

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA**

REX W. GIBSON, individually and)
on behalf of others similarly situated,)
)
Plaintiff,)
)
v.)
)
VOLKSWAGEN GROUP OF AMERICA,)
INC. and VOLKSWAGEN AG,)
)
Defendants.)

Case No.

JURY TRIAL DEMANDED

COMPLAINT

Rex W. Gibson, individually and on behalf of others similarly situated, states the following as his complaint against Volkswagen Group of America and Volkswagen AG (collectively “Volkswagen”):

INTRODUCTION

1. This case arises from the intentional and fraudulent attempts by Volkswagen to evade and violate federal and state emissions standards. Beginning in 2009, Volkswagen employed a cheat device in the software for the turbocharged direct injection (“TDI”) diesel engines installed on certain Volkswagen vehicles. As a result of the cheat device, Volkswagen vehicles equipped with these TDI engines only met federal and state standards for nitrogen oxides (“NOx”) emissions during laboratory emissions testing. Without the cheat device, the vehicles never could have met federal and state emissions standards and, as a result, could not have been sold in the United States.

2. In the spring of 2014, a group of researchers from the University of West Virginia began researching the emissions for Volkswagen vehicles equipped with TDI engines. These researchers discovered that under real world driving conditions, many of Volkswagen's vehicles emitted 20-30 times more NOx than is allowable under federal and state emissions standards. These findings spawned investigations by the California Air Resources Board and the Environmental Protection Agency, and on September 18, 2015, the Environmental Protection Agency issued a notice of violation to Volkswagen, concluding 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 [Clear Air Act] emission standards. Therefore, VW violated section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B). Additionally, the EPA [Environmental Protection Agency] 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 instruction into commerce, or importing these vehicles, or for causing any of the foregoing acts.

3. Although Volkswagen initially denied any wrongdoing with respect to its TDI engines, Volkswagen's U.S. CEO, Michael Horn, eventually admitted that Volkswagen had "totally screwed up" and that it was "dishonest with the EPA and the California Air Resources Board, and all of you (i.e., its customers)." Volkswagen's conduct was fraudulent, unjust, violated federal and state law, and violated the express and implied warranties made to its customers. Plaintiff brings this action on behalf of himself and a proposed class of other similarly situated individuals and entities.

PARTIES, JURISDICTION, AND VENUE

4. Plaintiff Rex W. Gibson is over the age of 19 and is a resident and citizen of Alabama.

5. Defendant Volkswagen Group of America, Inc. is a corporation organized, established, and existing under the laws of New Jersey and maintains its principal place of business in Virginia.

6. Defendant Volkswagen AG is a foreign corporation organized, established, and existing under the laws of Germany and maintains its principal place of business in Germany.

7. This Court has personal jurisdiction over Defendants because they are engaged in substantial and not isolated activity within this state. Additionally, Plaintiff's causes of action arise from Defendants directly or through their agents marketing, distributing, shipping, selling, and warranting products that were used and consumed in this state in the ordinary course of commerce, trade, or use.

8. This Court has original jurisdiction over this action under the Class Action Fairness Act, 28 U.S.C. §1332(d), because this is a class action in which: (1) there are 100 or more members in the Plaintiff's proposed class; (2) at least some members of the proposed class have a different citizenship from Defendants; and (3) the claims of the proposed class members exceed \$5,000,000 in the aggregate.

9. This Court has original jurisdiction over this action pursuant to 28 U.S.C. §1332 in that the citizenship of the Plaintiff is diverse from the citizenship of each of the Defendants and the amount in controversy exceeds \$75,000.

10. Venue is proper in this Court pursuant to 28 U.S.C. §1391(a) because a substantial part of the events giving rise to Plaintiff's claims occurred in this district when


defendants sold, marketed, distributed, shipped, and/or warranted the defective products at issue here.

BACKGROUND

A. Volkswagen's marketing and release of its TDI diesel engines.


11. As a general rule, diesel engines are more efficient and provide more torque than gasoline-powered engines. However, diesel engines historically have been associated with smoke belching, semi-trucks and clunky passenger cars. Beginning in 2009, Volkswagen released a new 2.0L turbocharged direct injection ("TDI") diesel engine. The TDI engines were installed in Volkswagen's Jetta, Jetta Sportwagen, Golf, Golf Sportwagen, Beetle, Beetle Convertible, and Passat models. Volkswagen marketed its new, TDI diesel engines as groundbreaking and ushering in a new era of "clean diesel" technology:

This ain't your daddy's diesel.

Stinky, smoky, and sluggish. Those old diesel realities no longer apply. Enter TDI Clean Diesel. Ultra-low-sulfur fuel, direct injection technology, and extreme efficiency.  We've ushered in a new era of diesel.

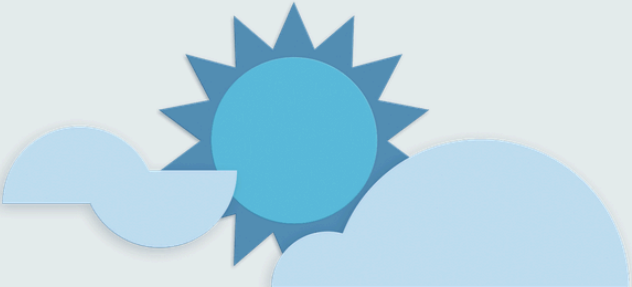
- Engineered to burn low-sulfur diesel fuel
- "Common Rail" direct injection system

[View key fuel efficiency info ?](#)



12. The TDI engine was the centerpiece of a branding campaign by Volkswagen centered on positioning its vehicles as the "go-to" brand for environmentally concerned drivers.

Specifically, Volkswagen represented that its line of TDI engines were part of its philosophical commitment to being “eco-conscious” and to “building a better future for all of us:”




Efficiency isn't just a word. ¹ It's our philosophy.

Our commitment to making vehicles that are eco-conscious is part of bigger thinking. Because by building efficient vehicles that people actually want to drive, we're also building a better future for all of us. ² It's how we Think Blue®.

[View key fuel efficiency info ?](#)

13. In addition to supposedly being “environmentally-friendly” Volkswagen’s marketing campaign emphasized that its TDI engines retained the performance and torque benefits historically associated with a diesel engine. In Volkswagen’s words, owners could have their cake and eat it too:



Fun-fueled.

Feel the fun, torque-y, turbocharged power of a TDI Clean Diesel engine and you'll almost forget it's efficient. ¹ TDI Clean Diesel makes sure you don't have to sacrifice driving dynamics for mpg. Cake. Eating it too.

- Available **DSG® dual-clutch transmission**
- **Torque-y and responsive**

[View key fuel efficiency info ?](#)

B. The Clean Air Act and regulation of diesel emissions.

14. Congress passed the Clean Air Act (“the Act”) in 1963. In passing the Act, Congress found that “the increased use of motor vehicles . . . has resulted in mounting dangers to the public health and welfare.” 42 U.S.C. §7401(a)(2). Congress’ purpose in creating the Act was to “protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare and the product capacity of its population. 42 U.S.C. §7401(b)(1)-(2).

15. A central part of the Act’s framework is the regulation of nitrogen oxides (“NOx”) and other pollutants from mobile sources, such as cars. NOx are a family of highly reactive gases that play a major role in the atmospheric reactions with volatile organic compounds that produce ozone (i.e. smog). Inhaling ozone can lead to health problems such as chest pain, coughing, throat irritation, and congestion. Similarly, inhaling ozone can irritate and worsen bronchitis, emphysema, and asthma. As with many other forms of pollution, children are most at risk of having health problems from ozone exposure.

16. Under the Act and its regulatory framework, vehicles powered by Volkswagen’s TDI diesel engine were required to comply with certain emissions standards for air pollutants, including NOx. As part of this compliance protocol, the Environmental Protection Agency (“EPA”) administers a certification program to ensure that every vehicle introduced into the United States meets the required emissions standards. Through this program, the EPA issues certificates of conformity (“COCs”), which indicate that a particular model vehicle meets the required emissions standards.

17. In order to receive a COC from the EPA, vehicle manufacturers must submit an application to the EPA disclosing the material aspects of the vehicles emissions system. Additionally, each model vehicle must undergo a series of tests designed to determine whether

the vehicle satisfies EPA emissions standards. In marketing and selling its TDI diesel powered vehicles, Volkswagen represented and warranted that its vehicles met or exceeded all federal and state emissions standards.

C. Volkswagen's deployment of a cheat device to manipulate EPA testing.

18. The EPA expressly bans the use of “cheat” or “defeat” devices to evade or manipulate emissions testing. Specifically, the EPA defines a defeat device as a device “that reduces the effectiveness of the emission control system under conditions which may reasonably be expected to be encountered in normal vehicle operation and use . . .” 40 C.F.R. §86.1803-01. Motor vehicles equipped with a defeat device cannot receive a COC from the EPA. Moreover, vehicles are only covered by a COC “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).

19. The EPA initially issued COCs for Volkswagen vehicles powered by its 2.0L TDI diesel engines, meaning that the vehicles passed the EPA’s standard emissions testing. However, in early 2014, a group of researchers conducted emissions testing on several Volkswagen model vehicles powered by TDI diesel engines. That testing revealed that in real-world driving conditions, Volkswagen’s Jetta and Passat models exceeded U.S. emission limits by a factor of between 5 and 35.

20. Following the release of the results of the West Virginia study, the EPA launched an investigation into Volkswagen’s TDI diesel engine vehicles. For more than a year after the EPA began its investigation, Volkswagen denied any wrongdoing and attributed the testing discrepancies to mere “technical glitches.” However, on September 18, 2015, the EPA issued a notice of violation to Volkswagen, concluding that Volkswagen had intentionally employed cheat devices in the software of its vehicles. As explained by the EPA, the cheat devices sensed

when the vehicles were being tested for compliance with EPA emissions standards and made temporary changes to the vehicles' emissions system so that the vehicles could pass the test:

VW manufactured and installed software in the electronic control module (ECM) of these vehicles that senses 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 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" . . . 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 . . . As a result, emissions of NOX increased by a factor of 10 to 40 times above the EPA compliant levels . . .

21. The EPA concluded that cheat devices had been incorporated into the software of the following Volkswagen vehicles:

| Model Year | EPA Test Group | Make and Model(s) |
|-------------------|-----------------------|---|
| 2009 | 9VWXV02.035N | VW Jetta, VW Sportwagen |
| 2009 | 9VWXV02.0U5N | VW Jetta, VW Sportwagen |
| 2010 | AVWXV02.0UFN | VW Golf, VW Jetta, VW Jetta Sportwagen |
| 2011 | BVWXV02.0U5N | VW Golf, VW Jetta Sportwagen |
| 2012 | CVWXV02.0U5N | VW Beetle, VW Beetle Convertible, VW Golf, VW Jetta, VW Jetta Sportwagen, |
| 2012 | CVWXVO2.0U4S | VW Passat |
| 2013 | DVWXV02.0U5N | VW Beetle, VW Beetle Convertible, VW Golf, VW Jetta, VW Jetta Sportwagen |

| | | |
|------|--------------|--|
| 2013 | DVWXV02.0U4S | VW Passat |
| 2014 | EVWXV02.0U5N | VW Beetle, VW Beetle Convertible, VW Golf, VW Jetta, VW Jetta Sportwagen |
| 2014 | FVGAV02.0VAL | VW Passat |
| 2015 | FVGAV02.0VAL | VW Beetle, VW Beetle Convertible, VW Golf, VW Golf Sportwagen, VW Jetta, VW Passat |

22. After the EPA issued its notice of violation, Volkswagen and its executives finally conceded that their deceit was far more than just a technical glitch. During a speech in Brooklyn, New York, Michael Horn, the chief of U.S. operations for Volkswagen, acknowledged that Volkswagen “was dishonest with the EPA, and the California Air Resources Board and with all of you [i.e. the customers].” He went on to say “we have totally screwed up.”

C. Plaintiff’s purchase of a 2012 Golf TDI.

23. Plaintiff Rex W. Gibson purchased a 2012 Volkswagen Golf with a 2.0L TDI diesel engine from Quality Automotive dealership in March 2012.

24. Some of the primary factors in Plaintiff’s decision to purchase the vehicle were its purported environmental benefits and fuel efficiency. Plaintiff relied on the representations made by Volkswagen, its agents, and its employees related to the fuel efficiency, environmental benefits, and compliance with emissions standards of the vehicle and these representations were a material factor in his decision to purchase the vehicle.

CLASS ALLEGATIONS

25. Plaintiff brings this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of himself and the following Class of persons similarly situated:

All persons who leased or bought any of the following vehicles: (a) 2009-2015 Volkswagen Jetta TDI and Volkswagen Jetta TDI Sportwagen; (b) 2010-2015 Volkswagen Golf TDI and Volkswagen Golf TDI Sportwagen; (c) 2012-2015 Volkswagen Beetle and Volkswagen Beetle Convertible; and (d) 2012-2015 Volkswagen Passat TDI.

26. Excluded from the Class are the Defendants, their legal representatives, officers, directors, assigns, and successors, or any entity in which any Defendant has a controlling interest; the judge to whom this action is assigned, and members of the judge's immediate family; claims for personal injury, wrongful death and/or emotional distress; and all persons or entities who properly execute and timely file a request for exclusion from the Class.

A. Numerosity

27. The exact number of Class members is unknown to the Plaintiff at this time. However, upon information and belief, Volkswagen has sold hundreds of thousands of vehicles with the cheat device described above. As such, the Class is so numerous that joinder of all members is impracticable. Moreover, the identity of the members of the Class can readily be determined from the records maintained by the Defendants.

B. Commonality

28. There are numerous questions of law and fact common to Plaintiff and the Class, which predominate over any questions that might affect individual Class members, including:

- a. Whether the vehicles leased or bought by the Class met federal and state emissions standards;
- b. Whether Volkswagen installed a cheat device in the vehicles leased or bought by the Class in violation of federal emissions testing standards;
- c. Whether Volkswagen disclosed the installation of the cheat device in accordance with federal regulatory requirements;
- d. Whether Volkswagen made fraudulent representations to the Class regarding its TDI diesel engines;
- e. Whether Volkswagen concealed material facts from the Class regarding its TDI diesel engines; and
- f. Whether Volkswagen breached the implied and express warranties provided to the Class regarding Volkswagen's TDI diesel engines.

C. Typicality

29. Plaintiff's claims are typical of the claims of the other members of the Class because his claims arise from the same events, practices, and/or course of conduct and because all members of the Class are similarly affected by Defendants' wrongful conduct.

D. Adequacy

30. Plaintiff will fairly and adequately represent and protect the interests of all members of the Class.

31. Plaintiff does not have any interests antagonistic to or in conflict with the interests of the Class.

32. The Defendants have no unique defenses against the Plaintiff that would interfere with the Plaintiff's representation of the Class.

33. Plaintiff has retained counsel with considerable experience in prosecuting class actions and complex litigation. Plaintiff and his counsel are committed to vigorously prosecuting this action on behalf of the Class and have the financial resources to do so.

E. Rule 23(b)(1) Requirements

34. The requirements of Rule 23(b)(1)(A) are satisfied because prosecution of separate actions by the members of the Class would create a risk of establishing incompatible standards of conduct for Defendants.

35. The requirements of Rule 23(b)(1)(B) are satisfied because adjudications of these claims by individual members of the Class would, as a practical matter, be dispositive of the interest of the other members not parties to the actions, or substantially impair or impede the ability of other members of the Class to protect their interests.

F. Rule 23(b)(3) Requirements

36. If the Class is not certified under Rule 23(b)(1), then certification under (b)(3) is appropriate because questions of law or fact common to members of the Class predominate over any questions affecting only individual members. Moreover, a class action is superior to other available methods of fairly and efficiently adjudicating this controversy. The expense Class members would have to incur if they were to attempt individually to obtain relief from the Defendants would dwarf the value of their claims, which accordingly do not warrant separate actions. Due to the expense of individual litigation, few if any Class members could otherwise afford to seek legal redress for the wrongs committed by the Defendants. Absent a class action,

Class members will continue to suffer losses, Defendants' misconduct will continue without remedy, and Defendants will retain the economic benefits of their wrongdoing.

37. Further, Class treatment of the common questions of law and fact in this case is superior to multiple individual actions or piecemeal litigation because it economizes public and private resources and promotes consistency and efficiency of adjudication. Disposing of the claims of the Class members in a single action will provide substantial benefits to all parties and the courts.

COUNT ONE FRAUDULENT REPRESENTATION

38. Plaintiff incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

39. Defendants represented to Plaintiff and the Class that the vehicles at issue met or exceeded federal and state emissions standards.

40. Defendants' representations were false when made.

41. Defendants knew that their representations to Plaintiff and the Class were false and intentionally misled Plaintiff and the Class.

42. Plaintiff and the Class relied on the representations made by the Defendants.

43. As a direct and proximate result of the Defendants' fraudulent representations, Plaintiff and the Class have sustained actual damages in that they have incurred, or are substantially certain to incur, costs and expenses of repairing or modifying their vehicles in order to meet federal and state emissions standards, loss of use of their vehicles, and loss in value of their vehicles.

**COUNT TWO
FRAUDULENT CONCEALMENT**

44. Plaintiff incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

45. Defendants had a duty to disclose to Plaintiff and the Class whether the vehicles at issue satisfied federal and state emissions standards.

46. Defendants fraudulently concealed from Plaintiff and the Class the fact that the vehicles at issue did not satisfy federal and state emissions standards.

47. Whether the Plaintiff and the Class' vehicles satisfied federal and state emissions standards was a material fact.

48. Plaintiff and the Class could not have discovered that the Defendants had concealed the fact that the vehicles at issue did not satisfy federal and state emissions standards.

49. As a direct and proximate result of the Defendants' fraudulent concealment, Plaintiff and the Class have sustained actual damages in that they have incurred, or are substantially certain to incur, costs and expenses of repairing or modifying their vehicles in order to meet federal and state emissions standards, loss of use of their vehicles, and loss in value of their vehicles.

**COUNT THREE
BREACH OF IMPLIED AND EXPRESS WARRANTY**

50. Plaintiff incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

51. Plaintiff and the Class' vehicles were "goods" for purposes of the Uniform Commercial Code, and at the time the vehicles were placed in the stream of commerce Defendants were "merchants" with respect to goods of this kind.

52. Defendants through advertising material, literature, publications, and other materials, expressly and impliedly warranted that Plaintiff and the Class' vehicles satisfied federal and state emissions standards.

53. Defendants breached these warranties because they fraudulently concealed from Plaintiff and the Class the fact that the vehicles did not meet federal and state emissions standards.

54. As a direct and proximate result of the Defendants' fraudulent concealment, Plaintiff and the Class have sustained actual damages in that they have incurred, or are substantially certain to incur, costs and expenses of repairing or modifying their vehicles in order to meet federal and state emissions standards, loss of use of their vehicles, and loss in value of their vehicles.

COUNT FOUR UNJUST ENRICHMENT

55. Plaintiff incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

56. Defendants have been unjustly enriched in that they have wrongfully acquired a benefit, i.e., funds and profits, by their wrongful behavior described above.

57. Defendants have continued to acquire funds and profits despite their knowledge of the fact that the vehicles at issue did not meet federal and state emissions requirements.

58. The circumstances under which Defendants profited from the sale of the vehicles at issue make it inequitable for them to retain those funds and profits.

59. Plaintiff, on behalf of himself and the Class, demands that Defendants be ordered to disgorge, for the benefit of the Plaintiff and the Class, all or part of their ill-gotten profits received from the sale of the vehicles at issue and/or make full restitution to Plaintiff and the Class.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and the proposed Class, prays that this Court enter judgment against the Defendants and in favor of the Plaintiff and award the following relief:

- Certification of the proposed Class and any necessary subclass(es);
- A declaration that the Defendants are financially responsible for notifying the Class that the vehicles at issue do not meet federal and state emissions standards;
- A declaration that the Defendants are responsible for the costs and expenses of modifying and repairing the vehicles at issue so that the vehicles are in compliance with all federal and state emissions requirements;
- An award of compensatory damages to Plaintiff and the Class for loss of use and diminution of value to the vehicles at issue;
- An award of punitive damages to Plaintiff and the Class for the purpose of punishing Defendants for their wrongful and illegal conduct and also to deter others from engaging in similar wrongful and illegal conduct in the future;

- A declaration that the Defendants must disgorge, for the benefit of Plaintiff and the Class, all or part of their ill-gotten profits received from the sale of the vehicles at issue;
- An award of costs and attorneys' fees, as allowed by law, and/or from a common fund created hereby;
- Leave to amend the Complaint to conform to the proof presented at trial; and
- Such other or further relief, including equitable relief, as this Court deems appropriate under the circumstances.

PLAINTIFF DEMANDS TRIAL BY JURY.

Respectfully submitted,

/s/ Steven L. Nicholas
GREGORY B. BREEDLOVE
gb@cunninghambounds.com
STEVEN L. NICHOLAS
sln@cunninghambounds.com
WILLIAM E. BONNER
web@cunninghambounds.com
DAVID G. WIRTES, JR.
dgw@cunninghambounds.com
Cunningham Bounds, LLC
1601 Dauphin St.
Mobile, AL 36604
251-471-6191 (O)
251-479-1031 (F)

PLAINTIFF WILL SERVE THE DEFENDANTS BY PRIVATE PROCESS SERVER AS FOLLOWS:

Volkswagen Group of America, Inc.
C/O CSC-Lawyers Incorporating Service, Inc.
150 South Perry Street
Montgomery, AL 36104

Volkswagen AG
Berliner Ring 2
38440 Wolfsburg, Germany