

SOLOMON LAW FIRM, LLC

By: Franklin P. Solomon, Esq.
801 Kings Highway North
Cherry Hill, NJ 08034
Ph: 856-910-4311
F: 856-823-1551
fsolomon@franklinsolomonlaw.com

LOCKS LAW FIRM, LLC

By: Michael A. Galpern, Esq.
Andrew P. Bell, Esq.
James A. Barry, Esq.
801 N. Kings Highway
Cherry Hill, NJ 08034
Ph: 856-663-8200
Fax: 856-661-8400
mgalpern@lockslaw.com
abell@lockslaw.com
jbarry@lockslaw.com

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

CHARLES M. HART, JEANETTE TALESE and
DANIEL R. VOLKEMA, Individually on behalf
of themselves and all others similarly situated,

Plaintiffs,

v.

VOLKSWAGEN GROUP OF AMERICA, INC.,

Defendants.

NO.

**CLASS ACTION COMPLAINT
AND JURY DEMAND FOR TRIAL**

Plaintiffs CHARLES M. HART, JEANETTE TALESE and DANIEL R. VOLKEMA (“Plaintiffs”), by counsel and on behalf of themselves and all others similarly situated, individually and as class representatives, for their Complaint against Defendant Volkswagen

Group of America, Inc. (“Volkswagen” or “Defendant”), allege, based where applicable on personal knowledge, information and belief, and the investigation of counsel, as follows:

INTRODUCTION

1. This is a nationwide consumer class action brought on by Plaintiffs on behalf of themselves and on behalf of all others similarly situated against Defendant Volkswagen for its intentional installation of “defeat devices” (as defined by the Clean Air Act), which are software that circumvent EPA emissions standards for certain air pollutants, in over 482,000 diesel Volkswagen and Audi vehicles sold in the United States since 2009.

2. Volkswagen’s intentional installation of “defeat devices” is illegal and a threat to public health: “Using a defeat device in cars to evade clean air standards is illegal and a threat to public health,” said Cynthia Giles, Assistant Administrator for the Office of Enforcement and Compliance Assurance.¹

3. On September 18, 2015, the Environmental Protection Agency (“EPA”) issued a Notice of Violation (“NOV”) against Defendant and its affiliates.² In its NOV, the EPA found that Volkswagen and its affiliates had installed sophisticated software algorithms or “defeat devices” in the Volkswagen and Audi diesel vehicles sold in the United States which detect when the vehicles are undergoing official emissions testing and switch on full emissions controls on only during the official emissions tests so the vehicles will “pass” the tests. During all other times that the vehicles are running, the defeat devices “switch” the emissions controls to another mode or “road calibration” resulting in cars emitting nitrogen oxides (NOx) at up to 40 times the standard allowed under United States laws and regulations.

¹ See Sept. 18, 2015 EPA News Release.

² See NOV dated Sept. 18, 2015, attached hereto as Exhibit “A”.

4. The Clean Air Act has strict emissions standards for vehicles and it requires vehicle manufacturers to certify to 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 system during normal driving conditions, cannot be certified. By manufacturing and selling cars with defeat devices that allowed for higher levels of emissions that were certified to EPA, Volkswagen violated the Clean Air Act, defrauded its customers, and engaged in unfair competition under state and federal law.

5. The Clear Air Act (CAA) and the regulations promulgated thereunder aim to protect human health and the environment by reducing emissions of nitrogen oxides (NO_x) and other pollutants from mobile sources of air pollution. Nitrogen oxides are a family of highly reactive gases that play a major role in the atmospheric reactions with volatile organic compounds (VOCs) that produce ozone (smog) on hot summer days. Breathing ozone can trigger a variety of health problems including chest pain, coughing, throat irritation, and congestion. Breathing ozone can also worsen bronchitis, emphysema, and asthma. Children are at greatest risk of experiencing negative health impacts from exposure to ozone.

6. According the EPA NOV, Volkswagen installed its unlawful “defeat devices” in at least the following vehicles equipped with 2.0 liter diesel engines:³

³ *Id.* at 5.

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

Discovery and further investigation by California Air Resources Board (CARB) may reveal that additional vehicle models and model years since 2009 should be properly included in this group of Defendant's vehicles with unlawful "defeat devices" (hereinafter, collectively with the above, "Defective Vehicles").

7. Volkswagen has charged a substantial premium for the Defective Vehicles, which were deceptively marketed by Volkswagen as "Clean Diesel." For example, for the 2015 Volkswagen Passat, the SE model has a starting MSRP of \$26,280. However, the base TDI SE Clean Diesel has a starting MSRP of \$27,095, a price premium of \$815. For the 2015 Volkswagen Golf, the base model S has a starting MSRP of \$19,295. However, the base TDI S Clean Diesel has a starting MSRP of \$22,345, a price premium of \$3,050. All the Defective Vehicles have substantial premiums that consumers paid in excess of the non-diesel models.

8. Volkswagen has been ordered by the EPA to recall the Defective Vehicles and repair them so that they comply with EPA emissions requirements at all times during normal operation. However, Volkswagen will not be able to make the Defective Vehicles comply with

emissions standards without substantially degrading their performance characteristics, including their horsepower and their efficiency. As a result, even if Volkswagen is able to make Class members' Defective Vehicles EPA compliant, Class members will nonetheless suffer actual harm and damages because their vehicles will no longer perform as they did when purchased and as advertised. This will necessarily result in a diminution in value of every Defective Vehicle and it will cause owners of Defective Vehicles to pay more for fuel while using their vehicles.

9. This class action seeks to redress Volkswagen's illegal and wrongful actions by compelling Volkswagen to cease its unlawful, deceptive, fraudulent and unfair business practices, costs, restitution, damages and disgorgements in amounts to be determined at trial, revocation of acceptance, damages under the Magnuson-Moss Warranty Act, for treble and/or punitive damages as permitted by law.

THE PARTIES

10. Plaintiff Charles M. Hart is a citizen of the State of New Jersey and resides in Haddonfield, New Jersey.

11. Plaintiff Jeanette Talese is a citizen of the Commonwealth of Pennsylvania and resides in Ambler, Pennsylvania.

12. Plaintiff Daniel R. Volkema is a citizen of the State of Ohio and resides in Pataskala, Ohio.

13. Volkswagen Group of America, Inc. ("Volkswagen") is a for-profit 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. Volkswagen is therefore a citizen of New Jersey and Virginia. See 28 U.S.C. § 1332(d)(10).

14. At all times relevant hereto, Volkswagen manufactured, distributed, sold, leased, and warranted the Defective Vehicles under the Volkswagen and Audi brand names throughout the nation. Volkswagen and/or its agents and/or affiliates designed the Clean Diesel engines and engine control systems in the Defective Vehicles, including the “defeat devices.” Volkswagen also developed and disseminated the owners’ manuals and warranty booklets, advertisements, and other promotional materials relating to the Defective Vehicles. Volkswagen delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the United States including the States of New Jersey, Pennsylvania and Ohio.

JURISDICTION AND VENUE

15. This Court has subject matter jurisdiction over this matter pursuant 28 U.S.C. § 1332(d)(2)(A) in that at least one member of the Class is a citizen of a State different from any defendant name herein, and the amount in controversy exceeds the sum of \$5 million, exclusive of interests and costs.

16. Venue is proper in this district pursuant to 28 U.S.C. § 1391, as Defendant is incorporated under the laws of New Jersey.

17. This Court is empowered to issue a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202.

FACTUAL ALLEGATIONS

A. The Clean Air Act Prohibits Defeat Devices

18. Part A of Title II of the Clean Air Act or CAA and the regulations promulgated thereunder aim to reduce nitrogen oxides and other pollutants emitted by automobiles to improve air quality from the deleterious effects caused by pollution.

19. Passenger cars (known as “light-duty motor vehicles” under the CAA) are regulated by the CAA, 42 U.S.C. § 7522, which sets compliance provisions, and by 40 C.F.R. Part 86, which sets federal emission standards and test procedures for certain air pollutants such as nitrogen oxides.

20. Every vehicle introduced into interstate commerce in the United States must satisfy applicable emission standards. To accomplish this, the EPA administers a certification program and issues certificates of conformity (“COCs”) to compliant vehicles. 40 C.F.R. § 86.1811-04.

21. Auto manufacturers must submit a COC application to obtain a COC. That application must include a list of all auxiliary emission control devices (“AECDs”), which are design elements that detect certain vehicle parameters, such as temperature, speed, RPMs and transmission gear, for the purpose of modulating, delaying or deactivating the operation of any part of the emission control system. 40 C.F.R. § 86.1803-01.

22. Some AECDs are considered “defeat devices.” A “defeat device” is an AECD “that reduces the effectiveness of the emission control system under conditions which may reasonably be expected to be encountered in normal vehicle operation and use,” unless certain requirements are met. 40 C.F.R. § 86.1803-01.

23. If a COC applicant’s vehicles contain any AECDs, the applicant must justify each AECD that reduces emission effectiveness and explain why that AECD is not a defeat device. 40 C.F.R. § 86.1844-01(d)(11).

24. Cars with defeat devices, such as Volkswagen's Defective Vehicles, cannot be certified, and a COC only covers cars that conform to what was described in the manufacturer's application for the COC. 40 C.F.R. § 86.1848-10(c)(6).

25. The CAA makes it unlawful for:

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

CAA § 203(a)(3)(B), 40 C.F.R. § 86.1854-12(a)(3)(ii).

B. Volkswagen's "Clean Diesel" Advertising Campaign Is Intentionally Deceptive Because It Failed To Disclose That The Defective Vehicles Were Manufactured With Unlawful Defeat Devices

26. Beginning in model year 2009 with the VW Jetta and Jetta Sportwagen, Volkswagen embarked on a "Clean Diesel" campaign to sell cars with a diesel engine that it advertised as both eco-friendly, due to low emissions, and fuel-efficient. Volkswagen's marketing message has led to Volkswagen being the largest seller of diesel passenger vehicles in the United States.

27. Also, since at least July 29, 2008, Volkswagen informed buyers of the Jetta TDI vehicles that they were eligible for a \$1,300 federal tax credit and representing that the Jetta TDI sedan and SportWagen "meet the most stringent emissions standards in California."⁴ This statement was untrue.

⁴ See Press Release dated July 29, 2008, attached hereto as Exhibit "B".

28. Volkswagen also touted a technology called TDI — an abbreviation for turbocharged direct injection — which purportedly “has lower CO₂ emissions compared to 93% of other vehicles,”⁵ and specifically:

Going the distance has never been easier.

TDI Clean Diesel technology has lower CO₂ emissions compared to 93% of other vehicles, and it boasts 30% better fuel economy than comparable gas engines. ¹, ² And with significantly more torque than comparable gasoline-engine cars, ³ you can have more fun as you pass by all those fueling stations.

29. Indeed, the marketing phrase, “Clean Diesel” is such a fundamental, core part of Volkswagen sales campaigns that the phrase is in the very name of the Defective Vehicles.

30. Volkswagen has also stated 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.”

31. Defendant also touted 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.

32. Defendant 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.”

33. Through that website, Volkswagen represents:

We used to think of diesel as black clouds of smoke and noxious fumes.
But that was then. Now we have Clean Diesel that meets the highest

⁵ See sss.vw.com/features/clean-diesel dated May 15, 2014 on web.archive.org.

standards in all 50 states, thanks to ultra-low sulfur diesel (ULSD) fuel and innovative engine technology that burns cleaner.⁶

If one-third of Americans switched to Clean Diesel vehicles, we would save approximately 1.4 million barrels of oil a day. In turn, we'd help reduce our carbon footprint by about 532 million pounds of CO₂. And that's like planting about 600,000 trees, every single day.⁷

With Clean Diesel Technology and ultra-low sulfur diesel fuel, we'll generate a lot less smog in the air. "Thanks," in advance, from the environment.⁸

34. A May 15, 2014 report issued by West Virginia University's Center for Alternative Fuels, Engines & Emissions found significantly elevated nitrogen oxides emissions when the Defective Vehicles were driven in real world conditions.

35. The Defective Vehicles emit excessive and illegal amounts of pollution when driven in real world conditions, yet still manage to deceive and pass the EPA's compliance tests.

36. To enable the Defective Vehicles pass the EPA's test standards, Volkswagen manufactured and installed software in its Defective Vehicles that sensed when the vehicle was being tested for compliance with EPA emission standards. According to the EPA, Volkswagen created a "switch" that senses whether the vehicle is being tested based on various inputs that precisely track the EPA's emission test procedure.⁹ Thus, when tested, Volkswagen's software produced compliant emission results. During normal vehicle operation, however, the "switch" activated and ran a separate calibration, called "road calibration." "Road calibration" mode

⁶ See <http://www.clearlybetterdiesel.org/index.html#environment> (last visited Sept. 23, 2015)

⁷ See <http://www.clearlybetterdiesel.org/index.html#environment-left> (last visited Sept. 23, 2015)

⁸ See <http://www.clearlybetterdiesel.org/index.html#environment-right> (last visited Sept. 23, 2015)

⁹ See EPA NOV dated Sept. 18, 2015, at 3-4.

reduced effectiveness of the emission control system and increased emissions of nitrogen oxides 10-40 times above EPA compliant levels.¹⁰

37. Volkswagen's "road calibration" and "switch" are illegal "defeat" devices. According to the EPA, the Defective Vehicles do not conform to the specifications described in Volkswagen's COC application. Volkswagen, therefore, violated the CAA each time it introduced a Defective Vehicle into commerce.¹¹

C. Volkswagen Admitted The Defective Vehicles Were Made With Unlawful Defeat Devices

38. The EPA and the California Air Resources Board ("CARB") presented emission reports to Volkswagen, which culminated in a voluntary software recall in December 2014. Yet this recall failed to remediate the pollution problem. Indeed, nitrogen oxides emissions were still "significantly higher" than expected during CARB's testing.¹²

39. Volkswagen failed to adequately explain the poor performance under the CARB testing.

40. Only when it became clear that the EPA and CARB would not approve certificates of conformity for Volkswagen's 2016 model year diesel cars, did Volkswagen "admit that it designed and installed a defeat devices in these vehicles in the form of a sophisticated software algorithm that detected when a vehicle was undergoing emissions testing." NOV, at 4.

TOLLING OF THE STATUTES OF LIMITATIONS
Fraudulent Concealment

41. Upon information and belief, the Volkswagen Defendants have known of the defects described above since at least 2009. Defendants knew of the defects well before

¹⁰ *Id.* at 4.

¹¹ *Id.*

Plaintiffs and Class Members purchased the Defective Vehicles, and have concealed from or failed to notify Plaintiffs, Class Members, and the public of the full and complete nature of the defects.

42. Defendant intentionally concealed the defect from the public, from the Plaintiffs and from the Class until September 2015 did not fully investigate or consciously failed to investigate the seriousness of the issue.

43. Any applicable statute of limitations has therefore been tolled by Defendant's knowledge and active concealment.

Estoppel

44. Defendant was and is under a continuing duty to disclose to Plaintiffs and Class Members the true character, quality, and nature of the vehicles. Defendant actively concealed the true character, quality, and nature of the Defective Vehicles and knowingly made misrepresentations about the quality, reliability, characteristics, and performance of the vehicles. Plaintiffs and Class Members reasonably relied upon Defendant's knowing and affirmative misrepresentations and/or active concealment of these facts. Based on the foregoing, Defendant is estopped from relying on any statutes of limitation in defense of this action.

Discovery Rule

45. The causes of action alleged herein did not accrue until Plaintiffs and Class Members discovered in September 2015 that their vehicles were defective.

¹² See ARB Letter dated Sept. 18, 2015, at 2, attached hereto as Exhibit "C".

PLAINTIFFS' FACTS

A. Plaintiff Charles M. Hart

46. Plaintiff Charles M. Hart, resident of Haddonfield, New Jersey, purchased a 2013 Passat TDI diesel in Pennsylvania in approximately November of 2014.

47. Mr. Hart, an attorney, extensively researched vehicles in 2014, including reading brochure materials on the TDI engine, visiting the local Volkswagen dealership on more than one occasion and test driving a Passat TDI, in an effort to find a vehicle that had excellent fuel economy, a low environmental signature, and good acceleration and performance, and that would maintain a high resale value. After conducting this research, and based on the representations of Volkswagen, Mr. Hart purchased a 2013 Passat diesel in 2014. Mr. Hart is the title holder for the vehicle.

48. Mr. Hart would not have paid as much for his vehicle or would not have purchased his Passat at all had he known that the emissions during its normal use were much higher than was legal. His Passat's value has decreased because of Volkswagen's fraud, and if the excess emissions are fixed, the car's performance and its gas mileage will be diminished, affecting both its value to him and its potential resale value.

B. Plaintiff Jeanette Talese

49. Plaintiff Jeanette Talese, a resident of Ambler, Pennsylvania, purchased a 2010 Jetta turbo diesel in Pennsylvania in approximately August of 2015.

50. Ms. Talese researched vehicles in 2015 to find one that had excellent fuel economy, was good for the environment, and that maintained a high resale value.

51. Based on VW's representations that its 2010 Jetta turbo diesel met all of these parameters, Ms. Talese purchased a 2010 Jetta diesel. Ms. Talese is the title holder for the

vehicle. She would not have purchased the Volkswagen Jetta turbo diesel had she known that the emissions during normal use exceeded federal and/or state standards.

52. Repairs done to her vehicle will diminish its performance and fuel efficiency. She would not have paid as much for the car, or would not have purchased the car at all, if it did not have those performance and fuel economy features touted by Volkswagen. Additionally, the reduced fuel efficiency, performance and the stigma of this deceptive practice scandal will adversely affect the car's resale value.

C. Plaintiff Daniel R. Volkema

53. Plaintiff Daniel R. Volkema is a resident of Pataskala, Ohio, who purchased a 2011 Jetta TDI Sportwagen in Columbus Ohio in the spring of 2011.

54. Mr. Volkema is an attorney with a daily commute of over sixty (60) miles round trip each day to work. He researched vehicles in 2011 to find one that had excellent fuel economy, and a low environmental signature. After conducting this research, and based on the representations of Volkswagen, Mr. Volkema purchased a new 2011 Jetta TDI Sportwagen.

55. Mr. Volkema would not have purchased this Sportwagen at all had he known that the emissions during its normal use were much higher than was legal. His Sportwagen's value has decreased because of Volkswagen's fraud, and if the excess emissions are fixed, the car's performance and its gas mileage will be diminished, affecting both its value to Mr. Volkema and its potential resale value.

CLASS ACTION ALLEGATIONS

56. This action is brought and may properly be maintained as a class action pursuant to Rule 23(a) and Rule 23(b)(1), (2) and/or (3) of the Federal Rules of Civil Procedure. Plaintiffs

bring this action on behalf of themselves and all members of the following class (the “Nationwide Class”):

All persons or entities in the United States who purchased or leased one or more Defective Vehicles.

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.

57. The action is also brought on behalf of the following sub-class within the Class of the following (the “New Jersey Class”):

All persons in the State of New Jersey who purchased or leased one or more Defective Vehicles.

58. The action is also brought on behalf of the following sub-class within the Class of the following (the “Pennsylvania Class”):

All persons in the Commonwealth of Pennsylvania who purchased or leased one or more Defective Vehicles.

59. The action is also brought on behalf of the following sub-class within the Class of the following (the “Ohio Class”)

All persons in the State of Ohio who purchased or leased one or more Defective Vehicles.

60. The Class and subclasses are so numerous that joinder of all members is impracticable. Plaintiffs believe that there are at least hundreds of thousands of members of the Class and tens of thousands of members of the subclasses. Although the exact number and identities of individual Class and/or subclasses members are presently unknown, the number of

such members can easily be ascertained from Defendants' records and through other appropriate discovery.

61. Each of the Classes is ascertainable because its members can be readily identified using registration records, sales records, production records, and other information kept by Defendants and/or third parties in the usual course of business, and within their control.

62. There are questions of fact and law which are common to the Class and/or subclasses that predominate over any questions affecting only individual class members.

Among the common questions of law and fact are the following:

- a. Whether the Defective Vehicles contain illegal defeat devices;
- b. Whether the defeat devices cause excessive and illegal emissions;
- c. Whether Defendants engaged in unlawful, unfair or deceptive business practices, as alleged herein;
- d. Whether the Defective Vehicles suffered a diminution of value as a result of Defendants' deceptive business practices;
- e. Whether Defendants made unlawful and misleading representations or material omissions with respect to the Defective Vehicles;
- f. Whether Defendants represented that the Defective Vehicles have characteristics, uses, benefits or qualities that they do not have;
- g. Whether Defendants' unlawful, unfair and deceptive practices harmed Plaintiffs and Class Members;
- h. Whether Plaintiffs and the Class Members have been damaged by the unlawful actions of Defendants and the amount of damages to the Class;
- i. Whether Defendants have been unjustly enriched by their conduct;
- j. Whether Plaintiffs and the Class Members are entitled to equitable relief;
- k. Whether punitive damages should be awarded; and
- l. What aggregate amounts of statutory penalties are sufficient to punish and deter Defendants and to vindicate statutory and public policy.

63. Plaintiffs' claims are typical of the claims of the other members of the Class and subclasses, inasmuch as all such claims arise out of the same course of conduct by Defendant. Plaintiffs have no interests antagonistic to the interests of the other members of the Class or subclasses. Plaintiffs are committed to the vigorous prosecution of this action and have retained competent counsel experienced in the prosecution of class action and consumer litigation. Accordingly, Plaintiffs are adequate representatives of, and will fairly and adequately protect the interests of the Class and subclasses.

64. Defendant has acted or refused to act on grounds generally applicable to the Class and/or subclasses, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

65. A class action is an appropriate and superior method for the fair and efficient adjudication of the present controversy inasmuch as common questions of law and/or fact predominate over any individual questions which may arise, and, accordingly, there would accrue enormous savings to both the Courts and the Class and /or subclasses in litigating the common issues on a class-wide instead of on a repetitive individual basis and inasmuch as no unusual difficulties are likely to be encountered in the management of this class action in that all questions of law and/or fact to be litigated at the liability stage of this action are common to the Class and/or subclasses.

66. Class certification is appropriate under Fed. R. Civ. P. 23(b)(1) and is also fair and efficient because prosecution of separate actions by individual Class and/or subclasses members would create a risk of inconsistent or differing adjudications with respect to such individual members of the Class and/or subclasses, which as a practical matter may be dispositive of the

interests of other members not parties to the adjudication, or substantially impair or impede their ability to protect their interests.

67. Class certification is further appropriate under Fed. R. Civ. P. 23(b)(2) because Defendants have acted, and continues to act, on grounds generally applicable to the members of the Class and subclasses.

68. Plaintiffs anticipate that there will be no difficulty in the management of this litigation. This litigation presents common law, warranty, and consumer fraud acts and practices claims of the types that have often been prosecuted on a class-wide basis.

COUNT I
(Fraud by Concealment)

69. Plaintiffs repeat and reallege all of the allegations set forth in the preceding paragraphs as if fully set forth herein and further allege as follows:

70. This claim is brought on behalf of the Nationwide Class and all subclasses.

71. Volkswagen intentionally concealed and suppressed material facts concerning the quality of the Affected Vehicles. As alleged in this complaint, notwithstanding references in the very model names of the subject vehicles as “Clean Diesel,” or to their engines as “TDI Clean Diesel” engines, Volkswagen engaged in a secret scheme to evade federal and state vehicle emissions standards by installing software designed to conceal its vehicles’ emissions of the pollutant nitrogen oxide, which contributes to the creation of ozone and smog. 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 false readings. Reportedly, Volkswagen’s

deliberate, secret scheme resulted in noxious emissions from these vehicles at 40 times applicable standards.

72. Plaintiffs and Nationwide Class and subclass 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 Nationwide Class and subclass members did not, and could not, unravel Volkswagen's deception on their own.

73. 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 Nationwide Class and subclass members placed in its representations.

74. Volkswagen also took steps to ensure that its employees did not reveal the details of its scheme to regulators or consumers, including Plaintiffs and Nationwide Class and subclass 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 law and regulations. Volkswagen's false representations were material to consumers, both because they concerned the quality of the affected vehicles, including their compliance with applicable federal and state law 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

Nationwide Class and subclass members, highly valued that the vehicles they were purchasing or leasing were *clean* diesel cars, and they paid a premium accordingly.

75. Volkswagen had a duty to disclose the emissions scheme it engaged in with respect to the vehicles at issue because knowledge of the scheme and its details were known and/or accessible only to Volkswagen, because Volkswagen had exclusive knowledge as to implementation and maintenance of its scheme, and because Volkswagen knew the facts were not known to, or reasonably discoverable by, Plaintiffs or Nationwide Class and subclass members. Volkswagen also had a duty to disclose this knowledge 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 scheme, 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. Having volunteered to provide information to Plaintiffs, Volkswagen had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and Nationwide Class and subclass 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 Nationwide Class and subclass members that they

were purchasing *clean* diesel vehicles, and certification testing appeared to confirm this — except that, secretly, Volkswagen had subverted the testing process thoroughly.

76. 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 Nationwide Class and subclass members.

77. On information and belief, Volkswagen has still not made full and adequate disclosures, and continues to defraud Plaintiffs and Nationwide Class and subclass members by concealing material information regarding the emissions qualities of its referenced vehicles and its emissions scheme.

78. Plaintiffs and Nationwide Class and subclass 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 Nationwide Class and subclass Members' actions were justified. Volkswagen was in exclusive control of the material facts, and such facts were not known to the public, Plaintiffs, or Nationwide Class and subclass members. Because of the concealment and/or suppression of the facts, Plaintiffs and Nationwide Class and subclass members have sustained damage 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 Nationwide Class and subclass members been aware of Volkswagen's emissions schemes 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.

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

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

81. Volkswagen's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Nationwide Class and subclass 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.

82. Plaintiffs plead this count pursuant to the law of New Jersey, where Volkswagen is incorporated, on behalf of all members of the Nationwide Class and subclass. As necessary,

and in the alternative, Plaintiffs stand ready to plead sub-classes, based on the residences at pertinent times of members of the Nationwide Class and subclass, to allege fraudulent concealment under the laws of states other than New Jersey.

COUNT II
Breach of Contract

83. Plaintiffs repeat and reallege all of the allegations set forth in the preceding paragraphs as if fully set forth herein and further allege as follows:

84. Plaintiffs bring this Count on behalf of the Nationwide Class and subclasses.

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

86. Each and every sale or lease of a Defective Vehicle constitutes a contract between Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing Plaintiffs and the other Nationwide Class and subclass members Defective Vehicles and by misrepresenting or failing to disclose the existence of the unlawful "defeat device" and/or defective design, including information known to Volkswagen rendering each

Defective Vehicle less safe and emissions compliant, and thus less valuable, than vehicles not equipped with Clean Diesel engine systems and “defeat devices.”

87. As a direct and proximate result of Volkswagen’s breach of contract, Plaintiffs and the Nationwide Class and subclasses 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

88. Plaintiffs repeat and reallege all of the allegations set forth in the preceding paragraphs as if fully set forth herein and further allege as follows:

89. Plaintiffs bring a cause of action against Defendant for breach of express warranty on behalf of themselves and the Nationwide Class and subclasses.

90. Defendant made numerous representations, descriptions, and promises to Plaintiffs and Nationwide Class and subclass members regarding the performance and emission controls of its diesel vehicles.

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

92. Plaintiffs and Nationwide Class and subclass 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 Nationwide Class and subclass members.

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

COUNT IV
Breach of Implied Warranty

94. Plaintiffs repeat and reallege all of the allegations set forth in the preceding paragraphs as if fully set forth herein and further allege as follows:

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

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

97. Plaintiffs and Nationwide Class and subclass members reasonably relied on Volkswagen's representations in purchasing the Defective Vehicles.

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

99. When Plaintiffs and Nationwide Class and subclass 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.

100. Accordingly, the Defective Vehicles failed to conform to Volkswagen's implied warranty regarding their functionality.

101. As a direct and proximate result of Volkswagen's false and misleading representations and warranties, Plaintiffs and Nationwide Class and subclass members suffered significant injury when Volkswagen sold them cars that, it is now clear, are worth far less than the price Plaintiffs and Nationwide Class and subclass members paid for them. Accordingly, Plaintiffs and the Nationwide Class and subclass seek the relief described below.

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

102. Plaintiffs repeat and reallege all of the allegations set forth in the preceding paragraphs as if fully set forth herein and further allege as follows:

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

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

105. Each of Volkswagen's Defective Vehicles is a "consumer product," as that term is defined in 15 U.S.C. § 2301(1).

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

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

108. 15 U.S.C. § 2310(d)(1) provides a cause of action for any consumer who is damaged by the failure of a warrantor to comply with an implied warranty.

109. Volkswagen provided Plaintiffs and Nationwide Class members with “implied warranties,” as that term is defined in 15 U.S.C. § 2301(7).

110. Volkswagen has breached these implied warranties as described in more detail above. Without limitation, Volkswagen’s Defective Vehicles are defective, as described above, which resulted in the problems and failures also described above.

111. Volkswagen has failed to comply with its obligations under its written and implied promises, warranties, and representations, by and through Volkswagen’s conduct as described herein, including Volkswagen’s knowledge of the defects inherent in the vehicles and its actions, and inactions, in the face of this knowledge.

112. In its capacity as a warrantor, and by the conduct described herein, any attempts by Volkswagen to limit or disclaim 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.

113. All jurisdictional prerequisites have been satisfied.

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

115. As a result of Volkswagen’s breach of implied warranties, Plaintiffs and the Nationwide 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

116. Plaintiffs repeat and reallege all of the allegations set forth in the preceding paragraphs as if fully set forth herein and further allege as follows:

117. Plaintiffs bring this count on behalf of themselves and, where applicable, the Nationwide Class and subclasses.

118. Plaintiffs and members of the Nationwide Class and subclasses conferred a benefit on Defendant by, *inter alia*, using (and paying for) its vehicles Defendant has retained this benefit, and know of and appreciate this benefit.

119. Defendant was, and continues to be, unjustly enriched at the expense of Plaintiffs and Nationwide Class and subclass members.

120. Defendant should be required to disgorge this unjust enrichment to the Nationwide Class and subclasses.

COUNT VII
Breach of the New Jersey Consumer Fraud Act
(N.J.S.A. 56:8-1, *et seq.*)

121. Plaintiffs repeat and reallege all of the allegations set forth in the preceding paragraphs as if fully set forth herein and further allege as follows:

122. Plaintiffs bring this Count on behalf of the members of the New Jersey Subclass.

123. The advertisement, promotion, distribution, supply, sale, or lease of the subject vehicles is a “sale or advertisement” of “merchandise governed by the New Jersey Consumer Fraud Act (“NJCFA”).

124. Prior to the New Jersey members of the Class’ purchase of the subject vehicle, Defendant made uniform representations of the quality and/or characteristics of the subject vehicle, as aforesaid, which were untrue, deceptive, false and/or misleading. Said statements had the capacity to, and did deceive the public and cause injury to New Jersey Plaintiffs and Class members.

125. Specifically, Defendant in its advertisements/and or statements to New Jersey Class Members failed to disclose, and intentionally concealed the fact that the vehicles had defeat devices installed to cheat emission testing.

126. New Jersey class members reasonably expected that the subject vehicles complied with state and federal emissions standards, and reasonably expected that Defendant did not use any system or device to cheat said testing.

127. As a direct and proximate result of the Defendant's actions, the New Jersey class members have suffered ascertainable loss and other damages.

128. The New Jersey class is therefore entitled to damages trebled, plus attorneys fees and costs in this matter pursuant to the NJCFA.

COUNT VIII
Violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law Act
("PAUTPL")
(73 Pa. C.S. §§ 201-1, *et seq.*)

129. Plaintiffs repeat and reallege all of the allegations set forth in the preceding paragraphs as if fully set forth herein and further allege as follows:

130. Plaintiffs bring this count on behalf of themselves and the members of the Pennsylvania Subclass.

131. This claim arises under the Pennsylvania Unfair Trade Practices and consumer Protection Law, 73 Pa.C.S. §§ 201-1, *et seq.*

132. Plaintiffs and members of the Pennsylvania Subclass are "persons" as defined by 73 Pa.C.S. 201-2 (2).

133. At all relevant times, Defendant's actions were committed in the course of trade or commerce within the meaning of 73 Pa.C.S. 201-2(3).

134. Plaintiffs purchased or leased their subject vehicles primarily for personal, family or household purposes within the meaning of 73 Pa.C.S. 201-9.2.

135. The PaUTPL prohibits unfair or deceptive acts or practices “in the conduct of any trade or commerce.” Pa.C.S. 201-3.

136. The PaUTPL declares that acts such as “Representing that goods or services are of a particular standard, quality or grade...[;] advertising goods or services with the intent not to sell them as advertised;...[and] Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or misunderstanding.” 73 Pa.C.S. 201-2.

137. Defendant made uniform representations that its diesel vehicles were of a particular standard, quality, or grade when they were and are not, and that they would perform as represented when they did not. As set forth above, Defendant also made false and/or misleading statements regarding the capacity and characteristics of Defective Vehicles that were unfair or deceptive, had and continue to have the capacity to deceive the public, cause injury to Pennsylvania Plaintiffs, and were made in violation of the PaUTPL.

138. In its communications with and disclosures to Pennsylvania members of the Class, Defendant intentionally concealed and/or failed to disclose that the Defective Vehicles included a software program designed to cheat emissions testing, and that the true emissions of those vehicles were far higher than claimed. Those omissions were unfair or deceptive, had and continue to have the capacity to deceive the public, cause injury to Pennsylvanians and were made in clear violation of the PaUTPL.

139. Defendant had, at all material times, exclusive knowledge that the Defective Vehicles had the defects set forth above — facts unknown to Pennsylvania members of the

Class. Defendant's exclusive knowledge of these material facts gave rise to a duty to disclose such facts, which Defendant failed to perform.

140. The representations made by Defendant and the facts concealed and/or not disclosed by Defendant are material facts that were likely to deceive reasonable consumers, and that a reasonable consumer would have relied on in deciding whether or not to purchase the Defective Vehicles.

141. The representations made by Defendant, and the facts concealed and/or not disclosed by Defendant, detrimentally affected the public interest. There is an inherent public interest in reducing emissions from vehicles and properly advertising emission levels. The Defective Vehicles did not operate as advertised and thus negatively affected the public interest.

142. Pennsylvania members of the Class justifiably acted, or relied to their detriment, on Defendant's affirmative misrepresentations and the concealed and/or non-disclosed facts as evidenced by their purchase and/or use of the Defective Vehicles.

143. Had Defendant disclosed all material information regarding the defeat devices, Pennsylvania members of the Class would not have purchased and used the Defective Vehicles.

144. Defendant knew, or recklessly failed to know, that its statements about its "Clean Diesel" vehicles were false and/or misleading.

145. By the conduct described herein, Defendant engaged in unfair or deceptive acts or practices in the conduct of business, trade, or commerce.

146. As a direct and proximate result of Defendant's violations of the forgoing law, the Pennsylvania members of the Class have been injured.

147. The Pennsylvania members of the Class have been damaged and are entitled to all of the damages, remedies, fees, and costs available under the PaUTPL.

148. By virtue of Defendant's violation of the PaUTPL, Pennsylvania class members are entitled to up to three times actual damages, but not less than one hundred dollars as well as attorney's fees and costs. 73 Pa.C.S. 201-9.2.

COUNT IX
Violations of the Ohio Consumer Sales Practices Act
(OH Rev. Code §§ 1345.01, *et seq.*)

149. Plaintiffs repeat and reallege all of the allegations set forth in the preceding paragraphs as if fully set forth herein and further allege as follows:

150. Plaintiffs bring this count on behalf of themselves and the members of the Ohio Subclass.

151. This claim arises under the Ohio Consumer Sales Practices Act, Ohio Rev. Code §§ 1345.01, *et seq.*

152. Plaintiffs and members of the Ohio Subclass are "consumers" as defined by Ohio Rev. Code 1345.01.

153. At all relevant times, Defendant was a supplier as defined by Ohio Rev. Code 1345.01.

154. Plaintiff and Ohio class members' transactions were "consumer transactions" as defined by Ohio Rev. Code 1345.01.

155. The Ohio Consumer Sales Practices act prohibits prohibits unfair or deceptive acts in connection with consumer transactions. Ohio Rev. Code 1345.02.

156. The Ohio Consumer Sales Practices Act prohibits suppliers from deceptively representing that the subject of "a consumer transaction has ... performance characteristics ... or

benefits that it does not have; ... that the subject of a consumer transaction is of a particular standard, quality, grade, style ... if it is not.” Ohio Rev. Code 1345.02

157. Defendant made uniform representations that its diesel vehicles were of a particular standard, quality, or grade when they were and are not, and that they would perform as represented when they did not. As set forth above, Defendant also made false and/or misleading statements regarding the capacity and characteristics of Defective Vehicles that were unfair or deceptive, had and continue to have the capacity to deceive the public, cause injury to Ohio Plaintiffs, and were made in violation of the Ohio Consumer Sales Practices Act.

158. In its communications with and disclosures to Ohio members of the Class, Defendant intentionally concealed and/or failed to disclose that the Defective Vehicles included a software program designed to cheat emissions testing, and that the true emissions of those vehicles were far higher than claimed. Those omissions were unfair or deceptive, had and continue to have the capacity to deceive the public, cause injury to Pennsylvanians and were made in clear violation of the Ohio Consumer Sales Practices Act.

159. Defendant had, at all material times, exclusive knowledge that the Defective Vehicles had the defects set forth above — facts unknown to Pennsylvania members of the Class. Defendant’s exclusive knowledge of these material facts gave rise to a duty to disclose such facts, which Defendant failed to perform.

160. The representations made by Defendant and the facts concealed and/or not disclosed by Defendant are material facts that were likely to deceive reasonable consumers, and that a reasonable consumer would have relied on in deciding whether or not to purchase the Defective Vehicles.

161. The representations made by Defendant, and the facts concealed and/or not disclosed by Defendant, detrimentally affected the public interest. There is an inherent public interest in reducing emissions from vehicles and properly advertising emission levels. The Defective Vehicles did not operate as advertised and thus negatively affected the public interest.

162. Ohio members of the Class justifiably acted, or relied to their detriment, on Defendant's affirmative misrepresentations and the concealed and/or non-disclosed facts as evidenced by their purchase and/or use of the Defective Vehicles.

163. Had Defendant disclosed all material information regarding the defeat devices, Ohio members of the Class would not have purchased and used the Defective Vehicles.

164. Defendant knew, or recklessly failed to know, that its statements about its "Clean Diesel" vehicles were false and/or misleading.

165. By the conduct described herein, Defendant engaged in unfair or deceptive acts or practices in the conduct of business, trade, or commerce.

166. As a direct and proximate result of Defendant's violations of the forgoing law, the Ohio members of the Class have been injured.

167. The Ohio members of the Class have been damaged and are entitled to all of the damages, remedies, fees, and costs available under the Ohio Consumer Sales Practices Act.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on their own behalf and on behalf of all others similarly situated, pray for judgment as follows:

1. That this Court certify this case as a class action under Rule 23(a) and Rule 23(b)(1), (2) and/or (3) of the Federal Rules of Civil Procedure, and appoint Plaintiffs and their counsel to represent the Class and Subclasses;
2. An order temporarily and permanently enjoining Volkswagen from continuing the unlawful, deceptive, fraudulent, and unfair business practices alleged in this Complaint;
3. Injunctive relief in the form of a recall or free replacement program;
4. Revocation of acceptance;
5. Damages under the Magnuson-Moss Warranty Act;
6. Costs, restitution, damages, and disgorgement in an amount to be determined at trial;
7. Treble and/or punitive damages as permitted by applicable laws;
8. That Volkswagen be ordered to pay pre- and post judgment interest on any amounts awarded;
9. An award of costs and attorneys' fees; and
10. Such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiffs hereby demand a trial by jury.

By: /s/ Franklin P. Solomon
Franklin P. Solomon
SOLOMON LAW FIRM, LLC
801 Kings Highway North
Cherry Hill, NJ 08034
Ph: 856-910-4311
F: 856-823-1551
fsolomon@franklinsolomonlaw.com

LOCKS LAW FIRM, LLC

Michael A. Galpern

Andrew P. Bell

James A. Barry

801 N. Kings Highway

Cherry Hill, NJ 08034

Tel: (856) 663-8200

Fax: (856) 661-8400

mgalpern@lockslaw.com

abell@lockslaw.com

jbarry@lockslaw.com

Attorneys for Plaintiffs and the Class

EXHIBIT A



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

SEP 18 2015

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

*VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED*

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

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

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

Re: Notice of Violation

Dear Mr. Geanacopoulos and Mr. Johnson:

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

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

Law Governing Alleged Violations

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

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

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

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

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

Motor vehicles equipped with defeat devices, such as those at issue here, cannot be certified. EPA, *Advisory Circular Number 24: Prohibition on use of Emission Control Defeat Device* (Dec. 11, 1972); *see also* 40 C.F.R. §§ 86-1809-01, 86-1809-10, 86-1809-12. Electronic control systems which may receive inputs from multiple sensors and control multiple actuators that affect the emission control system’s performance are AECDs. EPA, *Advisory Circular Number 24-2: Prohibition of Emission Control Defeat Devices – Optional Objective Criteria* (Dec. 6, 1978). “Such elements of design could be control system logic (i.e., computer software), and/or calibrations, and/or hardware items.” *Id.*

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

The CAA makes it a violation “for any person to manufacture or sell, or offer to sell, or install, any part or component intended for use with, or as part of, any motor vehicle or motor vehicle engine, where a principal effect of the part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this subchapter, and where the person knows or should know that such part or component is being offered for sale or installed for such use or put to such use.” CAA § 203(a)(3)(B), 42 U.S.C. § 7522(a)(3)(B); 40 C.F.R. § 86.1854-12(a)(3)(ii). Additionally, manufacturers are prohibited from selling, offering for sale, introducing into commerce, delivering for introduction into commerce, or importing, any new motor vehicle unless that vehicle is covered by an EPA-issued COC. CAA § 203(a)(1), 42 U.S.C. § 7522(a)(1); 40 C.F.R. § 86.1854-12(a)(1). It is also a violation to cause any of the foregoing acts. CAA § 203(a), 42 U.S.C. § 7522(a); 40 C.F.R. § 86-1854-12(a).

Alleged Violations

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

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

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

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

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

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

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

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

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

Enforcement

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

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

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

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

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

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

Sincerely,

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

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

Copy:

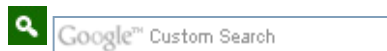
Todd Sax, California Air Resources Board
Walter Benjamin Fisherow, United States Department of Justice
Stuart Drake, Kirkland & Ellis LLP

EXHIBIT B

- [subscription settings](#)
- [Become a member](#)
- [Submit your news](#)

September 25, 2015

- [facebook](#)
- [twitter](#)
- [google+](#)



CSR News

Volkswagen's Clean Diesels Eligible for Alternative Motor Vehicle Federal Tax Credit

Submitted by: **Volkswagen of America**
Categories: **Clean Technology, Renewable & Alternative Energy**
Posted: Sep 19, 2008 - 01:08 PM EST



Buyers of Volkswagen Jetta TDI vehicles eligible for a \$1300 Federal Tax Credit

HERNDON, Va., Sept. 19 /PRNewswire/ -- Volkswagen of America, Inc. today announced that buyers of the Jetta TDI sedan and SportWagen are eligible for a \$1,300 Federal Income Tax Credit. The Internal Revenue Service has issued a certification letter affirming that the vehicles qualify for the Advanced Lean Burn Technology Motor Vehicle income tax credit.

"The \$1,300 tax credit provides an even greater value to the upcoming Jetta TDI sedan and SportWagen," said Mark Barnes, COO, Volkswagen of America, Inc. "Our clean diesel vehicles offer consumers the fuel efficiency that they're looking for while providing power, utility, performance, safety and excellent value."

Jetta TDI sedan and SportWagen showcase the best of both worlds, an alternative fuel vehicle with no compromises. Fuel efficiency, performance and convenience come standard with the 50-state compliant Jetta TDI sedan and SportWagen models, which meet the most stringent emissions standards in California. Vehicles are currently available to test drive at local Volkswagen dealers, both models will be available for sale this August.

While the Environmental Protection Agency estimates the Jetta TDI at an economical 29 mpg city and 40 mpg highway, Volkswagen went a step further to show real world fuel economy of the Jetta TDI. Leading third-party certifier, AMCI, tested the Jetta TDI and found it performed 24 percent better in real world conditions, achieving 38 mpg in the city and 44 mpg on the highway.*

The Jetta TDI models come standard with Volkswagen's Prevent and Preserve Safety System, consisting of numerous standard safety features. Both the Jetta TDI sedan and SportWagen include six airbags, with optional rear side airbags, and like all 2009 model year Volkswagens, Jetta TDIs also feature standard Electronic Stabilization Program (ESP) for added safety.

Also standard for 2009 is Volkswagen's Carefree Maintenance Program -- with this program there are no charges for the scheduled maintenance described in the vehicle's maintenance booklet for the length of the New Vehicle Limited Warranty--three years or 36,000 miles, whichever occurs first.

Volkswagen of America, Inc.

Volkswagen of America, Inc. recently announced Electronic Stability Program (ESP) as standard equipment on all its 2009 vehicles. As a result, Volkswagen is one of the only original equipment manufacturers to offer an electronic stability control system on their entire product line - ahead of the National Highway Traffic Safety Administration's (NHTSA) deadline requiring

vehicles in the 2012 model year to include stability control systems. Volkswagen's ESP technology works in conjunction with antilock brakes and helps reduce loss of control and rollovers to avoid crashes. NHTSA predicts nearly 10,000 lives could be saved each year if automakers included stability systems as standard equipment.

Founded in 1955, Volkswagen of America, Inc. is headquartered in Herndon, Va. It is a subsidiary of Volkswagen AG, headquartered in Wolfsburg, Germany. Volkswagen is one of the world's largest producers of passenger cars and Europe's largest automaker. Volkswagen sells the Rabbit, New Beetle, New Beetle convertible, GTI, Jetta, GLI, Passat, Passat wagon, Eos, Tiguan and Touareg through approximately 600 independent U.S. dealers. Visit Volkswagen of America online at [vw.com](http://www.vw.com).

*29 city / 40 highway EPA estimates. 38 city / 44 highway real world fuel economy based on AMCI testing. Your mileage may vary. For more information on Volkswagen, go to www.vw.com.

For more information, please contact:

Thomas Wegehaupt Volkswagen of
America, Inc.

Phone: +1-703-364-7642

EXHIBIT C



Air Resources Board



Matthew Rodriguez
Secretary for
Environmental Protection

Mary D. Nichols, Chair
9480 Telstar Avenue, Suite 4
El Monte, California 91731 • www.arb.ca.gov

Edmund G. Brown Jr.
Governor

Reference No. IUC-2015-007

September 18, 2015

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

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

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

Re: Admission of Defeat Device and California Air Resources Board's Requests

Dear Mr. Geanacopoulos and Mr. Johnson:

In order to protect public health and the environment from harmful pollutants, the California Air Resources Board (CARB) rigorously implements its vehicle regulations through its certification, in use compliance, and enforcement programs. In addition to the new vehicle certification process, CARB regularly tests automobiles to ensure their emissions performance is as expected throughout their useful life, and performs investigative testing if warranted. CARB was engaged in dialogue with our European counterparts concerning high in use emissions from light duty diesels. CARB deployed a number of efforts using portable measurement systems and other approaches to increase our understanding for the California fleet. In 2014, the International Council for Clean Transportation (ICCT) and West Virginia University (WVU) identified through their test program, and brought to the CARB's and the United States Environmental Protection Agency's (EPA) attention, concerns of elevated oxides of nitrogen (NOx) emissions over real world driving. The ICCT actions were consistent and

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our website: <http://www.arb.ca.gov>.

California Environmental Protection Agency

Mr. Geanakopoulos and Mr. Johnson:
September 18, 2015
Page 2

complementary to our activities. This prompted CARB to start an investigation and discussions with the Volkswagen Group of America (VW) on the reasons behind these high NOx emissions observed on their 2.0 liter diesel vehicles over real world driving conditions. As you know, these discussions over several months culminated in VW's admission in early September 2015 that it has, since model year 2009, employed a defeat device to circumvent CARB and the EPA emission test procedures.

VW initiated testing to replicate the ICCT/WVU testing and identify the technical reasons for the high on-road emissions. VW shared the results of this testing and a proposed recalibration fix for the Gen1 (Lean NOx Trap technology) and Gen2 (Selective Catalytic Reduction (SCR) technology) with CARB staff on December 2, 2014. Based on this meeting, CARB and EPA at that time agreed that VW could implement the software recall; however, CARB cautioned VW that if our confirmatory testing showed that the fix did not address the on-road NOx issues, they would have to conduct another recall. Based on this meeting, VW initiated a voluntary recall in December 2014 which, according to VW, affected approximately 500,000 vehicles in the United States (~50,000 in California). The recall affected all 2009 to 2014 model-year diesel fueled vehicles equipped with Gen1 and Gen2 technology. This recall was claimed to have fixed among other things, the increased real world driving NOx issue.

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

To have a more controlled evaluation of the high NOx observed over the road, CARB developed a special dynamometer cycle which consisted of driving the Phase 2 portion of the FTP repeatedly. This special cycle revealed that VW's recall calibration did increase Diesel Exhaust Fluid (DEF) dosing upon initial startup; however, dosing was not sufficient to keep NOx emission levels from rising throughout the cycle. This resulted in uncontrolled NOx emissions despite the SCR reaching sufficient operating temperatures.

CARB shared its test results with VW on July 8, 2015. CARB also shared its results with the EPA. Several technical meetings with VW followed where VW disclosed that Gen1, Gen2 and the 2015 model-year improved SCR vehicle (known as the Gen3) had a second calibration intended to run only during certification testing. During a meeting on September 3, 2015, VW admitted to CARB and EPA staff that these vehicles were

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our website: <http://www.arb.ca.gov>.

California Environmental Protection Agency

Mr. Geanakopoulos and Mr. Johnson:
September 18, 2015
Page 3

designed and manufactured with a defeat device to bypass, defeat, or render inoperative elements of the vehicles' emission control system. This defeat device was neither described nor justified in the certification applications submitted to EPA and CARB. Therefore, each vehicle so equipped would not be covered by a valid federal Certificate of Conformity (COC) or CARB Executive Order (EO) and would be in violation of federal and state law.

Based upon our testing and discussions with VW, CARB has determined that the previous recall did not address the high on-road NOx emissions, and also resulted in the vehicle failing certification standards. Therefore, the recall is deemed ineffective and is deemed unapproved. VW must immediately initiate discussions with CARB to determine the appropriate corrective action to rectify the emission non-compliance and return these vehicles to the claimed certified configuration. CARB program and enforcement staff is prepared to work closely with VW to find corrective actions to bring these vehicles into compliance.

CARB has also initiated an enforcement investigation of VW regarding all model-year 2009 through 2015 light-duty diesel vehicles equipped with 2.0 liter engines. We expect VW's full cooperation in this investigation so this issue can be addressed expeditiously and appropriately.

Sincerely,



Annette Hebert, Chief
Emissions Compliance, Automotive Regulations and Science Division

cc: Mr. Byron Bunker, Director
Compliance Division
Office of Transportation and Air Quality
Office of Air and Radiation
U.S. Environmental Protection Agency

Mr. Linc Wehrly, Director
Environmental Protection Agency
Light-Duty Vehicle Center
2000 Traverwood Drive
Ann Arbor, MI 48105

Dr. Todd P. Sax, Chief
Enforcement Division
California Air Resources Board

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our website: <http://www.arb.ca.gov>.

California Environmental Protection Agency

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

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

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

DEFENDANTS

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

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

Attorneys (If Known)

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

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

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

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

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

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

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

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

VI. CAUSE OF ACTION

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

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

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

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

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

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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