

James E. Cecchi
Lindsey H. Taylor
CARELLA, BYRNE, CECCHI,
OLSTEIN, BRODY & AGNELLO, P.C.
5 Becker Farm Road
Roseland, New Jersey 07068
(973) 994-1700

Matthew Preusch
KELLER ROHRBACK L.L.P.
1129 State Street, Suite 8
Santa Barbara, CA 93101
(805) 456-1496

Attorneys for Plaintiffs

Lynn Lincoln Sarko
Gretchen Freeman Cappio
Daniel Mensher
Ryan McDevitt
KELLER ROHRBACK L.L.P.
1201 Third Avenue, Suite 3200
Seattle, Washington 98101-3052
(206) 623-1900

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

DAVID GRECZYLO, CHARLES HALL,
RED BRADLEY, TIM WINKEL,
BENJAMIN FOOTE, NICOLAS SWISHER,
and ZAK DIXON, individually and on behalf
of all others similarly situated,

Plaintiffs,

v.

VOLKSWAGEN GROUP OF AMERICA,
INC. and VOLKSWAGEN AG,

Defendants.

Civil Action No.

**COMPLAINT and
DEMAND FOR JURY TRIAL**

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	NATURE OF THE ACTION	1
III.	PARTIES	4
IV.	JURISDICTION AND VENUE	6
V.	FACTS	8
A.	Defendants Tout Their Diesel Vehicles as Being Fuel Efficient and Good for the Environment	8
B.	Volkswagen Intentionally Hid the Excessive and Illegal Levels of Pollution Emitted from its Cars	11
C.	Defendants Have Profited Handsomely From Their Diesel Vehicles.....	17
D.	Volkswagen’s Illegal Actions Have Caused Class Members Significant Harm.....	17
VI.	PLAINTIFFS’ FACTS.....	20
A.	Plaintiff David Greczylo	20
B.	Plaintiff Charles Hall	21
C.	Plaintiff Red Bradley	22
D.	Plaintiff Tim Winkel	22
E.	Plaintiff Benjamin Foote.....	23
F.	Plaintiff Nicolas Swisher	24
G.	Plaintiff Zak Dixon	24
VII.	CLASS ACTION ALLEGATIONS	25
1.	Numerosity: Federal Rule of Civil Procedure 23(a)(1)	26
2.	Commonality and Predominance: Federal Rule of Civil Procedure 23(a)(2) and 23(b)(3)	26

3.	Typicality: Federal Rule of Civil Procedure 23(a)(3).....	27
4.	Adequacy: Federal Rule of Civil Procedure 23(a)(4)	27
5.	Declaratory and Injunctive Relief: Federal Rule of Civil Procedure 23(b)(2)	27
6.	Superiority: Federal Rule of Civil Procedure 23(b)(3)	28
VIII.	ANY APPLICABLE STATUTES OF LIMITATION ARE TOLLED	28
A.	Discovery Rule Tolling	28
B.	Tolling Due To Fraudulent Concealment	29
C.	Estoppel.....	30
IX.	DEMAND FOR JURY TRIAL	73

I. INTRODUCTION

Plaintiffs David Greczylo, Charles Hall, Red Bradley, Tim Winkel, Benjamin Foote, Nicolas Swisher, and Zak Dixon (“Plaintiffs”), individually and on behalf of all others similarly situated, allege the following against Volkswagen Group of America, Inc., and Volkswagen AG (“Defendants” or “Volkswagen”), based where applicable on personal knowledge, information and belief, and the investigation of counsel.

II. NATURE OF THE ACTION

1. This action is not about corporate negligence; rather, it is about a global auto manufacturer’s intentional deception of well-meaning, conscientious consumers and regulators, and its large scale, misguided plan to profit by gaming the system rather than playing by the rules.

2. This nationwide class action concerns the intentional installation of so-called defeat devices on at least 482,000 diesel Volkswagen and Audi vehicles sold in the United States since 2009 (“Defeat Device Vehicles”). Defendants marketed those vehicles as environmentally-friendly cars that possessed the holy grail of automotive qualities: extremely high fuel efficiency and performance, with very low emissions. Although Defendants successfully marketed these expensive cars as “green,” their environmentally-friendly representations were a sham. Defendants did not actually make cars with those desirable and advertised attributes.

3. According to a Notice of Violation (“NOV”), issued by the U.S. Environmental Protection Agency (EPA), on September 18, 2015, Volkswagen installed its “defeat device” in at least the following diesel models of its vehicles: Model Year (“MY”) 2009-2015 Jetta; MY 2009-2014 Jetta Sportswagen, MY 2012-2015 Beetle and Beetle Convertible; MY 2010-2015 Golf; MY 2015 Gold Sportswagen; MY 2012-2015 Passat; and MY 2010-2015 Audi A3. The California Air Resources Board is currently investigating whether the Defendants installed the

device in other cars as well, so additional vehicle models and model years may be added to this list when new facts are discovered.

4. Instead of delivering on their promise of extremely high fuel mileage coupled with low emissions, Defendants devised a way to make it appear that their cars did what they said they would when, in fact, they did not. Put simply, Defendants lied and continued to lie after the fact.

5. As Michael Horn, President and CEO of Volkswagen Group of America, reportedly admitted before unveiling the 2016 Volkswagen Passat in New York on September 21, 2015:

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

6. Volkswagen “screwed up” by intentionally designing and installing defeat devices that work by switching on the full emissions control systems in Defendants’ cars only when the car is undergoing periodic emissions testing. The technology needed to control emissions from

Defendants' cars to meet state and federal emissions regulations reduces their performance, limiting acceleration, torque, and fuel efficiency.

7. To hide this, the defeat device simply shuts off most of the emissions control systems in the car once the car has completed its emissions test. While that might have made the cars more fun to drive, it resulted in Defendants' cars sending up to 40 times as much pollution into the environment as is allowed under the Clean Air Act and state regulations.

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

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

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

10. *The New York Times* reported on September 23, 2015, Volkswagen AG's former chief executive, Martin Winterkorn resigned “taking responsibility for an emissions cheating scandal that has gravely damaged the carmaker's reputation.” There was reportedly chatter amongst Volkswagen's executive committee of the supervisory board that criminal proceedings may begin although Winterkorn claims to have “had no knowledge of the manipulation of the emissions data.”

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

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

13. Defendants’ violations are explained in a Notice of Violation the EPA issued to Defendants, as well as a letter from the California Air Resources Board (“CARB”), copies of which are attached to this Class Action Complaint as Exhibits A and B, respectively.

14. Because of Defendants’ actions, the cars it sold to Plaintiffs are not what Volkswagen promised. They are not environmentally friendly, “clean” diesels. Instead, they are dirty diesels: cars that pollute so much that they violate state and federal environmental protection laws. Moreover, when the emissions systems designed to decrease pollution are activated, the cars’ performance is diminished and they get worse mileage than advertised by Volkswagen.

15. These untenable circumstances not only undermine the reasons consumers paid a premium for their purportedly “clean” diesel cars but substantially decrease the resale value of the vehicles.

III. PARTIES

16. Plaintiff David Greczylo is a resident and citizen of Tinton Falls, Monmouth County, New Jersey.

17. Plaintiff Charles Hall is a resident and citizen of Brigantine, Atlantic County, New Jersey.

18. Plaintiff Red Bradley is a resident and citizen of the Municipality of Anchorage, Alaska.

19. Plaintiff Tim Winkel is a resident and citizen of Bloomington, Monroe County, Indiana.

20. Plaintiff Benjamin Foote is a resident and citizen of Des Moines, Polk County, Iowa.

21. Plaintiff Nicolas Swisher is a resident and citizen of Brookings, Brookings County, South Dakota.

22. Plaintiff Zak Dixon is a resident and citizen of Laramie, Albany County, Wyoming.

23. Volkswagen Group of America, Inc. is a corporation doing business in every U.S. 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.

24. Volkswagen AG is the parent corporation and sole owner of Volkswagen Group of America, Inc. (collectively “Volkswagen”). Volkswagen AG is based in Germany and directly controls and directs the actions of Volkswagen Group of America, Inc., which acts as its agent in the United States. As a result, this Court has specific jurisdiction over Volkswagen AG.

25. At all relevant times, Volkswagen manufactured, distributed, sold, leased, and warranted the Defeat Device Vehicles under the Volkswagen and Audi brand names throughout the nation. Volkswagen and/or its agents designed the CleanDiesel engines and engine control systems in the Defeat Device Vehicles, including the “defeat device.” Volkswagen also

developed and disseminated the owners' manuals and warranty booklets, advertisements, and other promotional materials relating to the Defeat Device Vehicles.

IV. JURISDICTION AND VENUE

26. This Court has jurisdiction over this action pursuant to the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1332(d), because at least one Class member is of diverse citizenship from one Defendant, there are more than 100 Class members, and the aggregate amount in controversy exceeds \$5 million, exclusive of interest and costs.

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

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

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

30. The remarkable level of centralized and intimate control Volkswagen AG and former CEO Winterkorn exert over Volkswagen Group of America, Inc. is well documented. Volkswagen AG itself describes this highly-centralized structure in its corporate governance document as follows: Volkswagen AG "targets and requirements [are] laid down by the Board of Management of Volkswagen AG or the Group Board of Management [and] must be complied with in accordance with the applicable legal framework." This top-down governance manifests

in Volkswagen AG's intimate management of Volkswagen Group of America, Inc. For example, in 2011, when Dr. Winterkorn visited the newly built Volkswagen plant in Tennessee, Bloomberg Business reported that "he berated staff for hanging chrome parts for air vents, doors and gear shifts on the wall. To check that they uniformly glistened before agreeing to use them in the sedan, he wanted them displayed on a table with light shining down at the same angle that customers would see the parts in the car."

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

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

The New York Times reported that Volkswagen AG was undergoing a “broad reorganization that would centralize control over its myriad brands [including Volkswagen Group of America, Inc.] and cement the power of its new chief executive, Martin Winterkorn.” Whatever decentralization Mr. Winterkorn was hoping to accomplish, however, has not come to pass, as he has now stepped down as Volkswagen’s CEO. In short, Volkswagen AG tightly controls the actions of its agent, Volkswagen Group of America, Inc., to perform the critical task of selling its cars in the United States. As a result, this Court has specific jurisdiction over Volkswagen AG.

33. Venue is proper in this District under 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the claims occurred and/or emanated from this District, and because Defendants have caused harm to Class members residing in this District.

V. FACTS

34. Defendants intentionally designed, marketed, and sold cars in order to mislead consumers and regulators about the amount of pollution those cars created and the fuel efficiency they produced. Despite touting themselves as an environmentally conscientious company that produced thoughtful cars for people who cared about the environment, Defendants sold expensive cars that produced pollution at orders of a magnitude above federal and state regulations, and then intentionally and knowingly hid the truth about those cars.

A. Defendants Tout Their Diesel Vehicles as Being Fuel Efficient and Good for the Environment

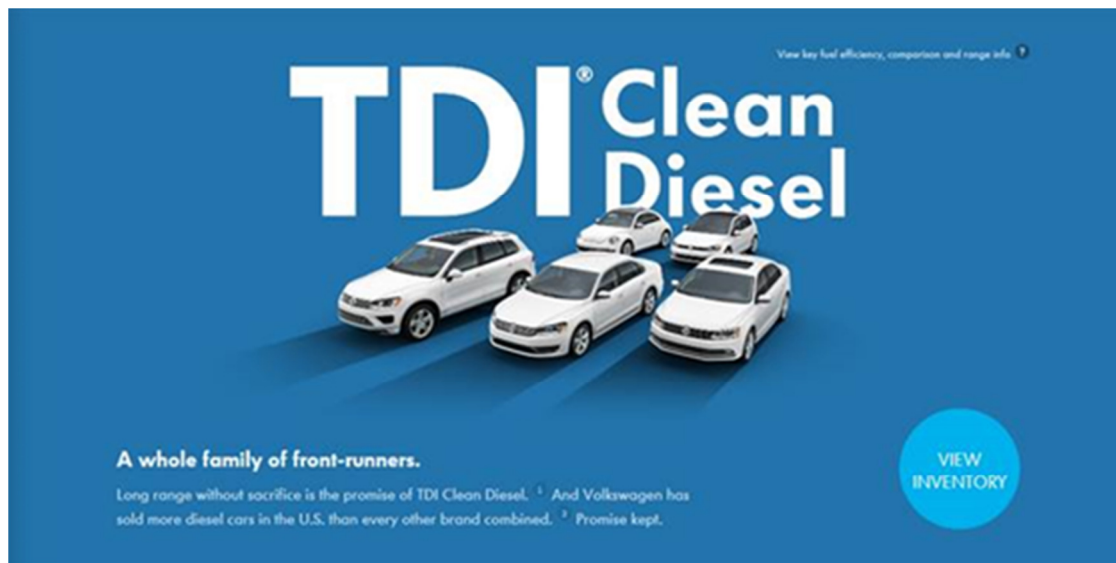
35. For years, Volkswagen has advertised its diesel vehicles as low-emission, fuel-efficient cars. Indeed, this marketing message is at the core of its image in the United States. It has been a successful advertising campaign; Volkswagen has become the largest seller of diesel passenger vehicles in the United States.

36. Defendants' success is based in large part on promoting their diesel cars as "clean" and "green" vehicles. Indeed, being both highly efficient and "clean" are the centerpieces of Defendants' diesel engine marketing campaign. "CleanDiesel" is in the very name of the vehicles about which Defendants lied.



37. Long after Volkswagen became aware that its vehicles were deliberately designed to cheat emissions tests, and even after EPA issued a Notice of Violation, Volkswagen continued to mislead consumers, including in advertisements appearing on its webpage as recently as September 21, 2015.

38. Those ads, an example of which is pictured below, are rapidly being removed from Volkswagen's websites. For example, Defendants continued to represent the Defeat Device Vehicles as "CleanDiesel":



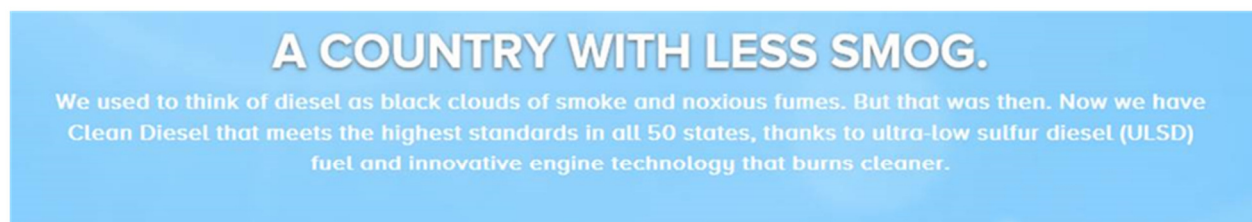
39. Volkswagen’s apparent concern for the environment is evident beyond just the model names and purported attributes of their vehicles. For example, on the “Environment” page of its website, Volkswagen Group of America states that it takes “environmental responsibility very seriously. When it comes to making our cars as green as possible, Volkswagen has an integrated strategy focused on reducing fuel consumption and emissions, building the world’s cleanest diesel engines and developing totally new power systems, which utilize new fuel alternatives.”

40. Volkswagen bolsters its apparent environmental bona fides by trumpeting the fact that the Audi A3 TDI and VW Jetta TDI were named the 2010 Green Car of the Year and the 2009 Green Car of the Year, respectively.

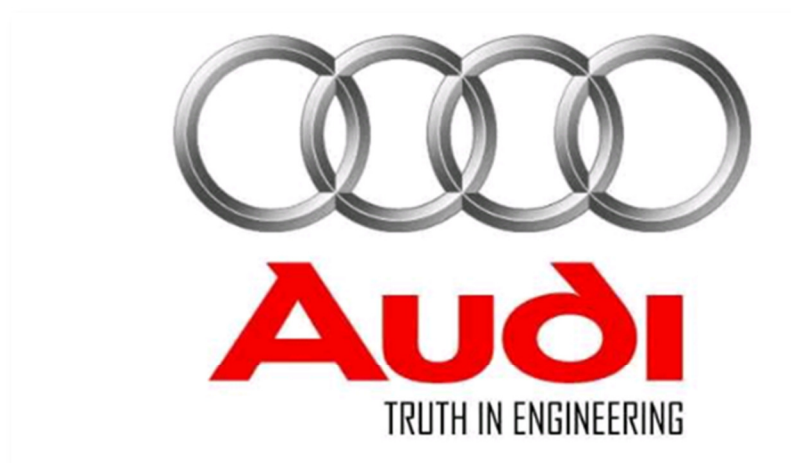
41. Defendants also launched a “Think Blue” program, which they explained is part of their policy of being “more responsible on the road and more environmentally conscious—not just in our cars.”

42. Beyond merely advertising, Defendants supported and directed a website to promote its “clean” diesel technology, www.clearlybetterdiesel.org, which says the technology

reduces smog and “meets the highest standards in all 50 states, thanks to ultra-low sulfur diesel (ULSD) fuel and innovative engine technology that burns cleaner,” and includes this image:



43. To promote its Audi brand, Volkswagen goes so far as to use the tagline “Truth in Engineering”:



44. Unfortunately for consumers who bought Defendants’ cars and for people who breathe the air into which Defendants’ cars emit extraordinary amounts of pollutants, Defendants engineering was far from “truthful.” Volkswagen has designed and sold cars that emit pollutants at breath-taking levels, failing state and federal environmental regulations by incredible margins.

B. Volkswagen Intentionally Hid the Excessive and Illegal Levels of Pollution Emitted from its Cars

45. The EPA’s investigation of Volkswagen was prompted by a May 15, 2014, publication titled “In-Use Emissions Testing of Light-Duty Diesel Vehicles in the United States”

by the Center for Alternative Fuels, Engines & Emissions (CAFEE) at West Virginia University (“the CAFEE Report”).

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

47. Those findings show that, contrary to Volkswagen’s self-promotion as a “green” company, its diesel cars are unhealthy and unlawful.

48. On September 18, 2015, the EPA issued a Notice of Violation of the Clean Air Act to Volkswagen. The NOV explains that Defendants have installed sophisticated software in the Volkswagen and Audi diesel vehicles sold by Defendants in the United States that detects when the vehicle is undergoing official emissions testing and turns full emissions controls on only during the test.

49. At all other times that the vehicle is running, however, the emissions controls are deactivated, meaning that pollution is freely released into the environment at levels that exceed those allowed by federal and state clean air regulators. This software produced and used by Volkswagen is a “defeat device” as defined by the Clean Air Act.

50. Those defeat devices were part of a computerized engine control systems that monitors sensors throughout a car’s engine and exhaust systems, and controls operation of the car’s systems to ensure optimal performance, which are common on most modern engines, including Volkswagen’s “CleanDiesel” engines. The functions controlled by those systems include fuel injection, valve and ignition timing, and, as in Volkswagen’s “CleanDiesel” engines, operating the engine’s turbocharger. The engine control computer can, for example, ensure that

the air-to-fuel mixture is correct based on sensor readings such as throttle position, amount of air flowing into the engine, and engine temperature.

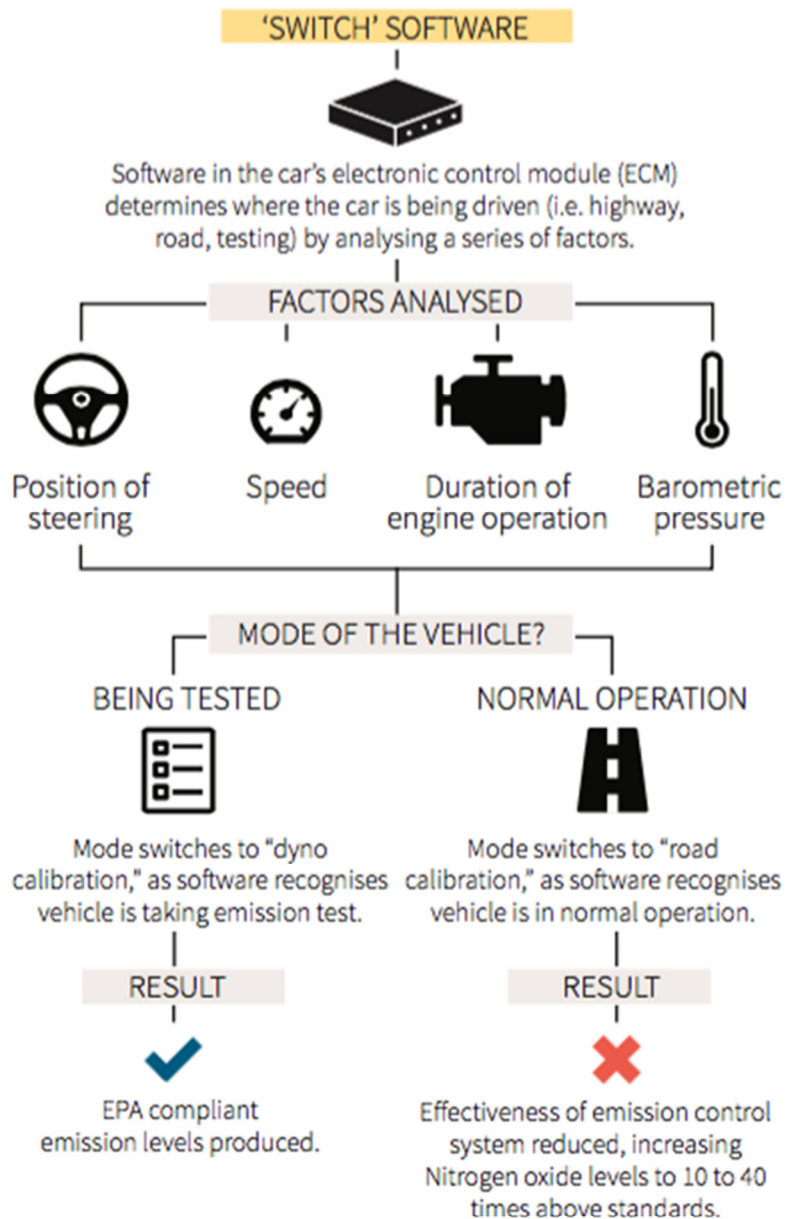
51. These engine control computers also receive data from sensors in the car's exhaust system that measure the amounts of chemical substances included in the car's exhaust. That data provides a measure of the engine's operation and efficiency, and is thus used by the engine control computer in operating the car's systems to ensure the desired performance and efficiency.

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

53. Volkswagen programmed the engine control computers in the Defeat Device Vehicles with software that detects when the cars are undergoing emissions testing, and then operates the car's engine and exhaust systems to ensure that emissions comply with EPA pollutant standards. When the car is not being emissions tested—that is, under the vast majority of operating conditions—the engine control systems operate the vehicle in a manner that does not comply with EPA emissions requirements.

54. This graphic prepared by *Reuters* summarizes that process:

How Volkswagen's defeat device works



Source: U.S. Environmental Protection Agency

J. Wang, 22/09/2015

REUTERS

55. In short, this software allows Defendants' diesel vehicles to meet emissions standards in labs or state testing stations while permitting the vehicles to emit nitrogen oxides

(NOx) at up to 40 times the standard allowed under United States laws and regulations during the normal operation of the vehicles.

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

57. NOx pollution contributes to nitrogen dioxide, ground-level ozone, and fine particulate matter. Exposure to these pollutants has been linked with serious health dangers, including asthma attacks and other respiratory illness serious enough to send people to the hospital. Ozone and particulate matter exposure have been associated with premature death due to respiratory-related or cardiovascular-related effects. Children, the elderly, and people with pre-existing respiratory illness are at an acute risk of health effects from these pollutants.

58. The Clean Air Act has strict emissions standards for vehicles, and it requires vehicle manufacturers to certify to the EPA that the vehicles sold in the United States meet applicable federal emissions standards to control air pollution. Every vehicle sold in the United States must be covered by an EPA-issued certificate of conformity. Under federal law, cars equipped with defeat devices, which reduce the effectiveness of emissions control systems during normal driving conditions, cannot be certified.

59. Remarkably, Volkswagen has already admitted that it violated state and federal laws, including CARB standards and the Clean Air Act:



60. This is not the first time Volkswagen allegedly engineered vehicles to cheat emission standards. As reported by the *Los Angeles Times*, Volkswagen paid a \$120,000 fine to EPA in 1974 in order to settle charges that “it gamed pollution control systems in four models by changing carburetor settings and shutting off an emissions-control system at low temperatures.”

61. Moreover, it appears Volkswagen was warned as long ago as 2007 by its suppliers and own employees to not try to cheat admissions tests in its modern diesel engines. According to a report by the *Associated Press*, “VW’s internal investigation has found a 2007 letter from parts supplier Bosch warning Volkswagen not to use the software during regular operation.” Also, “a Volkswagen technician raised concerns about illegal practices in connection with emissions levels in 2011.”

62. Despite those warnings, Volkswagen manufactured, marketed, and sold cars with defeat devices designed to allow for higher levels of emissions than those allowed by state and

federal law, violating the Clean Air Act, defrauding its customers, and engaging in unfair competition under state and federal laws.

C. Defendants Have Profited Handsomely From Their Diesel Vehicles

63. Defendants charge and consumers pay substantial premiums for the Defeat Device Vehicles. For example, according to Defendants' website, for the 2015 Volkswagen Jetta, the base S model with a gasoline engine has a starting MSRP of \$18,780. The base TDI S CleanDiesel, however, has a starting MSRP of \$21,640, a price premium of \$2,860. The CleanDiesel premium compared to the highest trim Jetta models with a comparable four-cylinder turbocharged gasoline engine is substantially higher: The Jetta SE has a starting MSRP of \$20,095, while the CleanDiesel TDI SEL MSRP is \$26,410, a 31% premium.

64. These premiums occur across all of the vehicles in which Defendants installed its "defeat device" for emissions testing, ranging from roughly \$1,000 for a mid-tier Golf, to \$2,900 for a base-level diesel Jetta, to nearly \$7,000 for a top-line diesel Passat.

D. Volkswagen's Illegal Actions Have Caused Class Members Significant Harm

65. The EPA has ordered Defendants to recall the Defeat Device Vehicles and repair them so that they comply with EPA emissions requirements. But that recall will not compensate Plaintiffs and the class for the significant harm Defendants' deception has caused. That is true for at least two reasons.

66. First, any repairs performed as part of the recall are likely to diminish the performance of the Defeat Device Vehicles. Volkswagen will likely not be able to make those vehicles compliant with state and federal regulations without degrading performance, fuel efficiency, or both. That is so because any solution will likely involve reprogramming the Defeat Device Vehicles' software to engage the emissions control equipment (which currently only operates when the vehicles are being emissions tested) at all times in a manner that reduces

engine power and fuel economy to bring NOx emissions within legal limits. Plaintiffs' and Class members' cars will therefore not perform as advertised.

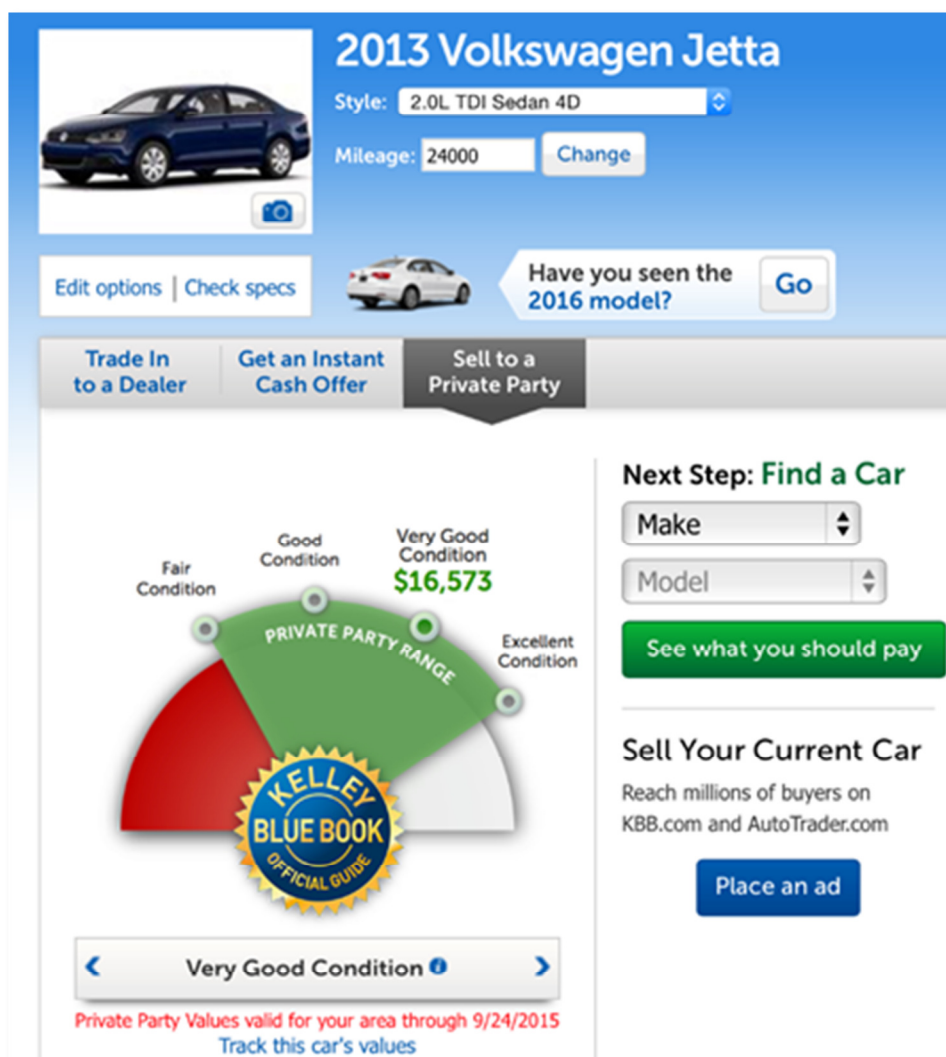
67. Second, the recall cannot compensate for the financial damages they have suffered, including the premium Plaintiffs and the Class paid for their "clean" diesel vehicles, the inevitable reduction in resale value caused by the recall, and the increase in fuel expenses as the vehicles become less efficient following reprogramming.

68. For those reasons, as a result of Volkswagen's unfair, deceptive, and/or fraudulent business practices, and its failure to disclose that under normal operating conditions the Defeat Device Vehicles emit 40 times the allowed levels, owners and/or lessees of the Defeat Device Vehicles have suffered losses in money and/or property.

69. Had Plaintiffs and Class members known of the "defeat device" at the time they purchased or leased their Defeat Device Vehicles, they would not have purchased or leased those vehicles, or would have paid substantially less for the vehicles than they did.

70. The resale value of Plaintiffs' and Class members' vehicles have also dropped since the announcement of Volkswagen's emission defeat device. Kelley Blue Book, www.kbb.com, is known as the nationwide "go-to" pricing guide for used cars. Kelley Blue Book ("KBB") has an established car valuation methodology and its values are broadly accepted in the industry by both buyers and sellers of used cars.

71. For example, this information from Kelly Blue Book shows the resale value of a 2013 Jetta in very good condition with 2,400 miles has dropped nearly \$1,000 in less than a week. The September 22, 2015 price quote (valid through September 24) was \$16,573. Just five days later, on September 27 (valid through October 1), the same car received a KBB value of \$15,878:



72. According to media sources, Volkswagen's recently ousted CEO, Martin Winterkorn, said in a statement that he was "deeply sorry that we have broken the trust of our customers and the public," and that Defendants would be suspending sales of some 2015 and 2016 vehicles with 2.0 liter diesel engines. While Defendants' candor about its breach of trust is notable, it cannot compensate Plaintiffs and Class members for the damages they have incurred.

73. In sum, Volkswagen's deliberate strategy to value profit over the truth, human health, and the environment, has caused serious harm to consumers nationwide.

VI. PLAINTIFFS' FACTS

A. Plaintiff David Greczylo

74. David Greczylo resides in Tinton Falls, New Jersey. Mr. Greczylo is the current owner of a 2012 VW Golf TDI that he purchased from Freehold Volkswagen in Freehold, New Jersey on February 25, 2013.

75. Mr. Greczylo paid \$26,215 for his 2012 Golf. Included in the price was a premium mark-up because he was buying a diesel car with what was represented as high fuel efficiency, low emissions, and enhanced performance.

76. Mr. Greczylo previously owned a 2010 Jetta TDI, which he purchased on August 28, 2010 from World Volkswagen in Neptune, New Jersey for about \$24,700. He bought his 2010 Jetta because of its fuel efficiency, low emissions, and turbo engineering. Mr. Greczylo commutes about 90 miles round trip for work, and he was interested in having a fuel efficient car with lower emissions. He was attracted to Volkswagen's representations of "CleanDiesel."

77. Mr. Greczylo is concerned that his 2010 Jetta was emitting pollutants at a much higher rate than he understood would be the case. He is concerned that Volkswagen represented to him a pollution standard that his 2010 Jetta never satisfied.

78. In 2012, Mr. Greczylo made the decision to purchase his Golf, which he currently owns. He again relied on Volkswagen's representations of "CleanDiesel" for his 2012 Golf.

79. He decided to buy the Golf because he wanted to secure high fuel efficiency, a good ride, and reduced emissions. In addition, the car had been made in Germany, unlike prior Volkswagens he had driven, and he felt it had very strong engineering.

80. Mr. Greczylo is concerned that his 2012 Golf has been emitting pollutants at a much higher rate than he understood to be the case.

81. Mr. Greczylo is also concerned that the value of his 2012 Golf has decreased significantly because of Volkswagen's misrepresentations. He was planning on reselling or trading in his car, and is now concerned about its decrease in value. He is also concerned about the likely impact on its performance or fuel efficiency after any proposed "fix" of the car's emissions.

82. Mr. Greczylo would not have bought his 2012 Golf, or his 2010 Jetta, if he had known the truth that Volkswagen had installed an emission "defeat device" in his car that rendered untrue its statements about the car's low emissions and environmental impacts.

B. Plaintiff Charles Hall

83. Charles Hall resides in Brigantine, New Jersey. Mr. Hall owns a 2011 Jetta TDI, which he bought at Cherry Hill Imports in Cherry Hill, New Jersey in May 2011.

84. Mr. Hall and his wife were interested in buying a fuel efficient car because they drive to Florida frequently and wanted to reduce their gas costs. They had not owned a diesel car in the past, because they were aware of the reputation of diesel fuel as being "dirty" and not good for the environment. When they became aware of Volkswagen's dual representations of "CleanDiesel" and fuel efficiency, they decided to buy the 2011 Jetta. Mr. Hall believed that the represented lower emissions of his 2011 Jetta was a good choice both for him and for the environment.

85. Mr. Hall paid cash for his 2011 Jetta, and bought it for just under \$25,000. Mr. Hall is concerned that any proposed "fix" by Volkswagen of his Jetta's emission system will either impact the car's fuel efficiency or its performance.

86. Mr. Hall is also concerned that the value of his 2011 Jetta has been severely impacted by Volkswagen's actions. He was hoping to sell his car sometime next year because he needs a bigger car. Mr. Hall's future plans to have that bigger car be a Volkswagen diesel Passat

have obviously been put on indefinite hold because of Volkswagen's actions. In addition, Mr. Hall is uncertain whether and at what price he might be able to resell his Jetta.

C. Plaintiff Red Bradley

87. Plaintiff Bradley is a resident of Anchorage, Alaska. For six years, up until October 2012, he provided marketing materials as a contractor for the only Volkswagen dealership in Alaska: Morrison Auto Group

88. As part of that work, he received marketing materials from Volkswagen, and, like consumers nationwide, reasonably believed based on those materials that Volkswagen's TDI models were fuel efficient and low emissions.

89. Based on those claims, he leased a 2013 Jetta Sportwagen, paying a premium for the diesel model due to its purported low emissions

90. Now, Mr. Bradley feels Volkswagen deceived him, just as it did other consumers and regulators. He has been damaged by that deception because, for nearly three years, he has been paying a premium to lease a TDI that he now knows emits up to 40 times the permissible levels of NOx.

D. Plaintiff Tim Winkel

91. Plaintiff Tim Winkel, a resident of Bloomington, Indiana, purchased a new 2013 Volkswagen Jetta Sportwagen TDI in November 2013, from a dealership in Indianapolis.

92. Mr. Winkel chose the Jetta TDI because he was looking for an environmentally friendly car. Volkswagen advertised the Jetta TDI as environmentally-friendly "Clean Diesel," balancing efficient fuel mileage and clean, EPA-compliant emissions with excellent performance. Because Mr. Winkel was considering moving to California (where he had previously lived) in the future, he also confirmed with the dealer that the vehicle complied with all California emissions requirements before purchasing it.

93. Mr. Winkel paid a premium for the “Clean Diesel” Jetta TDI, and would never have bought the car in the first place, much less paid a premium for it, if he knew the truth about its emission levels. He is concerned that any fix Volkswagen attempts to implement now will worsen his Jetta’s gas mileage and performance.

94. Mr. Winkel is disappointed that Volkswagen, a company he previously viewed favorably, defrauded him and other buyers of Defeat Device Vehicles when it misrepresented the characteristics of its “Clean Diesel” cars. Mr. Winkel is also disappointed that the resale value of his car has been severely diminished as a result of Volkswagen’s deceptive conduct.

E. Plaintiff Benjamin Foote

95. Benjamin Foote resides in Des Moines, Iowa. Mr. Foote leases a 2014 Jetta SportWagen TDI.

96. In August 2014, Mr. Foote visited a Volkswagen dealership in Cedar Rapids, Iowa. Mr. Foote was interested in leasing a Volkswagen diesel car because he was attracted to Volkswagen’s dual promise of fuel efficiency and low emissions. Mr. Foote decided to lease a 2014 Jetta SportWagen TDI because it provided extra cargo room while maintaining fuel efficiency, reduced emissions, and lower monthly gasoline costs.

97. Mr. Foote paid about \$29,000 for his 2014 Jetta SportWagen TDI. Included in that cost was a premium mark-up for the diesel version of the car and the concomitant benefits of low emissions and fuel efficiency that he was seeking. Mr. Foote recalls that he could have bought a basic Jetta model, not a diesel, and paid less for the car. But he decided to buy the diesel version because of the benefits from diesel – fuel efficiency, and low emissions – that Volkswagen was promoting. Mr. Foote leased his 2014 Jetta SportWagen TDI because he believed the promised lower emissions would have a reduced impact on the environment.

98. Mr. Foote would not have leased his Jetta, and certainly would not have paid a higher premium for it, if he had known that it was fitted with an emission defeat device, rendering untrue Volkswagen's representations about the car's low emissions and environmental impacts.

F. Plaintiff Nicolas Swisher

99. Plaintiff Nicolas Swisher, a resident of Brookings, South Dakota, purchased a new 2012 Volkswagen Jetta TDI Sedan in [October, 2015] from [Volkswagen of Inver Grove] in [Inver Grove Heights], [Minnesota].

100. Mr. Swisher chose the Jetta TDI primarily because Volkswagen advertised the vehicle as combining excellent fuel economy and environmentally friendly emissions with strong performance. He chose the Jetta TDI over other vehicles because of these features.

101. Mr. Swisher paid a premium for the "Clean Diesel" Jetta TDI, and would never have bought the car in the first place, much less paid a premium for it, if he knew the truth about its fuel economy, emission levels and performance.

102. The eventual resale value of the car has been an important consideration for Mr. Swisher throughout his ownership. He believes that Defendant's actions have significantly diminished the current and resale value of his Jetta.

G. Plaintiff Zak Dixon

103. Plaintiff Zak Dixon, a resident of Laramie, Wyoming, purchased a new 2013 Jetta TDI from a dealership in Las Vegas, Nevada. For this diesel Jetta, Mr. Dixon paid approximately \$30,000.

104. The Jetta was the first car that Mr. Dixon ever purchased.

105. Mr. Dixon chose the Jetta TDI because Defendants advertised it as being a very fuel efficient car that was environmentally friendly and EPA-compliant. Because Mr. Dixon dies

a significant amount of driving, these features were critical to his decision to purchase this car. As a result, he paid a premium for the Jetta TDI over other vehicles, such as the gasoline Jetta, because it offered these features.

106. Mr. Dixon has been damaged by Volkswagen's fraudulent and deceptive conduct. He would not have purchased his Jetta TDI if he knew the truth about its emissions; nor would he have paid a premium for it.

VII. CLASS ACTION ALLEGATIONS

107. Plaintiffs bring this action on behalf of themselves and as a class action, pursuant to the provisions of Rules 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure on behalf of the following Class:

All persons or entities in the United States who are current or former owners and/or lessees of a diesel "Defeat Device Vehicle." Defeat Device Vehicles include, without limitation: Model Year ("MY") 2009-2015 Jetta. MY 2009-2014 Jetta Sportwagen, MY 2012-2015 Beetle and Beetle Convertible, MY 2010-2015 Golf, MY 2015 Golf Sportwagen, MY 2012-2015 Passat, and MY 2010-2015 Audi A3.

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

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

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

1. Numerosity: Federal Rule of Civil Procedure 23(a)(1)

111. The members of the Class are so numerous and geographically dispersed that individual joinder of all Class members is impracticable. While Plaintiffs are informed and believe that there are not less than hundreds of thousands of members of the Class, the precise number of Class members is unknown to Plaintiffs, but may be ascertained from Volkswagen's records. Class members may be notified of the pendency of this action by recognized, Court-approved notice dissemination methods, which may include U.S. mail, electronic mail, Internet postings, and/or published notice.

2. Commonality and Predominance: Federal Rule of Civil Procedure 23(a)(2) and 23(b)(3)

112. This action involves common questions of law and fact, which predominate over any questions affecting individual Class members, including, without limitation:

- (a) Whether Volkswagen engaged in the conduct alleged herein;
- (b) Whether Volkswagen designed, advertised, marketed, distributed, leased, sold, or otherwise placed Defeat Device Vehicles into the stream of commerce in the United States;
- (c) Whether the CleanDiesel engine system in the Defeat Device Vehicles contains a defect in that it does not comply with EPA requirements;
- (d) Whether the CleanDiesel engine systems in Defeat Device Vehicles can be made to comply with EPA standards without substantially degrading the performance and/or efficiency of the Defeat Device Vehicles;
- (e) Whether Volkswagen knew about the "defeat device" and, if so, how long Volkswagen has known;

(f) Whether Volkswagen designed, manufactured, marketed, and distributed Defeat Device Vehicles with a “defeat device,”

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

(h) Whether Plaintiffs and the other Class members overpaid for their Defeat Device Vehicles;

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

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

3. Typicality: Federal Rule of Civil Procedure 23(a)(3)

113. Plaintiffs’ claims are typical of the other Class members’ claims because, among other things, all Class members were comparably injured through Volkswagen’s wrongful conduct as described above.

4. Adequacy: Federal Rule of Civil Procedure 23(a)(4)

114. Plaintiffs are adequate Class representatives because their interests do not conflict with the interests of the other members of the Class they seek to represent; Plaintiffs have retained counsel competent and experienced in complex class action litigation; and Plaintiffs intend to prosecute this action vigorously. The Class’s interests will be fairly and adequately protected by Plaintiffs and their counsel.

5. Declaratory and Injunctive Relief: Federal Rule of Civil Procedure 23(b)(2)

115. Volkswagen has acted or refused to act on grounds generally applicable to Plaintiffs and the other members of the Class, thereby making appropriate final injunctive relief and declaratory relief, as described below, with respect to the Class as a whole.

6. Superiority: Federal Rule of Civil Procedure 23(b)(3)

116. A class action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. The damages or other financial detriment suffered by Plaintiffs and the other Class members are relatively small compared to the burden and expense that would be required to individually litigate their claims against Volkswagen, so it would be impracticable for members of the Class to individually seek redress for Volkswagen's wrongful conduct.

117. Even if Class members could afford individual litigation, the court system could not. Individualized litigation creates a potential for inconsistent or contradictory judgments, and increases the delay and expense to all parties and the court system. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

VIII. ANY APPLICABLE STATUTES OF LIMITATION ARE TOLLED

A. Discovery Rule Tolling

118. The tolling doctrine was made for cases of concealment like this one. For the following reasons, any otherwise-applicable statutes of limitation have been tolled by the discovery rule with respect to all claims.

119. Through the exercise of reasonable diligence, and within any applicable statutes of limitation, Plaintiffs and members of the proposed Class could not have discovered that Volkswagen was concealing and misrepresenting the true emissions levels of its vehicles, including but not limited to its use of defeat devices.

120. As reported in *The New York Times* on September 19, 2015, the International Council on Clean Transportation, a research group, first noticed the difference between Volkswagen's emissions in testing laboratories and in normal use on the road. The International

Council on Clean Transportation brought the defeat device issue to the attention of the EPA. The EPA, in turn, conducted further tests on the vehicles, and ultimately uncovered the unlawful use of the defeat device software. Thus, Volkswagen's deception with respect to its CleanDiesel engines, engine control systems, and "defeat devices" was painstakingly concealed from consumers and regulators alike.

121. Plaintiffs and the other Class members could not reasonably discover, and did not know of facts that would have caused a reasonable person to suspect, that Volkswagen intentionally failed to report information within its knowledge to federal and state authorities, its dealerships, or consumers.

122. Likewise, a reasonable and diligent investigation could not have disclosed that Volkswagen had information in its sole possession about the existence of its sophisticated emissions deception and that it concealed that information, which was discovered by Plaintiffs immediately before this action was filed. Plaintiffs and other Class members could not have previously learned that Volkswagen valued profits over compliance with applicable federal and state emissions and consumer law.

B. Tolling Due To Fraudulent Concealment

123. Throughout the relevant time period, all applicable statutes of limitation have been tolled by Volkswagen's knowing and active fraudulent concealment and denial of the facts alleged in this Complaint.

124. Instead of disclosing its emissions deception, or that the emissions from the Defeat Device Vehicles were far worse than represented, Volkswagen falsely represented that its vehicles complied with federal and state emissions standards, and that it was a reputable manufacturer whose representations could be trusted.

C. Estoppel

125. Volkswagen was under a continuous duty to disclose to Plaintiffs and the other Class members the facts that it knew about the emissions from Defeat Device Vehicles, and of those vehicles' failure to comply with federal and state laws.

126. Although it had the duty throughout the relevant period to disclose to Plaintiffs and Class members that it had engaged in the deception described in this Complaint, Volkswagen chose to evade federal and state emissions and clean air standards with respect to the Defeat Device Vehicles, and it intentionally misrepresented its blatant and deceptive lack of compliance with state law regulating vehicle emissions and clean air.

127. Thus, Volkswagen is estopped from relying on any statutes of limitations in defense of this action.

COUNT I
Fraud By Concealment
(Common Law)

128. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

129. Plaintiffs bring this claim on behalf of the Class.

130. Volkswagen intentionally concealed and suppressed material facts concerning the quality and character of the Defeat Device Vehicles. As alleged in this Complaint, Volkswagen engaged in deception to evade federal and state vehicle emissions standards by installing software designed to conceal its vehicles' emissions of the pollutants, which contributes to the creation of ozone and smog.

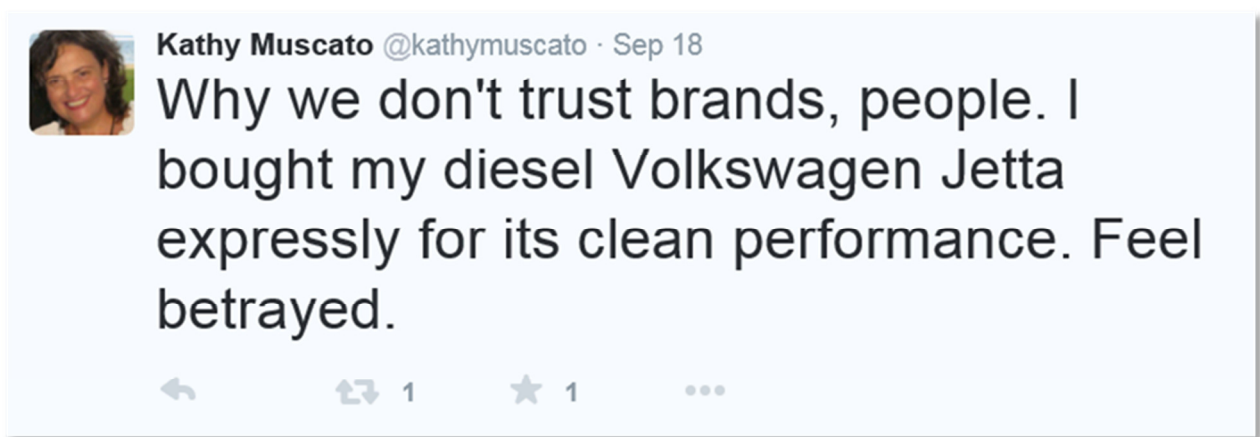
131. The software installed on the vehicles at issue was designed nefariously to kick in during emissions certification testing, such that the vehicles would show far lower emissions than when actually operating on the road. The result was what Volkswagen intended: vehicles

passed emissions certifications by way of deliberately induced readings that do not reflect normal operations. Reportedly, Volkswagen's deliberate, secret deception resulted in noxious emissions from these vehicles at up to 40 times applicable standards.

132. Plaintiffs and Class members reasonably relied upon Volkswagen's false representations. They had no way of knowing that Volkswagen's representations were false and gravely misleading. As alleged herein, Volkswagen employed extremely sophisticated methods of deception. Plaintiffs and Class members did not, and could not, unravel Volkswagen's deception on their own.

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

134. As one representative customer, Kathy Muscato of Rochester, New York, explained in a tweet the day the EPA announced the Notice of Violation, she felt "betrayed" by Volkswagen:



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



136. Volkswagen's false representations were material to consumers, both because they concerned the quality of the Defeat Device Vehicles, including their compliance with applicable federal and state laws and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As Volkswagen well knew, its customers, including Plaintiffs and Class members, highly valued that the vehicles they were purchasing or leasing were clean diesel cars, and they paid accordingly.

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

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

139. Having volunteered to provide information to Plaintiffs and the Class, Volkswagen had the duty to disclose the entire truth. These omitted and concealed facts were material because they directly affect the value of the Defeat Device Vehicles purchased or leased by Plaintiffs and Class members. 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 Class members that they were purchasing clean diesel vehicles, and certification testing appeared to confirm this—except that, secretly, Volkswagen had thoroughly subverted the testing process.

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

141. On information and belief, Volkswagen has still not made full and adequate disclosures, and continues to defraud Plaintiffs and Class members by concealing material information regarding both the emissions qualities of its vehicles and its emissions deception.

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

143. Because of the concealment and/or suppression of the facts, Plaintiffs and Class members have sustained damages because they own vehicles that are diminished in value as a result of Volkswagen's concealment of the true quality and quantity of those vehicles' emissions and Volkswagen's failure to timely disclose the actual emissions qualities and quantities of hundreds of thousands of Volkswagen- and Audi-branded vehicles and the serious issues engendered by Volkswagen's corporate policies. Had Plaintiffs and Class members been aware of Volkswagen's emissions deceptions with regard to the vehicles at issue, and the company's

callous disregard for compliance with applicable federal and state law and regulations, Plaintiffs and Class members who purchased or leased new or certified previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

144. The value of Plaintiffs' and Class members' vehicles has diminished as a result of Volkswagen's fraudulent concealment of its emissions deception, which has greatly tarnished the Volkswagen and Audi brand names attached to Plaintiffs' and Class members' vehicles and made any reasonable consumer reluctant to purchase any of the Defeat Device Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

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

146. Volkswagen's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Class members' rights and the representations that Volkswagen made to them, in order to enrich Volkswagen. Volkswagen's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

147. Plaintiffs plead this count pursuant to the law of New Jersey, where Volkswagen has its American headquarters, on behalf of all members of the Class. As necessary, and in the alternative, Plaintiffs may allege sub-classes, based on the residences at pertinent times of members of the Class, to allege fraudulent concealment under the laws of states other than New Jersey.

COUNT II
Breach Of Contract

148. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

149. Plaintiffs bring this Count on behalf of the Class.

150. Volkswagen's misrepresentations and omissions alleged herein, including Volkswagen's failure to disclose the existence of the "defeat device" and/or defective design as alleged herein, caused Plaintiffs and the other Class members to make their purchases or leases of their Defeat Device Vehicles. Absent those misrepresentations and omissions, Plaintiffs and the other Class members would not have purchased or leased these Defeat Device Vehicles, would not have purchased or leased these Defeat Device Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the CleanDiesel engine system and the "defeat device." Accordingly, Plaintiffs and the other Class members overpaid for their Defeat Device Vehicles and did not receive the benefit of their bargain.

151. Each and every sale or lease of a Defeat Device Vehicle constitutes a contract between Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing Plaintiffs and the other Class members defective Defeat Device Vehicles and by misrepresenting or failing to disclose the existence of the "defeat device" and/or defective design, including information known to Volkswagen rendering each Defeat Device Vehicle less safe and emissions compliant, and thus less valuable, than vehicles not equipped with CleanDiesel engine systems and "defeat devices."

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

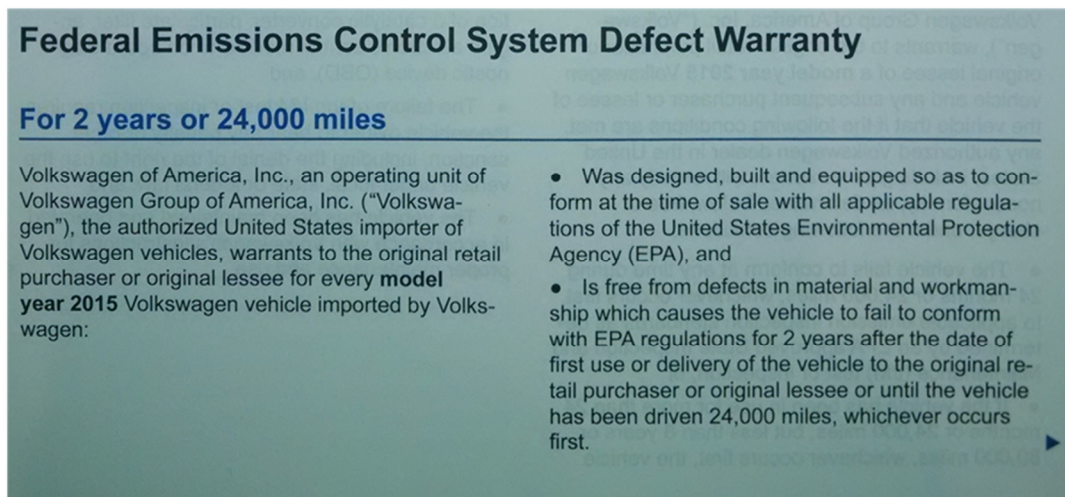
COUNT III
Breach Of Express Warranty

153. Plaintiffs incorporate by reference every prior and subsequent allegation of this Complaint as if fully restated here.

154. Plaintiffs bring a cause of action against Defendants for breach of express warranty on behalf of themselves and the Class.

155. Defendants made numerous representations, descriptions, and promises to Plaintiffs and Class members regarding the performance and emission controls of its diesel vehicles.

156. For example, Volkswagen included in manuals for some or all of their Defeat Device Vehicles the warranty that its vehicles were “designed, built and equipped so as to conform at the time of sale with all applicable regulations of the United States Environmental Protection Agency,” or similar language:



157. Volkswagen made similar representations that its emission systems complied with state law, for example:

Volkswagen of America, Inc., an operating unit of Volkswagen Group of America, Inc. (Volkswagen), warrants to the original retail purchaser or original lessee and any subsequent purchaser or lessee that every **model year 2010** Volkswagen vehicle imported by Volkswagen and certified for sale and registered in California:

- was designed, built and equipped so as to conform with all applicable requirements of the California Air Resources Board ("CARB") and

158. Defendants, however, knew or should have known that its representations, descriptions, and promises were false. Defendants were aware that it had installed defeat devices in the vehicles it sold to Plaintiffs and Class members.

159. Plaintiffs and Class members reasonably relied on Volkswagen's representations in purchasing "clean" diesel vehicles. Those vehicles, however, did not perform as was warranted. Unbeknownst to Plaintiffs, those vehicles included devices that caused their emission reduction systems to perform at levels worse than advertised. Those devices are defects. Accordingly, Volkswagen breached its express warranty by providing a product containing defects that were never disclosed to the Plaintiffs and Class members.

160. As a direct and proximate result of Volkswagen's false and misleading representations and warranties, Plaintiffs and Class members suffered significant damages and seek the relief described below.

COUNT IV
Breach Of Implied Warranty

161. Plaintiffs incorporate by reference each and every prior and subsequent allegation of this Complaint as if fully restated here.

162. Plaintiffs bring this cause of action against Volkswagen for breach of implied warranty on behalf of themselves and the Class.

163. Volkswagen made numerous representations, descriptions, and promises to Plaintiffs and Class members regarding the functionality of Volkswagen's "clean" diesel technology.

164. Plaintiffs and Class members reasonably relied on Volkswagen's representations in purchasing the Defeat Device vehicles.

165. As set forth throughout this Complaint, Volkswagen knew that its representations, descriptions and promises regarding its diesel engines were false.

166. When Plaintiffs and Class members purchased Volkswagen's diesel vehicles, they did not conform to the promises or affirmations of fact made in Volkswagen's promotional materials, including that the vehicles were designed to meet the most demanding environmental standards. Instead, as alleged above, those vehicles were designed to cheat those standards, and the vehicles emitted far higher levels of pollution than promised.

167. Accordingly, the Defeat Device Vehicles failed to conform to Volkswagen's implied warranty regarding their functionality.

168. As a direct and proximate result of Volkswagen's false and misleading representations and warranties, Plaintiffs and Class members suffered significant injury when Volkswagen sold them cars that, it is now clear, are worth far less than the price Plaintiffs and

Class members paid for them. Accordingly, Plaintiffs and the Class seek the relief described below.

COUNT V
Implied And Written Warranty
Magnuson - Moss Act (15 U.S.C. §§ 2301, *et seq.*)

169. Plaintiffs incorporate by reference each and every prior and subsequent allegation of this Complaint as if fully restated here.

170. Plaintiffs assert this cause of action on behalf of themselves and the other members of the Class.

171. This Court has jurisdiction to decide claims brought under 15 U.S.C. § 2301 by virtue of 15 U.S.C. § 2310(d).

172. Volkswagen's Defeat Device Vehicles are a "consumer product," as that term is defined in 15 U.S.C. § 2301(1).

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

174. Volkswagen is a "warrantor" and "supplier" as those terms are defined in 15 U.S.C. § 2301(4) and (5).

175. 15 U.S.C. § 2310(d)(1) provides a cause of action for any consumer who is damaged by the failure of a warrantor to comply with an implied or written warranty.

176. As described herein, Volkswagen provided Plaintiffs and Class members with "implied warranties" and "written warranties" as those term are defined in 15 U.S.C. § 2301.

177. Volkswagen has breached these warranties as described in more detail above. Without limitation, Volkswagen's Defeat Device vehicles are defective, as described above, which resulted in the problems and failures also described above.

178. By Volkswagen's conduct as described herein, including Volkswagen's knowledge of the defects inherent in the vehicles and its action, and inaction, in the face of the knowledge, Volkswagen has failed to comply with its obligations under its written and implied promises, warranties, and representations.

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

180. All jurisdictional prerequisites have been satisfied.

181. Plaintiffs and members of the Class are in privity with Volkswagen in that they purchased the software from Volkswagen or its agents.

182. As a result of Volkswagen's breach of warranties, Plaintiffs and Class members are entitled to revoke their acceptance of the vehicles, obtain damages and equitable relief, and obtain costs pursuant to 15 U.S.C. §2310.

COUNT VI
Unjust Enrichment

183. Plaintiffs incorporate by reference each and every prior and subsequent allegation of this Complaint as if fully restated here.

184. Plaintiffs bring this count on behalf of themselves and, where applicable, the Class.

185. Plaintiffs and members of the Class conferred a benefit on Defendants by, inter alia, using (and paying for) its vehicles.

186. Defendants have retained this benefit, and know of and appreciate this benefit.

187. Defendants were and continues to be unjustly enriched at the expense of Plaintiffs and Class members.

188. Defendants should be required to disgorge this unjust enrichment.

COUNT VII
Violation Of Racketeer Influenced And Corrupt Organizations Act (“RICO”), 18 U.S.C. § 1961 *et seq.*

189. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

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

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

The Defeat Device Enterprise

192. As detailed below, upon information and belief, in 2007, three individuals took or were appointed to leadership positions at Volkswagen AG, and/or its subsidiaries Audi AG and Porsche AG: Chief Executive Officer Martin Winterkorn (“Winterkorn”); Porsche’s head of Engine and Transmission Development Wolfgang Hatz (“Hatz”); and Audi’s head of Technical Development Ulrich Hackenberg (“Hackenberg”) (collectively, “the Individual Members”). These individuals exploited their positions of authority as well as the legitimacy and infrastructure of Volkswagen AG, Volkswagen of America, Inc., Audi AG (collectively, “the VW Corporate Members”), as well as Robert Bosch GmbH (“Bosch”), a German auto component manufacturer that developed the systems used by the criminal enterprise as “defeat

devices,” to perpetrate fraud against American consumers as well as state and federal regulators for their own personal and professional gain.

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

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

195. Hatz and Hackenberg, specifically, used their positions of authority and control at a Volkswagen AG subsidiaries—Audi and Porsche—to infiltrate the Volkswagen Group Board of Management, and exercise control over the Group to intentionally conceal and suppress material facts concerning the quality and character of the Defeat Device Vehicles and to evade federal and state vehicle emissions standards by installing software specifically designed to conceal its vehicles’ emissions of nitrous oxides.

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

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

Martin Winterkorn – CEO of Volkswagen AG

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

199. In 2007, Volkswagen was struggling, specifically in the U.S. market, where Volkswagen’s AG’s performance was described as “disastrous”:

The brand’s strategy of wooing customers with premium, uplevel products has not paid off; it is lacking new, interesting, and affordable products in key segments; and its costly production site in Chattanooga, Tennessee, is woefully underutilized.¹

200. Winterkorn was also facing a challenge to his leadership from auto magnate and long-time Volkswagen executive Ferdinand Piëch, who sought to oust Winterkorn as CEO.²

¹ Anton Watts, “VW Drama: Why Piech Wants Winterkorn Out—and What the Future May Hold,” *Car and Driver* (Apr. 16, 2015).

² *Id.*

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

[a] plan to . . . triple [Volkswagen] sales in the United States in just a decade – setting it on a course to sweep by Toyota to become the world’s largest automaker . . . by betting on diesel-powered cars . . . [and] promising high mileage and low emissions without sacrificing performance.³

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

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

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

205. In 2007, the year that Winterkorn took over as CEO, Volkswagen took two major steps to reverse this trend. First, Volkswagen ceased the use of BlueTEC in several of its models—in favor of developing its own emissions-reduction technology, which is now known to

³ Danny Hakim, Aaron Kessler, and Jack Ewing, “As Volkswagen Pushed to Be No. 1, Ambitions Fueled a Scandal,” *New York Times* (Sept. 26, 2015).

rely on the defeat devices which are the subject of this suit. Second, two executives of Volkswagen AG subsidiaries, Hackenberg and Hatz, were given leadership roles at Volkswagen

206. Hatz and Hackenberg were reportedly hand-picked to play a major role in implementing Winterkorn's plan to make Volkswagen the world's number-one automaker, through the development of consumer-friendly, low-emission diesel vehicles.

207. By implementing these steps and, in turn, economically benefitting from the Default Device Enterprise, Winterkorn delivered on his promise to sell more diesel cars in the U.S. than every other brand combined. However, Winterkorn's misdeeds came at a price and he was forced to resign in September 2015, following allegations that he knew or should have known of the defeat devices installed in Volkswagen vehicles.

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

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

Ulrich Hackenberg

210. Hackenberg joined Audi AG in 1989 and was put in charge of Audi Concept Definition. Later, he took over technical project management for Audi's entire product range, including the Audi A3, one of the affected vehicle models.⁴

211. On February 1, 2007, Hackenberg was appointed as a Member of Volkswagen's Brand Board of Development, where he was responsible for the technical development of all the Volkswagen Group's brands.⁵ Under his leadership, three new models were developed: the Golf, the Polo, and the Passat, two of which are affected vehicle models.

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

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

[P]ushing forward with development in . . . our TDI engines in the USA – our clean diesel offensive is bearing substantial fruit. In China, too, we are already introducing the first clean diesel models and watching developments there very closely. We also expect a great deal from g-tron technology, the most sustainable type of gas drive.⁶

⁴ Audi, "Board of Management," <http://www.audiusa.com/newsroom/corporate/audi-ag-board-of-management/ulrich-hackenberg>, (last accessed Sept 26, 2015) ("In 1985 Prof. Dr. Hackenberg joined AUDI AG, where in 1989 he was put in charge of Concept Definition and later took over the technical project management of the entire product range. This included the models Audi 80, A3, A4, A6, A8, TT and A2."); Autoblog, "Hackenberg says next Audi A4 set for Frankfurt debut," (Mar. 10, 2015).

⁵ Audi, "Board of Management," <http://www.audiusa.com/newsroom/corporate/audi-ag-board-of-management/ulrich-hackenberg> (last accessed Sept. 26, 2015).

⁶ Audi AG, "Gentlemen Start Your Engines," <http://audi-encounter.com/magazine/technology/01-2015/126-gentlemen-start-your-engines> (2014).

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

Wolfgang Hatz

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

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

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

Allegations Common to the Individual Members

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

219. In addition to the pattern of racketeering detailed herein, the Individual Members exploited Volkswagen’s, its subsidiaries’, and Bosch’s resources, including employees and engineers, in order to further the cover-up. For example, according to reports from “[e]missions

testers at the company's site in Westlake Village, California [which] evaluated all [Volkswagen] cars," VW and Audi executives orchestrated a cover-up from abroad:

If any vehicle failed to meet emissions targets, a team of engineers from Volkswagen headquarters [in Wolfsburg, Germany] or luxury brand Audi's base in Ingolstadt [Germany] was flown in.... After the group had tinkered with the vehicle for about a week, the car would then pass the test. VW had no engineers in the U.S. able to create the mechanism that cheated on the test or who could fix emissions problems, according to two other people.⁷

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

221. In their leadership roles at Volkswagen AG and its subsidiaries, the Individual Members used Volkswagen's infrastructure to distribute Defeat Device Vehicles to the United States and elsewhere.

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

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

Allegations Against the Volkswagen Corporate Members

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

⁷ Alex Webb and David Welch, "Volkswagen Said to Manage Faked Test Results From Germany," (Sept. 25, 2015).

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

Allegations Against Robert Bosch GmbH ("Bosch")

226. Bosch is the world's largest manufacturer of automotive components.

227. On information and belief, Bosch developed the engine and emissions control systems and software that provided the basis for the Defeat Devices, and sold them to Volkswagen.

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

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

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

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

232. Bosch was or should have been further aware that sales of Volkswagen vehicles that had Defeat Devices installed were increasing at an unprecedented rate, as indicated by the below graph from *The Economist*:



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

Enterprise Allegations

234. The Individual Members, the Volkswagen Corporate Members, and Bosch are all “persons” within the meaning of 18 U.S.C. § 1961(3).

235. The Defeat Device Enterprise engaged in, and affected- interstate and foreign commerce, and is an association-in-fact enterprise within the meaning of 18 U.S.C. § 1961(3)

and consists of “persons” associated together for the common purpose of employing the multiple, deceptive, abusive, illegal, and/or fraudulent acts described herein.

236. The Defeat Device Enterprise was formed in or about 2007 and continues to the present day.

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

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

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

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

241. The Defeat Device Enterprise is an ongoing organization with an ascertainable structure and a framework for making and carrying out decisions, that functions as a continuing unit with established duties, and that is separate and distinct from the pattern of racketeering activity in which Enterprise members have engaged and are engaging. Each member of the Enterprise performs a role in furtherance of the scheme consistent with its structure. The Enterprise was controlled by the Volkswagen Corporate Members and/or the Individual Members who developed the Defeat Device scheme and developed the cars and engines that

would put it into place. Upon direction from the Volkswagen Corporate Members and/or Individual Members, Bosch knew was reckless in not knowing the illegal purpose for which the defeat devices software it developed and supplied to the Volkswagen Corporate Members was being used, and the Volkswagen Corporate Members distributed the vehicles alongside a marketing campaign designed to misrepresent the Defeat Device Vehicles' emission levels and defraud consumers.

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

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

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

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

246. On information and belief, the Volkswagen Corporate Members and Individual Members of the Enterprise also shared a common purpose which amounted to fraud: to misrepresent the emission levels, fuel efficiency, performance, and power of affected Volkswagen vehicles and/or to conceal information regarding the use of Defeat Devices in the Volkswagen Defeat Device Vehicles to evade state and federal emission regulations. Bosch

knew or was reckless in not knowing that this was occurring and that Bosch software was being used to achieve it.

247. Each member of the Enterprise benefits from the common purpose. For the Volkswagen Corporate Members, the purpose was to avoid the additional costs associated with developing and installing low-emissions diesel technology that would also be attractive to consumers, and to sell and lease more vehicles to consumers based upon false representations of the Defeat Device Vehicles' performance and emissions levels. Succinctly put, the common purpose was to profit from the myth of the "holy grail" of high performance, efficient, low emissions vehicles. For the Individual Members, the purpose of the scheme was to further their own professional and pecuniary interests through misuse of the Corporate Members' resources. For Bosch, the purpose was to increase the sales of components to Volkswagen and thus realize monetary profit from the scheme.

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

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

250. Volkswagen AG and its subsidiaries, Volkswagen Group America, Inc. and Audi AG; Bosch; Martin Winterkorn, Ulrich Hackenberg, and Wolfgang Hatz are entities separate and distinct from one another and from the Enterprise. All of the Enterprise members are

independent legal entities with the authority to act independently of the Enterprise and the other Enterprise members.

251. The Individual Members, the Volkswagen Corporate Members, and Bosch, and their respective officers and employees, together, knowingly or recklessly, developed the Defeat Devices and the Defeat Device Vehicles and/or the operative technology in the Defect Device Vehicles.

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

Pattern of Racketeering Activity

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

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

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

256. The Volkswagen Corporate Members and/or Individual Members, with the assistance and collaboration of the other persons associated in fact with the Enterprise, devised and employed a fraudulent scheme to suppress and conceal the true emissions levels of the affected vehicles and by use of the mails, telephone and internet transmitted, or caused to be transmitted, by means of wire communication traveling in interstate or foreign commerce, writing(s) and/or signal(s), including but not limited to Volkswagen and Audi’s websites, Service

Bulletins to dealers, vehicle owners' manuals, press releases, advertisements, communications with federal and state regulators, and communications with other members of the enterprise, for the purpose of executing that scheme or artifice to defraud, in violation of 18 U.S.C. §§ 1341 and 1343. Defendants' pattern of conduct is exemplified below.

257. In or about April, 2015, Volkswagen sent letters to owners of Defeat Device Vehicles instructing them to take their cars to a dealer in order to install a software update that would alter their vehicles' tailpipe emissions so as to "optimize . . . operating efficiency." In reality, the software update was intended only to continue to evade state emissions tests and the letter was intended to (and did) perpetrate fraud against consumers and government regulators. A copy of the letter is attached hereto as Exhibit C.

258. In December, 2014, in response to concerns raised by the California Air Resources Board and the EPA, Volkswagen was permitted to issue recall letters for certain 2-liter diesel 2010-2014 models. The letters indicated that the owners of certain Defeat Device Vehicles needed to return their cars in order to install a software update that would fix an issue with a malfunctioning indicator light. Specifically, it indicated that "if the [light] illuminates for any reason, your vehicle will not pass an . . . emission inspection."⁸ In reality, the update was intended only to evade state emission tests and the letter was intended to perpetrate fraud against consumers and government regulators.

259. As detailed above, Volkswagen has continuously and, as recently as September 17, 2015, in television, internet and print advertisements, falsely represented that its Defeat Device Vehicles were "clean diesel" vehicles, which emitted less greenhouse gas than other

⁸ Mike Blake, "Exclusive: VW recall letters in April warned of an emissions glitch," *Reuters Business* (Sept. 23, 2015).

models, when in fact they emitted 10 to 40 times more greenhouse gases than legally permitted by state a federal regulations.

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

261. Continually, and as recently as September 17, 2015, Volkswagen transmitted fraudulent reports to the EPA indicating that their Defeat Device Vehicles met emissions targets as required by law,⁹ when in fact they emit 10 to 40 times more greenhouse gases than permitted by state and federal regulation.

Plaintiffs' Injuries and Damages

262. Plaintiffs and the Class were damaged and injured in their business and property by reason of the Defeat Device Enterprise's conduct in at least the following ways:

a. Plaintiffs and Class members who purchased or leased Defeat Device Vehicles were fraudulently induced into making those transactions and/or paying more than they otherwise would have had the true emissions and performance information of the Defeat Device Vehicles been revealed.

b. The value of the vehicles Plaintiffs and Class members purchased has been reduced, and if they can resell their vehicles at all, the resale value has decreased dramatically.

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

⁹ Alex Webb and David Welch, "Volkswagen Said to Manage Faked Test Results From Germany," Sept. 25, 2015.

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

265. Plaintiffs and Class members are entitled to bring this action for three times their actual damages, as well as punitive damages, equitable relief, and their costs and reasonable attorneys' fees, pursuant to 18 U.S.C. § 1964(c).

COUNT VIII
Violation Of The New Jersey Consumer Fraud Act
(N.J.S.A. § 56:8-1 *et seq.*)

266. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

267. Plaintiffs bring this Count on behalf of the New Jersey members of the Class.

268. The New Jersey Consumer Fraud Act ("New Jersey CFA") prohibits the "act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise ..., whether or not any person has in fact been misled, deceived or damaged thereby" N.J.S.A. § 56:8-2.

269. Volkswagen, Plaintiffs, and Class members are "person[s]" under the New Jersey CFA. N.J.S.A. § 56:8-1(d)

270. Plaintiffs' and the Class members' purchase or lease of Defeat Device Vehicles are "sales" under the New Jersey CFA. N.J.S.A. § 56:8-1(e).

271. Each Defeat Device Vehicle purchased or leased by a New Jersey member of the class is "merchandise" within the meaning of the New Jersey CFA. N.J.S.A. § 56:8-1(c).

272. Volkswagen intentionally and knowingly misrepresented material facts regarding the Defeat Device Vehicles with an intent to mislead Plaintiffs and Class members.

273. In connection with the sale and lease of Defeat Device Vehicles, Volkswagen represented that the Defeat Device Vehicles were “clean,” low-emission vehicles when, in fact, they were not; represented that the Defeat Device Vehicles were of a particular quality or standard when, in fact, they were not; and willfully failed to disclose and actively concealed the existence and true nature of the “defeat device.”

274. Volkswagen has known of its use of the “defeat device” and the true nature of its CleanDiesel engine system, but it concealed that from consumers until regulators forced Volkswagen to disclose it. Volkswagen intended that consumers, including Plaintiffs and the Class members, would rely on this concealment.

275. Volkswagen possessed exclusive knowledge it was selling and distributing vehicles throughout the United States that did not comply with EPA regulations, intentionally concealed that information from Plaintiffs and Class members, and made incomplete and misleading representations about the Defeat Device Vehicles, including the true nature of the CleanDiesel engine, while intentionally withholding material facts from Plaintiffs that contradicted these representations.

276. Volkswagen’s misrepresentations and omissions practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs and Class member, about the true nature of the Defeat Device Vehicles. Plaintiffs and Class members reasonably relied on Volkswagen’s false or misleading representations and omissions in deciding to purchase or lease the Defeat Device Vehicles.

277. Plaintiffs and the Class members relied on these false or misleading representations and omissions to their detriment. As a direct and proximate result of Volkswagen’s deceptive acts and practices, Plaintiffs and the Class members have suffered

ascertainable injury-in-fact and/or actual damage, including the diminished value of their property.

278. Pursuant to N.J.S.A. § 56:8-19, Plaintiffs and the Class members seek monetary relief against Defendant for actual damages in an amount to be determined at trial. Plaintiffs also are entitled to recover, for each Plaintiff and each Class member, threefold damages.

279. Plaintiffs also seek an order enjoining Volkswagen's unfair and/or deceptive acts or practices and attorneys' fees, costs, and any other just and proper relief available under the New Jersey CFA.

280. Pursuant to N.J.S.A. § 56:8-20, Plaintiffs will serve the New Jersey Attorney General with a copy of this Complaint.

COUNT IX
Violation Of The Alaska Unfair Trade Practices
And Consumer Protection Act
(ALASKA STAT. § 45.50.471, *et seq.*)

281. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

282. Plaintiffs bring this Count on behalf of the Alaska members of the Class.

283. The Alaska Unfair Trade Practices and Consumer Protection Act ("Alaska CPA") prohibits "unfair or deceptive acts or practices in the conduct of trade or commerce," including: "(4) representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that the person does not have;" "(6) representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;" "(8) advertising goods or services with intent not to sell them as advertised;" or "(12) using or employing deception, fraud, false pretense, false promise,

misrepresentation, or knowingly concealing, suppressing, or omitting a material fact with intent that others rely upon the concealment, suppression or omission in connection with the sale or advertisement of goods or services whether or not a person has in fact been misled, deceived or damaged.” Alaska Stat. § 45.50.471.

284. Volkswagen intentionally and knowingly misrepresented material facts regarding the Defeat Device Vehicles with an intent to mislead Plaintiffs and Class members.

285. In connection with the sale and lease of Defeat Device Vehicles, Volkswagen represented that the Defeat Device Vehicles were “clean,” low-emission vehicles when, in fact, they were not; represented that the Defeat Device Vehicles were of a particular quality or standard when, in fact, they were not; advertised the Defeat Device Vehicles with the intent not to sell them as advertised; and willfully failed to disclose and actively concealed the existence and true nature of the “defeat device.”

286. Volkswagen has known of its use of the “defeat device” and the true nature of its CleanDiesel engine system, but it concealed that from consumers until regulators forced Volkswagen to disclose it.

287. Volkswagen possessed exclusive knowledge it was selling and distributing vehicles throughout the United States that did not comply with EPA regulations, intentionally concealed that information from Plaintiffs and Class members, and made incomplete and misleading representations about the Defeat Device Vehicles, including the true nature of the CleanDiesel engine, while intentionally withholding material facts from Plaintiffs that contradicted these representations.

288. Volkswagen’s unfair trade practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs and Class member, about the true nature of the Defeat

Device Vehicles. Plaintiffs and Class members reasonably relied on Volkswagen's false or misleading representations and omissions in deciding to purchase or lease the Defeat Device Vehicles.

289. Plaintiffs and the Class members relied on these false or misleading representations and omissions to their detriment. As a direct and proximate result of Volkswagen's unfair and deceptive acts, Plaintiffs and the Class members have suffered injury-in-fact and/or actual damage, including the diminished value of their property.

290. Pursuant to Alaska Stat. § 45.50.531(a), Plaintiffs and the Class members seek monetary relief against Defendant measured as the greater of (a) three-times actual damages in an amount to be determined at trial and (b) statutory damages in the amount of \$500 for each Plaintiff and Class member. Because Defendant engaged in a willful deceptive act, Plaintiffs are entitled to recover additional punitive damages under Alaska common law.

291. Plaintiffs also seek attorneys' fees, costs, and any other just and proper relief available under the Alaska CPA.

COUNT X
Violation Of The Indiana Deceptive Consumer Sales Act
(IND. CODE § 24-5-0.5-1, *et seq.*)

292. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

293. Plaintiffs bring this Count on behalf of the Indiana members of the Class.

294. The Indiana Deceptive Consumer Sales Act ("Indiana DCSA") prohibits a supplier from committing an "unfair, abusive, or deceptive act, omission, or practice in connection with a consumer transaction," which includes representations, whether implicit or explicit, that: "(1) That such subject of a consumer transaction has ... approval, performance, characteristics, accessories, uses, or benefits it does not have which the supplier knows are

should reasonably know it does not have”; “(2) That such subject of a consumer transaction is of a particular standard, quality, grade, style or model, if it is not and if the supplier knows or should reasonably know that it is not;” and “(8) That such consumer transaction involves or does not involve a warranty, a disclaimer of warranties, or other rights, remedies, or obligations, if the representation is false and if the supplier knows or should reasonably know that the representation is false.” Ind. Code § 24-5-0.5-3. “Any representations on or within a product or its packaging or in advertising or promotional materials which would constitute a deceptive act shall be the deceptive act both of the supplier who places such a representation thereon or therein, or who authored such materials, and such suppliers who shall state orally or in writing that such representation is true if such other supplier shall know or have reason to know that such representation was false.” *Id.*

295. Volkswagen, Plaintiffs, and Class members are “person[s]” under the Indiana DCSA. *Id.* § 24-5-0.5-2.

296. Volkswagen is a “supplier” within the meaning of the Indiana DCSA. *Id.* § 24-5-0.5-2.

297. Each Defeat Device Vehicle purchased or leased by an Indiana member of the class is the “subject of a consumer transaction” within the meaning of the Indiana DCSA. *Id.* § 24-5-0.5-2.

298. The sale or lease of the Defeat Device Vehicles constitute “consumer transactions” within the meaning of the Indiana DCSA, as Plaintiffs and the Class members purchased or leased their Defeat Device Vehicles primarily for personal, family, charitable, agricultural, or household purposes. *Id.* § 24-5-0.5-2.

299. Volkswagen intentionally and knowingly misrepresented material facts regarding the Defeat Device Vehicles with an intent to mislead Plaintiffs and Class members.

300. In connection with the sale and lease of Defeat Device Vehicles, Volkswagen represented that the Defeat Device Vehicles were “clean,” low-emission vehicles when, in fact, Volkswagen knew or should reasonably have known they were not; represented that the Defeat Device Vehicles were of a particular quality or standard when, in fact, Volkswagen knew or should reasonably have known they were not; and willfully failed to disclose and actively concealed the existence and true nature of the “defeat device.”

301. Volkswagen has known of its use of the “defeat device” and the true nature of its CleanDiesel engine system, but it concealed that from consumers until regulators forced Volkswagen to disclose it.

302. Volkswagen possessed exclusive knowledge it was selling and distributing vehicles throughout the United States that did not comply with EPA regulations, intentionally concealed that information from Plaintiffs and Class members, and made incomplete and misleading representations about the Defeat Device Vehicles, including the true nature of the CleanDiesel engine, while intentionally withholding material facts from Plaintiffs that contradicted these representations.

303. Volkswagen’s unfair trade practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs and Class member, about the true nature of the Defeat Device Vehicles. Plaintiffs and Class members reasonably relied on Volkswagen’s false or misleading representations and omissions in deciding to purchase or lease the Defeat Device Vehicles.

304. Plaintiffs and the Class members relied on these false or misleading representations and omissions to their detriment. As a direct and proximate result of Volkswagen's deceptive acts and practices, Plaintiffs and the Class members have suffered injury-in-fact and/or actual damage, including the diminished value of their property.

305. Pursuant to Ind. Code § 24-5-0.5-4(a), Plaintiffs and the Class members seek monetary relief against Defendant measured as the greater of (a) actual damages in an amount to be determined at trial, and (b) statutory damages in the amount of \$500 for each Plaintiff and Class member. Because Defendant engaged in a willful deceptive act, Plaintiffs are entitled to recover, for each Plaintiff and each Class member, up to three-times actual damages but not less than \$1,000.

306. Plaintiffs also seek an order enjoining Volkswagen's unfair and/or deceptive acts or practices and attorneys' fees, costs, and any other just and proper relief available under the Indiana DCSA.

307. Each of Defendants' deceptive acts is an "incurable deceptive act" within the meaning of the Indiana DCSA because it was done by Volkswagen "as part of a scheme, artifice, or device with intent to defraud or mislead." Ind. Code § 24-5-0.5-2. In the event Defendants' deceptive acts are deemed not to be "incurable," Plaintiffs will provide notice in satisfaction of Ind. Code § 24-5-0.5-5, and may subsequently amend this Complaint to perfect this Count.

COUNT XI
Violation Of The Private Right Of Action
For Consumer Frauds Act
(IOWA CODE §§ 714H.1, *et seq.*)

308. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

309. Plaintiffs bring this Count on behalf of the Iowa members of the Class.

310. The Iowa Private Right of Action for Consumer Frauds Act (“Iowa CFA”) prohibits any “practice or act the person knows or reasonably should know is an unfair practice, deception, fraud, false pretense, or false promise, or the misrepresentation, concealment, suppression, or omission of a material fact, with the intent that others rely upon the unfair practice, deception, fraud, false pretense, false promise, misrepresentation, concealment, suppression, or omission in connection with the advertisement, sale, or lease of consumer merchandise” Iowa Code § 714H.3(1).

311. Plaintiffs and Class members are “consumer[s]” within the meaning of the Iowa CFA. *Id.* § 714H.2(3).

312. Volkswagen is a “person” within the meaning of the Iowa CFA. *Id.* § 714H.2(7).

313. Each Defeat Device Vehicle purchased or leased by an Iowa member of the class constitutes “consumer merchandise” within the meaning of the Iowa CFA, as Plaintiffs and the Class members purchased or leased their Defeat Device Vehicles primarily for personal, family, or household purposes. *Id.* § 714H.2(4).

314. Volkswagen intentionally and knowingly misrepresented material facts regarding the Defeat Device Vehicles with an intent to mislead Plaintiffs and Class members.

315. In connection with the advertisement, sale, and lease of Defeat Device Vehicles, Volkswagen represented that the Defeat Device Vehicles were “clean,” low-emission vehicles when, in fact, Volkswagen knew or should reasonably have known they were not; represented that the Defeat Device Vehicles were of a particular quality or standard when, in fact, Volkswagen knew or should reasonably have known they were not; and willfully failed to disclose and actively concealed the existence and true nature of the “defeat device.”

316. Volkswagen has known of its use of the “defeat device” and the true nature of its CleanDiesel engine system, but it concealed that from consumers until regulators forced Volkswagen to disclose it.

317. Volkswagen possessed exclusive knowledge it was selling and distributing vehicles throughout the United States that did not comply with EPA regulations, intentionally concealed that information from Plaintiffs and Class members, and made incomplete and misleading representations about the Defeat Device Vehicles, including the true nature of the CleanDiesel engine, while intentionally withholding material facts from Plaintiffs that contradicted these representations.

318. Volkswagen intended that Plaintiffs and the Class members would rely on these misrepresentations and omissions.

319. Volkswagen’s unfair, misleading, and fraudulent practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs and Class member, about the true nature of the Defeat Device Vehicles. Plaintiffs and Class members reasonably relied on Volkswagen’s false or misleading representations and omissions in deciding to purchase or lease the Defeat Device Vehicles.

320. Plaintiffs and the Class members relied on these false or misleading representations and omissions to their detriment. As a direct and proximate result of Volkswagen’s unfair trade practices, Plaintiffs and the Class members have suffered injury-in-fact and/or actual damage, including the diminished value of their property.

321. Pursuant to Iowa Code Ann. § 714H.5, Plaintiffs and the Class members seek monetary relief against Defendant for actual damages in an amount to be determined at trial. Because Defendant’s conduct constitutes willful and wanton disregard for the rights of Plaintiffs

and the Class members, Plaintiffs are entitled to recover, for each Plaintiff and each Class member, statutory damages in an amount up to three-times actual damages.

322. Plaintiffs also seek an order enjoining Volkswagen's unfair and/or deceptive acts or practices and attorneys' fees, costs, and any other just and proper relief available under the Iowa CFA.

COUNT XII
Violation Of The South Dakota Deceptive Trade Practices And Consumer Protection Law
(S.D. CODIFIED LAWS § 37-24-1 *et seq.*)

323. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

324. Plaintiffs bring this Count on behalf of the South Dakota members of the Class.

325. The South Dakota Deceptive Trade Practices and Consumer Protection Law ("South Dakota CPL") prohibits "deceptive acts or practices." S.D. CODIFIED LAWS § 37-24-6. "It is a deceptive act or practice for any person to ... [k]nowingly and intentionally act, use, or employ any deceptive act or practice, fraud, false pretense, false promises, or misrepresentation or to conceal, suppress, or omit any material fact in connection with the sale or advertisement of any merchandise, regardless of whether any person has in fact been misled, deceived, or damaged thereby [.]" *Id.*

326. Volkswagen, Plaintiffs, and Class members are "person[s]" under the South Dakota CPL. *Id.* § 37-24-1(8).

327. Each Defeat Device Vehicle purchased or leased by a South Dakota member of the class is "merchandise" within the meaning of the South Dakota CPL. *Id.* § 37-24-1(7).

328. Volkswagen's actions set forth herein occurred in the conduct of trade or commerce as defined under the South Dakota CPL. *Id.* § 37-24-1(13).

329. Volkswagen intentionally and knowingly misrepresented material facts regarding the Defeat Device Vehicles with an intent to mislead Plaintiffs and Class members.

330. In connection with the sale and lease of Defeat Device Vehicles, Volkswagen represented that the Defeat Device Vehicles were “clean,” low-emission vehicles when, in fact, Volkswagen knew they were not; represented that the Defeat Device Vehicles were of a particular quality or standard when, in fact, Volkswagen knew they were not; and willfully failed to disclose and actively concealed the existence and true nature of the “defeat device.”

331. Volkswagen has known of its use of the “defeat device” and the true nature of its CleanDiesel engine system, but it concealed that from consumers until regulators forced Volkswagen to disclose it.

332. Volkswagen possessed exclusive knowledge it was selling and distributing vehicles throughout the United States that did not comply with EPA regulations, intentionally concealed that information from Plaintiffs and Class members, and made incomplete and misleading representations about the Defeat Device Vehicles, including the true nature of the CleanDiesel engine, while intentionally withholding material facts from Plaintiffs that contradicted these representations.

333. Volkswagen’s unfair trade practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs and Class member, about the true nature of the Defeat Device Vehicles. Plaintiffs and Class members reasonably relied on Volkswagen’s false or misleading representations and omissions in deciding to purchase or lease the Defeat Device Vehicles.

334. Plaintiffs and the Class members relied on these false or misleading representations and omissions to their detriment. As a direct and proximate result of

Volkswagen's deceptive acts and practices, Plaintiffs and the Class members have suffered injury-in-fact and/or actual damage, including the diminished value of their property.

335. Pursuant to S.D. Codified Laws § 37-24-31, Plaintiffs and the Class members seek monetary relief against Defendant for actual damages in an amount to be determined at trial.

COUNT XIII
Violation Of The Wyoming Consumer Protection Act
(WYO. STAT. §§ 40-12-101, *et seq.*)

336. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

337. Plaintiffs bring this Count on behalf of the Wyoming members of the Class.

338. The Wyoming Consumer Protection Act ("Wyoming CPA") prohibits "deceptive trade practice[s]," including when a person, in the course of his business and in connection with a consumer transaction, knowingly: "(i) Represents that merchandise has a source, origin, sponsorship, approval, accessories or uses it does not have;" "(iii) Represents that merchandise is of a particular standard, grade, style or model, if it is not"; "(v) Represents that merchandise has been supplied in accordance with a previous representation, if it has not..."; "(viii) Represents that a consumer transaction involves a warranty, a disclaimer of warranties, particular warranty terms, or other rights, remedies or obligations if the representation is false"; "(x) Advertises merchandise with intent not to sell it as advertised"; or "(xv) Engages in unfair or deceptive acts or practices." Wyo. Stat. § 40-12-105.

339. Volkswagen, Plaintiffs, and Class members are "person[s]" under the Wyoming CPA. *Id.* § 40-12-102(a)(i).

340. Each Defeat Device Vehicle purchased or leased by a Wyoming member of the class is "merchandise" within the Wyoming CPA. *Id.* § 40-12-102(a)(vi).

341. The sale or lease of the Defeat Device Vehicles constitutes “consumer transactions” within the meaning of the Wyoming CPA, as Plaintiffs and the Class members purchased or leased their Defeat Device Vehicles primarily for personal, family, or household purposes. *Id.* § 40-12-102(a)(ii).

342. Volkswagen intentionally and knowingly misrepresented material facts regarding the Defeat Device Vehicles with an intent to mislead Plaintiffs and Class members.

343. In connection with the sale and lease of Defeat Device Vehicles, Volkswagen represented that the Defeat Device Vehicles were “clean,” low-emission vehicles when, in fact, Volkswagen knew they were not; represented that the Defeat Device Vehicles were of a particular quality or standard when, in fact, Volkswagen knew they were not; advertised the Defeat Device Vehicles with an intent not to sell them as advertised; and willfully failed to disclose and actively concealed the existence and true nature of the “defeat device.”

344. Volkswagen has known of its use of the “defeat device” and the true nature of its CleanDiesel engine system, but it concealed that from consumers until regulators forced Volkswagen to disclose it.

345. Volkswagen possessed exclusive knowledge it was selling and distributing vehicles throughout the United States that did not comply with EPA regulations, intentionally concealed that information from Plaintiffs and Class members, and made incomplete and misleading representations about the Defeat Device Vehicles, including the true nature of the CleanDiesel engine, while intentionally withholding material facts from Plaintiffs that contradicted these representations.

346. Volkswagen’s unfair trade practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs and Class member, about the true nature of the Defeat

Device Vehicles. Plaintiffs and Class members reasonably relied on Volkswagen's false or misleading representations and omissions in deciding to purchase or lease the Defeat Device Vehicles.

347. Plaintiffs and the Class members relied on these false or misleading representations and omissions to their detriment. As a direct and proximate result of Volkswagen's deceptive trade practices, Plaintiffs and the Class members have suffered injury-in-fact and/or actual damage, including the diminished value of their property.

348. Pursuant to WYO. STAT. § 40-12-108, Plaintiffs and the Class members seek monetary relief against Defendant for actual damages in an amount to be determined at trial.

349. Plaintiffs also seek attorneys' fees, costs, and any other just and proper relief available under the Wyoming CPA.

350. Plaintiffs acknowledge that the Wyoming CPA requires that, prior to making a claim for damages under that statute, a plaintiff provide notice and an opportunity to cure in satisfaction of WYO. STAT. § 40-12-109. Plaintiffs intend to make comply with these requirements and may subsequently amend this Complaint to perfect this Count.

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

- A. Certification of the proposed Class, including appointment of Plaintiffs' counsel as Class Counsel;
- B. An order temporarily and permanently enjoining Volkswagen from continuing the unlawful, deceptive, fraudulent, and unfair business practices alleged in this Complaint;
- C. Injunctive relief in the form of a recall or free replacement;

- D. Public injunctive relief necessary to protect public health and welfare, and to remediate the environmental harm caused by the Defeat Device Vehicles' unlawful emissions;
- D. Costs, restitution, damages, and disgorgement in an amount to be determined at trial;
- E. Revocation of acceptance;
- F. Damages under the Magnuson-Moss Warranty Act;
- G. For treble and/or punitive damages as permitted by applicable laws;
- H. An order requiring Volkswagen to pay both pre- and post-judgment interest on any amounts awarded;
- I. An award of costs and attorneys' fees; and
- J. Such other or further relief as may be appropriate.

IX. DEMAND FOR JURY TRIAL

Plaintiffs demand a jury trial as to all issues so triable.

CARELLA, BYRNE, CECCHI,
OLSTEIN, BRODY, & AGNELLO, P.C.
Attorneys for Plaintiffs

By: /s/ James E. Cecchi
JAMES E. CECCHI

Lynn Lincoln Sarko
Gretchen Freeman Cappio
Daniel Mensher
Ryan McDevitt
KELLER ROHRBACK L.L.P.
1201 Third Avenue, Suite 3200
Seattle, Washington 98101-3052
(206) 623-1900

Matthew Preusch

KELLER ROHRBACK L.L.P.
1129 State Street, Suite 8
Santa Barbara, CA 93101
(805) 456-1496

JS 44 (Rev. 11/04)

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 THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS David Greczylo, Charles Hall, Red Bradley, Tim Winkel, Benjamin Foote, Nicholas Swisher and Zak Dixon (b) County of Residence of First Listed Plaintiff <u>Monmouth</u> (EXCEPT IN U.S. PLAINTIFF CASES) (c) Attorney's (Firm Name, Address, and Telephone Number) Carella, Byrne, Cecchi, Olstein, Brody & Agnello, 5 Becker Farm Road, Roseland, New Jersey 07068	DEFENDANTS Volkswagen Group of America, Inc. and Volkswagen AG County of Residence of First Listed Defendant _____ (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED. Attorneys (If Known) _____
--	---

II. BASIS OF JURISDICTION (Place an "X" in One Box Only) <input type="checkbox"/> 1 U.S. Government Plaintiff <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 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) (For Diversity Cases Only) <table style="width: 100%;"> <tr> <td style="width: 33%;">Citizen of This State</td> <td style="width: 10%; text-align: center;">PTF</td> <td style="width: 10%; text-align: center;">DEF</td> <td style="width: 33%;">Incorporated or Principal Place of Business In This State</td> <td style="width: 10%; text-align: center;">PTF</td> <td style="width: 10%; text-align: center;">DEF</td> </tr> <tr> <td><input type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td></td> <td><input type="checkbox"/> 4</td> <td><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	PTF	DEF	Incorporated or Principal Place of Business In This State	PTF	DEF	<input type="checkbox"/> 1	<input type="checkbox"/> 1	<input type="checkbox"/> 1		<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
Citizen of This State	PTF	DEF	Incorporated or Principal Place of Business In This State	PTF	DEF																				
<input type="checkbox"/> 1	<input type="checkbox"/> 1	<input type="checkbox"/> 1		<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																				

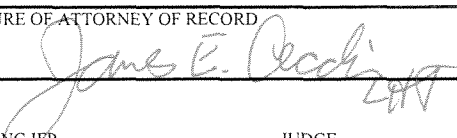
IV. NATURE OF SUIT (Place an "X" in One Box Only)					
CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. 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	TORTS 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 PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 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	FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	BANKRUPTCY <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	OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input checked="" type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <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"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition				

V. ORIGIN (Place an "X" in One Box Only)							
<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify)	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment	

VI. CAUSE OF ACTION	Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): <u>18 U.S.C. sec 1961 et seq.</u> Brief description of cause: <u>This is a claim relating to non-EPA compliant vehicles</u>
----------------------------	---

VII. REQUESTED IN COMPLAINT:	<input checked="" type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	DEMAND \$ _____ CHECK YES only if demanded in complaint: JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
-------------------------------------	---	---

VIII. RELATED CASE(S) IF ANY	(See instructions): JUDGE <u>Linares</u> DOCKET NUMBER <u>15-6985</u>
-------------------------------------	---

DATE <u>10/01/2015</u>	SIGNATURE OF ATTORNEY OF RECORD 
---------------------------	---

FOR OFFICE USE ONLY				
RECEIPT # _____	AMOUNT _____	APPLYING IFP _____	JUDGE _____	MAG. JUDGE _____