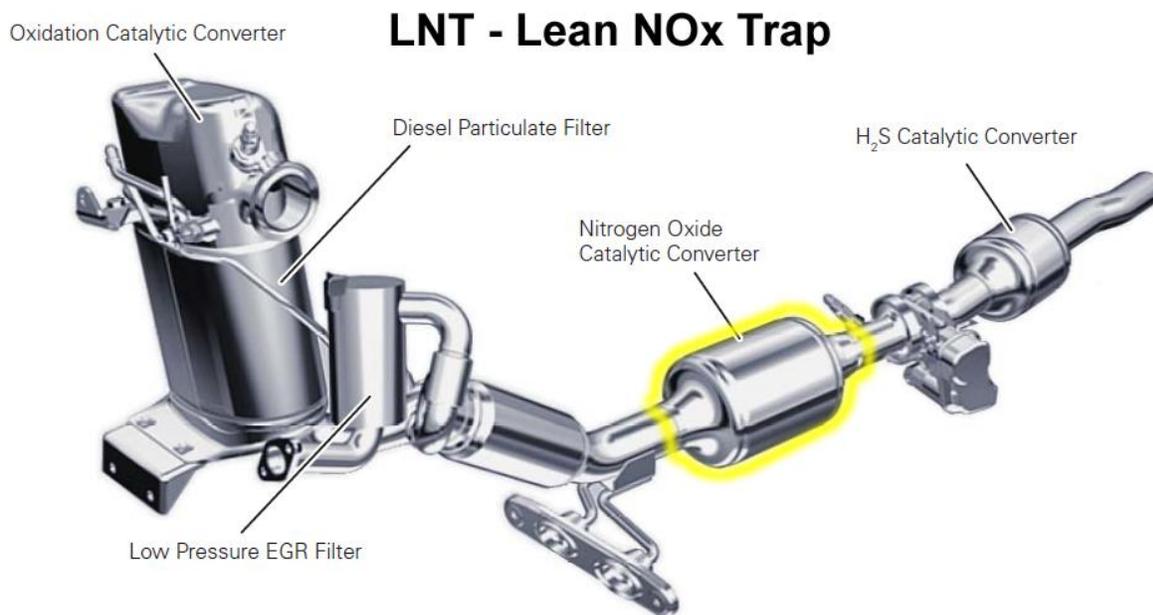
72. The EPA's investigation of Volkswagen was prompted by a May 15, 2014, publication titled "In-Use Emissions Testing of Light-Duty Diesel Vehicles in the United States" by the Center for Alternative Fuels, Engines & Emissions ("CAFEE") of West Virginia University ("the CAFEE Report").

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

74. The findings of the study were brought to the attention of the EPA and in the same month as the report was published the U.S. EPA and the California Air Resources Board ("CARB") opened a joint investigation into the findings but it was not publicized.

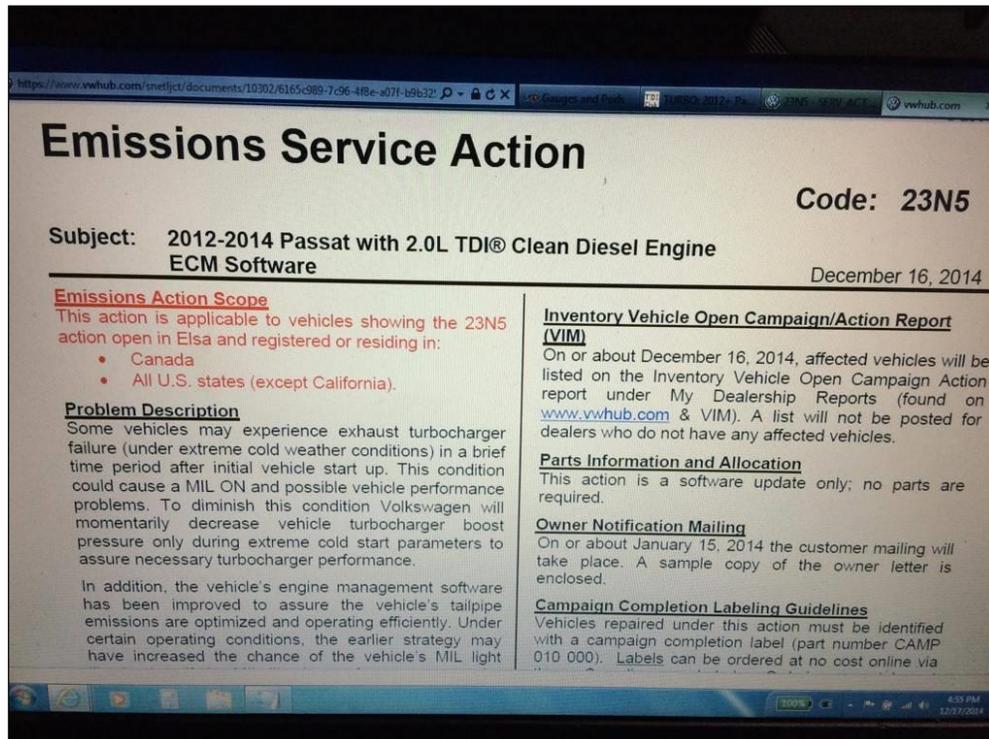
75. As part of the investigation discussions took place with the Volkswagen on the reasons behind these high NO_x emissions observed on their 2.0 liter diesel vehicles over real world driving conditions. Based on these discussions Volkswagen initiated testing to replicate the ICCT/WVU testing and identify the technical reasons for the high on-road emissions.

76. Volkswagen shared the results of this testing and a proposed recalibration fix for the Gen1 (Lean NO_x Trap technology) and Gen2 (Selective Catalytic Reduction (SCR) technology) with CARB staff on December 2, 2014. Based on this meeting, CARB and EPA at that time agreed that Volkswagen could implement the software recall; however, CARB cautioned Volkswagen that if our confirmatory testing showed that the fix did not address the on-road NO_x issues, they would have to conduct another recall.

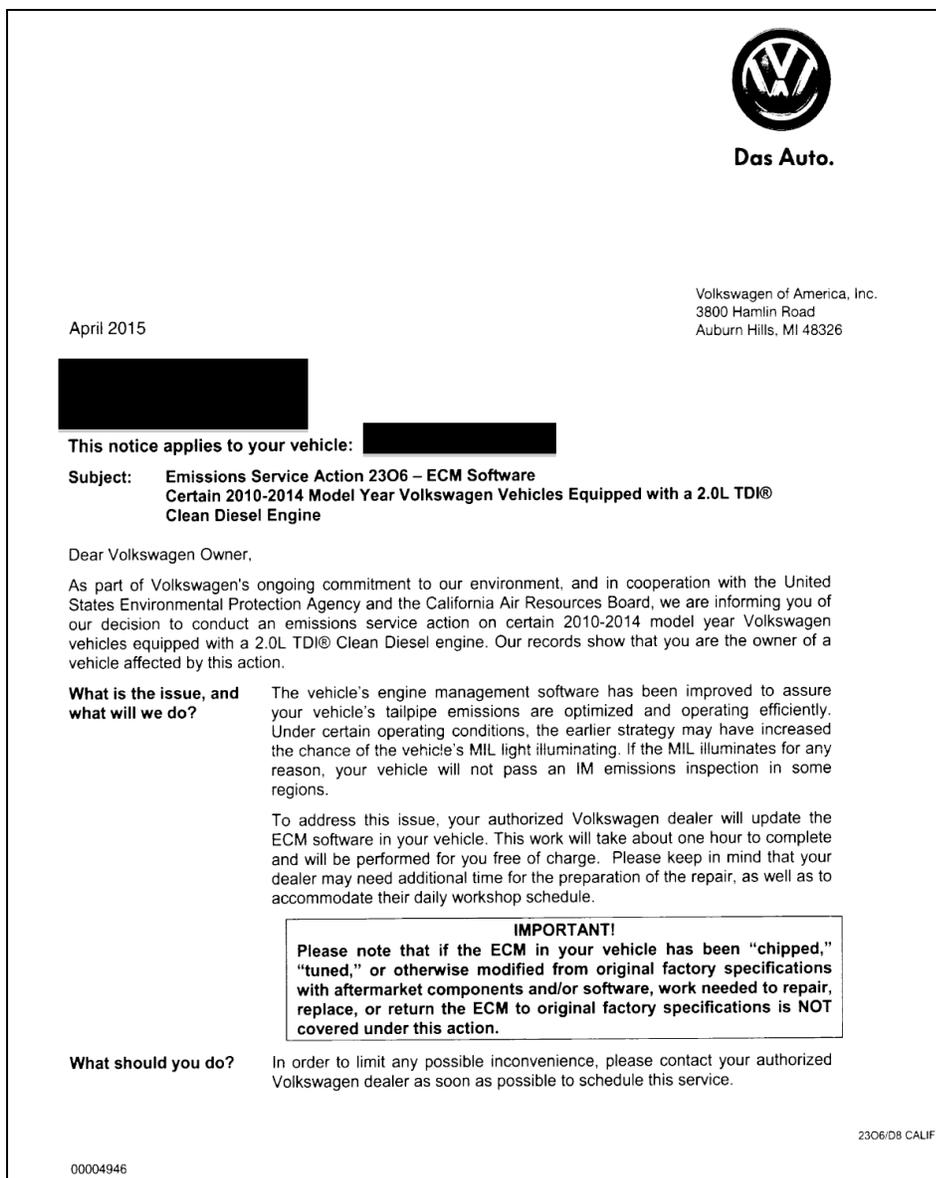


77. Based on this meeting, Volkswagen initiated a voluntary recall on December 16th, 2014 which, according to Volkswagen, affected approximately 500,000 vehicles in the United States (--50,000 in California). The recall affected all 2009 to 2014 model-year diesel fueled vehicles equipped with Gen1 and Gen2 technology. This recall was claimed to have fixed among other things, the increased real world driving NO_x issue.

78. Interestingly enough the recall's primary objective as stated in the notice was not emissions related but rather involving premature turbocharger failure - "Some vehicle may experience exhaust turbocharger failure (under extreme cold weather conditions) in a brief time period after initial vehicle start up." The emissions aspect of the notice was placed in an "In addition..." paragraph and was still misleading as to the reason for the recall.



79. Volkswagen made a second attempt to fix the problem beginning in April 2015, when it issued VW Action Code 2306, which was a recall for Clean Diesel equipped vehicles. Volkswagen claimed that the recall was a "repair" and that it "improved" the engine management system. But many owners recorded a marked decrease in fuel efficiency and performance after the recall was completed.



80. In its notice of Emissions Service Action 2306, which was sent through the United States Mail to owners of the Affected Vehicles, the Volkswagen Defendants falsely asserted that they:

- (1) Had “an ongoing commitment to [the] environment;”
- (2) That it was “cooperat[ing] with the United States Environmental Protection Agency and the California Air Resources Board;” and

- (3) That the recipient's "vehicle's engine management software has been proved to assure your vehicles tailpipe emissions are optimized and operating efficiently."

81. On May 6, 2015 CARB commenced confirmatory testing to determine the efficacy of the recall on both the Gen1 and Gen2 vehicles. CARB confirmatory testing was completed on a 2012 model-year Gen2 Volkswagen test group CVWX02.0U4S, to be followed with Gen1 testing. CARB staff tested this vehicle on required certification cycles (FTP, US06 and HWFET) and over-the-road using a Portable Emission Measurement Systems (PEMS). On some certification cycles, the recall calibration resulted in the vehicle failing the NOx standard. Over-the-road PEMS testing showed that the recall calibration did reduce the emissions to some degree but NOx emissions were still significantly higher than expected.

82. The real world effects these two failed two attempted fixes on vehicle performance, especially fuel economy, were not reported by the Volkswagen Defendants This can be seen on most any forum or blog involving TDI owners as demonstrated below:

- 2014 Passat TDI. Had the update at 10 K miles. Before the update, we averaged 38-38.5 in mixed driving. After the update, we saw a severe drop in the economy from 37-38.5 miles/gallon average to 28-29 miles gallon, mixed driving, in Florida. The car didn't have any issues before or after update, everything seems to work fine, just the fuel consumption became unacceptable.⁸
- So I want to add my story. I had this update installed at 70k mile back in July 2015. I brought it in on an empty diesel take and refilled right after picking up my car from service. Prior to service and having the ecu update install I was getting and average of 42mpg, a range of 750 or so miles. Immediately after update on the next refuel I was getting 36mpg, or actually lower with a range of 550-600 miles on each tank. My driving distance remained the same, my driving behavior remained the same and the only difference done was that ecu update. So now I am refueling more frequently than before which is costing me than before this update.

⁸ See <http://www.myturbodiesel.com/threads/emissions-service-action-23n5-ecm-software-2012-2014-2-01-tdi.27419/page-2> (last accessed October 2, 2015).

- Did the California version 23N5 tune that came out with notifications for California residents in February of 2014, a couple of months after everyone else with 2012-2014's got their notices.⁹
- Since we don't have cold weather start ups in Southern California, the turbo vanes boost reduction is unchanged, I can see it on my Scan Gauge II even at 35F morning startups... unchanged.¹⁰
- What has changed is the amount of regenerations, and frequency. They have doubled.... I can barely make it 180 to 200 miles between active regenerations, versus 370 to 400 miles between regenerations before the VW shop visit tune. VW has certainly retarded the timing to reduce NOX, and in the process, it doubles the soot load, and halves the time between fuel being wasted for regenerations. More fuel is being wasted also, on these regenerations. It's all noted if you program your Scan Gauge II in the " X gauges" section. I know this to be true, and factual, as I always reset my trip odometer in the dash when a regeneration was completed. YMMV, but I can guarantee the next tune will be more of the same, more timing reduction to lower combustion temperatures, and NOX, at the expense of even more frequent DPF regenerations, more soot being created and burned off, and more DEF consumption. CARB shared its test results with VW on July 8, 2015. CARB also shared its results with the EPA. Several technical meetings with VW followed where VW disclosed that Gen1, Gen2 and the 2015 model-year improved SCR vehicle (known as the Gen3) had a second calibration intended to run only during certification testing.¹¹

83. Those findings led the EPA to continue its own investigation, which ultimately revealed that, contrary to the Volkswagen Defendants' vigorous efforts to promote themselves as "green" enterprise with an extraordinary commitment to environmental protection, it was instead a liar and a cheat—its Clean Diesel technology was a fraud and its cars were gross polluters that were, in fact, not even legal to drive on U.S. roadways.

84. The EPA's NOV explained that the installed sophisticated software in the Volkswagen and Audi diesel vehicles sold by the Volkswagen Defendants in the United States that detects when the vehicle is undergoing official emissions testing and turns full emissions controls on only during the test. At all other times that the vehicle is running, however, the emissions

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

controls are deactivated, meaning that pollution is freely released into the environment at levels that exceed those allowed by federal and state laws and regulations. The manner in which the software was programmed by the Volkswagen Defendants falls under the legal description of a defeat device, which is prohibited by the Clean Air Act.

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

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

87. The result is that the Volkswagen Defendants' Clean Diesel vehicles would meet emissions standards in labs or testing stations, but at all other times emit NO_x at up to 40 times the standard allowed under United States laws and regulations.

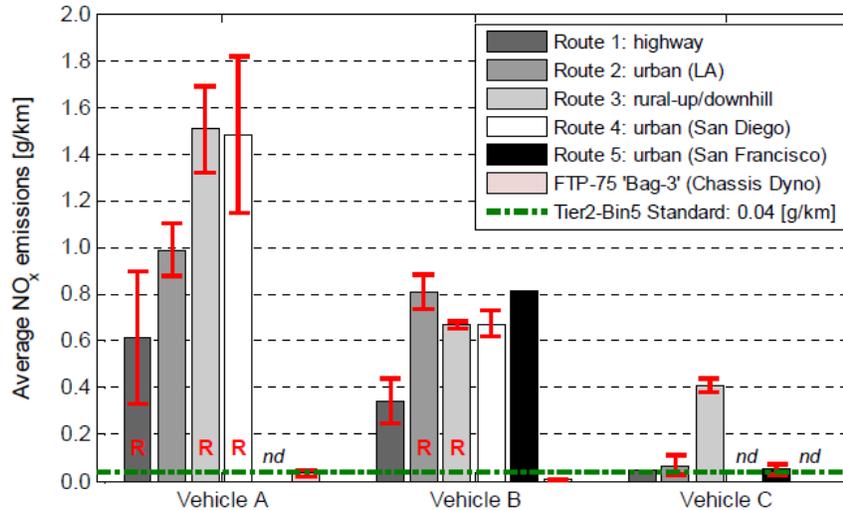


Figure 4.3: Average NO_x emissions of test vehicles over the five test routes compared to US-EPA Tier2-Bin5 emissions standard; repeat test variation intervals are presented as $\pm 1\sigma$; Route 1 for Vehicle A includes rush-hour/non rush-hour driving, 'R' designates routes including a test with DPF regeneration event, 'nd' - no data available

88. As the journal Popular Mechanics reported, non-Volkswagen diesels commonly use urea injection to “neutralize” NO_x emission, but those systems add weight and complexity to the engine. “Everyone wondered how VW met emissions standards while foregoing urea injection. As it turns out, they didn’t. It wasn’t magical German engineering. Just plain old fraud.”

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

90. Then in January of 2004 Volkswagen paid a \$552,500 settlement for distributing and selling vehicles in California that were not certified to meet state automobile emissions

standards. The settlement stems from Volkswagen delivering to California retail locations 85 new 2002 model year vehicles that were not certified by ARB for sale in California and ultimately selling 84 of those before the error was discovered.

91. And finally in 2005 Volkswagen was fined 1.1 million for Clean Air Violations, the largest civil penalty ever assessed, to resolve its failure to promptly notify and correct a defective oxygen sensor affecting at least 326,000 of its 1999, 2000 and 2001 Golfs, Jetta and New Beetles. Volkswagen received numerous warranty claims associated with cracked oxygen sensors during the winter of 1999-2000, but did not report the defect to the EPA until June 2001 while the EPA had already discovered the excess emissions from a randomly selected vehicle during a routine test.

92. The Volkswagen Defendants also violated the Clean Air Act by falsely certifying to the EPA that the Affected Vehicles would meet applicable federal emission standards to obtain the EPA-issued Certificate of Conformity, which is required to sell vehicles in the United States.

93. The software produced and used by the Volkswagen Defendants is a “defeat device” as defined by the Clean Air Act and the EPA under 40 C.F.R. §86.1803-01.

94. The Engine Control Unit, or ECU, and engine management software residing within are designed and manufactured by Robert Bosch GmbH, a German multinational engineering and electronics company. In addition to the ECU, Bosch supplies other key components, such as the high pressure pump, low pressure exhaust gas recirculation pressure sensors, cam sensors, lambda sensors, hot film air mass sensor, and glow timing electronic control unit. The engine management software is equipped with a feature that is commonly referred to as a Dyno mode or Test mode.

95. When emissions system and fuel economy and other similar testing is conducted during vehicle development the vehicle is placed on a dynamometer which can be thought of as two big rollers or a treadmill—rather than driving on the road. The vehicle has only its driving wheels rolling (the front ones, in the case of the Volkswagen Defendants’ vehicles). But the rear tires are stationary. The vehicle could otherwise interpret the test procedure as a dangerous situation or malfunction, activating traction control or stability control so instead during these developmental tests the engine management software is placed into Dyno mode. By enabling the Dyno or Test Mode, the vehicle is able to operate during the test process.



96. The Volkswagen Defendants have used this feature of the software to serve as a “switch” that will turn the vehicle’s emission controls on and off based on whether the vehicle is on the open road (switch off) or being tested for emissions (switch on). In effect when emissions testing is performed on one of these vehicles the emission system turns “on” once a certain set of parameters are met which can include steering wheel position, rear wheel speed, air flow and others. Once the test is complete and the car is restarted, the car reverts to its normal function. And

once the cars are in on-the-road mode, nitrogen oxide levels can increase by as much as 10 to 40 times the federal standard.

97. Robert Bosch warned the Volkswagen Defendants in 2007 that it would be illegal to sell cars with emissions control software that turned on only during emissions tests, but Bosch continued supplying the systems either fully aware of the defeat devices or blindly choose to ignore what VW was doing upon installation using the software Bosch had provided.

98. In addition, a group of Volkswagen engineers discovered the use of the defeat device in 2011 and brought it, and the fact that the device was illegal, to the attention of company management. This report went nowhere and the Volkswagen Defendants continue utilizing the defeat device.

99. By manufacturing and selling cars with defeat devices that allowed for higher levels of emissions that were certified to EPA, the Volkswagen Defendants violated the Clean Air Act, defrauded their customers, and engaged in unfair competition under state and federal law.

C. The Volkswagen Defendants Have Admitted Their Fraudulent Conduct.

100. On September 20, 2015, the Volkswagen Defendants admitted that the EPA allegations were true and that a “defeat device” had been used in the Affected Vehicles. Martin Winterkorn, then then-CEO of Volkswagen AG stated “*I personally am deeply sorry that we have broken the trust of our customers and the public.*”

101. On September 23, 2015, Mr. Winterkorn resigned as CEO of Volkswagen AG, stating that “*above all, I am stunned that misconduct on such a scale was possible in the Volkswagen Group.*”¹²

¹² See Fox Business’s “Volkswagen CEO Resigns Amid Emissions Scandal” by Matthew Rocco, September 23, 2015. <http://www.foxbusiness.com/business-leaders/2015/09/23/volkswagen-ceo-resigns-amid-emissions-scandal/>

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

As you have seen since Friday, the EPA, the Environmental Protection Agency, has issued a statement and reality that Volkswagen Group manipulated engine software in our TDI diesel cars, and we violated emissions standards. The CEO of our parent company, Dr. Martin Winterkorn, said yesterday Volkswagen will fully cooperate with the responsible agencies, and much much more important as see it, he stated that he was personally and deeply sorry for this—that Volkswagen has broken the trust of our customers, and the public here in America. And lastly he stated that this matter, and this is I think common sense, now this is the first priority for him personally and for the entire [board]. So let's be clear about this: our company was dishonest with the EPA and the California Air Resources Board, and with all of you. And in my German words, we've totally screwed up. We must fix those cars, and prevent this from ever happening again, and we have to make things right—with the government, the public, our customers, our employees, and also very importantly our dealers. This kind of behavior, I can tell you out of my heart, is completely inconsistent with our core values. The three core values of our brand are value, innovation, and in this context very importantly, responsibility: for our employees, for our stakeholders, and for the environment. So it goes totally against what we believe is right. Along with our German headquarters, we are committed to do what must be done, and to begin to restore our trust.

103. As reported by Reuters, Volkswagen named the head of its Porsche unit, Matthias Mueller, as its new chief executive. Mueller claims, “[u]nder my leadership, Volkswagen will do all it can to develop and implement the strictest compliance and governance standards in the whole industry.”

104. That promise may be a tall order considering Germany's transport minister announced that the carmaker has “manipulated test results for about 2.8 million vehicles” in Germany, which is “nearly six times as many as it has admitted to falsifying in the United States.” That indicates that the Volkswagen Defendants are “cheating on a bigger scale than previously thought.”

105. As a result of the Volkswagen Defendants' unfair, deceptive, and/or fraudulent business practices, and their failure to disclose that under normal operating conditions the Affected

Vehicles emit 40 times the allowed levels, owners and/or lessees of the Affected Vehicles have suffered losses in money and/or property. Had Plaintiff and Class members known of the “defeat device” at the time they purchased or leased their Affected Vehicles, they would not have purchased or leased those vehicles, or would have paid substantially less for the vehicles than they did.

106. Moreover, when and if Volkswagen Defendants recall the Affected Vehicles and degrade the Clean Diesel engine performance in order to make the Affected Vehicles compliant with EPA standards, Plaintiff and Class members will be required to spend additional sums on fuel and will not obtain the performance characteristics of their vehicles when purchased. Moreover, affected vehicles will necessarily be worth less in the marketplace because of their decrease in performance and efficiency.

D. The Volkswagen Defendants Have Obtained Considerable Benefits From Their Fraudulent Conduct.

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

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

Clean Diesel Price Premiums

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

E. Plaintiff and Class Members Have Suffered Significant Harm as a Result of The Volkswagen Defendants' Unlawful Actions.

109. The Volkswagen Defendants will not be able to adequately fix the vehicles. The EPA has ordered Volkswagen to bring the Affected Vehicles into compliance with the emissions standards of the Clean Air Act, but doing so will materially compromise the vehicles' performance and/or fuel efficiency. Even if the Volkswagen Defendants are able to make the Affected Vehicles EPA-compliant through a retrofit, the vehicles will no longer perform as previously represented to the public and consumers, and Plaintiff and Class Members will be deprived of the benefits Volkswagen promised and for which they bargained when they purchased or leased the Affected Vehicles.

110. As a result, the Affected Vehicles do not function as reasonable consumers expect, and have lost considerable value. Moreover, Plaintiff and Class Members will incur additional expenses at the pump as a result of the decreased fuel efficiency.

111. The Volkswagen Defendants failed to disclose these material facts to the public and to consumers. Had Plaintiff and Class Members known of the defect at the time they decided to

purchase or lease the Affected Vehicles, they would have declined to purchase or lease the vehicles, or would have paid considerably less than they did.

112. In sum, the Volkswagen Defendants' deliberate deception has caused significant harm to Plaintiff, Class Members, and the public.

113. Plaintiff brings this action for actual damages, equitable relief, including restitution, injunctive relief, and disgorgement of profits, and all other relief available on behalf of themselves and all similarly-situated individuals and entities (the "Class" or "Class Members") who own or lease or who have owned or leased a 2009-2015 Volkswagen or Audi diesel-powered vehicle which contained software specifically designed to avoid and cheat EPA test standards.

VI. TOLLING OF THE STATUTE OF LIMITATIONS

A. Discovery Rule Tolling

114. Class Members had no way of knowing about the Volkswagen Defendants' deception with respect to their Clean Diesel engine system and "defeat device." It took federal EPA and CARB investigations to uncover the Volkswagen Defendants' deception, which involved sophisticated software manipulation on the part of Volkswagen Defendants. As reported by the *Los Angeles Times* on September 18, 2015, it took California Air Resources Board testing on a special dynamometer in a laboratory, open road testing using portable emission testing equipment, and the use of special testing devised by the Board to uncover the Volkswagen Defendants' scheme and to detect how software on the engine's electronic control module was deceiving emissions certifications tests. Plainly, the Volkswagen Defendants were intent on expressly hiding their behavior from regulators and consumers. This is the quintessential case for tolling.

115. Within the time period of any applicable statutes of limitations, Plaintiffs and members of the proposed classes could not have discovered through the exercise of reasonable

diligence that the Volkswagen Defendants were concealing the conduct complained of herein and misrepresenting the true position with respect to the emission qualities of their vehicles.

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

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

B. Fraudulent Concealment Tolling

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

119. Instead of disclosing their emissions scheme, or that the quality and quantity of emissions from the subject vehicles were far worse than represented, and of its disregard of federal and state law, the Volkswagen Defendants falsely represented that their vehicles complied with

federal and state emissions standards, and that it was a reputable manufacturer whose representations could be trusted.

C. Estoppel

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

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

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

123. Based on the foregoing, the Volkswagen Defendants are estopped from relying on any statutes of limitations in defense of this action.

VII. CLASS ALLEGATIONS

124. Plaintiffs brings this action on behalf of themselves and as a class action, pursuant to the provisions of Rules 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure on behalf of the following class and subclasses (collectively, the "Classes"):

The Nationwide Class

All persons or entities in the United States who are current or former owners and/or lessees of an "Affected Vehicle." Affected Vehicles include, without limitation: MY 2009-2015 VW Jetta; MY 2009-2014 VW Jetta Sportwagen; MY 2012-2015 VW Beetle; MY 2012-2015 VW Beetle Convertible; MY 2010-2015 VW Golf;

MY 2015 VW Golf Sportwagen; MY 2012-2015 VW Passat; and MY 2010-2015 Audi A3.

The New Jersey Subclass

All current and former owners of Affects Vehicles who reside in the State of New Jersey and/or who purchased or leased Affected Vehicles in New Jersey. Affected Vehicles include, without limitation: MY 2009-2015 VW Jetta; MY 2009-2014 VW Jetta Sportwagen; MY 2012-2015 VW Beetle; MY 2012-2015 VW Beetle Convertible; MY 2010-2015 VW Golf; MY 2015 VW Golf Sportwagen; MY 2012-2015 VW Passat; and MY 2010-2015 Audi A3.

The California Subclass

All current and former owners of Affects Vehicles who reside in the State of California and/or who purchased or leased Affected Vehicles in California. Affected Vehicles include, without limitation: MY 2009-2015 VW Jetta; MY 2009-2014 VW Jetta Sportwagen; MY 2012-2015 VW Beetle; MY 2012-2015 VW Beetle Convertible; MY 2010-2015 VW Golf; MY 2015 VW Golf Sportwagen; MY 2012-2015 VW Passat; and MY 2010-2015 Audi A3.

The Maryland Subclass

All current and former owners of Affects Vehicles who reside in the State of Maryland and/or who purchased or leased Affected Vehicles in Maryland. Affected Vehicles include, without limitation: MY 2009-2015 VW Jetta; MY 2009-2014 VW Jetta Sportwagen; MY 2012-2015 VW Beetle; MY 2012-2015 VW Beetle Convertible; MY 2010-2015 VW Golf; MY 2015 VW Golf Sportwagen; MY 2012-2015 VW Passat; and MY 2010-2015 Audi A3.

The Massachusetts Subclass

All current and former owners of Affects Vehicles who reside in the Commonwealth of Massachusetts and/or who purchased or leased Affected Vehicles in Massachusetts. Affected Vehicles include, without limitation: MY 2009-2015 VW Jetta; MY 2009-2014 VW Jetta Sportwagen; MY 2012-2015 VW Beetle; MY 2012-2015 VW Beetle Convertible; MY 2010-2015 VW Golf; MY 2015 VW Golf Sportwagen; MY 2012-2015 VW Passat; and MY 2010-2015 Audi A3.

The Pennsylvania Subclass

All current and former owners of Affects Vehicles who reside in the State of Pennsylvania and/or who purchased or leased Affected Vehicles in Pennsylvania. Affected Vehicles include, without limitation: MY 2009-2015 VW Jetta; MY 2009-2014 VW Jetta Sportwagen; MY 2012-2015 VW Beetle; MY 2012-2015 VW Beetle Convertible; MY 2010-2015 VW Golf; MY 2015 VW Golf Sportwagen; MY 2012-2015 VW Passat; and MY 2010-2015 Audi A3.

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

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

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

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

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

a) Whether the Volkswagen Defendants engaged in the conduct alleged herein;

b) Whether the Volkswagen Defendants designed, advertised, marketed, distributed, leased, sold or otherwise placed Affected Vehicles into the stream of commerce in the United States;

c) Whether the Clean Diesel engine system in the Affected Vehicles contains a defect in that it does not comply with U.S. EPA requirements;

d) Whether the Clean Diesel engine systems in Affected Vehicles can be made to comply with EPA standards without substantially degrading the performance and/or efficiency of the Affected Vehicles;

e) Whether the Volkswagen Defendants knew about the “defeat device” and, if so, how long the Volkswagen Defendants had known;

f) Whether the Volkswagen Defendants designed, manufactured, marketed, and distributed Affected Vehicles with a “defeat device”;

g) Whether the Volkswagen Defendants’ conduct violates consumer protection statutes, warranty laws, and other laws as asserted herein;

h) Whether Plaintiff and the other Class members overpaid for their Affected Vehicles;

i) Whether Plaintiffs and the other Class members are entitled to equitable relief, including, but not limited to, restitution or injunctive relief; and

j) Whether Plaintiff and the other Class members are entitled to damages and other monetary relief and, if so, in what manner.

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

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

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

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

fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

VIII. VIOLATIONS ALLEGED

COUNT I VIOLATION OF 18 U.S.C. § 1962(C), THE RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT (“RICO”) (Brought on Behalf of the Nationwide Class)

134. Plaintiffs re-allege and incorporate by reference all above paragraphs as though fully set forth herein.

135. Plaintiffs bring this claim on behalf of the Nationwide Class.

136. This Count, which alleges substantive violations of RICO, as provided in 18 U.S.C. § 1962(c), is asserted against the Defendants on behalf of the Class for actual damages, treble damages, and equitable relief pursuant to 18 U.S.C. § 1964.

137. Section 1962(c) makes it “unlawful for any person employed by or associated with any enterprise . . . to conduct or participate . . . in the conduct of such enterprise’s affairs through a pattern of racketeering activity or collection of an unlawful debt.” 18 U.S.C. § 1962(c).

138. As detailed more fully below, Plaintiffs and Class Members are “person[s] injured in his or her business or property” by reason of the Volkswagen’s violation of RICO within the meaning of 18 U.S.C. § 1964(c).

The Clean Diesel RICO Enterprise

139. As detailed below, upon information and belief, in 2007, three individuals took or were appointed to leadership positions at Volkswagen AG, and/or its subsidiaries Audi AG and Porsche AG: Chief Executive Officer Martin Winterkorn (“Winterkorn”); Porsche’s head of Engine and Transmission Development Wolfgang Hatz (“Hatz”); and Audi’s head of Technical Development Ulrich Hackenberg (“Hackenberg”) (collectively, “the Individual Members”). These

individuals exploited their positions of authority as well as the legitimacy and infrastructure of Defendant Volkswagen AG, Defendant Volkswagen of America, Inc., Audi AG (collectively, “the VW Corporate Members”), as well as Robert Bosch GmbH (“Bosch”), a German auto component manufacturer that developed the systems used by the criminal enterprise as “defeat devices,” to perpetrate fraud against American consumers as well as state and federal regulators for their own personal and profession gain.

140. When news that Volkswagen AG used “defeat devices” to evade state and federal emissions was made public, each of the Individual Members was immediately identified as being at “at the heart of the affair.” Winterkorn resigned while Hackenberg and Hatz, along with Volkswagen’s head of research and development, Heinz-Jakob Neusser, were suspended by Volkswagen AG’s board of management as a result of their reported involvement in the “defeat device” scandal.

141. Upon information and belief, the Individual Members exploited their leadership positions at Volkswagen AG, Volkswagen Group of America, Inc. and/or Audi AG and Porsche, as well as the legitimacy and infrastructure of those organizations and Bosch, for personal and professional gain by conducting an enterprise of associated-in-fact entities (the “Clean Diesel Rico Enterprise”), comprised of the Individual Members, the Volkswagen Corporate Members, and Bosch (collectively, “the Enterprise Members”), designed to secure the leadership positions of the Individual Members and increase the sales of Volkswagen-and Audi-brand diesel vehicles in the United States and elsewhere by concealing and/or misrepresenting the vehicles’ emission levels.

142. Upon information and belief, Hatz and Hackenberg, specifically, used their positions of authority and control at a Volkswagen AG subsidiaries—Audi and Porsche—to infiltrate the Volkswagen Group Board of Management, and exercise control over the Group to

intentionally conceal and suppress material facts concerning the quality and character of the Affected Vehicles and to evade federal and state vehicle emissions standards by installing software specifically designed to conceal its vehicles' emissions of nitrous oxides.

143. The Volkswagen Corporate Members and/or the Individual Members compelled and/or condoned the purchase of the 'defeat devices,' comprising in part engine management systems and software' designed by Bosch. Bosch is the world's largest manufacturer of automotive components, and maintains a continuous and ongoing relationship with the Volkswagen Corporate Members. Volkswagen Corporate Members and/or the Individual Members used the systems provided by Bosch as the basis for the defeat device, installed them in the Affected Vehicles, and distributed the Affected Vehicles worldwide, including but not limited to the 50 United States and the District of Columbia and conducted a campaign of misrepresentations designed to conceal the true emission levels of affected vehicles and conceal their use of defeat devices.

144. The role of each member of the Default Device Enterprise is described below.

Martin Winterkorn – CEO of Volkswagen AG

145. Martin Winterkorn succeeded Bernd Pischetsrieder as CEO of Volkswagen AG in 2007.

146. In 2007, Volkswagen was struggling, specifically in the U.S. market, where Volkswagen's AG's performance was described as "disastrous":

The brand's strategy of wooing customers with premium, uplevel products has not paid off; it is lacking new, interesting, and affordable products in key segments; and its costly production site in Chattanooga, Tennessee, is woefully underutilized.¹³

¹³ Anton Watts, "VW Drama: Why Piech Wants Winterkorn Out—and What the Future May Hold," *Car and Driver* (Apr. 16, 2015).

147. Winterkorn was also facing a challenge to his leadership from auto magnate and long-time Volkswagen executive Ferdinand Piëch, who sought to oust Winterkorn as CEO.¹⁴

148. In order to secure his leadership position, Winterkorn committed to an unprecedented gambit, described as:

[a] plan to . . . triple [Volkswagen] sales in the United States in just a decade – setting it on a course to sweep by Toyota to become the world’s largest automaker . . . by betting on diesel-powered cars . . . [and] promising high mileage and low emissions without sacrificing performance.¹⁵

149. Winterkorn’s promise to make Volkswagen the “world’s largest seller of diesel-powered cars” secured his position as CEO and Piëch was ousted from the organization by Volkswagen’s Management Board.

150. However, as is now clear, Winterkorn’s promise to the Board to overtake Toyota in the American market through the development of low- emission, consumer-friendly diesel passenger vehicles, while favorable to the investor’s bottom line was—absent extraordinary breakthroughs in engineering—a practical impossibility. In short, Winterkorn overpromised.

151. Prior to 2007, when Winterkorn became CEO, in order to reduce emissions from diesel fuel, Volkswagen’s diesel-powered vehicles, were equipped with BlueTEC, a selective catalytic reduction (SCR) system that Volkswagen leased from Daimler AG. To function, BlueTEC requires vehicles to carry an onboard tank of urea crystals in mineralized water, a feature which adds to the initial purchase price of the vehicle, and that must be refilled every 10,000 miles at a cost of around \$300, which reduces any cost-savings a consumer might realize by using diesel instead of gasoline.

¹⁴ *Id.*

¹⁵ Danny Hakim, Aaron Kessler, and Jack Ewing, “As Volkswagen Pushed to BeNo. 1, Ambitions Fueled a Scandal,” *New York Times* (Sept. 26, 2015).

152. In 2007, the year that Winterkorn took over as CEO, Volkswagen took two major steps to reverse this trend. First, Volkswagen ceased the use of BlueTEC in several of its models—in favor of developing its own emissions- reduction technology, which is now known to rely on the defeat devices which are the subject of this suit. Second, two executives of Volkswagen AG subsidiaries, Hackenberg and Hatz, were given leadership roles at Volkswagen

153. Hatz and Hackenberg were reportedly hand-picked to play a major role in implementing Winterkorn's plan to make Volkswagen the world's number- one automaker, through the development of consumer-friendly, low-emission diesel vehicles. 209. By implementing these steps and, in turn, economically benefitting from the Default Device Enterprise, Winterkorn delivered on his promise to sell more diesel cars in the U.S. than every other brand combined. However, Winterkorn's misdeeds came at a price and he was forced to resign in September 2015, following allegations that he knew or should have known of the defeat devices installed in Volkswagen vehicles.

154. Upon stepping down, Winterkorn asserted he was unaware of any wrong doing. However, that assertion is belied by newly-disclosed information that Volkswagen engineers discovered the use of the defeat device in 2011 and brought it, and the fact that the device was illegal, to the attention of company management. Volkswagen apparently ignored that report and continued their fraudulent and deceptive practices.

155. 211. In their leadership positions within Volkswagen, the Individual Members ordered the development of and/or personally developed each of the affected diesel-vehicle models that are the subject of this suit. Also in those positions, each Individual Member had access to and authority over the engine development and technical details of each affected Volkswagen vehicle that is the subject of this suit.

Ulrich Hackenberg

156. Hackenberg joined Audi AG in 1989 and was put in charge of Audi Concept Definition. Later, he took over technical project management for Audi's entire product range, including the Audi A3, one of the affected vehicle models.¹⁶

157. On February 1, 2007, Hackenberg was appointed as a Member of Volkswagen's Brand Board of Development, where he was responsible for the technical development of all the Volkswagen Group's brands.¹⁷ Under his leadership, three new models were developed: the Golf, the Polo, and the Passat, two of which are affected vehicle models.

158. On July 1, 2013, Hackenberg was appointed to the Board of Management of Audi AG, and given the responsibility to head up Audi AG's Technical Development.

159. 215. As head of technical development at Audi AG, Hackenberg spearheaded the development of Audi's TDI "CleanDiesel" engines. As he explained in a press release, his strategy for Audi's technical development included the following:

P]ushing forward with development in . . . our TDI engines in the USA – our clean diesel offensive is bearing substantial fruit. In China, too, we are already introducing the first clean diesel models and watching developments there very closely. We also expect a great deal from g-tron technology, the most sustainable type of gas drive.¹⁸

¹⁶ Audi, "Board of Management," <http://www.audiusa.com/newsroom/corporate/audi-ag-board-of-management/ulrich-hackenberg>, (last accessed Sept 26, 2015) ("In 1985 Prof. Dr. Hackenberg joined AUDI AG, where in 1989 he was put in charge of Concept Definition and later took over the technical project management of the entire product range. This included the models Audi 80, A3, A4, A6, A8, TT and A2."); Autoblog, "Hackenberg says next Audi A4 set for Frankfurt debut," (Mar. 10, 2015).

¹⁷ Audi, "Board of Management," <http://www.audiusa.com/newsroom/corporate/audi-ag-board-of-management/ulrich-hackenberg>, (last accessed Sept. 26, 2015).

¹⁸ Audi AG, "Gentlemen Start Your Engines," <http://audi-encounter.com/magazine/technology/01-2015/126-gentlemen-start-your-engines> (2014).

160. In his role as head of technical development at Audi AG, Hackenberg had extensive knowledge of the technical details of the TDI “CleanDiesel” models that he developed, and was reportedly suspended after reports that he had knowledge that the Affected Vehicles used defeat devices to evade federal and state vehicle emissions standards.

Wolfgang Hatz

161. Wolfgang Hatz joined Volkswagen in 2001 and at various times directed engine development for the Porsche, Audi, and Volkswagen brands.

162. In his role as the head of Engines and Transmissions Development, Hatz supervised the development of the engines and transmissions for the Affected Vehicles and had knowledge of the technical details of each those vehicles.

163. Hatz was reportedly suspended from his position in September 2015 after reports that he had knowledge that the affected Audi and Volkswagen vehicles used defeat devices to evade federal and state vehicle emissions standards.

Allegations Common to the Individual Members

164. Upon information and belief, in their leadership roles at Volkswagen, the Individual Members used Volkswagen AG and its subsidiaries including Volkswagen of America Inc., Volkswagen’s resources, as well as supplier Bosch, to orchestrate a scheme to fulfill Winterkorn’s promise to the Board to triple Volkswagen’s sales in the United States through the sale of low-emission diesel vehicles by ordering, developing, and/or installing defeat devices in the Affected Vehicles and, through a pattern of racketeering activity, misrepresenting and/or concealing the true emissions levels of those vehicles.

165. In addition to the pattern of racketeering detailed herein, the Individual Members exploited Volkswagen’s, its subsidiaries’, and Bosch’s resources, including employees and

engineers, in order to further the cover-up. For example, according to reports from “[e]missions testers at the company’s site in Westlake Village, California [which] evaluated all [Volkswagen] cars,” VW and Audi executives orchestrated a cover-up from abroad:

...any vehicle failed to meet emissions targets, a team of engineers from Volkswagen headquarters [in Wolfsburg, Germany] or luxury brand Audi’s base in Ingolstadt [Germany] was flown in.... After the group had tinkered with the vehicle for about a week, the car would then pass the test. VW had no engineers in the U.S. able to create the mechanism that cheated on the test or who could fix emissions problems, according to two other people.¹⁹

166. In other words, any vehicles that failed emissions targets received special treatment—that is, was fitted with a defeat device—and then the vehicle would pass the emissions test.

167. In their leadership roles at Volkswagen AG and its subsidiaries, the Individual Members used Volkswagen’s infrastructure to distribute Affected Vehicles to the United States and elsewhere.

168. In their leadership roles at Volkswagen AG and its subsidiaries, the Individual Members used Volkswagen’s infrastructure to orchestrate, and/or approve, a marketing campaign designed to misrepresent the emission levels of affected vehicles and defraud consumers.

169. As a result of the Individual Members’ misuse of Volkswagen resources and infrastructure, they achieved considerable personal and financial success.

Allegations Against the Volkswagen Corporate Members

¹⁹ Alex Webb and David Welch, “Volkswagen Said to Manage Faked Test Results From Germany,” (Sept. 25, 2015).

170. The Volkswagen Corporate Members developed, conducted, and approved a marketing campaign designed to misrepresent the emission levels of affected vehicles and to defraud consumers based upon the racketeering activity described below.

171. The Volkswagen Corporate Members collaborated and colluded with each other with and the Individual Members to conceal and suppress material facts concerning the quality and character of the affected vehicles and to evade federal and state vehicle emissions standards by installing software designed to conceal its vehicles' emissions of the pollutants.

Allegations Against Robert Bosch GmbH (“Bosch”)

172. On information and belief, Bosch developed the engine and emissions control systems and software that provided the basis for the defeat devices, and sold them to the Volkswagen Defendants.

173. On information and belief, Bosch was aware that the use of “test” or “dynometer” operation modes programmed into engine management software as defeat devices to evade emissions requirements is illegal in the United States, but nevertheless sold the systems and software to Volkswagen AG.

174. In 2007, when Volkswagen was developing the TDI engines that are the subject of the present suit using Bosch engine management software, Bosch issued a letter to the Volkswagen AG warning them that the use of “test” or “dynometer” modes included in the software during normal operation of a vehicle was illegal.

175. Bosch was reckless in not being aware of Winterkorn's promise ambitions to the Board to overtake Toyota's sales in the American market and to become the largest auto manufacturer in the world, through the sale of low- emission diesel passenger vehicles.

176. Bosch was reckless in not being aware that the illegal use of its software as a defeat device would help to achieve Winterkorn's promise.

177. Bosch was or should have been further aware that sales of Volkswagen vehicles that had Defeat Devices installed were increasing at an unprecedented rate.

178. Based upon the above-alleged pieces of information Bosch, as one of the largest and most successful component manufacturers in the world, knew or should have known, or was recklessly in not knowing, that engine management systems and software were being used as part of defeat devices illegally used in Volkswagen vehicles sold in the United States and around the world.

Enterprise Allegations

179. Defendant Volkswagen is a "person" under 18 U.S.C. § 1961(3).

180. Defendant Volkswagen AG is a "person" under 18 U.S.C. § 1961(3).

181. Audi AG is a "person" under 18 U.S.C. § 1961(3).

182. Winterkorn is a "person" under 18 U.S.C. § 1961(3).

183. Hatz is a "person" under 18 U.S.C. § 1961(3).

184. Hackenberg is a "person" under 18 U.S.C. § 1961(3).

185. Bosch is a "person" under 18 U.S.C. § 1961(3).

186. The Clean Diesel RICO Enterprise engaged in, and affected interstate and foreign commerce, and is an association-in-fact enterprise within the meaning of 18 U.S.C. § 1961(3) and consists of "persons" associated together for the common purpose of employing the multiple, deceptive, abusive, illegal, and/or fraudulent acts described herein.

187. The Clean Diesel RICO Enterprise was formed in or about 2007 and continues to the present day.

188. On information and belief, the Individual Members and the Volkswagen Corporate Members, violated 18 U.S.C. § 1962(c) by participating in or conducting the affairs of the Clean Diesel RICO Enterprise and/or engaging in a pattern of repeatedly defrauding consumers.

189. In addition, Bosch violated 18 U.S.C. § 1962(c) by participating in or conducting the affairs of the Clean Diesel RICO Enterprise through a pattern that it knew or should have known defrauded consumers.

190. The Enterprise undertook a fraudulent scheme to sell Affected Vehicles based upon the false and misleading misrepresentations and omissions set forth herein.

191. In furtherance of the scheme, the Volkswagen Corporate Members and/or Individual Members engaged in thousands of acts of mail fraud and wire fraud, each of which constitute “racketeering activity,” as that term is defined in 18 U.S.C. § 1961(1), as will be further detailed below.

192. The Clean Diesel RICO Enterprise is an ongoing organization with an ascertainable structure and a framework for making and carrying out decisions, that functions as a continuing unit with established duties, and that is separate and distinct from the pattern of racketeering activity in which Enterprise members have engaged and are engaging. Each member of the Enterprise performs a role in furtherance of the scheme consistent with its structure. The Enterprise was controlled by the Volkswagen Corporate Members and/or the Individual Members who developed the defeat device scheme and developed the cars and engines that would put it into place. Upon direction from the Volkswagen Corporate Members and/or Individual Members, Bosch knew was reckless in not knowing the illegal purpose for which the defeat devices software it developed and supplied to the Volkswagen Corporate Members was being used, and the

Volkswagen Corporate Members distributed the vehicles alongside a marketing campaign designed to misrepresent the Affected Vehicles' emission levels and defraud consumers.

193. The Enterprise also exists for the legitimate purpose of developing, manufacturing, and selling automobiles and operates within a framework that includes the sale of other automobiles not affected by fraud.

194. Alternatively, the Enterprise was formed solely for the purpose of carrying out the pattern of racketeering acts described herein.

195. The Enterprise was and is used by the Individual Members and/or the Volkswagen Corporate Members to effectuate a pattern of racketeering activity. All members of the Clean Diesel RICO Enterprise played a part in a fraudulent scheme to sell affected vehicles through the use of false or misleading statements related to the power, fuel efficiency, and emissions levels of the Affected Vehicles.

196. The members of the Enterprise shared a common purpose to develop and sell vehicles, of which certain models included a functioning Defeat Device.

197. On information and belief, the Volkswagen Corporate Members and Individual Members of the Enterprise also shared a common purpose which amounted to fraud: to misrepresent the emission levels, fuel efficiency, performance, and power of affected Volkswagen vehicles and/or to conceal information regarding the use of defeat devices in the Affected Vehicles to evade state and federal emission regulations. Bosch knew or was reckless in not knowing that this was occurring and that Bosch software was being used to achieve it.

198. Each member of the Enterprise benefits from the common purpose. For the Volkswagen Corporate Members, the purpose was to avoid the additional costs associated with developing and installing low-emissions diesel technology that would also be attractive to

consumers, and to sell and lease more vehicles to consumers based upon false representations of the Affected Vehicles' performance and emissions levels. Succinctly put, the common purpose was to profit from the myth of the "holy grail" of high performance, efficient, low emissions vehicles. For the Individual Members, the purpose of the scheme was to further their own professional and pecuniary interests through misuse of the Corporate Members' resources. For Bosch, the purpose was to increase the sales of components to Volkswagen and thus realize monetary profit from the scheme.

199. The Clean Diesel RICO Enterprise is separate and distinct from the pattern of racketeering activity. The Enterprise was an ongoing organization or group and existed to advance the interests of the individual entities that comprise its membership, as noted above.

200. The Clean Diesel RICO Enterprise, whose activities affected interstate and foreign commerce, is an association in fact of individuals and corporate entities within the meaning of 18 U.S.C. § 1961(4) and consists of persons associated together for the above described common purposes.

201. Volkswagen AG and its subsidiaries, Volkswagen Group America, Inc. and Audi AG; Bosch; Martin Winterkorn, Ulrich Hackenberg, and Wolfgang Hatz are entities separate and distinct from one another and from the Enterprise. All of the Enterprise members are independent legal entities with the authority to act independently of the Enterprise and the other Enterprise members.

202. The Individual Members, the Volkswagen Corporate Members, and Bosch, and their respective officers and employees, together, knowingly or recklessly, developed the defeat devices and the Affected Vehicles and/or the operative technology in the Affected Vehicles.

203. The Individual Members, the Volkswagen Corporate Members, and their respective officers and employees developed the false, misleading and/or deceptive advertisements described above.

Pattern of Racketeering Activity

204. As set forth above, the Corporate Members and the Individual Members conducted and participated in the affairs of the Enterprise.

205. In furtherance of the scheme, the Volkswagen Corporate Members engaged in thousands, or more, acts of mail fraud and wire fraud, each of which constitute “racketeering activity,” as the term is defined in 18 U.S.C. § 1961(1).

206. Specifically, the pattern consisted of numerous and repeated violations of the federal mail and wire fraud statutes—namely 18 U.S.C. §§ 1341 and 1343—that prohibit the use of any interstate or foreign mail or wire facility for the purpose of executing a scheme to defraud.

207. The Volkswagen Corporate Members and/or Individual Members, with the assistance and collaboration of the other persons associated in fact with the Enterprise, devised and employed a fraudulent scheme to suppress and conceal the true emissions levels of the affected vehicles and by use of the mails, telephone and internet transmitted, or caused to be transmitted, by means of wire communication traveling in interstate or foreign commerce, writing(s) and/or signal(s), including but not limited to Volkswagen and Audi’s websites, Service Bulletins to dealers, vehicle owners’ manuals, press releases, advertisements, communications with federal and state regulators, and communications with other members of the enterprise, for the purpose of executing that scheme or artifice to defraud, in violation of 18 U.S.C. §§ 1341 and 1343. Defendants’ pattern of conduct is exemplified below.

208. In December, 2014, in response to concerns raised by the California Air Resources Board and the EPA, Volkswagen was permitted to issue recall letters for certain 2-liter diesel 2010-2014 models. The letters, sent to owners and lessees of certain Affected Vehicles needed to return their cars in order to install a software update that would fix an issue with a malfunctioning indicator light.

209. In or about April, 2015, Volkswagen sent letters to owners and lessees of Affected Vehicles as part Emissions Service Action 2306, which were sent through the United States Mail, instructing them to take their cars to a dealer in order to install a software update that would alter their vehicles' tailpipe emissions so as to "optimize . . . operating efficiency." In reality, the software update was intended only to continue to evade state emissions tests and the letter was intended to (and did) perpetrate fraud against consumers and government regulators.

210. Specifically, it indicated that "if the [light] illuminates for any reason, your vehicle will not pass an . . . emission inspection."²⁰ In reality, the update was intended only to evade state emission tests and the letter was intended to perpetrate fraud against consumers and government regulators.

211. As detailed above, Volkswagen has continuously and, as recently as September 17, 2015, in television, internet and print advertisements, falsely represented that its Affected Vehicles were "clean diesel" vehicles, which emitted less greenhouse gas than other models, when in fact they emitted 10 to 40 times more greenhouse gases than legally permitted by state and federal regulations.

²⁰ Mike Blake, "Exclusive: VW recall letters in April warned of an emissions glitch," *Reuters Business* (Sept. 23, 2015).

212. In addition to the foregoing, each download or view of one of the advertisements described above constituted a separate offense.

213. Continually, and as recently as September 17, 2015, the Volkswagen Defendants transmitted fraudulent reports to the EPA indicating that their Affected Vehicles met emissions targets as required by law,²¹ when in fact they emit 10 to 40 times more greenhouse gases than permitted by state and federal regulation.

Plaintiffs' Injuries and Damages

214. As a direct result of the foregoing violations of 18 U.S.C. § 1962(d), Plaintiff and the Class Members have been injured their business and/or property by reason of the Clean Diesel RICO Enterprise's conduct in at least the following ways:

- (1) Plaintiffs and Class members who purchased or leased Affected Vehicles were fraudulently induced into making those transactions and/or paying more than they otherwise would have had the true emissions and performance information of the Affected Vehicles been revealed.;
- (2) The value of the vehicles Plaintiffs and Class members purchased has been reduced, and if they can resell their vehicles at all, the resale value has decreased dramatically.

215. But for the predicate acts described above—including the numerous false and misleading statements (and marketing and advertising containing omissions) sent via the U.S. mail and interstate wires—Plaintiff and Class Members would not have paid as high a price for the Affected Vehicles as they did, or would not have purchased the Affected Vehicles at all.

216. By reason of the foregoing, Defendant Volkswagen, has unlawfully, knowingly, and willfully conducted and participated directly or indirectly in the foregoing Defeat Device

²¹ Alex Webb and David Welch, "Volkswagen Said to Manage Faked Test Results From Germany," Sept. 25, 2015.

Enterprise through a pattern of racketeering activity in violation or attempted violation of 18 U.S.C. § 1962(c).

217. By reason of the foregoing, Defendant Volkswagen AG has unlawfully, knowingly, and willfully conducted and participated directly or indirectly in the foregoing Defeat Device Enterprise through a pattern of racketeering activity in violation or attempted violation of 18 U.S.C. § 1962(c).

218. These violations of 18 U.S.C. § 1962(c) by Defendant Volkswagen have directly and proximately caused Plaintiffs' and Class members' injuries and damages as set forth above.

219. These violations of 18 U.S.C. § 1962(c) by Defendant Volkswagen AG have directly and proximately caused Plaintiffs' and Class members' injuries and damages as set forth above. Plaintiffs and Class members are entitled to bring this action for three times their actual damages, as well as punitive damages, injunctive and/or equitable relief, and their costs and reasonable attorneys' fees, pursuant to 18 U.S.C. § 1964(c).

COUNT II
FRAUD BY CONCEALMENT
(Brought on Behalf of the Nationwide Class)

220. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set forth herein.

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

222. The Volkswagen Defendants intentionally concealed and suppressed material facts concerning the quality of the Affected Vehicles. The Volkswagen Defendants engaged in a secret scheme to conceal the fact that their Clean Diesel engine systems were not EPA-compliant. In doing so, the Volkswagen Defendants used a "defeat device" designed to kick-in during emissions certification testing, such that the vehicles would show far lower emissions than when actually

operating on the road. The result was what the Volkswagen Defendants intended: vehicles passed emissions certifications by way of deliberately induced false readings.

223. In doing so, the Volkswagen Defendants intentionally concealed the reality that the Clean Diesel engine systems in the Affected Vehicles were not EPA-compliant and used a ‘defeat device,’ or acted with reckless disregard for the truth, and denied Plaintiffs and the other Class members’ information that is highly relevant to their purchasing decisions.

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

225. The Volkswagen Defendants knew these representations were false when made.

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

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

228. The Volkswagen Defendants had a duty to disclose their emissions scheme because knowledge of the scheme and their details were known and/or accessible only to the Volkswagen

Defendants and their suppliers, because the Volkswagen Defendants had superior knowledge as to implementation and maintenance of their scheme, and because the Volkswagen Defendants knew the facts were not known to or reasonably discoverable by Plaintiffs or Class members.

229. The Volkswagen Defendants also had a duty to disclose because it made general affirmative representations about the qualities of their vehicles with respect to emissions standards, starting with references to them as clean diesel cars, or cars with clean diesel engines, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding their emissions scheme, the actual emissions of their vehicles, their actual philosophy with respect to compliance with federal and state clean air laws and emissions regulations, and their actual practices with respect to the vehicles at issue.

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

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

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

233. The Volkswagen Defendants actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect their profits and to avoid the perception that their vehicles did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand’s image and cost the Volkswagen Defendants money, and it did so at the expense of Plaintiffs and Class members. On information and belief, the Volkswagen Defendants has still not made full and adequate disclosures, and continues to defraud Plaintiffs and Class members by concealing material information regarding the emissions qualities of their vehicles and their emissions scheme.

234. Plaintiffs and the other Class members reasonably relied on the Volkswagen Defendants’ reputation and upon their representations – along with the Volkswagen Defendants’ failure to disclose the faulty and defective nature of the Clean Diesel engine system and the Volkswagen Defendants’ affirmative assurance that their Affected Vehicles were safe and reliable, and other similar false statements – in purchasing or leasing the Volkswagen Defendants’ Affected Vehicles.

235. Plaintiffs and Class members reasonably relied upon the Volkswagen Defendants’ false representations. They had no way of knowing that the Volkswagen Defendants’ representations were false and gravely misleading. As alleged herein, the Volkswagen Defendants

employed extremely sophisticated methods of deception. Plaintiffs and Class members did not, and could not, unravel Volkswagen's deception on their own.

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

237. The Volkswagen Defendants and their suppliers were in exclusive control of the material facts, and such facts were not known to the public, Plaintiffs, or Class members. As a result of their reliance, Plaintiffs and the other Class members have been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase or lease and/or the diminished value of their Affected Vehicles.

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

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

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

COUNT III
UNJUST ENRICHMENT
(Brought on Behalf of the Nationwide Class)

241. Plaintiffs re-allege and incorporate by reference all above paragraphs as though fully set forth herein.

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

243. The Volkswagen Defendants have received and retained a benefit from Plaintiffs and the Class, resulting in inequity.

244. The Volkswagen Defendants have benefitted from selling and leasing vehicles whose value was artificially inflated by the Volkswagen Defendants' concealment of the vehicles' performance and emissions problems for far more than they were worth, at a profit. Plaintiffs and members of the Class have overpaid for these vehicles.

245. The Volkswagen Defendants have further benefitted by avoiding the costs of a recall and other lawsuits, and has benefitted from their statements about the success of Volkswagen diesel vehicles.

246. Thus, all Class Members have conferred a benefit on Volkswagen.

247. It is inequitable for the Volkswagen Defendants to retain these benefits.

248. Plaintiffs were not aware of the true facts of Volkswagen-branded diesel vehicles and did not benefit from the Volkswagen Defendants' conduct.

249. The Volkswagen Defendants knowingly accepted the benefits of their unjust conduct.

250. As a result of the Volkswagen Defendants' conduct, the amount of their unjust enrichment should be disgorged, in an amount to be determined at trial.

COUNT IV
BREACH OF WARRANTY
(Brought on Behalf of the Nationwide Class)

251. Plaintiffs re-allege and incorporate by reference all above paragraphs as though fully set forth herein.

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

253. By advertising the "green" and "clean" qualities of their diesel engines, the Volkswagen Defendants expressly warranted to Plaintiffs and Class Members that the vehicles at least complied with all applicable laws and regulations relating to exhaust emissions, as it would be impossible for an automobile to be "green" if it emitted more pollutants than were allowed by applicable environmental laws and regulations.

254. Moreover, by advertising the low emissions in combination with statements regarding the performance, torque, and fuel efficiency, the Volkswagen Defendants warranted to

purchasers of the Affected Vehicles that the vehicles would exhibit this combination of characteristics. Such statements became the basis of the bargain for Plaintiffs and other Class Members because such statements are among the facts a reasonable consumer would consider material in the purchase of a vehicle.

255. In fact, in ordinary driving conditions, the Affected Vehicles did not comply with applicable environmental regulations, and instead emitted between 10 and 40 times the amount of pollutants allowed during normal operation. As such, it was unlawful for the Volkswagen Defendants to sell the vehicles to the public.

256. In addition, Volkswagen stated that the vehicles achieved certain fuel economy when tested in accordance with applicable EPA regulations. Those statements created an express warranty that the vehicle achieved the stated fuel efficiency, allowing consumers to make apples-to-apples comparisons with other vehicles.

257. Testing under EPA regulations presupposes that the vehicles comply with all laws and regulations applicable to automobiles, including environmental regulations.

258. In fact, had the Affected Vehicles been tested in accordance with EPA fuel efficiency standards while also complying with pollution regulations, they would have achieved significantly lower fuel efficiency than was stated on the EPA mileage sticker on the vehicle.

259. In addition, the Affected Vehicles are not adequately labeled because they misstate that the Affected Vehicles comply with EPA regulations, and the stated gas mileage for comparison purposes was not achieved by testing in accordance with EPA testing procedures.

260. As a result of the foregoing breaches of express warranty, Plaintiffs and other Class Members have been damaged in that they purchased vehicles that were unlawfully sold, did not

comply with government regulations, did not perform as promised, and were less valuable than what they paid for.

COUNT V
VIOLATION OF THE MAGNUSON-MOSS WARRANTY ACT
(Brought on Behalf of the Nationwide Class)

261. Plaintiffs re-allege and incorporate by reference all above paragraphs as though fully set forth herein.

262. Plaintiffs bring this claim on behalf of the Nationwide Class.

263. Plaintiffs and the Class brings this claim under the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301 et seq. ("the Act").

264. The Affected Vehicles are consumer products as defined in 15 U.S.C. § 2301(1).

265. The Volkswagen Defendants are suppliers and warrantors as defined in 15 U.S.C. § 2301(4),(5).

266. Plaintiffs and the Class received written warranties as defined in 15 U.S.C. §2301(6)(A) and/or (B), which the Volkswagen Defendants have each breached.

267. Plaintiffs and the Class are "consumers" as defined in 15 U.S.C. § 2301(3). They are consumers because they bought or leased an Affected Vehicle, they are entitled under the law to enforce both written and implied warranties.

268. Pursuant to 15 U.S.C. § 2310(e), Plaintiffs and the Class are not required to provide the Volkswagen Defendants with notice of this class action and an opportunity to cure until the time the Court determines the representative capacity of Plaintiffs pursuant to Fed.R.Civ.P. 23.

269. The Volkswagen Defendants are liable to Plaintiff and the Class pursuant to 15 U.S.C. § 2310(d)(1) because they breached their written warranties.

270. Further, in connection with the sale of the Affected Vehicles, the Volkswagen Defendants gave an implied warranty under the Act. As part of that implied warranty, the Volkswagen Defendants warranted that the Affected Vehicles complied with all applicable federal and state regulations, including emission regulations. The Volkswagen Defendants breached the implied warranty of merchantability.

271. Plaintiffs and the Class are entitled to damages caused by the Volkswagen Defendants' breaches of the warranties, including economic damages based upon either a return of Plaintiffs and Class Members purchase price; and/or the difference between the price paid for the Affected Vehicles as warranted and the actual value of the Affected Vehicle as delivered, and consequential damages.

272. In addition, Plaintiffs and the Class are entitled to reasonable attorneys' fees and costs as determined by the Court.

COUNT VI
VIOLATION OF THE NEW JERSEY CONSUMER FRAUD ACT
(N.J.S.A. 56:8-1 ET SEQ.)
(Brought on Behalf of the New Jersey Subclass)

273. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set forth herein.

274. Plaintiff Fiorelli brings this claim individually and on behalf of the proposed New Jersey Subclass.

275. The New Jersey Consumer Fraud Act (N.J.S.A. 56:8-1 et seq.) ("NJCFA") states, in relevant part:

...any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise. . . ."
N.J.S.A. 56:8-2.

276. Plaintiff Fiorelli and New Jersey Subclass Members are consumers who purchased and/or leased Affected Vehicles for personal, family, or household use.

277. The advertisement, promotion, distribution, supply, sale, or lease of the Affected Vehicles is a “sale or advertisement” of “merchandise” governed by the NJCFA.

278. Prior to Plaintiff Fiorelli’s and New Jersey Subclass Members’ purchase of the Affected Vehicles, the Volkswagen Defendants violated the NJCFA by making:

(1) uniform representations that their diesel vehicles were of a particular standard, quality, or grade when they were and are not, and that they would perform as represented when they did not, as set forth above; and

(2) false and/or misleading statements about the capacity and characteristics of the Affected Vehicles, as set forth above, that were unfair, deceptive, or otherwise fraudulent, had and continue to have the capacity to, and did, deceive the public and cause injury to Plaintiff and New Jersey Subclass Members.

279. The Volkswagen Defendants, in their communications with and disclosures to the Plaintiff Fiorelli and New Jersey Subclass Members, intentionally concealed or otherwise failed to disclose that the Affected Vehicles included a software program designed to cheat emissions testing, that the true emissions of those Vehicles were far higher than claimed, and that the Vehicles were incapable of achieving the advertised combination of low emissions, high performance, and fuel efficiency.

280. Plaintiff Fiorelli and New Jersey Subclass Members reasonably expected that the Affected Vehicles complied with the represented and claimed emissions both prior to and at the time of purchase, and reasonably expected that the Volkswagen Defendants did not use software

or any other device or system to cheat emissions testing. These representations and affirmations of fact made by the Volkswagen Defendants, and the facts they concealed or failed to disclose, are material facts that were likely to deceive reasonable consumers, and that reasonable consumers would, and did, rely upon in deciding whether or not to purchase or lease a subject. Moreover, the Volkswagen Defendants intended for consumers, including Plaintiff and New Jersey Subclass Members, to rely on these material facts.

281. The Volkswagen Defendants had exclusive knowledge that the Affected Vehicles had and have the defects set forth above which gave rise to a duty to disclose these facts. Volkswagen breached that duty by failing to disclose these material facts.

282. The injury to consumers by this conduct greatly outweighs any alleged countervailing benefits to consumers or competition under all circumstances. There is a strong public interest in reducing emission levels, as well as truthfully advertising emission levels.

283. Had Plaintiff Fiorelli and New Jersey Subclass Members known about the Volkswagen Defendants' use of the defeat device, and/or that the Affected Vehicles did not comply with the Volkswagen Defendants' advertised emissions and did not operate as advertised, they would not have purchased and/or leased the Affected Vehicles or would have paid less than they did for them.

284. As a direct and proximate result of the Volkswagen Defendants' actions, Plaintiff Fiorelli and New Jersey Subclass Members have suffered ascertainable loss and other damages.

COUNT VII
BREACH OF CONTRACT UNDER NEW JERSEY LAW
(Brought on Behalf of the New Jersey Subclass)

285. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set forth herein.

286. Plaintiff Fiorelli brings this claim individually and on behalf of the proposed New Jersey Subclass.

287. The Volkswagen Defendants' misrepresentations and omissions alleged herein, including their failure to disclose the existence of the Clean Diesel engine system's defect and/or defective design as alleged herein, caused Plaintiff Fiorelli and the other New Jersey Subclass members to make their purchases or leases of their Affected Vehicles.

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

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

290. As a direct and proximate result of the Volkswagen Defendants' breach of contract, Plaintiff Fiorelli and the New Jersey Subclass have been damaged in an amount to be proven at

trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

COUNT VIII
VIOLATION OF CALIFORNIA’S CONSUMER LEGAL REMEDIES ACT (“CLRA”),
CAL. CIV. CODE § 1750, ET SEQ.
(Brought on Behalf of the California Subclass)

291. Plaintiffs re=allege and incorporate by reference all paragraphs as though fully set forth herein.

292. Plaintiffs Mendoza and Schmidt bring this claim individually and on behalf of the proposed California Subclass.

293. This claim is brought on behalf of Plaintiffs Mendoza and Schmidt and members of the proposed California Subclass to seek injunctive relief against Volkswagen under the California Legal Remedies Act (“CLRA”), Cal. Civ. Code § 1750, et seq.

294. Defendant Volkswagen is a “person” as defined by the CLRA. Cal. Civ. Code § 1761(c).

295. Defendant Volkswagen AG is a “person” as defined by the CLRA. Cal. Civ. Code § 1761(c).

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

297. Plaintiffs Mendoza and Schmidt and members of the proposed California Subclass are “consumers” within the meaning of the CLRA, as defined by Cal. Civ. Code § 1761(d), who purchased or leased one or more Affected Vehicles.

298. As alleged above, the Volkswagen Defendants made numerous representations concerning the benefits, efficiency, performance, and safety features of Clean Diesel engine systems that were misleading.

299. The CLRA prohibits “unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer[.]” Cal. Civ. Code § 1770(a).

300. The Volkswagen Defendants engaged in unfair or deceptive trade practices that violated Cal. Civ. Code § 1770(a), as described above and below, by, among other things, failing to disclose the defective nature of the Affected Vehicles, representing that the Affected Vehicles had characteristics and benefits (e.g. fuel economy, performance, and low emissions) that they do not have, and representing that the Affected Vehicles were of a particular standard, quality, or grade when they were of another. See Cal. Civ. Code §§ 1770(a)(5) & (7).

301. The Volkswagen Defendants knew or should have known that their conduct violated the CLRA.

302. The Volkswagen Defendants unfair and deceptive acts or practices occurred repeatedly in Volkswagen’s course of trade or business, were material, were capable of deceiving a substantial portion of the purchasing public, and imposed a safety risk on the public.

303. The Volkswagen Defendants knew that they installed a defeat device in the Affected Vehicles to conceal the fact that the vehicles would not perform as promised and advertised, could not pass federal and state emissions tests, were not suitable for their intended use and were defectively designed or manufactured.

304. The Volkswagen Defendants was under a duty to Plaintiffs Mendoza and Schmidt and members of the proposed California Subclass to disclose the deceptive and defective nature of the Affected Vehicles because:

(3) The defect in the Affected Vehicles presents a safety hazard in that it causes the Affected Vehicles to emit dangerous and unlawful levels of noxious chemicals;

(4) The Volkswagen Defendants were in a superior position to know the true state of facts about the emission defect in the Affected Vehicles;

(5) Plaintiffs Mendoza and Schmidt and members of the proposed California Subclass could not reasonably have been expected to learn or discover that the Affected Vehicles contained the defeat device or emission defect; and

(6) The Volkswagen Defendants knew that Plaintiffs Mendoza and Schmidt and members of the proposed California Subclass could not reasonably have been expected to learn or discover the Window Regulator Defect prior to its manifestation.

305. In failing to disclose the defective nature of the Affected Vehicles, the Volkswagen Defendants knowingly and intentionally concealed material facts and breached their duty not to do so. The facts that were misrepresented, concealed or not disclosed by the Volkswagen Defendants to Plaintiffs Mendoza and Schmidt and members of the proposed California Subclass are material in that a reasonable consumer would have considered them to be important in deciding whether or not to purchase an Affected Vehicle. Moreover, a reasonable consumer would consider the unlawfully high emissions to pose a safety risk, as members of the proposed California Subclass did. Had Plaintiffs Mendoza and Schmidt and members of the proposed California Subclass known about the true nature and quality of the Affected Vehicles, they would not have purchased an Affected Vehicle.

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

- (1) Cal. Civ. Code § 1770(a)(2): Misrepresenting the approval or certification of goods;
- (2) Cal. Civ. Code § 1770(a)(3): Misrepresenting the certification by another;

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

307. Plaintiffs Mendoza and Schmidt and members of the proposed California Subclass are reasonable consumers who do not expect their Affected Vehicles contain a defeat device or emission defect which allows the vehicle to emit illegal levels of pollutants. That is the reasonable and objective consumer expectation relating a vehicle's engine and emissions.

308. As a result of the Volkswagen Defendants' conduct and unfair or deceptive acts or practices, Plaintiffs Mendoza and Schmidt and members of the proposed California Subclass have been harmed and have suffered actual damages in that the Affected Vehicles are no longer EPA-compliant, have lost value, will suffer decreased performance and fuel efficiency resulting in greater costs.

309. Plaintiffs Mendoza and Schmidt and members of the proposed California Subclass are entitled to equitable relief.

310. After mailing appropriate notice and demand in accordance with Civil Code § 1782(a) & (d), Plaintiffs will subsequently amend this Complaint to also include a request for compensatory and punitive damages.

COUNT IX
VIOLATION OF THE CALIFORNIA FALSE ADVERTISING LAW
(CAL. BUS. & PROF. CODE §§ 17500, ET SEQ.)
(Brought on Behalf of the California Subclass)

311. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set forth herein.

312. Plaintiffs Mendoza and Schmidt bring this claim individually and on behalf of the proposed California Subclass.

313. California Bus. & Prof. Code § 17500 states: “It is unlawful for any ... corporation ... with intent directly or indirectly to dispose of real or personal property ... to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated ... from this state before the public in any state, in any newspaper or other publication, or any advertising device, ... or in any other manner or means whatever, including over the Internet, any statement ... which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.”

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

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

316. Plaintiffs Mendoza and Schmidt and members of the proposed California Subclass have suffered an injury in fact, including the loss of money or property, as a result of the Volkswagen Defendants’ unfair, unlawful, and/or deceptive practices. In purchasing or leasing their Affected Vehicles, Plaintiffs Mendoza and Schmidt and members of the proposed California

Subclass relied on the misrepresentations and/or omissions of the Volkswagen Defendants with respect to the safety, performance and reliability of the Affected Vehicles. Volkswagen's representations turned out not to be true because the Affected Vehicles are distributed with faulty and defective Clean Diesel engine systems, rendering certain safety and emissions functions inoperative. Had Plaintiffs Mendoza and Schmidt and members of the proposed California Subclass known this, they would not have purchased or leased their

317. Affected Vehicles and/or paid as much for them. Accordingly, Plaintiffs Mendoza and Schmidt and members of the proposed California Subclass overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

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

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

COUNT X
VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW
(CAL. BUS. & PROF. CODE §§ 17200, *et seq.*)
(Brought on Behalf of the California Subclass)

320. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set forth herein.

321. Plaintiffs Mendoza and Schmidt bring this claim individually and on behalf of the proposed California Subclass.

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

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

- (1) By knowingly and intentionally concealing from Plaintiffs Mendoza and Schmidt and the other members of the proposed California Subclass members that the Affected Vehicles suffer from a design defect while obtaining money from Plaintiffs Mendoza and Schmidt and members of the proposed California Subclass;
- (2) By marketing Affected Vehicles as possessing functional and defect-free, EPA-compliant Clean Diesel engine systems;
- (3) By purposefully installing an illegal "defeat device" in the Affected Vehicles to fraudulently obtain EPA certification and cause Affected Vehicles to pass emissions tests when in truth and fact they did not pass such tests;
- (4) By violating federal laws, including the Clean Air Act;
- (5) By violating other California laws, including California laws governing vehicle emissions and emission testing requirements; and
- (6) In such other particulars as the evidence may show.

324. The Volkswagen Defendants' misrepresentations and omissions alleged herein caused Plaintiffs Mendoza and Schmidt and the other California Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiffs Mendoza and Schmidt and the other California Subclass members would not have purchased or leased these vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles

that did not contain Clean Diesel engine systems that failed to comply with EPA and California emissions standards.

325. Accordingly, Plaintiffs Mendoza and Schmidt and the other California Subclass members have suffered injury in fact including lost money or property as a result of the Volkswagen Defendants' misrepresentations and omissions.

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

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

COUNT XI
BREACH OF CONTRACT UNDER CALIFORNIA LAW
(Brought on Behalf of the California Subclass)

328. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set forth herein.

329. Plaintiffs Mendoza and Schmidt bring this claim individually and on behalf of the proposed California Subclass.

330. The Volkswagen Defendants' misrepresentations and omissions alleged herein, including their failure to disclose the existence of the Clean Diesel engine system's defect and/or

defective design as alleged herein, caused Plaintiffs Mendoza and Schmidt and the other California Subclass members to make their purchases or leases of their Affected Vehicles.

331. Absent those misrepresentations and omissions, Plaintiffs Mendoza and Schmidt and the other California Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the Clean Diesel engine system and which were not marketed as including such a system. Accordingly, Plaintiffs Mendoza and Schmidt and the other California Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

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

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

COUNT XII
VIOLATIONS OF THE MARYLAND CONSUMER PROTECTION ACT
(MD. CODE COM. LAW § 13-101, ET SEQ.)
(Brought on Behalf of the Maryland Subclass)

334. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set forth herein.

335. Plaintiff Sacamano brings this claim individually and on behalf of the proposed Maryland Subclass.

336. Defendant Volkswagen, Defendant Volkswagen AG, Plaintiff Sacamano, and the Maryland Subclass are “persons” within the meaning of MD. CODE COM. LAW § 13-101(h).

337. The Maryland Consumer Protection Act (“Maryland CPA”) provides that a person may not engage in any unfair or deceptive trade practice in the sale or lease of any consumer good. MD. COM. LAW CODE § 13-303. The Volkswagen Defendants participated in misleading, false, or deceptive acts that violated the Maryland CPA. By fraudulently installing the “defeat device” to make it appear that their Clean Diesel engine systems complied with EPA regulations, the Volkswagen Defendants engaged in deceptive business practices prohibited by the Maryland CPA.

338. The Volkswagen Defendants’ actions as set forth above occurred in the conduct of trade or commerce.

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

340. The Volkswagen Defendants also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Affected Vehicles the Volkswagen Defendants have known of their use of the “defeat device” and the true nature of their Clean Diesel engine system for at least six years, but concealed all of that information until recently.

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

342. By failing to disclose and by actively concealing the “defeat device” and the true cleanliness and performance of the Clean Diesel engine system, by marketing their vehicles as safe, reliable, environmentally clean, efficient, and of high quality, and by presenting themselves as a reputable manufacturer that valued safety, environmental cleanliness and efficiency, and stood behind their vehicles after they were sold, the Volkswagen Defendant engaged in unfair and deceptive business practices in violation of the Maryland CPA.

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

344. The Volkswagen Defendants’ unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiff Sacamano, about the true cleanliness and efficiency of the Clean Diesel engine system, the quality of the Volkswagen brand, the devaluing of environmental cleanliness and integrity at Volkswagen, and the true value of the Affected Vehicles.

345. The Volkswagen Defendants intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiff Sacamano and the Maryland Subclass.

346. The Volkswagen Defendants knew or should have known that their conduct violated the Maryland CPA.

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

348. The Volkswagen Defendants owed Plaintiff Sacamano and the members of the proposed Maryland Subclass a duty to disclose the true safety, cleanliness, efficiency and reliability of the Affected Vehicles and the devaluing of environmental cleanliness and integrity at Volkswagen, because they:

- (1) Possessed exclusive knowledge that it valued profits over environmental cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles throughout the United States that did not comply with EPA regulations;
- (2) Intentionally concealed the foregoing from Plaintiff Sacamano and the members of the proposed Maryland Subclass; and/or
- (3) Made incomplete representations about the safety, cleanliness, efficiency and reliability of the Affected Vehicles generally, and the use of the “defeat device” and true nature of the Clean Diesel engine system in particular, while purposefully withholding material facts from Plaintiff Sacamano and the members of the proposed Maryland Subclass that contradicted these representations.

349. Because the Volkswagen Defendants fraudulently concealed the “defeat device” and the true cleanliness and performance of the Clean Diesel engine system, resulting in a raft of negative publicity once the use of the “defeat device” and true characteristics of the Clean Diesel engine system finally began to be disclosed, the value of the Affected Vehicles has greatly

diminished. In light of the stigma attached to those vehicles by the Volkswagen Defendants' conduct, they are now worth significantly less than they otherwise would be.

350. The Volkswagen Defendants' fraudulent use of the "defeat device" and their concealment of the true characteristics of the Clean Diesel engine system were material to Plaintiff Sacamano and the members of the proposed Maryland Subclass. A vehicle made by a reputable manufacturer of environmentally friendly vehicles is worth more than an otherwise comparable vehicle made by a disreputable and dishonest manufacturer of polluting vehicles that conceals the amount its cars pollutes rather than make environmentally friendly vehicles.

351. Plaintiff Sacamano and the Maryland Subclass suffered ascertainable loss caused by the Volkswagen Defendants' misrepresentations' and their concealment of and failure to disclose material information. Class members who purchased the Affected Vehicles either would have paid less for their vehicles or would not have purchased or leased them at all.

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

353. The Volkswagen Defendants' violations present a continuing risk to Plaintiff Sacamano and the Maryland Subclass as well as to the general public. The Volkswagen Defendants' unlawful acts and practices complained of herein affect the public interest.

354. As a direct and proximate result of the Volkswagen Defendants' violations of the Maryland CPA, Plaintiff Sacamano and the Maryland Subclass have suffered injury-in-fact and/or actual damage.

355. Pursuant to MD. CODE COM. LAW § 13-408, Plaintiff Sacamano and the Maryland Subclass seek actual damages, attorneys' fees, and any other just and proper relief available under the Maryland CPA.

COUNT XIII
BREACH OF CONTRACT UNDER MARYLAND LAW
(Brought on Behalf of the Maryland Subclass)

356. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set forth herein.

357. Plaintiff Sacamano brings this claim individually and on behalf of the proposed Maryland Subclass.

358. The Volkswagen Defendants' misrepresentations and omissions alleged herein, including their failure to disclose the existence of the Clean Diesel engine system's defect and/or defective design as alleged herein, caused Plaintiff Sacamano and the other Maryland Subclass members to make their purchases or leases of their Affected Vehicles.

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

360. Each and every sale or lease of an Affected Vehicle by an authorized Volkswagen dealer constitutes a contract between the Volkswagen Defendants and the purchaser or lessee. The Volkswagen Defendants breached these contracts by selling or leasing Plaintiff Sacamano and the

other Maryland Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose the existence of the Clean Diesel engine system's defect and/or defective design, including information known to the Volkswagen Defendants rendering each Affected Vehicle non EPA-compliant, and thus less valuable, than vehicles not equipped with a Clean Diesel engine system.

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

COUNT XIV
VIOLATION OF THE MASSACHUSETTS CONSUMER PROTECTION ACT
(Brought on Behalf of the Massachusetts Subclass)

362. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set forth herein.

363. Plaintiff McCrohon will bring this claim individually and on behalf of the proposed Massachusetts Subclass.

364. Plaintiff intends to assert a claim under the Massachusetts Consumer Protection Act ("MCPA"), which makes it unlawful to engage in any "[u]nfair methods of competition or deceptive acts or practices in the conduct of any trade or commerce." MASS. GEN. LAWS CH.93A, § 2(1). Plaintiff McCrohon will make a demand in satisfaction of MASS. GEN. LAWS CH.93A, § 9(3), and may amend this Complaint to assert claims under the MCPA once the required 30 days have elapsed. This paragraph is included for purposes of notice only and is not intended to actually assert a claim under the MCPA.

COUNT XV
BREACH OF CONTRACT UNDER MASSACHUSETTS LAW
(Brought on Behalf of the Massachusetts Subclass)

365. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set forth herein.

366. Plaintiff McCrohon brings this claim individually and on behalf of the proposed Massachusetts Subclass.

367. The Volkswagen Defendants' misrepresentations and omissions alleged herein, including their failure to disclose the existence of the Clean Diesel engine system's defect and/or defective design as alleged herein, caused Plaintiff McCrohon and the other Massachusetts Subclass members to make their purchases or leases of their Affected Vehicles.

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

369. Each and every sale or lease of an Affected Vehicle by an authorized Volkswagen dealer constitutes a contract between the Volkswagen Defendants and the purchaser or lessee. The Volkswagen Defendants breached these contracts by selling or leasing Plaintiff McCrohon and the other Massachusetts Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose the existence of the Clean Diesel engine system's defect and/or defective design, including information known to the Volkswagen Defendants rendering each Affected Vehicle non

EPA-compliant, and thus less valuable, than vehicles not equipped with a Clean Diesel engine system.

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

COUNT XVI
VIOLATION OF THE PENNSYLVANIA UNFAIR TRADE PRACTICES AND
CONSUMER PROTECTION LAW
(73 P.S. § 201-1, et seq.)
(Brought on Behalf of the Pennsylvania Subclass)

371. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set forth herein.

372. Plaintiff Branzburg brings this claim individually and on behalf of the proposed Pennsylvania Subclass.

373. Plaintiff Branzburg and members of the proposed Pennsylvania Subclass purchased or leased their Affected Vehicles primarily for personal, family or household purposes within the meaning of 73 P.S. § 201-9.2.

374. All of the acts complained of herein were perpetrated by the Volkswagen Defendants in the course of trade or commerce within the meaning of 73 P.S. § 201-2(3).

375. The Pennsylvania Unfair Trade Practices and Consumer Protection Law ("Pennsylvania CPL") prohibits unfair or deceptive acts or practices, including:

- (1) "Representing that goods or services have ... characteristics, Benefits or qualities that they do not have;"
- (2) "Representing that goods or services are of a particular standard, quality or grade ... if they are of another;"

- (3) “Advertising goods or services with intent not to sell them as advertised;”
and
- (4) “Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or misunderstanding.” 73 P.S. § 201-2(4).

376. The Volkswagen Defendants engaged in unlawful trade practices, including representing that Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Affected Vehicles are of a particular standard and quality when they are not; advertising Affected Vehicles with the intent not to sell them as advertised; and engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding.

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

378. The Volkswagen Defendants have known of its use of the “defeat device” and the true nature of its Clean Diesel engine system for at least six years, but concealed all of that information until recently.

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

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

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

382. The Volkswagen Defendants’ unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiff Branzburg and members of the proposed Pennsylvania Subclass, about the true cleanliness and efficiency of the CleanDiesel engine system, the quality of the Volkswagen and Audi brands, the devaluing of environmental cleanliness and integrity at Volkswagen, and the true value of the Affected Vehicles.

383. The Volkswagen Defendants intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiff Branzburg and members of the proposed Pennsylvania Subclass

384. The Volkswagen Defendants knew or should have known that their conduct violated the Pennsylvania CPL.

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

386. The Volkswagen Defendants owed Plaintiff Branzburg and members of the proposed Pennsylvania Subclass a duty to disclose the true safety, cleanliness, efficiency and reliability of the Affected Vehicles and their devaluing of environmental cleanliness and integrity, because the Volkswagen Defendants:

- (1) Possessed exclusive knowledge that they valued profits over environmental cleanliness, efficiency, and lawfulness, and that they were manufacturing, selling and distributing vehicles throughout the United States that did not comply with EPA regulations;
- (2) Intentionally concealed the foregoing from Plaintiff Branzburg and members of the proposed Pennsylvania Subclass;
- (3) Made incomplete representations about the safety, cleanliness, efficiency and reliability of the Affected Vehicles generally, and the use of the “defeat device” and true nature of the Clean Diesel engine system in particular, while purposefully withholding material facts from Plaintiff Branzburg and members of the proposed Pennsylvania Subclass that contradicted these representations; and/or
- (4) In such other particulars as the evidence may show.

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

388. The Volkswagen Defendants’ fraudulent use of the “defeat device” and its concealment of the true characteristics of the Clean Diesel engine system were material to Plaintiff

Branzburg and members of the proposed Pennsylvania Subclass. A vehicle made by a reputable manufacturer of environmentally friendly vehicles is worth more than an otherwise comparable vehicle made by a disreputable and dishonest manufacturer of polluting vehicles that conceals the amount its cars pollutes rather than make environmentally friendly vehicles.

389. Plaintiff Branzburg and members of the proposed Pennsylvania Subclass suffered ascertainable loss caused by Volkswagen's misrepresentations and its concealment of and failure to disclose material information.

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

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

392. As a direct and proximate result of the Volkswagen Defendants' violations of the Pennsylvania CPL, Plaintiff Branzburg and the members of the proposed Pennsylvania Subclass have suffered injury-in fact and/or actual damage.

393. The Volkswagen Defendants are liable to Plaintiff Branzburg and the members of the proposed Pennsylvania Subclass for treble their actual damages or \$100, whichever is greater, and attorneys' fees and costs. 73 P.S. § 201-9.2(a). Plaintiff Branzburg and the members of the proposed Pennsylvania Subclass are also entitled to an award of punitive damages given that

Volkswagen's conduct was malicious, wanton, willful, oppressive, or exhibited a reckless indifference to the rights of others.

COUNT XVII
BREACH OF CONTRACT UNDER PENNSYLVANIA LAW
(Brought on Behalf of the Pennsylvania Subclass)

394. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set forth herein.

395. Plaintiff Branzburg brings this claim individually and on behalf of the proposed Pennsylvania Subclass.

396. The Volkswagen Defendants' misrepresentations and omissions alleged herein, including their failure to disclose the existence of the Clean Diesel engine system's defect and/or defective design as alleged herein, caused Plaintiff Branzburg and the other Pennsylvania Subclass members to make their purchases or leases of their Affected Vehicles.

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

398. Each and every sale or lease of an Affected Vehicle by an authorized Volkswagen dealer constitutes a contract between the Volkswagen Defendants and the purchaser or lessee. The Volkswagen Defendants breached these contracts by selling or leasing Plaintiff Branzburg and the other Pennsylvania Subclass members defective Affected Vehicles and by misrepresenting or

failing to disclose the existence of the Clean Diesel engine system's defect and/or defective design, including information known to the Volkswagen Defendants, rendering each Affected Vehicle non EPA-compliant, and thus less valuable, than vehicles not equipped with a Clean Diesel engine system.

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

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of members of the Nationwide Class, the New Jersey Subclass, the California Subclass the Maryland Subclass, the Massachusetts Subclass and the Pennsylvania Subclass respectfully request that the Court enter judgment in their favor and against Volkswagen, as follows:

- A. an order certifying the proposed Nationwide Class, designating Plaintiffs as the named representatives of the Nationwide Class, and designating the undersigned as Class Counsel;
- B. an order certifying the proposed New Jersey Subclass, designating Plaintiff Fiorelli as the named representative of the New Jersey Subclass, and designating the undersigned as Class Counsel;
- C. an order certifying the proposed California Subclass, designating Plaintiffs Mendoza and Schmidt as the named representatives of the California Subclass, and designating the undersigned as Class Counsel;

- D. an order certifying the proposed Maryland Subclass, designating Plaintiff Sacamano as the named representative of the Maryland Subclass, and designating the undersigned as Class Counsel;
- E. an order certifying the proposed Massachusetts Subclass, designating Plaintiff McCrohon as the named representative of the Massachusetts Subclass, and designating the undersigned as Class Counsel;
- F. an order certifying the proposed Pennsylvania Subclass, designating Plaintiff Branzburg as the named representative of the Pennsylvania Subclass, and designating the undersigned as Class Counsel;
- G. a declaration that the Volkswagen Defendants are financially responsible for notifying all Class Members about the true nature of the Affected Vehicles;
- H. an order enjoining the Volkswagen Defendants to desist from further deceptive distribution, sales, and lease practices with respect to the Affected Vehicles, and directing the Volkswagen Defendants to permanently, expeditiously, and completely repair the Affected Vehicles;
- I. an order compelling the Volkswagen Defendants to buy back the Affected Vehicles on fair and equitable terms;
- J. an award to Plaintiffs and Class Members of compensatory, exemplary, punitive, and statutory penalties and damages, including interest, in an amount to be proven at trial;
- K. an award to Plaintiffs and Class Members for the return of the purchase prices of the Affected Vehicles, with interest from the time it was paid, for the

reimbursement of the reasonable expenses occasioned by the sale, for damages and for reasonable attorney fees;

- L. a declaration that the Volkswagen Defendants must disgorge, for the benefit of Plaintiffs and Class Members, all or part of the ill-gotten profits received from the sale or lease of the Affected Vehicles, and make full restitution to Plaintiffs and Class Members;
- M. an award of treble damages to Plaintiffs and the Nationwide Class pursuant to 18 U.S.C. §§ 1964(a) and 1964(c);
- N. an award of punitive damages, injunctive and/or equitable relief, and their costs and reasonable attorneys' fees to the Plaintiffs pursuant to 18 U.S.C. § 1964(c).
- O. an award of treble damages pursuant Plaintiff Fiorelli and the New Jersey Subclass pursuant to N.J.S.A. 56:8-19;
- P. equitable relief for Plaintiffs Mendoza and Schmidt and the California Subclass pursuant to CAL CIV. CODE 1750, *et seq.*
- Q. equitable relief for Plaintiffs Mendoza and Schmidt and the California Subclass pursuant to CAL. BUS. & PROF. CODE § 1750, *et seq.*
- R. equitable relief and damages for Plaintiffs Mendoza and Schmidt and the California Subclass pursuant to CAL. BUS. & PROF. CODE § 17203 and CAL. BUS. & PROF. CODE § 3345
- S. an award of actual damages, attorneys' fees any other relief to Plaintiff Sacamano and the Maryland Subclass under MD. CODE COM. LAW § 13-408
- T. an award of attorneys' fees and costs, as allowed by law;
- U. an award of pre-judgment and post-judgment interest, as provided by law;

- V. leave to amend this Complaint to conform to the evidence produced at trial; and
- W. such other relief as may be appropriate under the circumstances.

DEMAND FOR JURY TRIAL

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

DATED: October 6, 2015

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Attorneys for Plaintiffs

JS 44 (Rev 12/12)

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

Karen Fiorelli, Steven C. Mendoza, Martin Schmidt, Paul Sacamano, Deborah McCrohon, Wendy Branzburg

DEFENDANTS

Volkswagen Group of America, Inc. a New Jersey Corporation and Volkswagen, AG, a German Corporation

(b) County of Residence of First Listed Plaintiff Monmouth County, NJ
(EXCEPT IN U.S. PLAINTIFF CASES)

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

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

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

Christopher M. Placitella, Esquire
COHEN, PLACITELLA & ROTH, P.C.
127 Maple Avenue, Red Bank, NJ 07701 732-747-9003

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 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 type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	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	<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 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 IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 LSC 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 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)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 315 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 checked="" 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	CIVIL RIGHTS	PRISONER PETITIONS			
<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	<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	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 Others: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

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

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

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity)

18. U.S.C Section 1962(c)

Brief description of cause

RICO, CONSUMER FRAUD AND BREACH OF WARRANTY ACTION

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMANDS
UNLITIGATED

CHECK YES only if demanded in complaint
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

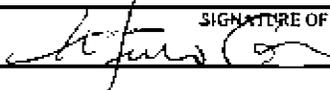
(See instructions).

JUDGE Linares

DOCKET NUMBER 2:15-CV-07195 & 07183

DATE
10/06/2015

SIGNATURE OF ATTORNEY OF RECORD

 Michael Cohen

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG JUDGE