

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

ARTHUR FIRMAN, LARRY
BUCHAN, JUDY BUCHAN,
LAURA FIRMAN, and KIYO TOMA
on behalf of themselves and all others
similarly situated;

CIVIL ACTION NO:

DOCKET NO.

v.

CLASS ACTION COMPLAINT

VOLKSWAGEN GROUP OF AMERICA,
INC.

Defendant.

CLASS ACTION COMPLAINT

Plaintiffs Arthur Firman, Larry Buchan, Judy Buchan, Laura Firman, and Kiyo Toma file this class action complaint on behalf of themselves and all others similarly situated against Defendant Volkswagen Group of America, Inc. (“Volkswagen”) and allege as follows:

I. INTRODUCTION

1. This nationwide class action concerns Volkswagen’s intentional installation of sophisticated software in certain Volkswagen and Audi diesel vehicles (hereinafter, the “Affected Vehicles”), designed to cheat the Environmental Protection Agency and state emission testing. This software, known in the automobile industry as a “defeat device,” was installed in approximately 500,000 Affected Vehicles in the United States and over eleven million vehicles worldwide.

2. In recent decades fewer and fewer diesel engine vehicles have been sold in the U.S. despite delivering better fuel economy and more power than traditional gasoline vehicles.

This decline was likely a result of their increased cost over gasoline vehicles and the fact that they were considered higher polluters of the environment. Sales of diesel passenger vehicles declined sharply in the 1990's and were all but eliminated in 2004 when stricter pollution emission standards were implemented.

3. In the late 2000's, Volkswagen introduced a new breed of diesel vehicles that could allegedly meet the stricter U.S. emission standards. Volkswagen aggressively marketed their "Clean Diesel TDI" vehicles to consumers as delivering more power and better fuel efficiency, while at the same time being safe for the environment – as long as consumers were willing to pay a premium price for the vehicles. Due to its aggressive marketing campaign, Volkswagen became the leader of diesel vehicle sales in the U.S. by manufacturing 39% of all passenger vehicles with diesel engines and accounting for more than 75% of all diesel passenger vehicle sales in 2013 alone. Scott Keogh, the President of Audi America commented on the 2013 sales figures stating, "[t]he past year has shown that American consumers clearly recognize the benefits of clean diesel TDI vehicles. They understand now more than ever that this is a technology delivering real answers to society's concerns about fuel consumption and greenhouse gas emissions without compromises."

4. However, Volkswagen's Clean Diesel vehicles were anything but the environmentally safe vehicles "without compromises" they were marketed to be. Each of the Affected Vehicles was installed with the defeat device software that was designed to detect when the Affected Vehicles were undergoing official emissions testing and turn on full emission controls only during that testing. At all other times, the emission controls were suppressed to allow more pollutants to escape and thereby improve fuel efficiency. This resulted in the sale of cars that would meet the EPA or state emission standards in the laboratory but, during the normal

operation of the car by the consumer (i.e. driving), would switch back into a “road calibration” mode and eliminate much of the pollution controls. In the road calibration mode, the Affected Vehicles emit nitrogen oxides (NOx) ten to forty times the standard allowed under United States laws and regulations.

5. After a university study called Volkswagen’s emission levels into question, its fraudulent scheme was finally revealed to the public by the EPA in a September 18, 2015 Notice of Violation (NOV). *See Exhibit A.* The NOV identified the following Affected Vehicles:

Model Year	EPA Test Group	Make and Model(s)
2009	9VWXV02.035N	VW Jetta, VW Jetta Sportwagen
2009	9VWXV02.0U5N	VW Jetta, VW Jetta Sportwagen
2010	AVWXV02.0U5N	VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3
2011	BVWXV02.0U5N	VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3
2012	CVWXV02.0U5N	VW Beetle, VW Beetle Convertible, VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3
2012	CVWXV02.0U4S	VW Passat
2013	DVWXV02.0U5N	VW Beetle, VW Beetle Convertible, VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3
2013	DVWXV02.0U4S	VW Passat
2014	EVWXV02.0U5N	VW Beetle, VW Beetle Convertible, VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3
2014	EVWXV02.0U4S	VW Passat
2015	FVGAV02.0VAL	VW Beetle, VW Beetle Convertible, VW Golf, VW Golf Sportwagen, VW Jetta, VW Passat,

6. After initially denying that the results of the testing were accurate or that they had installed the defeat device software, Volkswagen finally admitted that the EPA allegations were true. Michael Horn, the chief executive of Volkswagen Group of America, stated that the company had “totally screwed up” and that “our company was dishonest, with the EPA and the California Air Resources Board and with all of you.”

7. Without its illegal defeat device software, Volkswagen could not have marketed or sold any of the Affected Vehicles in the United States. Its deceptive scheme, however, allowed it to sell approximately 500,000 of the Affected Vehicles, at a premium price, over the last six years.

8. As a result of Volkswagen's unfair, deceptive, and fraudulent business practices, and its failure to disclose that under normal operating conditions the Affected Vehicles emit many times the allowed levels of NOx, owners and/or lessees of the Affected Vehicles have suffered losses in money or property. Had Plaintiffs and the putative Class members known of Volkswagen's unfair, deceptive, and fraudulent business practices 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.

9. Plaintiffs bring this action on behalf of themselves and the putative Class members to recover damages and to enjoin Volkswagen from continuing to deceive consumers.

II. BACKGROUND

10. Volkswagen Group of America was founded in 1955 in Englewood Cliffs, New Jersey. Volkswagen still maintains three facilities in New Jersey including one of its marketing offices that upon information and belief helped devise the deceptive marketing for the Clean Diesel vehicles at issue in this matter.

11. Volkswagen recently surpassed Toyota as the world's largest automaker and its diesel engine vehicles account for twenty percent of its world-wide sales. It designs, markets, warrants, and distributes the Affected Vehicles under the Volkswagen and Audi brand names.

12. In the mid-2000's, several states passed strict new emission standards that effectively banned the sale of diesel passenger vehicles. At the time, the EPA was considering

the implementation of stricter federal regulations regarding the emission of NOx and other pollutants. As a result, Volkswagen and several other vehicle manufacturers launched the “BlueTec Diesel Initiative” to design new diesel emission systems that would meet these strict regulations.

A. Volkswagen’s Marketing of Its “Clean Diesel” Vehicles

13. In the late 2000’s Volkswagen claimed to have successfully improved its diesel technology to meet the U.S. emission standards and began marketing its new line of vehicles as “Clean Diesel.” Volkswagen marketed these cars as more fuel efficient, more powerful, yet still safe and “clean” for the environment. These vehicles were sold at a premium price – anywhere from \$1,000 to \$7,000 more than the standard gasoline version of the same model car.

14. To dispel the public’s perception of diesel vehicles as being higher in environmental pollutants, Volkswagen embarked on an aggressive marketing campaign on television, in print, and on the internet to promote their new line of “Clean Diesel” vehicles as different from diesel vehicles of the past. Below are examples of Volkswagen ads promoting the allegedly Clean Diesel vehicles:



With reduced emissions.

These are not the kind of diesel engines that you find spewing sooty exhaust like an old 18-wheeler. Clean diesel vehicles meet some of the strictest standards in the world. Plus, TDI technology helps reduce sooty emissions by up to 90%, giving you a fuel-efficient and eco-conscious vehicle.¹

[!\[\]\(d3fb9f94af8b26d1c844efa9a98805b0_img.jpg\) Watch and learn about TDI® Clean Diesel](#)

15. Additional misrepresentations in various Volkswagen's marketing material include, but are not limited to, the following statements:

- a. "Clean diesel TDI [] is the bridge on the path to energy independence, offering high fuel efficiency, extremely low emissions, maximum

performance – and a fun driving experience;” and

- b. “Volkswagen’s manufacturing continues to refine and perfect the clean diesel technology we have pioneered, which delivers a dramatic reduction in both fuel consumption and exhaust emissions and offers some of the cleanest and most efficient alternatives on the market today.”

16. Volkswagen marketed the Affected Vehicles as safe for the environment all the while knowing that it was deceiving not only the American consumers but state and federal regulators through the use of its defeat device software.

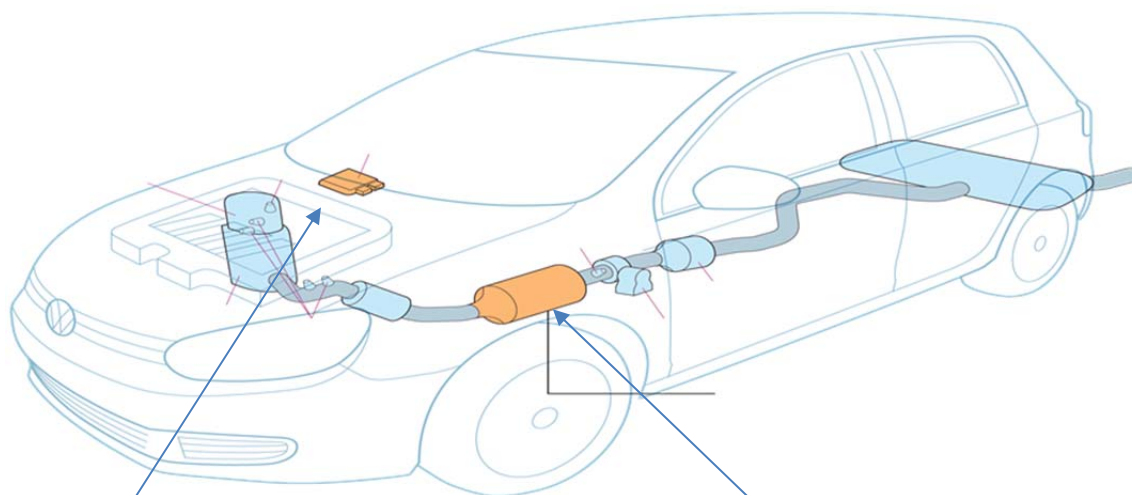
B. Volkswagen Uses Its Defeat Device Software to Cheat Emission Testing.

17. The Clean Air Act has strict emission standards and prohibits the sale of any vehicle in the United States that does not comply with the standards set by the EPA. All vehicles sold in the United States must be covered by an EPA-issued certificate of conformity.

18. Rather than work to create technology for its diesel vehicles that would meet these emission standards (as it had claimed to do in its marketing campaign), Volkswagen instead chose to create a sophisticated defeat device software that would essentially “switch” on the Affected Vehicles’ emission controls only during testing but allow the harmful pollutants to escape through the exhaust system during the normal operation of the vehicle.

19. Typically, emission control devices are installed to treat the exhaust created by the vehicles engine and eliminate or trap the emission of NO_x to comply with the federal and state standards and reduce toxic emissions.

20. NO_x pollution contributes to ground level Ozone (otherwise known as smog) as well as acid rain. It is also known to have effects on the human respiratory system and can damage lung tissue.



21. The picture above is a diagram of the exhaust system of a Volkswagen Golf. The gold plate pictured near the dashboard is the vehicle's computer. The gold cylinder along the exhaust line is the location of the emission control device. Volkswagen installed the defeat device software in the vehicle's computer to switch on the NO_x emission control device only during testing so that it would appear as if the Affected Vehicles were actually compliant with the emission controls.

22. Defeat devices are expressly forbidden by federal regulations. *See* 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, 86-1809-10, 86-1809-12. Put simply, a defeat device is hardware or software that “defeats” the vehicle’s emission controls during normal vehicle operation—enabling the vehicle to produce low emissions during emissions testing, but not during normal operation. The Clean Air Act makes it a violation for any person to sell, manufacture, or install any component in a motor vehicle “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 . . .

in compliance with the 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.” Clean Air Act, 42 U.S.C. § 7522(a)(3)(B); 40 C.F.R. § 86.1854012(a)(3)(ii).

23. Volkswagen’s defeat device used a sophisticated computer algorithm to detect when the vehicle was being tested for emissions based upon certain factors such as the position of the steering wheel, the vehicle speed, the duration of the engine’s operation, and barometric pressure. This allowed Volkswagen’s deception to continue undetected for years as it cheated the emission tests and continued to charge premium prices for the Affected Vehicles based upon their low emissions and high fuel efficiency.

24. When working properly, a vehicle uses more fuel to run emission control devices and protect the environment and people from the pollutants. The Affected Vehicles were able to save fuel by allowing more pollutants to pass through the exhaust system. Volkswagen used the its false emission reports and the resulting savings on fuel to deceptively market the Affected Vehicles as not only fuel efficient but safe for the environment. It also allowed them to charge premium prices for the Affected Vehicles.

C. Volkswagen’s Scheme Is Discovered.

25. In 2013, the International Council for Clean Transportation (ICCT) commissioned researchers at West Virginia University to test diesel car emissions expecting to find that diesel cars sold in the United States emitted fewer pollutants than cars sold in other countries because of the stricter U.S. standards.

26. Instead, after testing two of the Volkswagen Affected Vehicles, a 2012 Jetta and a 2013 Passat, in actual driving conditions, the researcher’s results showed that the NOx emissions were much higher than that permitted by law.

27. In May 2014, the ICCT published its study and alerted the EPA as well as the California Air Resources Board (CARB) about its findings.

28. As detailed in the EPA's NOV, Volkswagen did not initially admit its wrongdoings and instead attributed the increased emissions that occurred during driving conditions to "various technical issues and unexpected in-use conditions." *See* Ex. A.

29. In December 2014, Volkswagen issued a voluntary recall to purportedly address the issue. However, subsequent testing by CARB showed that Volkswagen's recall had only a limited benefit. Volkswagen continued to blame the test results on various technical issues. *Id.*

30. It was only when the EPA and CARB informed Volkswagen that they would not approve certificates of conformity for the sale 2016 model year vehicles that, on September 20, 2015, Volkswagen finally admitted that it had designed and installed the defeat device software to cheat the EPA and state testing. *Id.*

31. In a statement on September 20, 2015, Volkswagen CEO Martin Winterkorn said the company was "deeply sorry that we have broken the trust of our customers and the public." Volkswagen also announced that it was halting sales of all 2.0L Clean Diesel TDI engine vehicles in the United States.

32. On September 23, 2015, Mr. Winterkon stepped down as CEO due to the scandal.

33. One prominent consumer advocate, Ellen Bloom, the senior director of federal policy for Consumers Union, the policy and advocacy arm of Consumer Reports, remarked about the scheme, "Volkswagen was ripping off the consumer and hurting the environment at the same time."

34. As a result of Volkswagen's unfair, deceptive, and/or fraudulent practices, and its failure to disclosure that under normal operating conditions the Affected Vehicles emit up to

forty times the allowed levels, owners and lessees of the Affected Vehicles have suffered losses in money and/or property. Had Volkswagen not installed the defeat device, Plaintiffs and Class members would not have been able to purchase Affected Vehicles because EPA would not have approved the Affected Vehicles for sale or lease. Plaintiffs' purchases of the Affected Vehicles and the purchase or lease of Affected Vehicles by members of the Class, therefore, are void *ab initio*. As a result of fraudulently obtaining approval from EPA to sell and lease Affected Vehicles, Volkswagen was able to, and did, misrepresent to Plaintiffs and to Class members through an aggressive marketing company that the Affected Vehicles delivered more power and better fuel efficiency while being safer for the environment. Had Volkswagen not made the aforementioned misrepresentations to EPA and Plaintiffs and Class Members, Plaintiffs and Class Members would not have purchased or leased the Affected Vehicles, or would have paid substantially less for the Affected Vehicles than they did. Moreover, when the Affected Vehicles are recalled by Volkswagen pursuant to the EPA's NOV in order to become compliant with EPA standards, the Affected Vehicles engine performance and fuel efficiency will be reduced. Plaintiffs and the Class members will then be forced to spend additional funds on fuel. Additionally, the Affected Vehicles will necessarily be worth less in the marketplace as a result of Volkswagen's misrepresentations, the decrease in efficiency and/or their high pollutant emissions, as well as the notoriety caused by Volkswagen and its effect on the value of the Affected Vehicles.

35. This class actions seeks to redress the harm Plaintiffs and the proposed classes suffered due to Volkswagen's fraudulent, deceptive, and illegal conduct.

III. PARTIES, JURISDICTION AND VENUE

36. Plaintiff Arthur Firman is a citizen of the State of New Jersey. He is a natural

person over the age of 21 and otherwise *sui juris*. Mr. Firman bought a 2010 Volkswagen Jetta Sportwagen and was injured as a result of Volkswagen's unlawful conduct.

37. Plaintiffs Laura Firman and Kiyo Toma ("The Toma Plaintiffs") are citizens of the State of Washington. They are natural persons over the age of 21 and otherwise *sui juris*. The Toma Plaintiffs bought a 2010 Volkswagen Jetta Sportwagen TDI and were injured as a result of Volkswagen's unlawful conduct.

38. Plaintiffs Larry and Judy Buchan ("The Buchan Plaintiffs") are citizens of the State of Florida. They are natural persons over the age of 21 and otherwise *sui juris*. The Buchan Plaintiffs bought a 2015 Golf TDI Sportwagen and were injured as a result of Volkswagen's unlawful conduct.

39. Plaintiffs bought their vehicles, and paid the premium price, in part because they believed it was fuel efficient and at the same time good for the environment. Had Volkswagen disclosed that the vehicles were installed with defeat devices, the EPA would not have approved the sale of the Plaintiffs' vehicles or the other Affected Vehicles. Prior to purchasing the vehicle, Plaintiffs reviewed the product labels and materials. These materials did not disclose that Volkswagen had installed a defeat device on the vehicles and that the vehicles did not in fact comply with the EPA NOx emission standards. Nor did the materials disclose that the vehicles would be less fuel efficient once it becomes compliant with these standards.

40. Had Volkswagen not engaged in these unfair, fraudulent, and deceptive practices and made fraudulent misrepresentations, Plaintiffs would not have been able to purchase, and would not have purchased the vehicles or would have paid less for them.

41. Plaintiffs reasonably relied on Volkswagen's unfair, fraudulent, and deceptive practices and misrepresentations in purchasing their vehicles.

42. Volkswagen is a corporation doing business in every State and the District of Columbia, and is organized under the laws of New Jersey with its principal place of business at 2200 Ferdinand Porsche Dr., Herndon, Virginia 20171.

43. At all relevant times, Volkswagen manufactured, distributed, warranted, sold, and leased the Affected Vehicles throughout the United States. Further, Volkswagen or its agents marketed and promoted the Affected Vehicles as “Clean Diesel” throughout the United States.

44. This Court has subject matter jurisdiction over this action pursuant to the Class Action Fairness Act of 2005 (“CAFA”), Pub. L. No. 109-2, 119 Stat. 4 (codified in various sections of 28 U.S.C.).

45. Volkswagen is a New Jersey corporation. The amount in controversy exceeds \$5,000,000 and there are at least one hundred members of the putative class.

46. This Court has personal jurisdiction over Volkswagen because it is New Jersey corporation.

47. In addition, this Court has subject-matter jurisdiction under CAFA because the amount in controversy exceeds \$5 million and diversity exists between at least one of the named Plaintiffs and Volkswagen. 28 U.S.C. § 1332(d)(2). Further, in determining whether the \$5 million amount in controversy requirement of 28 U.S.C. § 1332(d) (2) is met, the claims of the putative class members are aggregated. 28 U.S.C. § 1332(d)(6).

48. Venue is proper in this forum pursuant to 28 U.S.C. § 1391 because Volkswagen transacts business and may be found in this District and a substantial portion of the practices complained of herein occurred in the District of New Jersey.

49. All conditions precedent to this action have occurred, been performed, or have been waived.

IV. CLASS ALLEGATIONS

A. Class Definitions

50. Plaintiffs bring this action against Volkswagen pursuant to Rules 23(a) and (b)(2) or (b)(3) of the Federal Rules of Civil Procedure on behalf of themselves and all other persons similarly situated. Plaintiffs seek to represent the following Classes:

Nationwide Class:

All persons who purchased or entered into a lease for one or more of the Affected Vehicles in the United States.

New Jersey Subclass:

All persons who purchased or entered into a lease for one or more of the Affected Vehicles in the State of New Jersey.

Washington Subclass:

All persons who purchased or entered into a lease for one or more of the Affected Vehicles in the State of Washington.

Florida Subclass:

All persons who purchased or entered into a lease for one or more of the Affected Vehicles in the State of Florida.

51. Excluded from the Class are Volkswagen, its employees, co-conspirators, officers, directors, legal representatives, heirs, successors and wholly or partly owned subsidiaries or affiliated companies, and the judicial officers and their immediate family members and associated court staff assigned to this case.

52. Plaintiffs reserve the right to modify or amend the definition of the proposed Classes before the Court determines whether certification is appropriate.

53. 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 claims.

B. Numerosity

54. Members of the proposed Classes are so numerous that joinder of all members would be impracticable. There are approximately 500,000 Affected Vehicles nationwide. The individual class members are also ascertainable, as the names and addresses of all class members can be identified in Volkswagen's books and records, as well as registration and sales records. The precise number names of class members can be obtained through discovery, but the numbers are clearly more than can be consolidated in one complaint such that it would be impractical for each member to bring suit individually. Plaintiffs do not anticipate any difficulties in the management of the action as a class action.

C. Commonality

55. There are questions of law and fact that are common to all of Plaintiffs' and the Class Members' claims. These common questions predominate over any questions that go particularly to any individual member of the Classes. Among such common questions of law and fact are the following:

- a. Whether Volkswagen engaged in deceptive, misleading, and fraudulent practices in obtaining EPA approval to market and sell the Affected Vehicles in the United States;
- b. Whether Volkswagen installed a "defeat device" in the Affected Vehicles;
- c. Whether Volkswagen violated any federal or state laws and regulations in installing the defeat device;
- d. Whether the Affected Vehicles have suffered diminution of value as a result of containing the defeat device and the deceptive, misleading, and fraudulent conduct of Volkswagen;
- e. Whether the Affected Vehicles failed to comply with the applicable federal and state emissions regulations as a result of the defeat device;

- f. Whether Volkswagen had a duty to disclose the existence of the defeat device and its consequences to its customers;
- g. Whether Volkswagen knew or should have known about the defeat device;
- h. Whether Volkswagen omitted or failed to disclose material facts that might affect Plaintiffs' and the Class members' decision whether to purchase or lease the Affected Vehicles;
- i. Whether Volkswagen's marketing of Affected Vehicles was likely to deceive or mislead Plaintiffs and the Class members;
- j. Whether Plaintiffs and the Class members reasonably relied on Volkswagen's unfair, deceptive, unlawful and/or fraudulent acts in purchasing or leasing the Affected Vehicles;
- k. Whether Volkswagen engaged in unfair, deceptive, unlawful and/or fraudulent acts or practices by failing to disclose that the Affected Vehicles were installed with the defeat device and that the Affected Vehicles did not deliver more power and better fuel efficiency while at the same time being safer for the environment;
- l. Whether Plaintiffs and the Class members would be likely misled by Volkswagen's conduct;
- m. Whether Volkswagen's conduct violates any applicable warranties; and
- n. Whether Plaintiffs and the Class members were injured as a result of Volkswagen's conduct.

D. Typicality

56. Plaintiffs are members of the Classes they seek to represent. Plaintiffs' claims are typical of the respective Classes' claims because of the similarity, uniformity, and common purpose of Volkswagen's unlawful conduct. Each Class member has sustained, and will continue to sustain, damages in the same manner as Plaintiffs as a result of Volkswagen's wrongful conduct.

E. Adequacy of Representation

57. Plaintiffs are adequate representatives of the Classes and Subclasses they seek to represent and will fairly and adequately protect the interests of those Classes. Plaintiff are committed to the vigorous prosecution of this action and have retained competent counsel, experienced in litigation of this nature, to represent them. There is no hostility between Plaintiffs and the unnamed Class members. Plaintiffs anticipate no difficulty in the management of this litigation as a class action.

58. To prosecute this case, Plaintiffs have chosen the undersigned law firms, which are very experienced in class action litigation, federal court practice in the District of New Jersey, and consumer fraud litigation, and have the financial and legal resources to meet the substantial costs and legal issues associated with this type of litigation.

59. Kozyak Tropin & Throckmorton (“KTT”) has the experience and knowledge in prosecuting complex class litigation efficiently and effectively. For example, KTT serves as co-lead counsel in 14 nationwide class actions brought against most of the largest banks and/or mortgage servicers (including Chase, Bank of America, Wells Fargo, HSBC, Citi, Ocwen, NationStar, PNC, EverHome, US Bank, SPS, SunTrust, OneWest, GreenTree,) and have reached settlements totaling over \$1 billion dollars for the proposed classes. Further, KTT has litigated some of the largest multi-district litigation and recently completed serving as co-lead counsel in the largest MDL that ever involved RICO claims, *In re Managed Care Litigation*, obtaining over \$1 billion dollars in relief for more than 600,000 doctors. KTT is willing to devote its time and resources to the successful prosecution of this action.

60. Bathgate Wegener & Wolf, PC (“BWW”) has extensive experience and knowledge in federal practice in the District of New Jersey. BWW attorneys have appeared on a regular basis in the three vicinages of the District of New Jersey. Its attorneys are versed in the

Federal Rules of Civil Procedure, the Federal Rules of Evidence, the Local Civil Rules of the District of New Jersey, and the Standing Orders of the United States District Court for the District of New Jersey. BWW attorneys have experience in representing consumers in consumer fraud cases and have knowledge of the substantive law underlying the Plaintiffs' and Class members' nationwide and New Jersey claims.

61. The Merlin Law Group ("Merlin") maintains extensive experience, knowledge, and resources in federal practice in the District of New Jersey and nationwide. With nine (9) offices and twenty-nine (29) attorneys across the country, Merlin regularly represents victims dealing with catastrophic losses. Merlin lawyers' Class Action and Multidistrict Litigation experience ranges from first-party insurance claimants to pharmaceutical litigation. Currently and in the past, Merlin lawyers serve as Co-Lead and/or Plaintiff's Liaison Counsel in Mass Action and Mass Tort consolidated litigation in state and federal courts across the country. Merlin commits to putting its time and resources toward successfully prosecuting this action.

F. Requirements of Fed. R. Civ. P. 23(b)(3)

62. The questions of law or fact common to Plaintiffs' and each Class Members' claims predominate over any questions of law or fact affecting only individual members of the class.

63. Common issues predominate when, as here, liability can be determined on a class-wide basis.

64. When determining whether common questions predominate, courts focus on the liability issue, and if the liability issue is common to the class as is the case at bar, common questions will be held to predominate over individual questions.

G. Superiority

65. A class action is superior to individual actions in part because of the non-exhaustive factors listed below:

- a. Joinder of all class members would create extreme hardship and inconvenience for the affected customers as they reside all across the states;
- b. Individual claims by class members are impractical because the costs to pursue individual claims exceed the value of what any one class member has at stake. As a result, individual class members have no interest in prosecuting and controlling separate actions;
- c. There are no known individual class members who are interested in individually controlling the prosecution of separate actions;
- d. The interests of justice will be well served by resolving the common disputes of potential class members in one forum;
- e. Individual suits would not be cost effective or economically maintainable as individual actions; and
- f. The action is manageable as a class action.

H. Requirements of Fed. R. Civ. P. 23(b)(2)

66. Volkswagen has acted or failed to act in a manner generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole.

V. TOLLING OF THE STATUTE OF LIMITATIONS

A. Discovery Rule Tolling

67. Within the time period of any applicable statutes of limitation, Plaintiffs and members of the proposed Classes could not have discovered through the exercise of reasonable diligence that Volkswagen was concealing the conduct complained of herein and misrepresenting the Company's actions with respect to the emissions qualities of its vehicles.

68. Class Members had no way of knowing about Volkswagen's deception with

respect to its Clean Diesel vehicles and the “defeat device.” Volkswagen continued to deny any wrongdoing to the EPA and state regulators even after the testing done by ICCT. Volkswagen was intent on expressly hiding its behavior from regulators and consumers.

69. 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 Volkswagen did not report information regarding its defeat devices to the EPA or state regulators, its dealerships, or purchasers of the Affected Vehicles. Nor would a reasonable and diligent investigation have disclosed that Volkswagen had information in its possession about the existence of its sophisticated software that cheated the EPA emissions tests and that it opted to conceal that information, which was discovered by Plaintiffs only shortly before this action was filed when the EPA issued its NOV on September 18, 2015.

70. For these reasons, all applicable statutes of limitations have been tolled by operation of the discovery rule.

B. Fraudulent Concealment Tolling

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

72. Instead of disclosing its scheme and the existence of the defeat device in the Affected Vehicles, Volkswagen falsely represented that the Affected Vehicles complied with federal and state emission standards and were worth the premium price consumers paid for the vehicles. Only when faced with the threat of not being able to sell its 2016 model cars did Volkswagen finally disclose its scheme.

73. Further, Volkswagen is under a continuing duty to disclose the true character,

quality, and nature of the Affected Vehicles and their compliance with emission standards and because Volkswagen actively concealed the true nature of the Affected Vehicles' NOx emissions, they are estopped from relying on any statute of limitation defense.

COUNT I
Violation of The New Jersey Consumer Fraud Act
(On behalf of the New Jersey Subclass)

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

75. The New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1, *et seq.*, prohibits the “use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation . . . in connection with the sale or advertisement of any merchandise or real estate, or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damaged thereby.” N.J.S.A 56:8-2.

76. Volkswagen has engaged in, and continues to engage in, unconscionable commercial practices, deceptive acts and misrepresentations in the conduct of its trade and/or commerce in the State of New Jersey. Volkswagen had a scheme to defraud Plaintiff Arthur Firman and the New Jersey Class members as well as state and federal regulators by installing a defeat device on the Affected Vehicles that would show they were compliant with U.S. emission standards and then representing to the consumers that its Affected Vehicles were “Clean Diesel” with low emissions and high fuel efficiency and worth the premium prices it charged.

77. Volkswagen made numerous material misrepresentations in its television, print, and internet advertising. Volkswagen knew, however, that the defeat device software it had installed was cheating the emission testing and that its Affected Vehicles were not “Clean

Diesel” as advertised but instead were emitting up to forty times more of NOx than was legally allowed. Further, Volkswagen knew, or should have known, that the Affected Vehicles could not achieve the advertised fuel efficiency had they been legally compliant with the emission standards.

78. The NJCFA further provides that “[a]ny person who suffers an ascertainable loss of moneys or property, real or personal, as a result of the use or employment by another person any method, act, or practice declared unlawful under the [NJCFA] may bring an action or assert a counterclaim therefore in any court of competent jurisdiction. N.J.S.A. 56:9-19.

79. Plaintiff Arthur Firman and the New Jersey Subclass are “person(s)” as that term is defined in N.J.S.A.56:8-1(d).

80. Plaintiff Arthur Firman and the New Jersey Subclass have suffered an ascertainable loss of moneys or property as a direct and proximate result of Volkswagen’s unfair and unconscionable practices. Volkswagen charged a premium price for the Affected Vehicles due to their low emissions and high fuel efficiency. Thus, as part of the scheme by Volkswagen, Plaintiff and the New Jersey Subclass paid than they would have, had they known of Volkswagen’s deception and will have incurred additional costs, including fuel costs as a result of Volkswagen’s unlawful conduct. As a result, of the unlawful conduct by Volkswagen, the Affected Vehicles have been diminished in value rendering them virtually worthless.

81. Plaintiff Arthur Firman and the New Jersey Subclass have a private right of action against Volkswagen that entitles them to recover, in addition to their actual damages, a threefold award of the damages sustained by any person, interest, as well as an award of reasonable attorney’s fees, filing fees and reasonable costs of the suit. N.J.S.A 56:8-19.

82. As a direct and proximate result of Volkswagen’s unlawful, unfair, and fraudulent

business practices, Plaintiff Arthur Firman and the proposed New Jersey Class have suffered injury in fact and lost money or property, in that they bought or leased Affected Vehicles they otherwise could not or would not have, overpaid for their vehicles, did not receive the benefit of their bargain, and their Affected Vehicles suffered a diminution in value. In addition, Plaintiff Firman and the proposed New Jersey Subclass will incur additional fuel costs, and a diminution in the performance of their respective Affected Vehicles, if and when their Affected Vehicles are altered in order to bring them into compliance with federal and state emissions standards. Meanwhile, Volkswagen has sold or leased more Affected Vehicles than they otherwise could have and charged inflated prices for Affected Vehicles, thereby unjustly enriching itself.

83. Plaintiff Arthur Firman and the New Jersey Subclass relied upon the fraudulent statements in the marketing materials to their detriment and have suffered and will continue to suffer irreparable harm if Volkswagen continues to engage in such deceptive, unfair, and unreasonable practices.

84. Plaintiff Arthur Firman, on behalf of himself and the New Jersey Subclass, demands judgment against Volkswagen for compensatory damages, treble damages, pre- and post-judgment interest, attorneys' fees, injunctive and declaratory relief, costs incurred in bringing this action, and any other relief as this Court deems just and proper.

COUNT II
FRAUD BY CONCEALMENT
(On behalf of Nationwide Class)

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

86. Volkswagen intentionally concealed and suppressed material facts concerning the quality of the Affected Vehicles' emission standards. As alleged in this complaint,

notwithstanding its deceptive marketing campaign related to the “Clean Diesel” vehicles, Volkswagen engaged in a secret scheme to evade federal and state vehicle emissions standards by installing defeat device software designed to conceal its vehicles’ emissions of NOx. The defeat device software was purposefully designed to “switch” on during the EPA or other emission testing, such that the Affected Vehicles would show far lower emissions during testing than when actually being operated by a consumer.

87. Volkswagen’s deliberate scheme to cheat the testing resulted in toxic emissions of NOx up to forty times the allowed standards. It also allowed Volkswagen to make material misrepresentations about its environmentally “clean” vehicles and their fuel efficiency – all the while also allowing Volkswagen to charge a premium price for the Affected Vehicles.

88. Volkswagen had a duty to disclose the scheme and the existence of the defeat device because it consistently and aggressively marketed and made affirmative representations to all consumers regarding its “Clean Diesel” technology that purported to pass all applicable federal and state emission standards. The existence of the defeat device was known or accessible only to Volkswagen, who had superior knowledge and access to the facts, and Volkswagen knew that the facts were not known to or reasonably discoverable by Plaintiffs and the Class. These omitted and concealed facts were material because they directly impact the quality of the Affected Vehicles.

89. Whether a manufacturer’s products comply with federal and state clean air law 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 certifications testing their vehicles must pass. Volkswagen represented to Plaintiffs and the Class members that they were purchasing *clean* diesel vehicles, and

certification testing appeared to confirm this—except that Volkswagen had secretly subverted the testing process through the use of its defeat device.

90. Volkswagen actively concealed or suppressed these material facts, in whole or in part, to induce Plaintiffs and the Class members to purchase or lease the Affected Vehicles at high prices because of their desire to protect the environment through low emissions and higher fuel efficiency. Volkswagen also actively concealed the material facts to protect its profits because it could charge a premium price for the Affected Vehicles – anywhere from \$1,000 to \$7,000 more than for gasoline vehicles of the same make and model. Volkswagen did so at the expense of Plaintiffs and the Class members.

91. Plaintiffs and the Class members were unaware of these omitted material facts and would not have acted as they did had they known of the concealed or suppressed facts. The actions of Plaintiffs and the Class were reasonable and justified. Volkswagen was in exclusive control of the material facts and such facts were not known to the public, Plaintiffs, or the Class members.

92. Because of the concealment and/or suppression of the facts, Plaintiffs and the Class members have sustained damage because they own vehicles that are diminished in value as a result of Volkswagen's concealment of and failure to timely disclose the true quality and quantity of those vehicles' emissions and the serious issues engendered by Volkswagen's corporate policies. Had Plaintiffs and the Class members been aware of Volkswagen's emissions schemes with regard to the Affected Vehicles, and the company's callous disregard for compliance with applicable federal and state law and regulations, Plaintiffs and the Class members who purchased or leased the Affected Vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

93. Defendant's acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and the Class's rights and well-being to enrich Defendant. Defendant's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future.

COUNT III
VIOLATION OF THE MAGNUSON-MOSS WARRANTY ACT
("Magnuson-Moss"), 15 U.S.C. § 2301, *et seq.*
(On behalf of nationwide Class)

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

95. Magnuson-Moss provides a private right of action by purchasers of consumer products against manufacturers or retailers who, among other things, fail to comply with the terms of the written, express, or implied warranties. *See* 15 U.S.C. § 2310(d)(1) (Remedies in consumer disputes). As alleged above, Volkswagen has failed to comply with the terms of its written, express, or implied warranties.

96. The Affected Vehicles are "consumer products" as defined by Magnuson-Moss. *See* 15 U.S.C. § 2301(1).

97. Plaintiffs and the Class members are "consumers" as defined by Magnuson-Moss. *See* 15 U.S.C. § 2301(3).

98. Volkswagen is a "supplier" and/or "warrantor" as defined by Magnuson-Moss. *See* 15 U.S.C. § 2301(4)-(5).

99. As a supplier and/or warrantor, Volkswagen is obligated to afford Plaintiffs and the Class members, as consumers, all rights and remedies available under Magnuson-Moss, regardless of privity.

100. Magnuson-Moss provides a cause of action for, among other things, breach of a

warranty. *See* 15 U.S.C. § 2310(d)(1). Volkswagen breached its implied warranties of merchantability, which it cannot disclaim under Magnuson-Moss, *see* 15 U.S.C. § 2308(a)(1), by failing to provide merchantable goods. Plaintiffs and the Class members have suffered damages as a result of Volkswagen's breaches of warranties as set forth above.

101. Further, Volkswagen provided purchasers and lessees of Affected Vehicles multiple written warranties as defined by 15 U.S.C. § 2301(6).

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

103. As required by law, Volkswagen also provided a Federal Emissions Warranty to members of the Nationwide Class.

104. ***Federal Emissions Warranty.*** Consistent with federal law, Volkswagen provided Plaintiffs and the proposed Nationwide Class with a "performance warranty" and a "design and defect warranty." In the event that a vehicle fails an emissions test, these warranties cover all emissions related parts for 2 years or 24,000 miles (whichever comes first), with the catalytic converter, engine control unit, and onboard diagnostic device covered for 8 years or 80,000 miles (whichever comes first). These warranties are directly applicable to the Affected Vehicles.

105. Volkswagen breached these warranties by selling the Affected Vehicles with a defeat device which renders the emissions control systems defective, and the Affected Vehicles thus do not comply with emissions standards set by federal law. This device cannot be repaired or redressed without materially altering the advertised estimated fuel economy and other

performance characteristics of the vehicle.

106. Volkswagen's breach of warranty has deprived Plaintiffs and other Class members of the benefit of their bargain. The amount in controversy of the Plaintiffs' individual claims meets or exceeds the sum or value of \$25. In addition, the amount in controversy meets or exceeds the sum or value of \$50,000 (exclusive of interests and costs) computed on the basis of all claims to be determined in this class action suit.

107. Plaintiffs and the Class Members have suffered, and are entitled to recover, damages as a result of Volkswagen's breaches of warranty and violations of Magnuson-Moss.

108. Volkswagen had an opportunity to disclose information concerning the Affected Vehicle's inability to perform as warranted, and to cure its breach of warranties, at least since May 2014, in response to the West Virginia study and in response to inquiries by the EPA and CARB. And yet it failed to do so.

109. As a direct and proximate result of Volkswagen's conduct, Plaintiffs and other members of the Nationwide Class have suffered damages and continue to suffer damages, including economic damages at the point of sale or lease, that is, the difference between the value of the vehicle as promised and the value of the vehicle as delivered.

110. Additionally, or in the alternative, Magnuson-Moss provides for "other legal and equitable" relief where there has been a breach of warranty or failure to abide by other obligations imposed by Magnuson-Moss. *See* 15 U.S.C. § 2310(d)(1). Rescission and Revocation of Acceptance are equitable remedies available to Plaintiffs and the Class Members under Magnuson-Moss.

111. Plaintiffs also seek under Magnuson-Moss an award of costs and expenses, including attorneys' fees, to prevailing consumers in connection with the commencement and

prosecution of this action. *See* 15 U.S.C. § 2310(d)(2). Plaintiffs and the Class members intend to seek such an award, including expert witness costs and other recoverable costs, as prevailing consumers at the conclusion of this lawsuit.

COUNT IV
UNJUST ENRICHMENT
(On behalf of the Nationwide Class)

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

113. Plaintiffs and the Class members directly conferred benefits on Volkswagen. Specifically, Volkswagen received from Plaintiffs and the Class members, benefits in the form of a premium price for the Affected Vehicles – typically \$1,000 to \$7,000 more the same make and model gasoline vehicle.

114. Plaintiffs and the Class members paid this premium price because of Volkswagen's representations that the Affected Vehicles complied with all applicable emissions standards and had greater fuel efficiency. Plaintiffs and the Class members would not have paid for the Affected Vehicles or would have paid less if not for these representations.

115. Volkswagen knew these representations to be false due to its purposeful installation of the defeat device, but knowingly accepted and retained the premium prices for the Affected Vehicles.

116. As a result, Plaintiffs and the Class members have conferred a direct benefit on Volkswagen.

117. Plaintiffs and the Class members expected remuneration or would have expected remuneration had they known the true facts surrounding Volkswagen's conduct. For example, had Plaintiffs and the Class members known that the Affected Vehicles did not meet the

emission standards and that the fuel efficiency would be downgraded once the vehicle is fixed, they would have expected to be charged and/or paid less.

118. Volkswagen had knowledge of this benefit and voluntarily accepted and retained the benefit conferred on it.

119. Volkswagen will be unjustly enriched if it is allowed to retain the aforementioned benefits, and the Plaintiffs and each Class member is entitled to recover the amount by which Volkswagen was unjustly enriched at his or her expense.

120. WHEREFORE, Plaintiffs, on behalf of themselves and all similarly situated Class members, demand an award against Volkswagen in the amounts by which Volkswagen has been unjustly enriched at Plaintiffs' and the Class members' expense, and such other relief as this Court deems just and proper

COUNT V
VIOLATION OF THE WASHINGTON CONSUMER PROTECTION ACT
(Wash. Rev. Code Ann. §§ 19.86.010)
(On behalf of the Washington Subclass)

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

122. The conduct of Volkswagen as set forth herein constitutes unfair or deceptive acts or practices, including but not limited to Volkswagen's manufacture, marketing, and sale of vehicles with defeat devices and non-EPA compliant Clean Diesel engines, which Volkswagen failed to adequately investigate, disclose, and remedy. Further, Volkswagen knew about these defects prior to the sale of the Affected Vehicles but did not disclose the existence of these defects to the Toma Plaintiffs and the Washington Subclass members. Volkswagen also made misrepresentations and omissions regarding the low emissions, fuel efficiency, and other features of the Affected Vehicles.

123. Volkswagen's actions as set forth above occurred in the conduct of trade or commerce. Volkswagen's actions constituted a generalized course of deception that impacts the public interest because the Toma Plaintiffs and the Washington Subclass members were injured in exactly the same way as thousands of others purchasing and/or leasing the Affected Vehicles and that the failure to follow the practices pertaining to motor vehicle warranties in Wash. Rev. Code § 19.18 is recognized by statute as matters vitally affecting the public interest. All of the wrongful conduct alleged herein occurred, and continues to occur, in the conduct of Volkswagen's business and has the potential for repetition.

124. Volkswagen's actions as set forth above induced the Toma Plaintiffs and the Washington Subclass members to purchase their Affected Vehicles from Volkswagen and pay a higher price for their Affected Vehicles than they otherwise would have.

125. Plaintiff and the Washington Subclass members were injured as a result of Volkswagen's conduct. Due to Volkswagen's deceptive or unfair conduct, the Toma Plaintiffs and the Washington Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain. Their vehicles have also suffered a diminution in value.

126. Volkswagen's conduct proximately caused the injuries to the Toma Plaintiffs and the Washington Subclass members.

127. Volkswagen is liable to the Toma Plaintiffs and the Washington Subclass members for damages in amounts to be proven at trial, including attorneys' fees, costs, and treble damages.

128. Pursuant to Wash. Rev. Code § 19.86.095, the Toma Plaintiffs will serve the Washington Attorney General with a copy of this Complaint as the Toma Plaintiffs and the Washington Subclass members seek injunctive relief.

COUNT VI
VIOLATION OF THE FLORIDA UNFAIR & DECEPTIVE TRADE PRACTICES ACT
(“FDUTPA”), § 501.201, *et seq.*, Fla. Stat.
(On behalf of the Florida Subclass)

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

130. The Buchan Plaintiffs and the Florida Subclass are “consumers” under FDUTPA. *See* § 501.203(7), Fla. Stat.

131. Volkswagen engaged in “trade or commerce” within the meaning of FDUTPA. *See* § 501.203(8), Fla. Stat.

132. FDUTPA prohibits “[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce” § 501.204(1), Fla. Stat. Volkswagen engaged in unfair and deceptive trade practices that violated FDUTPA as described herein.

133. Volkswagen violated FDUTPA by, *inter alia*, engaging in the following practices:

- a. Volkswagen installed a defeat device on the Affected Vehicles in order to fool the EPA testing for NOx emissions;
- b. Volkswagen represented to Florida consumers that the Affected Vehicles were “clean” and provided higher fuel efficiency with low pollutant emissions;
- c. Volkswagen knew that the Affected Vehicles had been equipped with the defeat devices but failed to disclose their existence. Volkswagen knew that such information, regarding the true amount of the Affected Vehicles’ emissions, was material to the purchase of the Affected Vehicles in light of its representations in its marketing campaign;
- d. Volkswagen failed to reveal material facts concerning the defeat devices and the performance of the Affected Vehicles to the Buchan Plaintiffs, the Florida Subclass, the public, and the government, the omission of which would tend to mislead or deceive consumers, and which could not be

reasonably known to the Buchan Plaintiffs, the Florida Subclass, the public, and the government; and

- e. Volkswagen intended for the Buchan Plaintiffs, the Florida Subclass, the public, and the government to rely on their misrepresentations and omissions, so that the Buchan Plaintiffs and the Florida Subclass would purchase or lease the Affected Vehicles and pay a premium price when doing so.

134. The Buchan Plaintiffs and the Florida Subclass were injured as a result of Volkswagen's misconduct because the Buchan Plaintiffs and the Florida Subclass now own or lease an Affected Vehicle that has diminished in value.

135. The Buchan Plaintiffs on behalf of the Florida Subclass seeks actual damages and an order enjoining Volkswagen's unfair or deceptive acts or practices and attorneys' fees, and any other just and proper relief available under FDUTPA.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and all other similarly situated Class members, respectfully request judgment against Volkswagen and other relief as follows:

(1) Declare this action to be a proper class action maintainable under Rule 23(b)(2) or Rule 23(b)(3) of the Federal Rules of Civil Procedure and designating and appointing Plaintiffs as Class and Subclass Representative and Plaintiffs' chosen counsel as Class Counsel;

(2) Declare that the conduct of Volkswagen as alleged herein is unlawful, deceptive, unfair or deceptive and issue an order temporarily and permanently enjoining Volkswagen from continuing the unlawful, deceptive, fraudulent, and unfair business practices alleged in this Complaint;

(3) Declare that Volkswagen must disgorge, for the benefit of Plaintiffs and the Class members all or part of the ill-gotten gains they received from the sale or lease of the Affected Vehicles;

(4) Award Plaintiffs and Class members actual, compensatory damages, or, in the alternative, statutory damages, as proven at trial;

(5) Award Plaintiffs and Class members punitive damages in such amount as proven at trial;

(6) Award Plaintiffs and Class members their reasonable attorneys' fees, costs, and pre-judgment and post-judgment interest;

(7) Awarding Plaintiff Firman and the New Jersey Subclass compensatory and treble damages, injunctive relief, declaratory relief, attorneys' fees, and costs under NJCFA;

(8) Awarding the Toma Plaintiffs and the Washington Subclass compensatory and treble damages, injunctive relief, declaratory relief, attorneys' fees, and costs under WCPA;

(9) Awarding the Buchan Plaintiffs and the Florida Subclass actual damages, injunctive relief, declaratory relief, attorneys' fees, and costs under FDUTPA; and

(10) Awarding Plaintiffs and Class members such other further and different relief as this case may require or as determined by this Court to be just, equitable, and proper under the circumstances.

DEMAND FOR JURY TRIAL

Plaintiffs request a jury trial for any and all Counts for which a trial by jury is permitted by law.

Respectfully submitted this 25th day of September, 2015.

By: /s/ CHRISTOPHER B. HEALY, ESQ.

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 18 2015

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Volkswagen AG
Audi AG
Volkswagen Group of America, Inc.
Thru:

David Geanacopoulos
Executive Vice President Public Affairs and General Counsel
Volkswagen Group of America, Inc.
2200 Ferdinand Porsche Drive
Herndon, VA 20171

Stuart Johnson
General Manager
Engineering and Environmental Office
Volkswagen Group of America, Inc.
3800 Hamlin Road
Auburn Hills, MI 48326

Re: Notice of Violation

Dear Mr. Geanacopoulos and Mr. Johnson:

The United States Environmental Protection Agency (EPA) has investigated and continues to investigate Volkswagen AG, Audi AG, and Volkswagen Group of America (collectively, VW) for compliance with the Clean Air Act (CAA), 42 U.S.C. §§ 7401–7671q, and its implementing regulations. As detailed in this Notice of Violation (NOV), the EPA has determined that VW manufactured and installed defeat devices in certain model year 2009 through 2015 diesel light-duty vehicles equipped with 2.0 liter engines. These defeat devices bypass, defeat, or render inoperative elements of the vehicles' emission control system that exist to comply with CAA emission standards. Therefore, VW violated section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B). Additionally, the EPA has determined that, due to the existence of the defeat

devices in these vehicles, these vehicles do not conform in all material respects to the vehicle specifications described in the applications for the certificates of conformity that purportedly cover them. Therefore, VW also violated section 203(a)(1) of the CAA, 42 U.S.C. § 7522(a)(1), by selling, offering for sale, introducing into commerce, delivering for introduction into commerce, or importing these vehicles, or for causing any of the foregoing acts.

Law Governing Alleged Violations

This NOV arises under Part A of Title II of the CAA, 42 U.S.C. §§ 7521–7554, and the regulations promulgated thereunder. In creating the CAA, Congress found, in part, 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). Congress’ purpose in creating the CAA, in part, was “to protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare and the productive capacity of its population,” and “to initiate and accelerate a national research and development program to achieve the prevention and control of air pollution.” CAA § 101(b)(1)–(2), 42 U.S.C. § 7401(b)(1)–(2). The CAA and the regulations promulgated thereunder aim to protect human health and the environment by reducing emissions of nitrogen oxides (NOx) and other pollutants from mobile sources of air pollution. Nitrogen oxides are a family of highly reactive gases that play a major role in the atmospheric reactions with volatile organic compounds (VOCs) that produce ozone (smog) on hot summer days. Breathing ozone can trigger a variety of health problems including chest pain, coughing, throat irritation, and congestion. Breathing ozone can also worsen bronchitis, emphysema, and asthma. Children are at greatest risk of experiencing negative health impacts from exposure to ozone.

The EPA’s allegations here concern light-duty motor vehicles for which 40 C.F.R. Part 86 sets emission standards and test procedures and section 203 of the CAA, 42 U.S.C. § 7522, sets compliance provisions. Light-duty vehicles must satisfy emission standards for certain air pollutants, including NOx. 40 C.F.R. § 86.1811-04. The EPA administers a certification program to ensure that every vehicle introduced into United States commerce satisfies applicable emission standards. Under this program, the EPA issues certificates of conformity (COCs), and thereby approves the introduction of vehicles into United States commerce.

To obtain a COC, a light-duty vehicle manufacturer must submit a COC application to the EPA for each test group of vehicles that it intends to enter into United States commerce. 40 C.F.R. § 86.1843-01. The COC application must include, among other things, a list of all auxiliary emission control devices (AECDs) installed on the vehicles. 40 C.F.R. § 86.1844-01(d)(11). An AECD is “any element of design which senses temperature, vehicle speed, engine RPM, transmission gear, manifold vacuum, or any other parameter for the purpose of activating, modulating, delaying, or deactivating the operation of any part of the emission control system.” 40 C.F.R. § 86.1803-01. The COC application must also include “a justification for each AECD, the parameters they sense and control, a detailed justification of each AECD that results in a reduction in effectiveness of the emission control system, and [a] rationale for why it is not a defeat device.” 40 C.F.R. § 86.1844-01(d)(11).

A defeat device is an AECD “that reduces the effectiveness of the emission control system under conditions which may reasonably be expected to be encountered in normal vehicle operation and

use, unless: (1) Such conditions are substantially included in the Federal emission test procedure; (2) The need for the AECDD is justified in terms of protecting the vehicle against damage or accident; (3) The AECDD does not go beyond the requirements of engine starting; or (4) The AECDD applies only for emergency vehicles” 40 C.F.R. § 86.1803-01.

Motor vehicles equipped with defeat devices, such as those at issue here, 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, 86-1809-10, 86-1809-12. Electronic control systems which may receive inputs from multiple sensors and control multiple actuators that affect the emission control system’s performance are AECDDs. EPA, *Advisory Circular Number 24-2: Prohibition of Emission Control Defeat Devices – Optional Objective Criteria* (Dec. 6, 1978). “Such elements of design could be control system logic (i.e., computer software), and/or calibrations, and/or hardware items.” *Id.*

“Vehicles are covered by a certificate of conformity only if they are in all material respects as described in the manufacturer’s application for certification” 40 C.F.R. § 86.1848-10(c)(6). Similarly, a COC issued by EPA, including those issued to VW, state expressly, “[t]his certificate covers only those new motor vehicles or vehicle engines which conform, in all material respects, to the design specifications” described in the application for that COC. *See also* 40 C.F.R. §§ 86.1844-01 (listing required content for COC applications), 86.1848-01(b) (authorizing the EPA to issue COCs on any terms that are necessary or appropriate to assure that new motor vehicles satisfy the requirements of the CAA and its regulations).

The CAA 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.” CAA § 203(a)(3)(B), 42 U.S.C. § 7522(a)(3)(B); 40 C.F.R. § 86.1854-12(a)(3)(ii). Additionally, manufacturers are prohibited from selling, offering for sale, introducing into commerce, delivering for introduction into commerce, or importing, any new motor vehicle unless that vehicle is covered by an EPA-issued COC. CAA § 203(a)(1), 42 U.S.C. § 7522(a)(1); 40 C.F.R. § 86.1854-12(a)(1). It is also a violation to cause any of the foregoing acts. CAA § 203(a), 42 U.S.C. § 7522(a); 40 C.F.R. § 86-1854-12(a).

Alleged Violations

Each VW vehicle identified by the table below has AECDDs that were not described in the application for the COC that purportedly covers the vehicle. Specifically, VW manufactured and installed software in the electronic control module (ECM) of these vehicles that sensed when the vehicle was being tested for compliance with EPA emission standards. For ease of reference, the EPA is calling this the “switch.” The “switch” senses whether the vehicle is being tested or not based on various inputs including the position of the steering wheel, vehicle speed, the duration of the engine’s operation, and barometric pressure. These inputs precisely track the parameters of the federal test procedure used for emission testing for EPA certification purposes. During EPA

emission testing, the vehicles' ECM ran software which produced compliant emission results under an ECM calibration that VW referred to as the "dyno calibration" (referring to the equipment used in emissions testing, called a dynamometer). At all other times during normal vehicle operation, the "switch" was activated and the vehicle ECM software ran a separate "road calibration" which reduced the effectiveness of the emission control system (specifically the selective catalytic reduction or the lean NO_x trap). As a result, emissions of NO_x increased by a factor of 10 to 40 times above the EPA compliant levels, depending on the type of drive cycle (e.g., city, highway).

The California Air Resources Board (CARB) and the EPA were alerted to emissions problems with these vehicles in May 2014 when the West Virginia University's (WVU) Center for Alternative Fuels, Engines & Emissions published results of a study commissioned by the International Council on Clean Transportation that found significantly higher in-use emissions from two light duty diesel vehicles (a 2012 Jetta and a 2013 Passat). Over the course of the year following the publication of the WVU study, VW continued to assert to CARB and the EPA that the increased emissions from these vehicles could be attributed to various technical issues and unexpected in-use conditions. VW issued a voluntary recall in December 2014 to address the issue. CARB, in coordination with the EPA, conducted follow up testing of these vehicles both in the laboratory and during normal road operation to confirm the efficacy of the recall. When the testing showed only a limited benefit to the recall, CARB broadened the testing to pinpoint the exact technical nature of the vehicles' poor performance, and to investigate why the vehicles' onboard diagnostic system was not detecting the increased emissions. None of the potential technical issues suggested by VW explained the higher test results consistently confirmed during CARB's testing. It became clear that CARB and the EPA would not approve certificates of conformity for VW's 2016 model year diesel vehicles until VW could adequately explain the anomalous emissions and ensure the agencies that the 2016 model year vehicles would not have similar issues. Only then did VW admit it had designed and installed a defeat device in these vehicles in the form of a sophisticated software algorithm that detected when a vehicle was undergoing emissions testing.

VW knew or should have known that its "road calibration" and "switch" together bypass, defeat, or render inoperative elements of the vehicle design related to compliance with the CAA emission standards. This is apparent given the design of these defeat devices. As described above, the software was designed to track the parameters of the federal test procedure and cause emission control systems to underperform when the software determined that the vehicle was not undergoing the federal test procedure.

VW's "road calibration" and "switch" are AECDs¹ that were neither described nor justified in the applicable COC applications, and are illegal defeat devices. Therefore each vehicle identified by the table below does not conform in a material respect to the vehicle specifications described in the COC application. As such, VW violated section 203(a)(1) of the CAA, 42 U.S.C. § 7522(a)(1), each time it sold, offered for sale, introduced into commerce, delivered for introduction into commerce, or imported (or caused any of the foregoing with respect to) one of the hundreds of thousands of new motor vehicles within these test groups. Additionally, VW

¹ There may be numerous engine maps associated with VW's "road calibration" that are AECDs, and that may also be defeat devices. For ease of description, the EPA is referring to these maps collectively as the "road calibration."

violated section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), each time it manufactured and installed into these vehicles an ECM equipped with the “switch” and “road calibration.”

The vehicles are identified by the table below. All vehicles are equipped with 2.0 liter diesel engines.

Model Year	EPA Test Group	Make and Model(s)
2009	9VWXV02.035N	VW Jetta, VW Jetta Sportwagen
2009	9VWXV02.0U5N	VW Jetta, VW Jetta Sportwagen
2010	AVWXV02.0U5N	VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3
2011	BVWXV02.0U5N	VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3
2012	CVWXV02.0U5N	VW Beetle, VW Beetle Convertible, VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3
2012	CVWXV02.0U4S	VW Passat
2013	DVWXV02.0U5N	VW Beetle, VW Beetle Convertible, VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3
2013	DVWXV02.0U4S	VW Passat
2014	EVWXV02.0U5N	VW Beetle, VW Beetle Convertible, VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3
2014	EVWXV02.0U4S	VW Passat
2015	FVGAV02.0VAL	VW Beetle, VW Beetle Convertible, VW Golf, VW Golf Sportwagen, VW Jetta, VW Passat, Audi A3

Enforcement

The EPA’s investigation into this matter is continuing. The above table represents specific violations that the EPA believes, at this point, are sufficiently supported by evidence to warrant the allegations in this NOV. The EPA may find additional violations as the investigation continues.

The EPA is authorized to refer this matter to the United States Department of Justice for initiation of appropriate enforcement action. Among other things, persons who violate section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), are subject to a civil penalty of up to \$3,750 for each violation that occurred on or after January 13, 2009;^[1] CAA § 205(a), 42 U.S.C. § 7524(a); 40 C.F.R. § 19.4. In addition, any manufacturer who, on or after January 13, 2009, sold, offered for sale, introduced into commerce, delivered for introduction into commerce, imported, or caused any of the foregoing acts with respect to any new motor vehicle that was not covered by an EPA-issued COC is subject, among other things, to a civil penalty of up to \$37,500 for each violation.^[2] CAA § 205(a), 42 U.S.C. § 7524(a); 40 C.F.R. § 19.4. The EPA may seek, and district courts may order, equitable remedies to further address these alleged violations. CAA § 204(a), 42 U.S.C. § 7523(a).

^[1] \$2,750 for violations occurring prior to January 13, 2009.

^[2] \$32,500 for violations occurring prior to January 13, 2009.

The EPA is available to discuss this matter with you. Please contact Meetu Kaul, the EPA attorney assigned to this matter, to discuss this NOV. Ms. Kaul can be reached as follows:

Meetu Kaul
U.S. EPA, Air Enforcement Division
1200 Pennsylvania Avenue, NW
William Jefferson Clinton Federal Building
Washington, DC 20460
(202) 564-5472
kaul.meetu@epa.gov

Sincerely,

A handwritten signature in black ink, appearing to read "Phillip A. Brooks".

Phillip A. Brooks
Director
Air Enforcement Division
Office of Civil Enforcement

Copy:

Todd Sax, California Air Resources Board
Walter Benjamin Fisherow, United States Department of Justice
Stuart Drake, Kirkland & Ellis LLP

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

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

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

DEFENDANTS

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

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

Attorneys (If Known)

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

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input 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	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other 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 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark 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"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

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):

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

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

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

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