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15 UNITED STATES DISTRICT COURT  
16 SOUTHERN DISTRICT OF CALIFORNIA

17 CAROLINE HOAG and PAUL	}	Case No. <u>'15CV2367 AJB DHB</u>
18 BYRNE, Individually and on Behalf of		<u>CLASS ACTION</u>
19 All Others Similarly Situated,		
20 Plaintiffs,	}	CLASS ACTION COMPLAINT
21 vs.		
22 VOLKSWAGEN AG, VOLKSWAGEN		
23 GROUP OF AMERICA, INC.,	}	
24 MARTIN WINTERKORN, MICHAEL		
25 HORN and DOES 1-25,		
26 Defendants.	}	<u>DEMAND FOR JURY TRIAL</u>
27		
28		

1 Plaintiffs Caroline Hoag and Paul Byrne (“Plaintiffs”) bring this action on  
2 behalf of themselves, and all others similarly situated, against defendants Volkswagen  
3 AG (“VW AG”), Volkswagen Group of America, Inc. (“VW America”) (collectively,  
4 “VW”), Martin Winterkorn (“Winterkorn”) and Michael Horn (“Horn”) (collectively,  
5 “Defendants” or “Volkswagen”). Plaintiffs allege the following based upon  
6 information and belief, the investigation of counsel, and personal knowledge as to the  
7 allegations pertaining to themselves.

## 8 INTRODUCTION

9 1. This nationwide consumer class action arises out of one of the biggest  
10 and most brazen corporate crimes in history. Volkswagen cheated its way to the top  
11 of the automotive food chain and spared no victim on its way, targeting its customers,  
12 its partners, the EPA, and even the very air we all breathe. The linchpin of  
13 Volkswagen’s scheme was a “defeat device” that it designed for the specific purpose  
14 of cheating smog tests, fooling the EPA into approving for sale hundreds of thousands  
15 of illegal cars that spewed millions of pounds of pollution – up to 4,000% of legal  
16 limits – and feeding the public a false narrative in which it starred as the world’s  
17 foremost innovator of “clean” diesel technology. As it turns out, Fahrvergnügen is not  
18 “what makes a car a Volkswagen.” Fraud is.

19 2. Fraud fueled Volkswagen’s success, and its only real clean diesel  
20 innovation was how it played dirty. Its ingeniously designed defeat device was  
21 programmed into its cars to detect when its dirty diesel engines were being tested in a  
22 lab or smog station, and then trigger performance-sapping emissions controls to make  
23 the engines appear clean and compliant with emissions standards. But when the test  
24 ended, and the driver returned to the road, the performance – and pollution – returned.  
25 Everything about Volkswagen’s scheme was coolly and intentionally calculated, as  
26  
27  
28

1 defendant Horn recently confessed at Congressional hearings: the defeat device “was  
2 installed for this purpose, yes.”<sup>1</sup>

3         3. Volkswagen promised low-emission environmentally friendly vehicles,  
4 with high fuel economy and exceptional performance, and consumers bought them in  
5 record numbers. Volkswagen has sold more diesel cars in the United States than  
6 every other brand combined.<sup>2</sup> From 2009 to 2015, Volkswagen sold and/or leased in  
7 the United States approximately 500,000 dirty diesels that its defeat device disguised  
8 as clean (the “Defective Vehicles”). And Volkswagen sold and leased more Defective  
9 Vehicles in California than in any other state.<sup>3</sup> So Volkswagen secretly turned the  
10 most environmentally conscious consumers into the biggest smog hogs on the road –  
11 and charged them a premium in the process.

12         4. Now “there are half a million cars running an emissions setup that *never*  
13 *should’ve left the factory*.”<sup>4</sup> Each of these Defective Vehicles is also illegal and never  
14 should have been sold because Volkswagen’s fraudulently obtained EPA certificates  
15 of conformity were invalid. Since the revelation of Volkswagen’s scheme, the DOJ  
16 and at least 45 state attorneys general have announced they are investigating  
17 Volkswagen’s misconduct, along with other criminal and civil investigations  
18 underway across the globe.<sup>5</sup>

19         5. Volkswagen’s crime has also taken a human toll. Reportedly, the  
20 pollution spewed by the Defective Vehicles has caused “somewhere between 16 and

21 <sup>1</sup> See <http://www.npr.org/sections/thetwo-way/2015/10/08/446861855/volkswagen-u-s-ceo-faces-questions-on-capitol-hill> (last visited on Oct. 19, 2015).

22 <sup>2</sup> <http://www.vw.com/features/clean-diesel/> (last visited on Sept. 21, 2015).

23 <sup>3</sup> [http://www.washingtonpost.com/business/economy/own-a-vw-diesel-heres-what-you-need-to-know/2015/09/21/f179d3f6-60a5-11e5-8e9e-dce8a2a2a679\\_story.html](http://www.washingtonpost.com/business/economy/own-a-vw-diesel-heres-what-you-need-to-know/2015/09/21/f179d3f6-60a5-11e5-8e9e-dce8a2a2a679_story.html)  
24 (last visited on Oct. 19, 2015).

25 <sup>4</sup> <http://www.popularmechanics.com/cars/a17430/ezra-dyer-volkswagen-diesel-controversy/>  
26 (last visited on Sept. 28, 2015).

27 <sup>5</sup> <http://www.bloomberg.com/news/articles/2015-10-08/texas-sues-volkswagen-claiming-deception-emissions-violations-ifiqscqq>  
28 (last visited on Oct. 16, 2015).

94 deaths over seven years, with the annual count increasing more recently as more of the diesels were on the road. The total cost has been well over \$100 million.”<sup>6</sup>

6. Volkswagen induced Plaintiffs and the Class (defined below) into purchasing or leasing illegal Defective Vehicles that violate the Clean Air Act and state law, and do not perform as represented by Volkswagen or as required by law. No one would – or could – have purchased these vehicles but for Defendants’ illegal scheme as Defendants could not obtain EPA certificates of conformity without cheating. Plaintiffs have suffered a steep diminution in the value of their Defective Vehicles. There is little market for these vehicles, which do not perform as advertised, are subject to a planned recall in the indefinite future (and without a clear plan to a complete fix), and pollute at levels exponentially beyond legal limits.<sup>7</sup>

7. Plaintiffs and the Class are consumers who purchased or leased a Defective Vehicle, including but not limited to:

<u>Year</u>	<u>Make &amp; Model(s)</u>
2009	Volkswagen Jetta TDI, Volkswagen Jetta SportWagen TDI
2010	Volkswagen Golf TDI, Volkswagen Jetta TDI, Volkswagen Jetta SportWagen TDI, and Audi A3
2011	Volkswagen Golf TDI, Volkswagen Jetta TDI, Volkswagen Jetta SportWagen TDI, and Audi A3
2012	Volkswagen Beetle TDI, Volkswagen Beetle Convertible TDI, Volkswagen Golf TDI, Volkswagen Jetta TDI, Volkswagen Jetta SportWagen TDI, Audi A3, Volkswagen Passat TDI

<sup>6</sup> <http://www.businessinsider.com/ap-ap-analysis-vw-evasion-likely-led-to-dozens-of-deaths-2015-10> (last visited on Oct. 16, 2015).

<sup>7</sup> Recent articles have suggested that the Defective Vehicles have already lost 13% of their value, and other VW vehicles have also dropped 2%. See <http://www.wsj.com/articles/kelley-blue-book-volkswagen-diesel-car-values-decline-13-1444147701> (last visited on Oct. 16, 2015).

<u>Year</u>	<u>Make &amp; Model(s)</u>
2013	Volkswagen Beetle TDI, Volkswagen Beetle Convertible TDI, Volkswagen Golf TDI, Volkswagen Jetta TDI, Volkswagen Jetta SportWagen TDI, Audi A3, Volkswagen Passat TDI
2014	Volkswagen Beetle TDI, Volkswagen Beetle Convertible TDI, Volkswagen Golf TDI, Volkswagen Jetta TDI, Volkswagen Jetta SportWagen TDI, Audi A3, Volkswagen Passat TDI
2015	Volkswagen Beetle TDI, Volkswagen Beetle Convertible TDI, Volkswagen Golf TDI, Volkswagen Jetta TDI, Volkswagen Jetta SportWagen TDI, Audi A3, Volkswagen Passat TDI, Volkswagen Golf SportWagen TDI

8. Plaintiffs, for themselves and all others similarly situated, hereby bring this action for violations of the Racketeer Influenced & Corrupt Organizations Act (18 U.S.C. §1961, *et seq.* (“RICO”)); fraud by concealment; breach of express and implied warranties under the Uniform Commercial Code (“UCC”), Magnuson-Moss Warranty Act (15 U.S.C. §2301, *et seq.* (“MMWA”)), and the Song-Beverly Warranty Act (Cal. Civ. Code §§1791.1, 1793.2(d), *et seq.*); and violations of the California Unfair Competition Law (Cal. Bus. & Prof. Code §17200, *et seq.* (“UCL”)), False Advertising Law (Cal. Bus. & Prof. Code §17500, *et seq.* (“FAL”)), and Consumers Legal Remedies Act (Cal. Civ. Code §1750, *et seq.* (“CLRA”)).

9. Defendants’ wrongful and illegal acts show a deliberate disregard for the rights or safety of the public. Defendants had knowledge of facts and/or intentionally disregarded facts that created a high probability of injury to the rights or safety of others, yet Defendants deliberately proceeded to act in conscious or intentional disregard of, and with reckless indifference to, the high degree of probability of injury to the rights or safety of others. Defendants’ conduct entitles Plaintiff and the Class to a significant award of punitive or exemplary damages in this case. Plaintiffs also seek, on behalf of themselves and Class members nationwide, monetary damages

(including treble damages under the RICO statute), appropriate restitution, and injunctive relief arising out of Defendants' illegal scheme and conspiracy.

### **JURISDICTION AND VENUE**

10. This Court has subject matter jurisdiction over this action under 28 U.S.C. §1331, because Plaintiffs' claims arise under the RICO Act, 18 U.S.C. §1962. The Court also has diversity jurisdiction because Plaintiffs and Defendants reside in different states. The Court has supplemental jurisdiction over Plaintiffs' state law claims under 28 U.S.C. §1367. This Court also has original jurisdiction over this lawsuit pursuant to 28 U.S.C. §1332(a)(1), as modified by the Class Action Fairness Act of 2005, because Plaintiffs and Volkswagen are citizens of different states; there are more than 100 members of the Class (as defined herein); the aggregate amount in controversy exceeds \$5 million, exclusive of attorneys' fees, interest, and costs; and Class members reside across the United States. The citizenship of each party is described further below in the "Parties" Section.

11. This Court has personal jurisdiction over each Defendant pursuant to 18 U.S.C. §§1965(b) and (d), and/or Cal. Code Civ. P. §410.10. This Court has personal jurisdiction over Defendants because they have minimum contacts with the United States and this State, and intentionally availed themselves of the laws of California by conducting a substantial amount of business throughout the State of California, including the design, manufacture, distribution, testing, sale, lease, and/or warranty of Volkswagen and Audi vehicles in this State and District. At least in part because of Defendants' misconduct as alleged in this lawsuit, more Defective Vehicles ended up on California's roads than in any other state in the country.<sup>8</sup>

12. Venue is proper in this Court under 28 U.S.C. §1391, because: (i) Defendants conduct substantial business in this District and have intentionally

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<sup>8</sup> See [http://www.washingtonpost.com/business/economy/own-a-vw-diesel-heres-what-you-need-to-know/2015/09/21/f179d3f6-60a5-11e5-8e9e-dce8a2a2a679\\_story.html](http://www.washingtonpost.com/business/economy/own-a-vw-diesel-heres-what-you-need-to-know/2015/09/21/f179d3f6-60a5-11e5-8e9e-dce8a2a2a679_story.html) (last visited on Oct. 19, 2015).

1 availed themselves of the laws and markets of the United States and this District;  
2 and/or (ii) many of the acts and transactions giving rise to this action occurred in this  
3 District, including, *inter alia*, Defendants’ promotion, marketing, distribution and sale  
4 of the Defective Vehicles to Plaintiffs and other Class members in this District.  
5 Defendants sell a substantial amount of automobiles in this District, have dealerships  
6 located throughout this District, and the misconduct occurred in part in this District.  
7 Venue is also proper under 18 U.S.C. §1965(a), because Defendants are subject to  
8 personal jurisdiction in this District as alleged in the preceding paragraph, and  
9 Defendants have agents located in this District.

## 10 **PARTIES**

### 11 **A. Plaintiffs**

12 13. Plaintiff Caroline Hoag (“Hoag”) is a resident of San Diego County,  
13 California. In 2011, Hoag purchased a 2011 Jetta TDI SportWagen for approximately  
14 \$30,000 from South Bay Volkswagen in National City. Like other Class members,  
15 Hoag purchased the Defective Vehicle based on Defendants’ advertisements touting  
16 VW’s “clean diesel” engine, combined with superior fuel economy and performance.

17 14. Plaintiff Paul Byrne (“Byrne”) is a resident of San Diego County,  
18 California. In May 2014, Byrne purchased via lease contract a 2014 Jetta TDI Diesel  
19 from Kearny Mesa Volkswagen in San Diego County. In June 2015, Byrne purchased  
20 a 2013 Passat TDI Diesel from Capistrano VW in San Juan Capistrano. Byrne  
21 purchased both vehicles based upon his desire to own a “green” fuel-efficient car, and  
22 Defendants’ advertisements touting the fuel economy of the Defective Vehicles as  
23 meeting or exceeding that achieved by hybrid vehicles. Defendants’ advertisements  
24 touted the vehicles’ low emissions and did not reveal that they contained a defeat  
25 device.

26 15. Plaintiffs relied on Defendants’ representations and had no reason to  
27 suspect, at that time, that the defective engine systems contained a defeat device.  
28 Plaintiffs would not have purchased or leased these vehicles had they been aware of



1 the “defeat devices” or that the Defective Vehicles did not comply with the advertised  
2 specifications regarding pollution emissions and fuel economy, and were not  
3 environmentally friendly.

4 16. Defendants concealed that every Defective Vehicle contained a defeat  
5 device and was illegal to import or sell because they did not meet applicable emissions  
6 standards. None of the Plaintiffs or Class members would have ever purchased the  
7 Defective Vehicles but for defendants’ fraud because the EPA would not have issued  
8 a certificate of conformity for these vehicles had the existence of the illegal defeat  
9 device been revealed. Further, none of the Plaintiffs or Class members would have  
10 purchased the Defective Vehicles if they had been accurately marketed as illegal  
11 because the legality of the vehicles was a fact material to their purchase, and because  
12 no reasonable dealer or other seller would have sold these vehicles to the public had  
13 their illegality been known.

14 17. Plaintiffs are now stuck with Defective Vehicles that are out of  
15 compliance with emissions standards and contain defeat devices rendering their Clean  
16 Diesel engine system defective. Moreover, Plaintiffs are stuck with vehicles for  
17 which the market has tanked in the aftermath of VW’s emissions scandal. Finally, it  
18 is far from clear whether any recall will be able to “fix” the emissions problem  
19 without sacrificing the fuel economy, horsepower, durability, and performance of the  
20 vehicles, all of which were material features in the advertising of the same.

21 **B. Defendants**

22 18. Defendant VW AG is a publicly traded German corporation and one of  
23 the world’s leading automobile manufacturers. VW AG’s headquarters are located in  
24 Wolfsburg, Germany. VW AG conducts substantial business throughout the United  
25 States and in this District, including its control of defendant VW America; its  
26 development and procuring of manufacturing plants, including in Chattanooga,  
27 Tennessee; its network of dealerships; and its distribution for sale of hundreds of  
28 thousands of Defective Vehicles across the United States and in this District.



1           19. Defendant VW America is a for-profit corporation that is not publicly  
 2 traded, is organized under the laws of the State of New Jersey and has its principal  
 3 place of business at 2200 Ferdinand Porsche Dr., Herndon, Virginia 20171.<sup>9</sup> VW  
 4 America does business in all 50 states (and the District of Columbia), including selling  
 5 thousands of Defective Vehicles in the State of California. Upon information and  
 6 belief, Volkswagen's testing and implementation of the defeat devices and fraudulent  
 7 scheme were carried out, at least in part, by and through a test center in California.

8           20. Defendant Winterkorn is a resident of Germany. Winterkorn was CEO  
 9 of VW AG until he resigned on September 23, 2015, in the wake of the diesel  
 10 emissions scandal. Winterkorn was a detail-oriented, micromanaging CEO, who  
 11 "retained control over engineering details that many other CEOs would relinquish  
 12 fully to deputies."<sup>10</sup> Winterkorn hand picked the engineers who designed the defeat  
 13 devices, and Winterkorn is being investigated by the German government for  
 14 allegations of fraud.<sup>11</sup> Winterkorn received compensation from the illegal scheme  
 15 based on the revenues and profits from the Defective Vehicles, and VW's increased  
 16 market share. Winterkorn approved, authorized, directed, ratified, and/or participated  
 17 in the acts complained of herein. Winterkorn is subject to the personal jurisdiction of  
 18 this Court as he has availed himself of the laws of the United States and California  
 19 through his management and control over VW America, as well as the design,  
 20 manufacture, distribution, testing, and sale of hundreds of thousands of Defective  
 21 Vehicles imported and sold across the United States, in this State, and in this District.

22           21. Defendant Horn is a resident of Virginia. Horn is President and CEO of  
 23 VW America. Horn received compensation from the illegal scheme and course of  
 24

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25 <sup>9</sup> VW America is not a defendant for the RICO claim alleged in this Complaint.

26 <sup>10</sup> <http://www.usatoday.com/story/money/cars/2015/09/23/volkswagen-emissions-scandal-martin-winterkorn/72673028/> (last visited on Sept. 28, 2015).

27 <sup>11</sup> See <http://www.reuters.com/article/2015/09/28/us-volkswagen-emissions-id-USKCN0RP14U20150928> (last visited on Sept. 28, 2015).  
 28

1 conduct based on the revenues and profits from the Defective Vehicles, and VW's  
 2 increased market share. Horn approved, authorized, directed, ratified, and/or  
 3 participated in the acts complained of herein. Horn has admitted that he was aware of  
 4 the vehicles' emissions non-compliance since at least 2014. On September 25, 2015,  
 5 VW AG put Prof. Dr. Winfried Vahlan in charge of VW's North America activities,  
 6 but Horn was able to keep his job despite media reports that he was being ousted in  
 7 the wake of the scandal.<sup>12</sup> (Vahlan has now also resigned.)

8 22. Defendants and/or their agents designed, manufactured, and installed the  
 9 engine systems in the Defective Vehicles, which included the defeat device and any  
 10 other auxiliary emissions systems. Defendants and/or their agents also tested the  
 11 vehicles and falsely reported compliant levels of emissions to the EPA and the  
 12 California Air Resources Board ("CARB") to fraudulently obtain certificates of  
 13 conformity, and failed to come clean to regulators when they were confronted with  
 14 discrepancies as described further below. Defendants and/or their agents also  
 15 developed and disseminated VW's "clean diesel" advertising campaign, websites,  
 16 owners' manuals and warranty booklets, advertisements, brochures, and other  
 17 promotional materials that falsely or misleadingly touted the Defective Vehicles' low-  
 18 emissions, fuel economy and performance.

19 23. Defendant Does 1-25 are other persons or entities involved in the design,  
 20 manufacture, sale, distribution, testing, and marketing of the Defective Vehicles  
 21 and/or the defeat device and/or other auxiliary emissions devices installed therein.

## 22 COMMON FACTUAL ALLEGATIONS

### 23 A. Defendants Hatch Their Illegal Scheme for the Diesel 24 Engines to Beat Out the Competition by Playing Dirty

25 24. Defendants' illegal scheme and common course of conduct was borne out  
 26 of greed and ambition to dominate the automotive market. In 2007, when Winterkorn  
 27 left Audi to become VW's CEO, he put into place goals for Volkswagen to become

28 <sup>12</sup> <https://media.vw.com/release/1074/> (last visited on Sept. 25, 2015).

1 the world's largest automaker, including a target of tripling U.S. sales to at least  
 2 800,000 vehicles by 2018.<sup>13</sup> At the time, "diesel-engine vehicles made up just 5% of  
 3 the U.S. car market," and Winterkorn saw this as an advantage.<sup>14</sup> As such, diesel  
 4 became the centerpiece of Defendants' U.S. campaign.

5 25. To accomplish VW's goal of increasing market share and sales,  
 6 Winterkorn appointed two engineers with whom he worked closely at Audi (Ulrich  
 7 Hackenberg and Wolfgang Hatz) to lead up R&D and engine development. Out of  
 8 their efforts came the TDI (turbocharged direct injection) diesel engine that contained  
 9 the defeat devices.<sup>15</sup> It is now believed that Volkswagen installed the defeat devices  
 10 to cheat emissions tests after Hackenberg and Hatz realized that the TDI diesel  
 11 engines could not meet stringent emissions standards. Rather than redesign the  
 12 engines once more, at great expense, Volkswagen instead banked on the defeat  
 13 devices to conceal their engineering inadequacies.<sup>16</sup> German newspapers report that  
 14 this decision involved "at least 30 people," with the number likely to grow.<sup>17</sup>

15 26. At the time when VW was trying to increase its sales of diesel vehicles,  
 16 many consumers may have viewed diesel engines as a relic of the past, where vehicles  
 17 emitted thick, toxic smoke full of dangerous and destructive pollutants. So with its  
 18 new engines, VW presented a new vision of diesel, touting its technology as having  
 19  
 20  
 21

22 <sup>13</sup> See [http://www.wsj.com/articles/vw-emissions-probe-zeroes-in-on-two-engineers-](http://www.wsj.com/articles/vw-emissions-probe-zeroes-in-on-two-engineers-1444011602)  
 23 [1444011602](http://www.wsj.com/articles/vw-emissions-probe-zeroes-in-on-two-engineers-1444011602) (last visited on Oct. 19, 2015).

24 <sup>14</sup> See *id.*

25 <sup>15</sup> See *id.*

26 <sup>16</sup> [http://www.nytimes.com/2015/10/05/business/engine-shortfall-pushed-](http://www.nytimes.com/2015/10/05/business/engine-shortfall-pushed-volkswagen-to-evade-emissions-testing.html)  
[volkswagen-to-evade-emissions-testing.html](http://www.nytimes.com/2015/10/05/business/engine-shortfall-pushed-volkswagen-to-evade-emissions-testing.html) (last visited on Oct. 16, 2015).

27 <sup>17</sup> [http://fortune.com/2015/10/14/dozens-of-managers-implicated-in-volkswagen-](http://fortune.com/2015/10/14/dozens-of-managers-implicated-in-volkswagen-scandal/)  
 28 [scandal/](http://fortune.com/2015/10/14/dozens-of-managers-implicated-in-volkswagen-scandal/) (last visited on Oct. 16, 2015).

1 improved so significantly that it should be viewed as grouped with electric and  
2 hydrogen cell vehicles as a “green” alternative to the standard gasoline automobile.<sup>18</sup>

3 27. To explain briefly the differences in diesel versus gasoline vehicles,  
4 diesel engines ignite the fuel through a combination of high temperatures and high  
5 compression, as opposed to a spark ignition in the typical automobile engine. Diesel  
6 fuel is traditionally denser than gasoline, and the high density fuel mixed with higher  
7 operating temperatures tends to produce a more efficient vehicle; gasoline engines are  
8 typically 30% efficient at converting fuel into energy compared to 45% for diesel  
9 engines.<sup>19</sup>

10 28. Further, diesel engines exist in a state of balance between rich and lean  
11 states. A diesel engine in a rich state contains more fuel than air, which tends to  
12 produce higher amounts of pollutant soot and reduced fuel efficiency. On the other  
13 hand, the lean state contains more air than fuel and produces higher amounts of  
14 NO<sub>x</sub>.<sup>20</sup> Neither of these discharges is desirable, as soot is rich in hazardous  
15 hydrocarbons and dangerous to lungs and hearts, while NO<sub>x</sub> – which can travel  
16 hundreds of miles – has a particularly destructive effect on the ozone layer.

17 29. For the EPA to designate a diesel automobile as a “clean” vehicle, it must  
18 produce both low soot and low NO<sub>x</sub>. Since achieving that is a difficult feat,  
19 significant engineering and innovation is required to achieve a clean rating. Typically,  
20 this involves running the diesel engine in a highly compressed, lean state to maximize  
21 fuel efficiency, countering soot production with diesel particulate filters and  
22 controlling the NO<sub>x</sub>. To reduce NO<sub>x</sub> emissions, diesel manufacturers were typically  
23 presented with two options: selective catalytic reduction, or use of a lean NO<sub>x</sub> trap.

24 <sup>18</sup> [http://www.fool.com/investing/general/2015/02/22/clean-diesel-hydrogen-fuel-](http://www.fool.com/investing/general/2015/02/22/clean-diesel-hydrogen-fuel-cell-or-electric-volksw.aspx)  
25 [cell-or-electric-volksw.aspx](http://www.fool.com/investing/general/2015/02/22/clean-diesel-hydrogen-fuel-cell-or-electric-volksw.aspx) (last visited on Sept. 28, 2015).

26 <sup>19</sup> [http://www1.eere.energy.gov/vehiclesandfuels/pdfs/basics/jtb\\_diesel\\_engine.pdf](http://www1.eere.energy.gov/vehiclesandfuels/pdfs/basics/jtb_diesel_engine.pdf)  
27 (last visited on Sept. 28, 2015).

28 <sup>20</sup> NO<sub>x</sub> is a generic term for nitrogen oxides. They are produced from the reaction of  
nitrogen and oxygen gases in the air during combustion.

1 Selective catalytic reduction involves injecting urea into a diesel vehicle's exhaust  
2 stream to react with the NO<sub>x</sub>, thereby turning it into harmless nitrogen and oxygen.  
3 This approach is quite effective, but it requires expensive, relatively bulky equipment  
4 to be added to the vehicle. Volkswagen sought to avoid this by using a lean NO<sub>x</sub> trap,  
5 which involved the storage of NO<sub>x</sub> in a separate compartment during vehicle  
6 operation. When the compartment is full, the system then burns off the stored NO<sub>x</sub> by  
7 pumping an extra burst of fuel into the cylinders, most of which passes through to the  
8 converter where it burns the NO<sub>x</sub> into harmless nitrogen and oxygen. This method is  
9 relatively cheaper and easier to implement than selective catalytic reduction, but  
10 results in lower fuel efficiency.

11 30. Volkswagen held itself out as having carefully optimized its engines to  
12 maintain low emissions, while simultaneously enjoying the cost savings of a lean NO<sub>x</sub>  
13 trap system. It claimed to do this by monitoring and adjusting combustion conditions  
14 and using a two-stage exhaust gas recirculation system to reduce initial emissions, and  
15 then handling the remaining emissions using a lean NO<sub>x</sub> trap.<sup>21</sup> This optimal  
16 balancing of diesel emissions is both difficult and expensive, and typically requires  
17 the use of urea injectors.<sup>22</sup> Starting with its 2009 TDI models, Volkswagen claimed to  
18 have achieved this engineering feat to the satisfaction of the EPA without making this  
19 additional investment, all while wrapping it in a fun, affordable, high-performance  
20 package that seemed to offer the best of all worlds for consumers.

21 **B. Volkswagen's Dirty "Clean Diesel" Advertising Campaign**  
22 **and Its Far-reaching Consequences**

23 31. Defendants' illegal scheme was fueled by their false and misleading  
24 national advertising campaign around VW's "clean" TDI diesel engines. Much of  
25 VW's success in the diesel market is owed to advertising its vehicles as eco-conscious

26 <sup>21</sup> See Hadler et al., *Volkswagen's New 2.0l TDI Engine Fulfills the Most Stringent*  
*Emission Standards*, INTERNATIONALES WIENER MOTORENSYMPOSIUM 2008.

27 <sup>22</sup> See [http://consumerist.com/2015/10/05/why-did-volkswagen-only-rig-emissions-](http://consumerist.com/2015/10/05/why-did-volkswagen-only-rig-emissions-systems-on-diesel-cars/)  
28 [systems-on-diesel-cars/](http://consumerist.com/2015/10/05/why-did-volkswagen-only-rig-emissions-systems-on-diesel-cars/) (last visited on Oct. 16, 2015).

1 vehicles. In fact, VW referred to the Defective Vehicles as “clean diesel vehicles” and  
 2 engaged in a broad public-relations campaign to “get clean-diesel power the  
 3 recognition it deserves as a true ‘green’ technology.”<sup>23</sup> VW wanted to drive home this  
 4 “clean” and environmentally friendly concept so much that it included the term “Clean  
 5 Diesel” in the name of the Defective Vehicles.

6 32. As explained above, VW sought to change the way consumers thought of  
 7 diesel and replace the mental image of sulfur emissions amid clouds of thick soot with  
 8 that of heightened efficiency and reduced CO<sub>2</sub> emissions. In fact, the VW website  
 9 states: “This ain’t your daddy’s diesel. Stinky, smoky, and sluggish. Those old diesel  
 10 realities no longer apply. Enter TDI Clean Diesel. Ultra-low-sulfur fuel, direct  
 11 injection technology, and extreme efficiency. We’ve ushered in a new era of  
 12 diesel.”<sup>24</sup>

13 33. Through its national advertising campaign, VW touted that “Clean diesel  
 14 delivers more torque, lower fuel consumption and reduces CO<sub>2</sub> emissions compared  
 15 with equivalent gasoline engines.”<sup>25</sup> This advertising culminated in a Guinness World  
 16 Record attempt, winning the award for “lowest fuel consumption – 48 U.S. states for a  
 17 non-hybrid car,” while driving a 2013 VW Passat TDI.<sup>26</sup>

18 34. The following are examples of VW’s advertising campaign touting the  
 19 Defective Vehicles:  
 20  
 21  
 22

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23 <sup>23</sup> See <http://media.vw.com/release/617> (last visited on Sept. 28, 2015).

24 <sup>24</sup> <https://www.vw.com/content/vwcom/es/features/clean-diesel.html> (last visited on  
 25 Sept. 21, 2015).

26 <sup>25</sup> [http://www.volkswagengroupamerica.com/clean\\_diesel\\_tdi.html](http://www.volkswagengroupamerica.com/clean_diesel_tdi.html) (last visited on  
 Sept. 21, 2015).

27 <sup>26</sup> <http://www.autotrader.com/car-news/volkswagen-passat-tdi-sets-world-record-for-fuel-economy-210689>  
 28 (last visited on Sept. 28, 2015).



## With reduced emissions.

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



Watch and learn about TDI® Clean Diesel

## A little fuel goes a long way.



**TDI**  
Clean Diesel



Combining legendary performance and fuel economy, the TDI Clean Diesel is our least thirsty engine yet, delivering up to 1,235 kilometres (highway) per tank on models like the Touareg and Passat.\*

Come test drive one today.



35. While secretly engaging in its illegal and fraudulent conduct, evading regulators, and concealing from the public that the Defective Vehicles emitted up to 40 times the legal limits of pollution, Volkswagen stated: “The Volkswagen Group is a leader in clean diesel technology” and “[w]ith the introduction of the new EA288



1 engine, we are excited that our family of TDI Clean Diesel vehicles is continuing to  
2 improve and will be even more clean, fuel efficient and powerful.”<sup>27</sup>

3 36. One advertisement for the Audi A3 depicts Kermit the Frog saying “it’s  
4 not that easy being green,” and celebrity Joel McHale responding “[i]t is now” while  
5 referring to the Audi A3.<sup>28</sup>

6 37. This advertising campaign proved successful, as VW took a commanding  
7 lead in U.S. diesel sales and was even profiled in many environmental websites and  
8 blogs as a preferred vehicle choice, relying on Volkswagen’s representations of high  
9 mileage and low diesel emissions.<sup>29</sup> In fact, many of the Defective Vehicles were  
10 deemed eligible for federal income tax credits to spur the sale of “clean diesel”  
11 technology, and at least \$78 million was earmarked for the first run of diesel Jetta  
12 buyers in 2009 and 2010.<sup>30</sup>

13 38. However, while touting that it was committed to making eco-conscious  
14 vehicles and referring to its diesel vehicles as “Clean Diesel,” Volkswagen concealed  
15 that the engine system contained a defect that intentionally allowed the Defective  
16 Vehicles to emit much more pollution than allowed by law or disclosed to the public.

17 39. This pollution is no trivial matter. It posed a real (and immediate threat)  
18 to public health and safety. In fact, it has been estimated that the defeat devices  
19 “allowed VWs to spew enough pollution to cause somewhere between 16 and 94  
20  
21  
22

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23 <sup>27</sup> <http://media.vw.com/release/495> (last visited on Sept. 28, 2015).

24 <sup>28</sup> [https://adsoftheworld.com/media/tv/audi\\_67th\\_primetime\\_emmy\\_awards\\_kermit\\_gets\\_set\\_up](https://adsoftheworld.com/media/tv/audi_67th_primetime_emmy_awards_kermit_gets_set_up) (last visited on Sept. 28, 2015).

25 <sup>29</sup> See, e.g., <http://www.mnn.com/green-tech/transportation/blogs/clean-diesel-what-you-need-to-know>; [http://www.greencarreports.com/news/1090957\\_2015-vw-golf-beetle-passat-jetta-all-get-new-clean-diesel-engine](http://www.greencarreports.com/news/1090957_2015-vw-golf-beetle-passat-jetta-all-get-new-clean-diesel-engine) (last visited on Sept. 28, 2015).

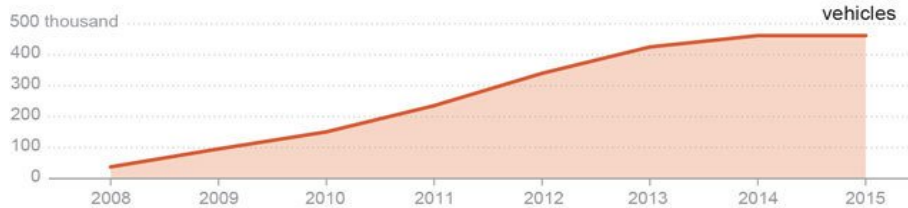
27 <sup>30</sup> <https://finance.yahoo.com/news/volkswagen-shares-plunge-most-six-071319964.html> (last visited on Sept. 28, 2015).  
28

1 deaths over seven years, with the annual count increasing more recently as more of the  
 2 diesels were on the road. The total cost has been well over \$100 million.”<sup>31</sup>

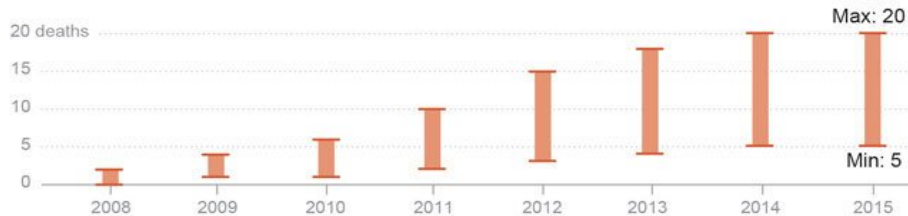
### 3 Calculating human toll of VW emissions problems

4 U.S. pollution resulting from Volkswagen’s dodging of emissions tests is enough to have  
 5 caused dozens of deaths since 2008. An AP analysis calculated upper and lower limits of  
 6 pollution using the number of affected vehicles each year and average mileage. Scientists  
 7 used that data in epidemiological computer models to estimate a range of deaths.

8 CUMULATIVE NUMBER OF AFFECTED VEHICLES IN THE U.S.



9 YEARLY ESTIMATED RANGE OF U.S. DEATHS FROM VW EMISSIONS VIOLATIONS



10 High and low estimates are based on total excess pollution from VW  
 11 diesels, but there are variables that make the figures rough estimates.

12 AFFECTED VEHICLES, BY MODEL



13 NOTE: The total of 47,809 for VW Golf includes 3,530 VW Golf Sportswagen vehicles. The total figure of  
 14 461,723 is derived from Kelley Blue Book vehicle registration data. The Environmental Protection Agency esti-  
 15 mates the total number of affected vehicles in the U.S. to be about 482,000.

16 SOURCES: AP analysis of data from the U.S. Environmental Protection Agency and Kelley Blue Book; AP  
 17 Professor Peter Adams, Carnegie Mellon; Volkswagen; Audi

18 40. Nevertheless, even after the truth was revealed about Defendants’ cheat  
 19 device, VW had the audacity to maintain on its webpage: “Our commitment to  
 20 making vehicles that are eco-conscious is part of bigger thinking.”<sup>32</sup>

21 <sup>31</sup> <http://www.businessinsider.com/ap-ap-analysis-vw-evasion-likely-led-to-dozens-of-deaths-2015-10> (last visited on Oct. 16, 2015).

22 <sup>32</sup> <https://www.vw.com/content/vwcom/es/features/clean-diesel.html> (last visited on  
 23 Sept. 21, 2015).

41. This misleading advertising campaign was not limited to consumers. Volkswagen also engaged in an aggressive lobbying campaign for federal tax credits for the Defective Vehicles, akin to those offered for electric cars.<sup>33</sup> This was met with some success: the IRS paid tens of millions (if not hundreds of millions of dollars) in tax credits for the Defective Vehicles, which lawmakers are now seeking to recoup.<sup>34</sup>

**C. Volkswagen's Illegal Scheme to Obtain Fraudulent EPA Certificates of Conformity for Sale of the Defective Vehicles**

42. The EPA administers a certification program to ensure that every vehicle introduced into the U.S. stream of commerce satisfies applicable emissions standards, and issues certificates of conformity to vehicles that satisfy the emissions standards for certain pollutants.

43. To obtain a certificate of conformity and thereby be allowed to introduce a vehicle into U.S. commerce, a vehicle manufacturer, such as VW, must submit an application to the EPA that includes a list of all auxiliary emission control devices installed on the vehicles, a justification for each, and a rationale for why the control device is not a defeat device.

44. A defeat device is defined as an auxiliary emission control device "that reduces the effectiveness of the emission control system under conditions which may reasonably be expected to be encountered in normal vehicle operation." 40 C.F.R. §86.1803-01. As made clear by federal regulations: "No new light-duty vehicle, light-duty truck, medium-duty passenger vehicle, or complete heavy-duty vehicle

<sup>33</sup> <http://dailycaller.com/2015/10/13/volkswagen-lobbied-obama-administration-for-green-tax-credits/> (last visited on Oct. 16, 2015).

<sup>34</sup> <http://www.forbes.com/sites/kellyphillipsrb/2015/10/07/senate-investigates-volkswagen-dealings-with-irs-on-tax-credits/> (last visited on Oct. 16, 2015); *see also* [http://www.law360.com/environmental/articles/714628?nl\\_pk=b1bf5f0b-4477-40d3-95dc-ea7e5b9e1e58&utm\\_source=newsletter&utm\\_medium=email&utm\\_campaign=environmental](http://www.law360.com/environmental/articles/714628?nl_pk=b1bf5f0b-4477-40d3-95dc-ea7e5b9e1e58&utm_source=newsletter&utm_medium=email&utm_campaign=environmental) (Senators Schumer and Blumenthal have called for VW to return more than \$200 million in fuel efficiency tax credits) (last visited on Oct. 16, 2015).

1 shall be equipped with a defeat device.” 40 C.F.R. §86.1809-10. Thus, motor  
2 vehicles that contain a defeat device cannot be certified, or sold, in the United States.

3 45. Volkswagen, however, installed defective Clean Diesel engine systems  
4 containing a defeat device in the Defective Vehicles, but did not disclose the presence  
5 of the defective engine system or defeat device to the EPA or to the consuming public,  
6 and instead intentionally and fraudulently misrepresented the amount of emissions  
7 released by the Defective Vehicles in normal vehicle operation. This enabled  
8 Volkswagen to circumvent EPA regulations and fraudulently pass EPA tests, and  
9 then, after the engine detected that the test was over, the engine would return to  
10 primary driving mode and its grossly excessive NO<sub>x</sub> emissions.

11 46. The certificates of conformity issued by the EPA for the Defective  
12 Vehicles state: “this certificate covers only those new motor vehicles or vehicle  
13 engines which conform, in all material respects, to the design specifications”  
14 described in the application for the certificate of conformity.

15 47. Thus, because the defective engine systems and defeat devices were not  
16 disclosed in Volkswagen’s application to the EPA or to the consuming public, the  
17 Defective Vehicles are not covered by a valid certificate of conformity and are not  
18 legally permitted to be sold to consumers. Volkswagen hid this fact from the EPA,  
19 from other government agencies, and from consumers, and continued to sell and/or  
20 lease the Defective Vehicles to the public, despite their illegality.

21 48. No one would have purchased or leased these vehicles had Defendants  
22 come clean about their defeat devices. That is because Defendants could not obtain a  
23 valid certificate of conformity to sell the Defective Vehicles in the United States. And  
24 in fact, since Defendants have been found out, a stop-sale order was issued and the  
25 EPA has refused to certify the 2016 models for sale, demonstrating that the sales and  
26 leases to Plaintiffs and the Class never would have occurred but for Defendants’  
27 illegal and fraudulent scheme.

28

**D. Volkswagen Finally Comes Clean in September 2015**

49. Defendants managed to evade the detection of regulators and the consuming public for years. It was not until September 18, 2015, that the EPA issued a Notice of Violation (the “Violation Notice”), stating that Volkswagen violated §203(a)(3)(B) of the Clean Air Act, 42 U.S.C. §7522(a)(3)(B) (the “CAA”), by manufacturing and installing “defeat devices” in certain model year 2009-2015 diesel light engine vehicles that bypass, defeat or render inoperative elements of the vehicles’ emission control systems.

50. The Violation Notice noted that Congress’s purpose in enacting the CAA was, *inter alia*, “to protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare.”<sup>35</sup> More specifically, “[t]he 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.”<sup>36</sup> The Violation Notice concluded that, in addition to violating the CAA, the Defective Vehicles also failed to conform to the vehicle specifications described by Volkswagen.

51. This was the first time that the public found out that, in an attempt to circumvent these laws, and gain profits from the sale and/or lease of the Defective Vehicles, Volkswagen had manufactured and installed in the Defective Vehicles defeat devices in the control module of the vehicles that sensed when the vehicles were being tested for compliance with EPA emissions standards. And that, during EPA emissions testing for the Defective Vehicles’ certificates of compliance, the device sensed that it was being tested by tracking the parameters of the federal test procedure used for EPA emissions testing and then fraudulently produced compliant emissions results.

<sup>35</sup> <http://www3.epa.gov/otaq/cert/documents/vw-nov-cao-09-18-15.pdf> (last visited on Sept. 28, 2015).

<sup>36</sup> *Id.*

1           52. This was also the first time that the public found out that, to the detriment  
2 of the environment and the consuming public, the emissions results for the Defective  
3 Vehicles were not accurate for normal vehicle operation, polluting at 10 to 40 times  
4 the legal limit,<sup>37</sup> and that the Defective Vehicles were “running an emissions setup  
5 that never should’ve left the factory.”<sup>38</sup>

6           53. The unraveling of Defendants’ illegal scheme started in May 2014,  
7 approximately 5 years after the first model year containing the defective engine  
8 system (and defeat device) was introduced by Volkswagen. In May 2014, West  
9 Virginia University’s Center for Alternative Fuels, Engines & Emissions first  
10 published results of a study commissioned by the International Council on Clean  
11 Transportation, which found certain of the Defective Vehicles’ real world NO<sub>x</sub> and  
12 other pollutant emissions exceeded the allowable EPA emissions standards.

13           54. This study initially alerted the EPA and CARB to Volkswagen’s  
14 emissions problems.

15           55. However, despite the knowledge that the Defective Vehicles contained  
16 defective engine systems (and defeat devices intentionally designed to comply with  
17 emissions standards while under EPA testing but not under normal driving  
18 conditions), Volkswagen failed to disclose this fact to the EPA or the consuming  
19 public. Instead, Volkswagen continued to withhold this information and asserted that  
20 the increased emissions could be attributed to various technical issues and unexpected  
21 in-use conditions.

22           56. In December 2014, Volkswagen issued a recall to update emission  
23 control software, and CARB (along with the EPA) conducted follow-up testing of the  
24 Defective Vehicles both in the laboratory and during normal road operation. CARB

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25  
26 <sup>37</sup> [www3.epa.gov/otaq/cert/violations.htm](http://www3.epa.gov/otaq/cert/violations.htm) (Notice of Violation, Sept. 18, 2015) (last  
visited on Oct. 16, 2015).

27 <sup>38</sup> [http://www.popularmechanics.com/cars/a17430/ezra-dyer-volkswagen-diesel-](http://www.popularmechanics.com/cars/a17430/ezra-dyer-volkswagen-diesel-controversy/)  
28 [controversy/](http://www.popularmechanics.com/cars/a17430/ezra-dyer-volkswagen-diesel-controversy/) (last visited on Sept. 28, 2015).



1 attempted to pinpoint the exact technical nature of the Defective Vehicles' poor  
2 performance and determine why the vehicles' on-board diagnostic system was not  
3 detecting the increased emissions. None of the potential technical issues suggested by  
4 Volkswagen adequately explained the higher test results confirmed by CARB.

5 57. While offering fabricated solutions, Volkswagen continued to remain  
6 silent regarding its knowledge of the true source of the emissions discrepancies:  
7 Volkswagen's defective engine systems and defeat devices. This is in the face of  
8 multiple warnings to executives, including letters from parts suppliers and a  
9 whistleblower who complained in 2011 about "illegal practices in connection with  
10 emissions levels."<sup>39</sup> Under the leadership of defendants Winterkorn and Horn,  
11 Volkswagen chose to suppress and/or ignore these repeated warnings, and continued  
12 to deceive the EPA, CARB, and its customers.

13 58. It was only when CARB and the EPA threatened to withhold certificates  
14 of conformity for Volkswagen's 2016 model year vehicles until Volkswagen  
15 adequately explained the anomaly regarding the higher emissions that Volkswagen  
16 finally came clean. In the face of these regulatory ultimatums, Volkswagen admitted  
17 that it had designed and installed defective engine systems that allowed the Defective  
18 Vehicles to operate out of compliance with emissions regulations in normal operation,  
19 but contained a device which detected when a vehicle was undergoing emissions  
20 testing and only operated in compliance with emissions standards during such testing.

21 59. As defendant Horn has now admitted, the defective engine system and  
22 defeat device hidden from the EPA and consumers was designed by Volkswagen for  
23 the express purpose of tracking the parameters of the federal test procedure and  
24 causing emission control systems to underperform when the device determined that  
25 the vehicle was not undergoing an emissions test procedure.

26  
27 <sup>39</sup> <http://www.latimes.com/business/la-fi-volkswagen-warned-20150927-story.html>  
28 (last visited on Sept. 28, 2015).



60. Volkswagen has now admitted that each of the Defective Vehicles contains an illegal defeat device and does not conform to the specifications provided by Volkswagen. The engine systems are defective and do not operate in accordance with federal and state law, and do not operate as represented by Volkswagen. Further, the engine systems in 2016 diesel vehicles also contain an auxiliary emissions control device, which Volkswagen claims to be different from their defeat device, but its full effects and details remain unconfirmed.<sup>40</sup>

61. The EPA investigation is ongoing and may lead to a finding of additional violations, defeat devices, auxiliary emissions controls, and affected Defective Vehicles. Further, California and dozens of state attorneys general are conducting simultaneous investigations that may likewise uncover additional fraud.<sup>41</sup>

#### **E. The Fallout from Volkswagen's Illegal Scheme**

62. Immediately after the revelation of Volkswagen's fraud, Volkswagen attempted to scrub its clean diesel advertisements from the internet, as those advertisements served to highlight Volkswagen's fraud, such as holding white towels to Defective Vehicle exhaust pipes to highlight the lack of "dirty" emissions.<sup>42</sup>

63. In a carefully crafted public statement issued after the fraud was revealed, defendant Winterkorn did not accept responsibility, but instead stated that he was "deeply sorry that we have broken the trust of our customers and the public."<sup>43</sup> Later,

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<sup>40</sup> <http://bigstory.ap.org/urn:publicid:ap.org:5c7a66fe0bd448f999b2c59379622488> (last visited on Oct. 16, 2015).

<sup>41</sup> <http://web.archive.org/web/20151003163135/http://abcnews.go.com/US/wireStory/california-conduct-volkswagen-investigation-34189802> (last visited on Oct. 16, 2015).

<sup>42</sup> <http://jalopnik.com/why-did-volkswagen-delete-all-of-its-diesel-ads-from-yo-1731691453> (last visited on Sept. 28, 2015).

<sup>43</sup> [http://www.volkswagenag.com/content/vwcorp/info\\_center/en/news/2015/09/state\\_ment\\_ceo\\_of\\_volkswagen\\_ag.html](http://www.volkswagenag.com/content/vwcorp/info_center/en/news/2015/09/state_ment_ceo_of_volkswagen_ag.html) (last visited on Sept. 28, 2015).

1 amidst global scrutiny, on September 23, 2015, Winterkorn announced his resignation  
2 from VW AG.<sup>44</sup>

3 64. Soon after Winterkorn's public statement, defendant Horn added: "Let's  
4 be clear about this: Our company was dishonest with the EPA and the California Air  
5 Resources Board and with all of you. In my German words, we have totally screwed  
6 up."<sup>45</sup> Though Horn has so far evaded the same fate as Winterkorn (as he has not yet  
7 been fired or compelled to resign), Horn has testified before Congress's Energy and  
8 Commerce Committee, as well as the EPA.<sup>46</sup>

9 65. VW has since released a stop-sale order instructing dealers to  
10 immediately stop selling the Defective Vehicles.<sup>47</sup> VW has also withdrawn its  
11 application to the EPA for approval to sell its model year 2016 diesel vehicles, leaving  
12 them quarantined in ports until it resolves the presence of auxiliary emissions control  
13 devices to the satisfaction of the EPA.<sup>48</sup>

14 66. Experts now point to the "uniquely awful" corporate governance at VW  
15 as a major factor in the fraudulent scheme.<sup>49</sup> VW's "peculiar corporate culture" and  
16 "lax boardroom controls," combined with highly centralized decision-making and a  
17 culture that encouraged the concealment of problems, greatly increased the risk of  
18

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19 <sup>44</sup> [http://www.nytimes.com/2015/09/24/business/international/volkswagen-chief-](http://www.nytimes.com/2015/09/24/business/international/volkswagen-chief-martin-winterkorn-resigns-amid-emissions-scandal.html?_r=0)  
20 [martin-winterkorn-resigns-amid-emissions-scandal.html?\\_r=0](http://www.nytimes.com/2015/09/24/business/international/volkswagen-chief-martin-winterkorn-resigns-amid-emissions-scandal.html?_r=0) (last visited on Sept.  
21 28, 2015).

22 <sup>45</sup> [http://www.washingtonpost.com/business/economy/vw-emissions-cheating-](http://www.washingtonpost.com/business/economy/vw-emissions-cheating-affects-11-million-cars-worldwide/2015/09/22/30f59bca-6126-11e5-9757-e49273f05f65_story.html?hpkfjksajflkajs)  
23 [affects-11-million-cars-worldwide/2015/09/22/30f59bca-6126-11e5-9757-](http://www.washingtonpost.com/business/economy/vw-emissions-cheating-affects-11-million-cars-worldwide/2015/09/22/30f59bca-6126-11e5-9757-e49273f05f65_story.html?hpkfjksajflkajs)  
24 [e49273f05f65\\_story.html?hpkfjksajflkajs](http://www.washingtonpost.com/business/economy/vw-emissions-cheating-affects-11-million-cars-worldwide/2015/09/22/30f59bca-6126-11e5-9757-e49273f05f65_story.html?hpkfjksajflkajs) (last visited on Sept. 28, 2015).

25 <sup>46</sup> [http://autoweek.com/article/car-news/congress-compels-vw-us-ceo-michael-horn-](http://autoweek.com/article/car-news/congress-compels-vw-us-ceo-michael-horn-testify-diesel-crisis)  
26 [testify-diesel-crisis](http://autoweek.com/article/car-news/congress-compels-vw-us-ceo-michael-horn-testify-diesel-crisis) (last visited on Oct. 16, 2015).

27 <sup>47</sup> [http://www.detroitnews.com/story/business/autos/foreign/2015/09/19/vw-us-](http://www.detroitnews.com/story/business/autos/foreign/2015/09/19/vw-us-dealers-halt-sales-diesel-cars/72488232/)  
28 [dealers-halt-sales-diesel-cars/72488232/](http://www.detroitnews.com/story/business/autos/foreign/2015/09/19/vw-us-dealers-halt-sales-diesel-cars/72488232/) (last visited on Oct. 16, 2015).

<sup>48</sup> <http://bigstory.ap.org/urn:publicid:ap.org:5c7a66fe0bd448f999b2c59379622488>  
(last visited on Oct. 16, 2015).

<sup>49</sup> [http://www.cnbc.com/2015/10/04/volkswagens-uniquely-awful-governance-at-](http://www.cnbc.com/2015/10/04/volkswagens-uniquely-awful-governance-at-fault-in-emissions-scandal.html)  
fault-in-emissions-scandal.html (last visited on Oct. 16, 2015).

1 corporate fraud and abuse.<sup>50</sup> Alexander Juschus, director of German proxy advisor  
2 IVOX, noted that “[t]here have been warnings about VW’s corporate governance for  
3 years [including prostitution and bribery scandals in 2006], but they didn’t take it to  
4 heart and now you see the result.”<sup>51</sup>

5 67. To remedy its violations, Volkswagen says that it intends to recall the  
6 Defective Vehicles and configure them to settings that produce a clean level of soot  
7 and NO<sub>x</sub>. In reconfiguring to this new setting, the efficiency, power, and performance  
8 of the Defective Vehicles will decline dramatically. Further, there will be serious  
9 degradation of vehicle durability, as these vehicles are designed to operate under  
10 particular settings. Certain parameters such as exhaust gas temperature, oil life, or  
11 engine/turbocharger RPMs will change and result in decreased durability as  
12 Volkswagen attempts to undo the effects of the fraud. The new VW AG CEO,  
13 Matthias Mueller, has stated that VW expects the recall of Defective Vehicles to begin  
14 in January 2016, and that the recall process will take up to a year to complete.<sup>52</sup>

15 68. As speculated by Karl Brauer, senior analyst for Kelley Blue Book: “‘It’s  
16 really unknown, but I think there’ll be an extended period of reduced value for [used  
17 VW vehicles]. The resolution will probably not leave as big of an impression and  
18 won’t counteract the initial impression that [consumers] are getting with these diesel  
19 cars.’”<sup>53</sup>

20 69. Though the scope of, and timeframe for, VW’s recall of the Defective  
21 Vehicles is presently ambiguous, Horn has reiterated that the recall would not begin  
22  
23

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24 <sup>50</sup> *Id.*

25 <sup>51</sup> *Id.*

26 <sup>52</sup> See <http://www.bbc.com/news/business-34455328> (last visited on Oct. 16, 2015).

27 <sup>53</sup> [http://www.cnbc.com/2015/09/24/as-volkswagen-loses-other-automakers-could-](http://www.cnbc.com/2015/09/24/as-volkswagen-loses-other-automakers-could-benefit.html)  
28 [benefit.html](http://www.cnbc.com/2015/09/24/as-volkswagen-loses-other-automakers-could-benefit.html) (last visited on Sept. 28, 2015).

1 until 2016, and would take at least a year or more to fully implement.<sup>54</sup> Defendants  
 2 have also said that they do not intend to buy back the cars.

3 70. Unfortunately for affected consumers, like Plaintiffs and the Class, one of  
 4 the fundamental problems with the Defective Vehicles is that they promised high  
 5 performance, environmentally friendly operation, and efficient fuel usage in a fun-to-  
 6 drive vehicle. Plaintiffs and the Class bought or leased the Defective Vehicles based  
 7 on these claims, and paid a premium for a diesel vehicle that had all of these traits.  
 8 That car may exist, but it was not the car Plaintiffs and the Class were defrauded into  
 9 purchasing or leasing. Defendants should be required to buy back these cars.

#### 10 **F. Volkswagen's Illegal Scheme Has Triggered Global** 11 **Scrutiny**

12 71. According to media reports, the Department of Justice ("DOJ") has  
 13 launched a criminal investigation into Volkswagen over the emissions cheating  
 14 scandal.<sup>55</sup> Additionally, the U.S. Senate has investigated Volkswagen's dealings with  
 15 the IRS in obtaining green energy tax credits,<sup>56</sup> the U.S. Congress's Energy and  
 16 Commerce committee has called upon Horn to testify to his knowledge of the  
 17 scheme,<sup>57</sup> 45 state attorneys general have initiated investigations,<sup>58</sup> and the Federal  
 18 Trade Commission has opened an investigation into Volkswagen's fraudulent  
 19 advertising.<sup>59</sup> As opined by National Highway Traffic Safety Administration

20 <sup>54</sup> <http://arstechnica.com/cars/2015/10/volkswagen-to-begin-diesel-vehicle-recall-in-january-should-be-complete-by-end-of-2016/> (last visited on Oct. 16, 2015).

21 <sup>55</sup> <http://www.wsj.com/articles/u-s-justice-department-conducts-criminal-probe-of-volkswagen-sources-say-1442869059> (last visited on Oct. 16, 2015).

22 <sup>56</sup> <http://www.forbes.com/sites/kellyphillipserb/2015/10/07/senate-investigates-volkswagen-dealings-with-irs-on-tax-credits/> (last visited on Oct. 16, 2015).

23 <sup>57</sup> <http://www.cnbc.com/2015/10/08/vw-us-ceo-i-had-no-knowledge-in-2014-of-defeat-devices-on-vehicles.html> (last visited on Oct. 16, 2015).

24 <sup>58</sup> <http://www.bloomberg.com/news/articles/2015-10-08/texas-sues-volkswagen-claiming-deception-emissions-violations-ifiqscqq> (last visited on Oct. 16, 2015).

25 <sup>59</sup> <http://consumerist.com/2015/10/15/federal-trade-commission-opens-probe-into-volkswagens-clean-diesel-advertising/> (last visited on Oct. 16, 2015).

1 Administrator Mark Rosekind, because of Volkswagen's fraud, "[w]e're questioning  
2 everything now."<sup>60</sup>

3 72. The German government is also reportedly investigating Winterkorn for  
4 criminal fraud, while several other countries in Europe and Asia are likewise  
5 investigating both Winterkorn and VW.<sup>61</sup> As mentioned above, after becoming CEO  
6 of VW AG, Winterkorn personally appointed the head engineers that were directly  
7 involved in the diesel strategy and implementation of the defeat devices.<sup>62</sup>

8 73. As part of their investigation into Volkswagen's conduct, German  
9 prosecutors have raided VW AG's Wolfsburg headquarters.<sup>63</sup>

10 74. On October 15, 2015, VW AG reportedly announced that "Germany's  
11 automotive regulator has rejected the company's remediation plan for diesel vehicles  
12 equipped with software designed to cheat emissions tests, and has instead instructed  
13 the automaker to initiate a recall covering about 8.5 million vehicles across the  
14 European Union."<sup>64</sup>

15 75. Further, the scale and brazenness of the fraud prompted VW to set aside a  
16 €6.5 billion fund to address affected consumers and the EPA.<sup>65</sup>

17  
18 <sup>60</sup> [http://www.detroitnews.com/story/business/autos/foreign/2015/09/22/nhtsa-head-  
19 vw-diesel-deception-another-reason-question-assumptions/72614662/](http://www.detroitnews.com/story/business/autos/foreign/2015/09/22/nhtsa-head-vw-diesel-deception-another-reason-question-assumptions/72614662/) (last visited on  
20 Oct. 16, 2015).

21 <sup>61</sup> [http://www.reuters.com/article/2015/09/28/us-volkswagen-emissions-  
22 idUSKCN0RP14U20150928](http://www.reuters.com/article/2015/09/28/us-volkswagen-emissions-idUSKCN0RP14U20150928) (last visited on Oct. 16, 2015);  
23 [http://www.bloomberg.com/news/articles/2015-09-30/diesel-scandal-undercuts-one-  
24 of-vw-s-few-strengths-in-showroom](http://www.bloomberg.com/news/articles/2015-09-30/diesel-scandal-undercuts-one-of-vw-s-few-strengths-in-showroom) (last visited on Oct. 16, 2015).

25 <sup>62</sup> [http://www.wsj.com/articles/vw-emissions-probe-zeroes-in-on-two-engineers-  
26 1444011602](http://www.wsj.com/articles/vw-emissions-probe-zeroes-in-on-two-engineers-1444011602) (last visited on Oct. 16, 2015).

27 <sup>63</sup> <http://www.bbc.com/news/business-34475408> (last visited on Oct. 16, 2015).

28 <sup>64</sup> [http://www.law360.com/environmental/articles/714628?nl\\_pk=b1bf5f0b-4477-  
40d3-95dc-  
ea7e5b9e1e58&utm\\_source=newsletter&utm\\_medium=email&utm\\_campaign=enviro  
nmental](http://www.law360.com/environmental/articles/714628?nl_pk=b1bf5f0b-4477-40d3-95dc-ea7e5b9e1e58&utm_source=newsletter&utm_medium=email&utm_campaign=environmental) (last visited on Oct. 16, 2015).

<sup>65</sup> [http://www.bloomberg.com/news/articles/2015-09-22/volkswagen-ceo-s-history-  
of-sweating-the-details-now-haunts-him](http://www.bloomberg.com/news/articles/2015-09-22/volkswagen-ceo-s-history-of-sweating-the-details-now-haunts-him) (last visited on Oct. 16, 2015).

76. In total, Defendants' illegal scheme deceived the public into buying approximately 500,000 Defective Vehicles at a total cost of billions of dollars to consumers nationwide, not even considering the cost of the harm already caused to the environment and public health, or the ongoing and immediate threat to the same.

### CLASS ACTION ALLEGATIONS

77. Plaintiffs bring this action as a class action pursuant to Rule 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure on behalf of themselves and all others similarly situated as members of the classes listed below:

(a) **The Nationwide Class:** All persons or entities in the United States who have purchased or leased a "Defective Vehicle." Defective Vehicles include: 2010-2015 Audi A3; 2012-2015 Volkswagen Beetle TDI and Volkswagen Beetle Convertible TDI; 2010-2015 Volkswagen Golf TDI; 2015 Volkswagen Golf SportWagen TDI; 2009-2015 Volkswagen Jetta TDI; 2009-2015 Volkswagen Jetta SportWagen TDI; and 2012-2015 Volkswagen Passat TDI. Plaintiffs believe that their California claims should apply nationwide because the misconduct emanated, in part, from this State by and through VW's testing center in Oxnard.

(b) **The California Class:** All persons or entities in the state of California who purchased or leased a "Defective Vehicle." Defective Vehicles include: 2010-2015 Audi A3; 2012-2015 Volkswagen Beetle TDI and Volkswagen Beetle Convertible TDI; 2010-2015 Volkswagen Golf TDI; 2015 Volkswagen Golf SportWagen TDI; 2009-2015 Volkswagen Jetta TDI; 2009-2015 Volkswagen Jetta SportWagen TDI; and 2012-2015 Volkswagen Passat TDI.

(c) The Nationwide Class and the California Class are collectively referred to as the "Class."

78. Specifically excluded from the proposed Class are individuals who have personal injury claims resulting from the Defective Vehicles, Volkswagen, VW's officers, directors, agents, trustees, parents, children, corporations, trusts, representatives, employees, principals, servants, partners, and joint ventures, or



1 entities controlled by Volkswagen, and its heirs, successors, assigns, or other persons  
 2 or entities related to or affiliated with Volkswagen and/or its officers and/or directors,  
 3 or any of them, any judge assigned to this action, and any member of their immediate  
 4 family.

5 79. Subject to additional information obtained through further investigation  
 6 and discovery, the foregoing Class definition may be expanded or narrowed by  
 7 amendment or superseded by Plaintiffs' motion for class certification. Plaintiffs  
 8 expressly reserve the right to move for class certification of different state classes and  
 9 different or additional vehicles.

10 80. **Numerosity of the Class.** The members of the Class are so numerous  
 11 that their individual joinder is impracticable. Upon information and belief,  
 12 Volkswagen sold approximately 500,000 Defective Vehicles in the United States.  
 13 Plaintiffs are informed and believe that there are thousands of members in the Class.  
 14 The Class may be notified and ascertained through defendants' records, its employees  
 15 and agents, and through the media. Members of the Class can be notified of the  
 16 pending action by e-mail, mail, and publication as necessary.

17 81. **Existence and Predominance of Common Questions of Fact and Law.**  
 18 There are questions of law and fact common to the Class that predominate over any  
 19 questions affecting only individual Class members. These common legal and factual  
 20 issues include, but are not limited to:

- 21 (a) whether Defendants engaged in the conduct alleged herein;
- 22 (b) whether the Defective Vehicles do not comply with EPA emissions  
 23 standards;
- 24 (c) whether Defendants illegally imported the Defective Vehicles;
- 25 (d) whether defendants VW AG, Winterkorn, and Horn violated the  
 26 RICO statute;
- 27 (e) whether Defendants violated California state law;
- 28 (f) whether Defendants violated the MMWA;



- 1 (g) whether Defendants breached their warranties;
- 2 (h) whether Defendants violated the common law;
- 3 (i) whether the Defective Vehicles emit more pollution than
- 4 represented by Defendants;
- 5 (j) whether the Defective Vehicles emit more pollution than allowed
- 6 under applicable state and federal law;
- 7 (k) whether the Defective Vehicles can be made to comply with EPA
- 8 emission standards without sacrificing fuel efficiency or performance;
- 9 (l) whether the Defective Vehicles can be made to comply with
- 10 representations made by Defendants;
- 11 (m) whether Defendants' representations regarding the Defective
- 12 Vehicles were false or materially misleading;
- 13 (n) whether Defendants knew of the defeat device in the Defective
- 14 Vehicles, and if so, how long have Defendants had this knowledge;
- 15 (o) whether Defendants intentionally designed, manufactured, and
- 16 installed defective engine systems in the Defective Vehicles;
- 17 (p) whether Plaintiffs and the Class are entitled to refunds;
- 18 (q) whether Plaintiffs and other Class members overpaid for the
- 19 Defective Vehicles;
- 20 (r) whether Defendants' conduct violates the laws as set forth in the
- 21 Counts;
- 22 (s) whether any remedial measure will reduce the utility, value, or
- 23 performance of the Defective Vehicles;
- 24 (t) whether Plaintiffs and Class members are entitled to equitable or
- 25 injunctive relief; and
- 26 (u) whether Plaintiffs and Class members are entitled to restitution or
- 27 damages, and what is the proper measure of the same.
- 28

1           82.   **Typicality.** The claims of the representative Plaintiffs are typical of the  
2 claims of each member of the Class. Plaintiffs, like all other Class members, have  
3 sustained damages arising from Volkswagen's violations of the laws, as alleged  
4 herein. The representative Plaintiffs and Class members were and are similarly or  
5 identically harmed by the same unlawful, deceptive, unfair, systematic, and pervasive  
6 pattern of misconduct engaged in by Volkswagen.

7           83.   **Adequacy.** The representative Plaintiffs will fairly and adequately  
8 represent and protect the interests of the Class members and have retained counsel  
9 who are competent trial lawyers experienced in complex litigation and class action  
10 litigation. There are no material conflicts between the claims of the representative  
11 Plaintiffs and the members of the Class that would make class certification  
12 inappropriate. Counsel for the Class will vigorously assert the claims of all Class  
13 members.

14           84.   **Predominance and Superiority.** This suit may be maintained as a class  
15 action under Federal Rule of Civil Procedure 23(b)(3) because questions of law and  
16 fact common to the Class predominate over the questions affecting only individual  
17 members of the Class, and a class action is superior to other available means for the  
18 fair and efficient adjudication of this dispute. The damages suffered by individual  
19 Class members are small compared to the burden and expense of individual  
20 prosecution of the complex and extensive litigation needed to address Volkswagen's  
21 conduct. Further, it would be virtually impossible for Class members to individually  
22 redress effectively the wrongs done to them. Even if Class members themselves could  
23 afford such individual litigation, the court system could not. In addition,  
24 individualized litigation increases the delay and expense to all parties and to the court  
25 system resulting from complex legal and factual issues of the case. Individualized  
26 litigation also presents a potential for inconsistent or contradictory judgments. By  
27 contrast, the class action device presents far fewer management difficulties; allows the  
28 hearing of claims which might otherwise go unaddressed because of the relative

1 expense of bringing individual lawsuits; and provides the benefits of single  
2 adjudication, economies of scale, and comprehensive supervision by a single court.

3 85. Plaintiffs contemplate the eventual issuance of a notice to the proposed  
4 Class members setting forth the subject and nature of the instant action. Upon  
5 information and belief, Volkswagen's own business records and electronic media can  
6 be utilized for the contemplated notices. To the extent that any further notices may be  
7 required, Plaintiffs would contemplate the use of additional media and/or mailings.

8 86. Additionally, this action is properly maintained as a class action pursuant  
9 to Rule 23(b) of the Federal Rules of Civil Procedure, in that:

10 (a) without class certification and determination of declaratory,  
11 injunctive, statutory, and other legal questions within the class action format,  
12 prosecution of separate actions by individual members of the Class will create the risk  
13 of:

14 (i) inconsistent or varying adjudications with respect to  
15 individual members of the Class which would establish incompatible standards of  
16 conduct for the parties opposing the Class; or

17 (ii) adjudication with respect to individual members of the Class  
18 which would, as a practical matter, be dispositive of the interests of the other Class  
19 members not parties to the adjudication or substantially impair or impede their ability  
20 to protect their interests;

21 (b) the parties opposing the Class have acted or refused to act on  
22 grounds generally applicable to each member of the Class, thereby making appropriate  
23 final injunctive or corresponding declaratory relief with respect to the Class as a  
24 whole; or

25 (c) common questions of law and fact exist as to the members of the  
26 Class and predominate over any questions affecting only individual members, and a  
27 class action is superior to other available methods for the fair and efficient  
28 adjudication of the controversy, including consideration of:

1 (i) the interests of the members of the Class in individually  
2 controlling the prosecution or defense of separate actions;

3 (ii) the extent and nature of any litigation concerning the  
4 controversy already commenced by or against members of the Class;

5 (iii) the desirability or undesirability of concentrating the  
6 litigation of the claims in the particular forum; and

7 (iv) the difficulties likely to be encountered in the management  
8 of a class action.

9 87. Damages may be calculated from the data maintained in Defendants'  
10 records, so that the cost of administering a recovery for the Class can be minimized.  
11 However, the precise amount of damages available to Plaintiffs and Class members is  
12 not a barrier to class certification.

### 13 **TOLLING OF THE STATUTE OF LIMITATIONS**

#### 14 **A. Discovery Rule Tolling**

15 88. Plaintiffs and members of the Class could not have discovered through  
16 the exercise of reasonable diligence that Volkswagen was concealing and  
17 misrepresenting the Defective Vehicles' emission specifications and that the Defective  
18 Vehicles contained a defeat device rendering the Clean Diesel engine system defective  
19 in violation of federal and state laws within the time period of any applicable statutes  
20 of limitation.

21 89. Plaintiffs and the other Class members did not know, and could not  
22 reasonably discover, that Volkswagen intentionally failed to report information within  
23 its knowledge to federal and state authorities, or consumers.

24 90. Likewise, a reasonable and diligent investigation could not have  
25 disclosed that Volkswagen intentionally engaged in emissions deception and that it  
26 concealed that information, which was discovered by Plaintiffs shortly before this  
27 action was filed.

28

1           91. For years, Volkswagen concealed the defeat device contained in the  
2 Defective Vehicles and maintained that the increased emissions from these vehicles  
3 could be attributed to various technical issues and unexpected in-use conditions.

4           92. Only on or about September 18, 2015, when the EPA and CARB stated  
5 that they would not approve Volkswagen's 2016 model year diesel vehicles until  
6 Volkswagen could adequately explain the anomalous emissions, did Volkswagen  
7 admit that the Defective Vehicles contained defective clean diesel engine systems.  
8 The allegations in this Complaint became known only in the wake of this  
9 announcement.

10           93. For these reasons, all applicable statutes of limitation have been tolled by  
11 operation of the discovery rule with respect to claims as to all the Defective Vehicles.

12           **B. Fraudulent Concealment Tolling**

13           94. Throughout the time period relevant to this action, Volkswagen  
14 concealed from Plaintiffs and the other Class members the defects described herein.  
15 Thus, all applicable statutes of limitation have also been tolled by Volkswagen's  
16 knowing and active fraudulent concealment and denial of the facts alleged herein  
17 throughout the time period relevant to this action.

18           95. Instead of disclosing its emissions scheme, or that the Clean Diesel  
19 engine systems contained in the cars were defective and resulted in emissions from the  
20 Defective Vehicles that were far worse than represented and violated federal and state  
21 law, Defendants falsely represented that the Defective Vehicles complied with federal  
22 and state emissions standards, and that VW was a reputable manufacturer whose  
23 representations could be trusted.

24           96. Volkswagen intentionally designed and installed the defeat device to  
25 conceal the true amount of pollutants emitted by the Defective Vehicles, and withheld  
26 this information for many years. Only when the EPA and CARB withheld approval of  
27 Volkswagen's 2016 model year diesel vehicles until Volkswagen could adequately  
28 explain the anomalous emissions did Volkswagen admit that Defective Vehicles

1 contained defective clean diesel engine systems that emitted far more pollutants than  
2 permitted under EPA standards and disclosed to the public.

3 97. Thus, the running of all applicable statutes of limitation have been  
4 suspended with respect to any claims that Plaintiffs and the other Class members have  
5 incurred by virtue of the fraudulent concealment doctrine.

6 **C. Estoppel**

7 98. Defendants were under a continuous duty to disclose to Plaintiffs and the  
8 other Class members the true character, quality, and nature of the Defective Vehicles,  
9 including the defeat device, and exorbitant pollutant emissions, and the Defective  
10 Vehicles' failure to comply with federal and state law.

11 99. Defendants knowingly, affirmatively, and actively concealed the true  
12 nature, quality, and character of the clean diesel engine systems, the emissions control  
13 systems, and the emissions of the Defective Vehicles.

14 100. Although Defendants had the duty to disclose to Plaintiffs and Class  
15 members that they had engaged in the deception described herein and installed  
16 defective clean diesel engine systems in the Defective Vehicles, Volkswagen chose to  
17 evade federal and state emissions standards and intentionally misrepresented its lack  
18 of compliance with federal and state law.

19 101. Defendants are estopped from relying on any statutes of limitations in  
20 defense of this action.

21 **COUNT I**

22 **VIOLATIONS OF THE RACKETEER INFLUENCED AND CORRUPT**  
23 **ORGANIZATIONS ACT**

24 **(18 U.S.C. §§1962(c)-(d))**

25 **(On Behalf of All Plaintiffs Against Defendants VW AG,**  
26 **Winterkorn, and Horn)**

27 102. Plaintiffs incorporate all allegations made herein.

28 103. This Count is brought on behalf of the Nationwide Class.



1           104. This Count is only against defendants VW AG, Winterkorn and Horn  
2 (the “RICO Defendants”) on behalf of the Nationwide Class. VW America is not a  
3 defendant for purpose of this RICO claim.

4           105. This claim arises under 18 U.S.C. §1962(c) and (d), which provides in  
5 relevant part:

6                   (c) It shall be unlawful for any person employed by or  
7 associated with any enterprise engaged in, or the activities of which  
8 affect, interstate or foreign commerce, to conduct or participate, directly  
or indirectly, in the conduct of such enterprise’s affairs through a pattern  
of racketeering activity . . . .

9                   (d) It shall be unlawful for any person to conspire to violate any  
10 of the provisions of subsection . . . (c) of this section.

11           106. Defendants engaged in a fraudulent scheme, common course of conduct  
12 and conspiracy to increase market share and revenues and to minimize losses for  
13 Defendants and their co-conspirators from the design, manufacture, distribution and  
14 sale of the Defective Vehicles.

15           107. To achieve these goals, Defendants entered into agreements to sell the  
16 Defective Vehicles to the public, obtained fraudulent certificates of conformity from  
17 the EPA, and disseminated false and misleading advertising and marketing materials  
18 to sell such vehicles without disclosing that they were illegal and defective. As a  
19 direct result of their conspiracy and fraudulent scheme, Defendants were able to  
20 extract revenues of billions of dollars from Plaintiffs and the Nationwide Class.

21           108. VW is the largest automaker in the world by sales, and conducts its  
22 business – legitimate and illegitimate – through various affiliates and subsidiaries,  
23 each of which is a separate legal entity. At all relevant times, defendants VW AG,  
24 Winterkorn, and Horn were “person[s],” as defined in 18 U.S.C. §1961(3), because  
25 they were “capable of holding a legal or beneficial interest in property.”

26           109. In an effort to expand its global reach, market share, and standardization  
27 of vehicle marketing and sales in the United States, VW AG, a publicly traded  
28 German company, formed VW America, a separate New Jersey company that is

1 headquartered in Virginia. VW America is not publicly traded and has no SEC  
2 reporting obligations, but it does have reporting obligations, protections and  
3 responsibilities unique to the State of New Jersey. At all relevant times, defendants  
4 Winterkorn and VW AG had hiring and firing authority over the executive officers of  
5 VW America, as well as oversight of VW America's operations, and tight control over  
6 the design, manufacture, and testing of the Defective Vehicles. Defendant Horn also  
7 exercised control over VW America and its business and affairs during the relevant  
8 time period. At all times, VW America acted for or on behalf of VW AG and  
9 Defendants in undertaking the acts and/or omissions alleged herein.

10       110. VW America constitutes a RICO "enterprise" within the meaning of 18  
11 U.S.C. §1961(4), through which VW AG and the individual defendants conducted the  
12 pattern of racketeering activity as described herein. VW AG directed VW America to  
13 engage in fraudulent activities that affected interstate commerce, which included  
14 obtaining fraudulent certificates of conformity from the EPA and the design,  
15 manufacture, testing, sale and distribution of the Defective Vehicles to consumers all  
16 over the United States. VW AG used VW America to manufacture and sell the  
17 Defective Vehicles throughout the United States with defeat devices that purposefully  
18 circumvented federal and state emissions laws, and VW America operated its largest  
19 emissions testing center in California. VW America's separate legal status also  
20 facilitated the unlawful scheme and provided a hoped-for shield from liability for VW  
21 AG and the individual defendants and their co-conspirators.

22       111. Alternatively, VW AG, VW America, Winterkorn and Horn, and other  
23 individuals and entities, including third parties such as Bosch (which supplied  
24 component parts for the defeat device) and others involved in the design, manufacture,  
25 testing, and sale of the Defective Vehicles, operated an association-in-fact enterprise,  
26 which was formed for the purpose of obtaining fraudulent certificates of conformity  
27 from the EPA and manufacturing, selling, importing and distributing the Defective  
28 Vehicles, and through which they conducted a pattern of racketeering activity, under

1 18 U.S.C. §1961(4). The enterprises alleged in this and the previous paragraph are  
2 referred to collectively as the “Illegal Defeat Device Enterprise.”

3 112. The Illegal Defeat Device Enterprise constituted a single “enterprise” or  
4 multiple enterprises within the meaning of 18 U.S.C. §1961(4), as individuals and  
5 other entities associated-in-fact for the common purpose of engaging in Defendants’  
6 profit-making scheme.

7 113. The RICO Defendants are employed by, and/or associated with, the  
8 Illegal Defeat Device Enterprise.

9 114. The RICO Defendants directed the affairs of the Illegal Defeat Device  
10 Enterprise through, among other things, using their executive officers and engineers to  
11 direct critical aspects of the enterprise’s operations, including the following:

12 (a) VW AG formed VW America to carry out its scheme to increase  
13 market share and sales of vehicles through its false or misleading advertising  
14 campaign of VW’s dirty diesel vehicles as clean;

15 (b) Winterkorn tightly controlled all aspects of the operations of VW  
16 and its subsidiaries, including the design, marketing, sales, research and development  
17 of the supposed “clean” diesel engines; and

18 (c) Horn had oversight and control over all aspects of VW America’s  
19 operations, including the marketing, testing, compliance, and sales of the Defective  
20 Vehicles with the defeat devices.

21 115. The Illegal Defeat Device Enterprise is an ongoing and continuing  
22 organization consisting of legal entities, including VW AG, VW America, their  
23 subsidiaries and network of dealerships, as well as third-party entities and individuals  
24 associated for the common or shared purpose of design, manufacture, distribution,  
25 testing, and sale of the Defective Vehicles to Plaintiffs and the Nationwide Class  
26 through fraudulent certificates of compliance, false emissions tests, deceptive and  
27 misleading sales tactics or materials, and deriving profits and revenues from those  
28 activities.

1           116. The Illegal Defeat Device Enterprise functions by selling vehicles to the  
2 consuming public. Many of these products are legitimate, including vehicles that do  
3 not contain defeat devices. However, the RICO Defendants, through the Illegal  
4 Defeat Device Enterprise, have engaged in a pattern of racketeering activity which  
5 also involves a fraudulent scheme to increase revenue for Defendants and the other  
6 entities and individuals associated-in-fact with the enterprise's activities through the  
7 illegal scheme.

8           117. The Illegal Defeat Device Enterprise engages in and affects interstate  
9 commerce because it involves commercial activities across state boundaries, such as  
10 the marketing, promotion, advertisement and sale of the Defective Vehicles  
11 throughout the country, and the receipt of monies from the sale of the same.

12           118. Within the Illegal Defeat Device Enterprise there was a common  
13 communication network by which co-conspirators shared information on a regular  
14 basis. The Illegal Defeat Device Enterprise used this common communication  
15 network for the purpose of manufacturing, marketing, testing, and selling the  
16 Defective Vehicles to the general public nationwide.

17           119. The RICO Defendants participated in the operation and management of  
18 the Illegal Defeat Device Enterprise by directing its affairs, as described herein.  
19 While the RICO Defendants participated in, and are members of, the enterprise, they  
20 have a separate existence from the enterprise, including distinct legal statuses,  
21 different offices and roles, bank accounts, officers, directors, employees, individual  
22 personhood, reporting requirements, and financial statements.

23           120. Each participant in the Illegal Defeat Device Enterprise had a systematic  
24 linkage to each other through corporate ties, contractual relationships, financial ties,  
25 and continuing coordination of activities. Through the Illegal Defeat Device  
26 Enterprise, the RICO Defendants functioned as a continuing unit with the purpose of  
27 assisting with and furthering the illegal scheme and their common purposes.

28

1           121. The RICO Defendants and the other members of the Illegal Defeat  
2 Device Enterprise all had the common purposes to maximize revenues by selling the  
3 Defective Vehicles as legal and “clean” diesel vehicles with superior fuel efficiency  
4 and performance, which they knew or recklessly disregarded were defective and  
5 designed illegally to circumvent laws in this country.

6           122. The Illegal Defeat Device Enterprise engaged in, and its activities  
7 affected, interstate and foreign commerce by designing, manufacturing, marketing,  
8 testing, and selling the Defective Vehicles to hundreds of thousands of persons  
9 throughout the United States.

10           123. The RICO Defendants exerted substantial control over the Illegal Defeat  
11 Device Enterprise and participated in the conduct of the enterprise’s affairs by:

12                   (a)    designing the Defective Vehicles with cheat software and auxiliary  
13 devices;

14                   (b)    failing to correct or disable the defeat devices when warned;

15                   (c)    manufacturing Defective Vehicles that emitted greater pollution  
16 than the legal limit;

17                   (d)    introducing the Defective Vehicles into the stream of United States  
18 commerce without a valid EPA certificate of conformity because the applications for  
19 such certificates were fraudulent;

20                   (e)    persisting in the manufacturing, distribution, and sale of the  
21 Defective Vehicles even after questions were raised about the emissions testing;

22                   (f)    misleading the government as to the nature of the defect;

23                   (g)    misleading the driving public as to the nature of the defect;

24                   (h)    designing and distributing marketing materials that misrepresented  
25 and concealed the defect in the vehicles;

26                   (i)    otherwise misrepresenting or concealing the defective nature of the  
27 Defective Vehicles from the public and regulators;

28                   (j)    illegally selling the Defective Vehicles; and

1 (k) collecting revenues and profits from the sale of such products.

2 124. The RICO Defendants knew of the ongoing scheme, were willing  
3 participants in it, and made money from it.

4 125. The RICO Defendants directed and controlled the ongoing organization  
5 necessary to implement the scheme at meetings and through communications of which  
6 Plaintiffs cannot fully know at present, because all such information lies in  
7 Defendants' and others' hands.

8 126. The RICO Defendants, each of whom is a person associated-in-fact with  
9 the Illegal Defeat Device Enterprise, did knowingly conduct or participate (or both),  
10 directly or indirectly, in the conduct of the enterprise's affairs through a pattern of  
11 racketeering activity within the meaning of 18 U.S.C. §§1961(1), 1961(5) and  
12 1962(c). The RICO Defendants have committed, conspired to commit, or aided and  
13 abetted in the commission of, at least two predicate acts of racketeering activity (*i.e.*,  
14 violations of 18 U.S.C. §§1341 and 1343), within the past ten years. The multiple acts  
15 of racketeering activity which they committed, or aided or abetted in the commission  
16 of, were related to each other, posed a threat of continued racketeering activity, and  
17 therefore constitute a "pattern of racketeering activity." The racketeering activity was  
18 made possible by the RICO Defendants' regular use of the facilities, services,  
19 distribution channels, and employees of the Illegal Defeat Device Enterprise.

20 127. In devising and executing the illegal scheme, the RICO Defendants  
21 devised and knowingly carried out a material scheme and/or artifice to defraud  
22 Plaintiffs and the Nationwide Class or to obtain money from Plaintiffs and the  
23 Nationwide Class by means of materially false or fraudulent pretenses,  
24 representations, promises, or omissions of material facts. For the purpose of  
25 executing the illegal scheme, the RICO Defendants committed these racketeering acts,  
26 which number in the thousands, intentionally and knowingly with the specific intent to  
27 advance the illegal scheme.

28



1           128. The RICO Defendants' predicate acts of racketeering (18 U.S.C.  
2 §1961(1)) include, but are not limited to:

3           (a) **Mail Fraud:** The RICO Defendants violated 18 U.S.C. §1341 by  
4 sending or receiving, or by causing to be sent and/or received, materials via U.S. mail  
5 or commercial interstate carriers for the purpose of executing the unlawful scheme to  
6 design, manufacture, market, and sell the Defective Vehicles by means of false  
7 pretenses, misrepresentations, promises, and omissions.

8           (b) **Wire Fraud:** The RICO Defendants violated 18 U.S.C. §1343 by  
9 transmitting and/or receiving, or by causing to be transmitted and/or received,  
10 materials by wire for the purpose of executing the unlawful scheme to defraud and  
11 obtain money on false pretenses, misrepresentations, promises, and omissions.

12           129. The RICO Defendants used, directed the use of, and/or caused to be used,  
13 thousands of interstate mail and wire communications in the execution of the scheme  
14 through virtually uniform misrepresentations, concealments and material omissions.  
15 The RICO Defendants' use of the mails and wires include, but are not limited to, the  
16 transmission, delivery, or shipment of the following by the RICO Defendants or third  
17 parties that were foreseeably caused to be sent as a result of Defendants' illegal  
18 scheme:

- 19           (a) the Defective Vehicles themselves;
- 20           (b) components for the cheat software;
- 21           (c) essential hardware for the Defective Vehicles;
- 22           (d) falsified emissions tests;
- 23           (e) fraudulent applications for EPA certificates of conformity;
- 24           (f) vehicle registrations and plates due to cheat device and  
25 fraudulently-obtained EPA certificates of conformity;
- 26           (g) documents and communications that facilitated the falsified  
27 emissions tests;
- 28

(h) false or misleading communications intended to lull the public and regulators from discovering the cheat software and/or auxiliary devices;

(i) sales and marketing materials, including advertising, websites, product packaging, brochures, and labeling, which misrepresented and concealed the true nature of the Defective Vehicles;

(j) documents intended to facilitate the manufacture and sale of the Defective Vehicles, including bills of lading, shipping records, reports and correspondence;

(k) documents to process and receive payment for the Defective Vehicles by unsuspecting consumers, including invoices and receipts;

(l) deposits of proceeds; and

(m) other documents and things, including electronic communications.

130. Based on information and belief, the RICO Defendants (or their agents), for the purpose of executing the illegal scheme, sent and/or received (or caused to be sent and/or received) by mail or by private or interstate carrier, shipments of the Defective Vehicles and related documents by mail or a private carrier affecting interstate commerce, including the items described above and alleged below:

<u>From</u>	<u>To</u>	<u>Date</u>	<u>Description</u>
VW America Manufacturing Plant	South Bay VW, California	October 2011	Shipment of Jetta TDIs.
Kearny Mesa VW, California	Paul Byrne	Spring 2014	Mailed service reminders for Defective Vehicles.
California DMV	Caroline Hoag	December 2014	Mailed renewed registration for 2011 Jetta TDI SportWagen based on false emissions test due to defeat device.
California DMV	Paul Byrne	June 2015	Mailed vehicle plates for 2013 Passat TDI Diesel VW based on fraudulent certificate of

<u>From</u>	<u>To</u>	<u>Date</u>	<u>Description</u>
			conformity.

131. Based on information and belief, the RICO Defendants (or their agents), for the purpose of executing the illegal scheme, transmitted (or caused to be transmitted) in interstate commerce by means of wire communications, certain writings, signs, signals and sounds, including those items described above and alleged below:

<u>From</u>	<u>To</u>	<u>Date</u>	<u>Description</u>
VW America, Virginia	EPA, District of Columbia	December 2014	Misleading communications about software patch for Defective Vehicles without revealing defeat device.
Kearny Mesa VW, California	Citibank, New York	May 2014	Byrne's partial credit card payment for 2014 Jetta TDI Diesel.
Capistrano VW, California	Chase Bank, New York	June 2015	Byrne's partial credit card payment for 2013 Passat TDI Diesel.

132. The RICO Defendants also used the internet and other electronic facilities to carry out the scheme and conceal the ongoing fraudulent activities. Specifically, VW America, under the direction and control of VW AG and the individual defendants, made representations about the Defective Vehicles on its website, YouTube, and through ads online, all of which were intended to mislead regulators and the public about the fuel efficiency, emissions standards, and other performance metrics.

133. The RICO Defendants also communicated by U.S. mail, by interstate facsimile, and by interstate electronic mail with various other affiliates, regional offices, divisions, dealerships and other third-party entities in furtherance of the scheme.

1           134. The mail and wire transmissions described herein were made in  
2 furtherance of Defendants' scheme to deceive regulators and consumers and lure  
3 consumers into purchasing Defective Vehicles, which Defendants knew or recklessly  
4 disregarded as emitting greater pollution than advertised. These acts of mail and wire  
5 fraud were not committed in isolation; they were related and posed a threat of  
6 continued fraudulent activity.

7           135. Many of the precise dates of the fraudulent uses of the U.S. mail and  
8 interstate wire facilities have been deliberately hidden, and cannot be alleged without  
9 access to Defendants' books and records. However, Plaintiffs have described the  
10 types of, and in some instances, occasions on which the predicate acts of mail and/or  
11 wire fraud would have occurred. They include thousands of communications to  
12 perpetuate and maintain the scheme, including the things and documents described in  
13 the preceding paragraphs.

14           136. The RICO Defendants and other members of the Illegal Defeat Device  
15 Enterprise have obtained money and property belonging to Plaintiffs and the  
16 Nationwide Class as a result of these violations. Plaintiffs and other Nationwide Class  
17 members have been injured in their business or property by the RICO Defendants'  
18 overt acts of mail and/or wire fraud, and by their aiding and abetting others' acts of  
19 mail and wire fraud. In fact, they never would have purchased the Defective Vehicles  
20 but for Defendants' illegal scheme and common course of conduct.

21           137. The RICO Defendants have not undertaken the practices described herein  
22 in isolation, but as part of a common scheme and conspiracy. In violation of 18  
23 U.S.C. §1962(d), the RICO Defendants conspired to violate 18 U.S.C. §1962(c), as  
24 described herein. Various other persons, firms and corporations, including third-party  
25 entities and individuals not named as defendants in this Complaint, have participated  
26 as co-conspirators with the RICO Defendants in these offenses and have performed  
27 acts in furtherance of the conspiracy to increase or maintain revenues, increase market  
28

1 share, and/or minimize losses for Defendants and their unnamed co-conspirators  
2 throughout the illegal scheme.

3 138. The RICO Defendants aided and abetted others in the violations of the  
4 above laws, thereby rendering them indictable as principals in the 18 U.S.C. §§1341  
5 and 1343 offenses.

6 139. The RICO Defendants engaged in a conspiracy to: (a) increase or  
7 maintain revenues; (b) increase market share; and (c) minimize losses of revenues or  
8 profits for Defendants and their co-conspirators.

9 140. To achieve these goals, the RICO Defendants hid from the general public  
10 the unlawfulness and emissions dangers of the Defective Vehicles and obfuscated the  
11 true nature of the defect even after regulators raised concern. The RICO  
12 Defendants suppressed and/or ignored warnings from third-parties, whistleblowers,  
13 and governmental entities of both the unlawfulness of the defeat device and of the  
14 defects present in the Defective Vehicles.

15 141. The RICO Defendants and each member of the conspiracy, with  
16 knowledge and intent, have agreed to the overall objectives of the conspiracy and  
17 participated in the common course of conduct to commit acts of fraud and indecency  
18 in designing, manufacturing, distributing, marketing, testing, and selling the Defective  
19 Vehicles.

20 142. Indeed, for the conspiracy to succeed, each of the RICO Defendants and  
21 their co-conspirators had to agree to implement and use the similar devices and  
22 fraudulent tactics against their intended targets.

23 143. Plaintiffs and the Nationwide Class have been injured in their property by  
24 the violations of 18 U.S.C. §§1962(c) and 1962(d), including the purchase price of the  
25 Defective Vehicles, the loss of value of their vehicles, greater fuel costs, and other  
26 related expenses. In the absence of the unlawful scheme, Plaintiffs and the  
27 Nationwide Class would not have incurred these economic losses. Indeed, no one  
28

1 would have purchased or leased a Defective Vehicle because Defendants could not  
2 obtain a valid EPA certificate of conformity without the defeat device.

3 144. Plaintiffs' and the Nationwide Class's injuries were directly and  
4 proximately caused by the RICO Defendants' racketeering activities.

5 145. The RICO Defendants knew and intended that Plaintiffs and the  
6 Nationwide Class would rely on their misrepresentations and omissions about the  
7 Defective Vehicles. The RICO Defendants knew and intended that consumers would  
8 incur costs as a result. As fully alleged herein, Plaintiffs, along with thousands of  
9 other consumers, relied upon the RICO Defendants' representations and omissions.  
10 Their reliance is made obvious by the fact that they purchased illegal vehicles that  
11 never should have been introduced into the stream of commerce in the United States  
12 and whose worth has now plummeted. In addition, the EPA and regulators also relied  
13 on Defendants' statements; otherwise Defendants could not have obtained valid  
14 certificates of conformity to sell the vehicles.

15 146. Because of the RICO Defendants' illegal scheme, common course of  
16 conduct, and conspiracy, Plaintiffs and the Nationwide Class purchased illegal  
17 vehicles that are now greatly depreciated in value. The damages suffered by Plaintiffs  
18 and the Nationwide Class may be measured by the total amount paid for the vehicles,  
19 which totals billions of dollars nationwide, even without trebling their damages.

20 147. Under 18 U.S.C. §1964(c), Plaintiffs are entitled to recover treble their  
21 actual damages plus interest, the costs of bringing this suit, and reasonable attorneys'  
22 fees.

## 23 **COUNT II**

### 24 **FRAUD BY CONCEALMENT**

#### 25 **(On Behalf of All Plaintiffs Against All Defendants)**

26 148. Plaintiffs incorporate all allegations made herein.

27 149. This Count is brought on behalf of the Nationwide Class, or alternatively,  
28 the California Class.



1           150. Volkswagen intentionally concealed and suppressed material facts  
2 concerning the quality and character of the Defective Vehicles. As alleged herein,  
3 Volkswagen engaged in deception to evade federal and state vehicle emissions  
4 standards by installing software designed to conceal its vehicles' emissions.

5           151. The software installed on the vehicles at issue was designed to only  
6 activate during emissions certification testing, such that the vehicles would show far  
7 lower emissions than when actually operating on the road. The result was that the  
8 Defective Vehicles improperly passed emissions certifications by way of deliberately  
9 induced false readings.

10           152. Plaintiffs and Class members reasonably relied upon Volkswagen's false  
11 representations. They had no way of knowing that Volkswagen's representations  
12 were false and misleading. As alleged herein, Volkswagen employed extremely  
13 sophisticated methods of deception. Plaintiffs and Class members did not, and could  
14 not, discover Volkswagen's deception on their own.

15           153. Volkswagen's false representations were material to consumers because  
16 they concerned the legality, quality, and characteristics of the Defective Vehicles,  
17 including their compliance with applicable federal and state laws and regulations  
18 regarding clean air and emissions, and also because of the price premium charged for  
19 the Defective Vehicles.

20           154. Volkswagen had a duty to disclose the emissions deception in which it  
21 engaged with respect to the Defective Vehicles because knowledge of the deception  
22 and its details were known and/or accessible only to Volkswagen. Likewise,  
23 Volkswagen knew the facts were unknown to or not reasonably discoverable by  
24 Plaintiffs or Class members.

25           155. In addition, Volkswagen had a duty to disclose because it made  
26 affirmative misrepresentations and/or material omissions about the legality and  
27 qualities of its vehicles with respect to emissions standards. These include, but are not  
28

1 limited to, references that the vehicles are clean diesel vehicles, which were  
2 misleading, deceptive, and incomplete without the disclosure of the deception.

3 156. Having volunteered to provide information to Plaintiffs and the Class,  
4 Volkswagen had the duty to disclose the entire truth. These omitted and concealed  
5 facts were material because they directly affect the legality, value, and performance of  
6 the Defective Vehicles purchased or leased by Plaintiffs and Class members.

7 157. Volkswagen actively concealed and/or suppressed these material facts to  
8 increase its profits and market share (and minimize losses) and to avoid the perception  
9 that its Defective Vehicles did not or could not comply with federal and state laws  
10 governing clean air and emissions. Such a perception would have been detrimental to  
11 the VW brand.

12 158. Plaintiffs and Class members were unaware of the omitted material facts  
13 referenced herein, and they would not have purchased or leased the Defective  
14 Vehicles if the EPA, CARB, or the driving public had known of the concealed and/or  
15 suppressed material facts.

16 159. Based on the concealment of the facts, Plaintiffs and Class members have  
17 sustained damages because they were induced to purchase the illegal Defective  
18 Vehicles, they now own or lease vehicles that are diminished in value as a result of  
19 Volkswagen's concealment of the true nature of the vehicles and Volkswagen's  
20 failure to timely disclose the true facts about hundreds of thousands of VW- and Audi-  
21 branded vehicles.

22 160. Accordingly, Volkswagen is liable to Plaintiffs and Class members for  
23 damages in an amount to be determined at trial. Volkswagen's acts were done  
24 wantonly, maliciously, and deliberately, with intent to defraud, and in reckless  
25 disregard of Plaintiffs' and Class members' needs, and warrant an assessment of  
26 punitive damages, also in an amount to be determined.

**COUNT III**  
**VIOLATION OF THE CALIFORNIA UNFAIR COMPETITION LAW**  
**(Cal. Bus. & Prof. Code §17200, *et seq.*)**  
**(On Behalf of All Plaintiffs Against All Defendants)**

161. Plaintiffs incorporate all allegations made herein.

162. This Count is brought on behalf of the Nationwide Class, or alternatively, the California Class.

163. The Unfair Competition Law (the “UCL”) defines unfair business competition to include “any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising.” Cal. Bus. & Prof. Code §17200. The UCL provides for injunctive relief, restitution, and disgorgement of profits.

164. Volkswagen’s unlawful, unfair, and fraudulent business acts and practices are described throughout this Complaint and include, but are not limited to, knowingly concealing from Plaintiffs and the Class members that the Defective Vehicles were illegal and suffered from a design defect, while falsely or misleadingly touting these vehicles as environmentally friendly and fuel efficient.

165. Volkswagen’s conduct violated the unlawful prong of the UCL as it violated Cal. Civ. Code §§1572-73, 1709, 1711, and 1770, and the common law. Furthermore, Volkswagen’s practices violate the CAA, 42 U.S.C. §§7522(a)(1) and (a)(3)(B); 40 C.F.R. §§86.1803-01, 86.1809-10, 600.302-12(c)-(e), and 16 C.F.R. §259.2(a), plus CARB emissions standards set forth in 13 Cal. Code Regs. tit. 13, §2282. Plaintiffs reserve the right to allege other violations of law, which constitute other unlawful business acts or practices. Such conduct has been ongoing and may continue to this date.

166. Volkswagen’s acts, omissions, misrepresentations, practices, and non-disclosures also constitute “unfair” business acts and practices within the meaning of the UCL in that Volkswagen’s conduct is substantially injurious to consumers, offends

1 public policy, and is immoral, unethical, oppressive, and unscrupulous as the gravity  
2 of the conduct outweighs any alleged benefits attributable to such conduct.

3 167. As stated herein, Plaintiffs allege violations of consumer protection,  
4 unfair competition, and truth-in-advertising laws in California resulting in harm to  
5 consumers. Plaintiffs assert violations of public policy by Volkswagen engaging in  
6 false and misleading advertising, unfair competition, and deceptive conduct towards  
7 consumers. This conduct constitutes violations of the unfair prong of the UCL. There  
8 were reasonably available alternatives to further Volkswagen's legitimate business  
9 interests other than the conduct described herein.

10 168. Plaintiffs and the Class members have been damaged as they relied on  
11 Volkswagen's misrepresentations and omissions regarding the legality and quality of  
12 the Defective Vehicles when purchasing or leasing the vehicles. Plaintiffs and the  
13 Class members would not have purchased or leased these vehicles at all, or at the  
14 premium prices they paid, and/or they would have purchased less expensive  
15 alternative vehicles that contained properly functioning Clean Diesel engine systems.

16 169. Pursuant to Cal. Bus. & Prof. Code §§17200 and 17203, Plaintiffs, on  
17 behalf of themselves and all others similarly situated, seek relief as prayed for below,  
18 including judgment and full restitution against Volkswagen, and an order requiring  
19 Volkswagen to immediately cease such acts of unlawful, unfair, and fraudulent  
20 business practices and requiring Volkswagen to engage in a corrective marketing  
21 campaign.

#### 22 **COUNT IV**

#### 23 **VIOLATION OF CALIFORNIA FALSE ADVERTISING LAWS**

24 **(Cal. Bus. & Prof. Code §17500, *et seq.*)**

25 **(On Behalf of All Plaintiffs Against All Defendants)**

26 170. Plaintiffs incorporate all allegations made herein.

27 171. This Count is brought on behalf of the Nationwide Class, or alternatively,  
28 the California Class.

1           172. Volkswagen violated California Business & Professions Code §17500, *et*  
2 *seq.*, by concealing from Plaintiffs and the other Class members that the Defective  
3 Vehicles were illegal and suffer from a design defect and by marketing the Defective  
4 Vehicles as having functioning Clean Diesel engine systems that performed as  
5 advertised.

6           173. The above-described false, misleading, and deceptive advertising  
7 Volkswagen disseminated deceived Plaintiffs and the Class and continues to have the  
8 likelihood to deceive.

9           174. Volkswagen emphasized repeatedly that the Defective Vehicles were  
10 environmentally friendly and a comparable environmental choice to hybrid or electric  
11 vehicles, while knowing that the Defective Vehicles were illegal, as they produced  
12 emissions up to 40 times greater than the EPA's legal limit. Further, to meet the EPA  
13 standards, the Defective Vehicles could not meet the level of performance or  
14 efficiency advertised by Volkswagen.

15           175. In making and disseminating the statements alleged herein, Volkswagen  
16 knew or should have known its advertisements were untrue and misleading in  
17 violation of Cal. Bus. & Prof. Code §17500, *et seq.* Plaintiffs and Class members  
18 based their decisions to purchase and/or lease their vehicles in substantial part on  
19 Volkswagen's misrepresentations and omitted material facts. The revenues to VW  
20 attributable to products sold in those false and misleading advertisements amount to  
21 billions of dollars for its vehicles. Plaintiffs and the Class were injured in fact and lost  
22 money or property as a result, both in terms of purchase price, diminution of value,  
23 and the differential higher cost of fuel and maintenance.

24           176. Plaintiffs and the Class have been damaged by said practice and seek full  
25 restitution and injunctive relief as prayed below.  
26  
27  
28

**COUNT V**

**VIOLATION OF THE CALIFORNIA  
CONSUMERS LEGAL REMEDIES ACT**

**(Cal. Civ. Code §1750, *et seq.*)**

**(On Behalf of All Plaintiffs Against All Defendants)**

177. Plaintiffs incorporate all allegations made herein.

178. This Count is brought on behalf of the Nationwide Class, or alternatively, the California Class.

179. The following definitions come within the meaning of the Consumers Legal Remedies Act (“CLRA”) (Cal. Civ. Code §1750, *et seq.*):

(a) The members of the Class, all of whom purchased and/or leased the Defective Vehicles manufactured and sold by Volkswagen are “[c]onsumer[s]” within the meaning of Cal. Civ. Code §1761(d);

(b) Defendants are “[p]ersons” within the meaning of Cal. Civ. Code §1761(c);

(c) Plaintiffs’ and each and every Class members’ purchase and/or lease of the Defective Vehicles constitutes a “[t]ransaction” within the meaning of Cal. Civ. Code §1761(e); and

(d) The Defective Vehicles are “[g]oods” within the meaning of Cal. Civ. Code §1761(a).

180. Volkswagen’s acts and practices as discussed throughout this Complaint constitute “unfair or deceptive acts or practices” by Volkswagen that are unlawful, as enumerated in Cal. Civ. Code §1770(a).

181. Such misconduct materially affected the purchasing decisions of Plaintiffs and the members of the Class by Volkswagen’s failure to disclose that the Defective Vehicles were illegal and equipped with defective Clean Diesel engine systems designed to cheat EPA emissions tests and falsify the attributes of the Defective Vehicles. Plaintiffs and the Class reasonably relied on Volkswagen’s



1 misstatements and material omissions regarding the Defective Vehicles when  
2 purchasing or leasing the Defective Vehicles.

3 182. Plaintiffs seek restitution and injunctive relief pursuant to Cal. Civ. Code  
4 §1780.

5 183. On or about October 16, 2015, Plaintiffs notified Volkswagen of the  
6 unlawful acts and practices described above by certified mail, return receipt requested,  
7 demanding that Volkswagen pay damages in the amount of the purchase price of the  
8 Defective Vehicles. Plaintiffs' letter advised Volkswagen that they have violated the  
9 CLRA and must correct and otherwise rectify the Defective Vehicles alleged to be in  
10 violation of Cal. Civ. Code §1770. Volkswagen was further advised that, in the event  
11 the relief requested has not been provided within thirty (30) days, Plaintiffs will  
12 amend this complaint to seek monetary damages under the CLRA. Volkswagen's  
13 conduct is malicious, fraudulent, and wanton and Volkswagen provided false  
14 information about the legality of the vehicles, their emissions, and the decreased  
15 performance that these vehicles would suffer without the fraudulent defeat device that  
16 was contained in the Defective Vehicles' software.

17 184. As a result of the Cal. Civ. Code §1770 violations, Plaintiffs and each  
18 and every member of the Class have suffered actual damages. Plaintiffs have lost  
19 money or property by purchasing or leasing the Defective Vehicles which they  
20 otherwise would not have done, or by paying a premium, which they otherwise would  
21 not have paid, and the Defective Vehicles have suffered a diminution in value, and  
22 any fix would result in increased fuel and efficiency costs, and decreased  
23 performance.

24 185. Attached as **Exhibit 1** is the Declaration of Rachel L. Jensen, which  
25 demonstrates that venue is proper in this District pursuant to Cal. Civ. Code §1780(d).

26 186. Plaintiffs seek actual damages, restitution, and attorneys' fees and costs  
27 pursuant to Cal. Civ. Code §1780. Furthermore, Volkswagen acted with oppression,  
28 fraud, and/or malice in engaging in the Cal. Civ. Code §1770 violations described

1 above. As a result, Plaintiffs are entitled to punitive damages pursuant to Cal. Civ.  
2 Code §1780.

3 **COUNT VI**  
4 **VIOLATION OF THE MAGNUSON-MOSS WARRANTY ACT**  
5 **(15 U.S.C. §2301, *et seq.*)**  
6 **(On Behalf of All Plaintiffs Against VW AG and VW America)**

7 187. Plaintiffs incorporate all allegations made herein.

8 188. This Count is brought on behalf of the Nationwide Class.

9 189. The Defective Vehicles are “consumer product[s]” as defined in 15  
10 U.S.C. §2301(1).

11 190. Plaintiffs and the Class are “consumer[s]” as defined in 15 U.S.C.  
12 §2301(3).

13 191. VW is a “supplier” and “warrantor” as defined in 15 U.S.C. §2301(4)-(5).

14 192. VW (and/or its agent or dealership) provided Plaintiffs and the Class with  
15 numerous written warranties as described in 15 U.S.C. §2301(6).

16 193. VW made implied warranties arising under state law regarding the  
17 Defective Vehicles within the meaning of 15 U.S.C. §2301(7).

18 194. VW’s warranties pertained to consumer products costing more than \$25.

19 195. VW provided Plaintiffs and the Class who purchased a new Defective  
20 Vehicle with a written Manufacturer’s Warranty, which provides “bumper-to-bumper”  
21 limited express warranty coverage for the lesser of 3 years or 36,000 miles. This  
22 warranty includes coverage of emission-related repairs.

23 196. Additionally, VW provided a Federal Emissions Warranty to members of  
24 the Class, which covers all emissions-related parts for the lesser of 2 years or 24,000  
25 miles, as well as an emissions warranty for the catalytic converter, engine control unit,  
26 and onboard diagnostic device for the lesser of 8 years or 80,000 miles.

27 197. Further, VW provided a California Emissions Warranty to members of  
28 the California Class, which provided greater warranties than those required by federal

1 law. Specifically, the California Emissions Warranty covers all emissions-related  
2 performance and parts for the lesser of 3 years or 50,000 miles, and a vehicle-specific  
3 list of more expensive emissions-related parts for the lesser of 7 years or 70,000 miles.  
4 The California Emissions Warranty provisions described here cover vehicles up to  
5 14,000 pounds GVWR (Gross Vehicle Weight Rating), and are applicable to the  
6 Defective Vehicles.

7 198. VW breached these warranties by selling Defective Vehicles containing  
8 defeat devices for the specific purpose of circumventing EPA emissions regulation,  
9 while surreptitiously emitting up to 40 times the legal limit of hazardous NO<sub>x</sub>.

10 199. To restrict emissions to the legal limit and deactivate the defeat device,  
11 the Defective Vehicles will need to be repaired, thus lowering the performance and/or  
12 efficiency of the Defective Vehicles. Thus, the breach of these warranties has  
13 deprived Plaintiffs and other Class members of the benefit of their bargain.

14 200. The amount in controversy of each plaintiff's individual claim meets or  
15 exceeds the sum or value of \$25. In addition, the amount in controversy for the Class  
16 meets or exceeds the sum of \$50,000, exclusive of interest and costs, computed on the  
17 basis of all claims to be determined in this lawsuit.

18 201. VW could have disclosed information regarding the inability of the  
19 Defective Vehicles to perform as warranted or attempted to cure its breach of  
20 warranties, but VW chose not to do so and instead chose to conceal these critical facts  
21 from regulators, Plaintiffs, and the Class.

22 202. As a direct and proximate result of this conduct, Plaintiffs have lost  
23 money or property by purchasing the Defective Vehicles, which they otherwise would  
24 not have purchased, or paying a premium they otherwise would not have paid, and the  
25 Defective Vehicles have suffered a diminution in value. Plaintiffs and the Class are  
26 entitled to legal and equitable relief against VW, including damages, specific  
27 performance, attorneys' fees, costs of suit, and other relief as appropriate.

28

203. Resorting to any informal dispute settlement procedure and/or affording VW an opportunity to cure these breaches of warranties is unnecessary and/or futile. Any remedies available through any informal dispute settlement procedure would be inadequate, as VW cannot remedy the problems associated with the Defective Vehicles without significantly reducing the effectiveness of the Defective Vehicles, and, as such, permanently causing financial harm to Plaintiffs. Any requirement – whether under the MMWA or otherwise – that Plaintiffs resort to an informal dispute resolution procedure and/or afford VW a reasonable opportunity to cure its breach of warranties is redundant and excused and thereby deemed satisfied.

## COUNT VII

### BREACH OF EXPRESS WARRANTY

#### (On Behalf of All Plaintiffs Against VW AG and VW America)

204. Plaintiffs incorporate all allegations made herein.

205. VW's actions, as alleged above, violate the state express warranty statute in the state of California (Cal. Com. Code §2313). This Count is thus brought collectively on behalf of the Nationwide Class, or alternatively, the California Class.

206. VW marketed, sold and distributed the Defective Vehicles to Plaintiffs and the members of the Class in the regular course of its business.

207. VW expressly represented and warranted, by and through statements, descriptions, and affirmations of fact made by it and its authorized agents and representatives that the Defective Vehicles were legal and environmentally friendly, all while maintaining excellent gas mileage and high quality performance. These representations were materially false or misleading. Further, VW issued a written warranty to Plaintiffs and the members of the Class in which VW warranted that the Defective Vehicles were free from defects in material and workmanship.

208. VW provided Plaintiffs and the Class who purchased a new Defective Vehicle with a written Manufacturer's Warranty, which provides "bumper-to-bumper"

1 limited express warranty coverage for the lesser of 3 years or 36,000 miles. This  
2 warranty includes coverage of emission-related repairs.

3 209. Additionally, VW provided a Federal Emissions Warranty to members of  
4 the Class, which covers all emissions-related parts for the lesser of 2 years or 24,000  
5 miles, as well as an emissions warranty for the catalytic converter, engine control unit,  
6 and onboard diagnostic device for the lesser of 8 years or 80,000 miles.

7 210. Further, VW provided a California Emissions Warranty to members of  
8 the California Class, which provided greater warranties than those required by federal  
9 law. Specifically, the California Emissions Warranty covers all emissions-related  
10 performance and parts for the lesser of 3 years or 50,000 miles, and a vehicle-specific  
11 list of more expensive emissions-related parts for the lesser of 7 years or 70,000 miles.  
12 The California Emissions Warranty provisions described herein cover vehicles up to  
13 14,000 pounds GVWR (Gross Vehicle Weight Rating), and are applicable to the  
14 Defective Vehicles.

15 211. In reliance upon these express warranties, Plaintiffs and the members of  
16 the Class purchased the Defective Vehicles.

17 212. The Defective Vehicles failed to comply with the express warranties  
18 because they suffered from inherent defects that, from the date of purchase forward,  
19 rendered the Defective Vehicles unfit for their intended use and purpose and left them  
20 with significant defects in material and workmanship.

21 213. VW knew or had reason to know that the Defective Vehicles did not  
22 conform to the express representations because the vehicles were neither legal,  
23 environmentally friendly, usable, nor free from defects as represented.

24 214. Plaintiffs were not required to notify VW of the breach because affording  
25 VW a reasonable opportunity to cure its breach of written warranty would have been  
26 futile. VW was also on notice of the defects from government investigation, research  
27 reports, and prior correspondence with the EPA and CARB.

28

215. As a direct and proximate cause of VW's breach, Plaintiffs and the other Class members have suffered damages and continue to suffer damages, including economic damages at the point of sale. Additionally, Plaintiffs and the Class either have incurred or will incur economic damages at the point of repair in the form of the cost of repair, cost of increased fuel consumption, and cost of increased maintenance.

216. Plaintiffs and the Class members are entitled to legal and equitable relief against VW, including damages, consequential damages, specific performance, rescission, attorneys' fees, costs of suit, and other relief as appropriate.

### **COUNT VIII**

#### **BREACH OF IMPLIED WARRANTY**

##### **(On Behalf of All Plaintiffs Against VW AG and VW America)**

217. Plaintiffs incorporate all allegations made herein.

218. This Count is brought on behalf of the Nationwide Class, or alternatively on behalf of the California Class.

219. VW's actions, as alleged above, violate the implied warranty of merchantability statute in the state of California (Cal. Civ. Code §1792).

220. VW marketed, sold and distributed the Defective Vehicles to Plaintiffs and the members of the Class in the regular course of its business.

221. VW impliedly warranted, by and through statements, descriptions, and affirmations of fact made by it and its authorized agents and representatives that the Defective Vehicles were of merchantable quality, would pass without objection in the trade or business under the contract description, and were free of material defects and fit for the ordinary purposes for which they were to be used.

222. In reliance upon these implied warranties, Plaintiffs and the members of the Class purchased or leased the Defective Vehicles.

223. The Defective Vehicles failed to comply with the implied warranties because they suffered from inherent design defects that, from the date of purchase forward, rendered the Defective Vehicles unfit for their intended use and purpose and

1 made them not free from defects in material and workmanship. Specifically, the  
2 Defective Vehicles were equipped with defective Clean Diesel engine systems.

3 224. VW knew that the vehicles did not conform to the implied warranties  
4 because the vehicles were neither usable nor free from defects as represented.

5 225. Plaintiffs were not required to notify VW of the breach because affording  
6 VW a reasonable opportunity to cure its breach of written warranty would have been  
7 futile. VW was also on notice of the defects from the government investigation,  
8 research reports, and prior correspondence with the EPA and CARB.

9 226. Plaintiffs and Class members have had sufficient direct dealings with  
10 either VW or its agents (via dealerships) to establish privity of contract.  
11 Notwithstanding this, privity is not required in this case because Plaintiffs and Class  
12 members are intended third-party beneficiaries of contracts between VW and its  
13 dealers; specifically, they are the intended beneficiaries of VW's implied warranties.  
14 The dealers were not intended to be the ultimate consumers of the Defective Vehicles  
15 and have no rights under the warranty agreements provided with the Defective  
16 Vehicles; the warranty agreements were designed for and intended to benefit the  
17 ultimate consumers only. Finally, privity is also not required because Plaintiffs' and  
18 the Class members' Defective Vehicles are considered dangerous instrumentalities.

19 227. As a direct and proximate cause of this breach, Plaintiffs and the other  
20 Class members have suffered damages, including economic damages at the point of  
21 sale or lease. Additionally, Plaintiffs and the other Class members either have  
22 incurred or will incur economic damages at the point of repair in the form of the cost  
23 of repair, increased future fuel costs, and increased future maintenance costs.

24 228. Plaintiffs and the other Class members are entitled to legal and equitable  
25 relief against VW, including damages, consequential damages, specific performance,  
26 rescission, attorneys' fees, costs of suit, and other relief as appropriate.



**COUNT IX**

**VIOLATION OF THE CALIFORNIA SONG-BEVERLY WARRANTY ACT  
AND BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**

**(Cal. Civ. Code §§1791.1 and 1793.2(d), *et seq.*)**

**(On Behalf of All Plaintiffs Against VW AG and VW America)**

229. Plaintiffs incorporate all allegations made herein.

230. This Count is brought on behalf of the California Class.

231. Plaintiffs and Class members who purchased the Defective Vehicles in California are “[b]uyer[s]” within the meaning of Cal. Civ. Code §1791(b).

232. The Defective Vehicles are “[c]onsumer goods” within the meaning of Cal. Civ. Code §1791(a).

233. VW is a “[m]anufacturer” and/or “[d]istributor” of the Defective Vehicles within the meaning of Cal. Civ. Code §1791(e) and (j).

234. VW made implied warranties to Plaintiffs and the members of the California Class within the meaning of Cal. Civ. Code §1791.1(a).

235. VW impliedly warranted to Plaintiffs and California Class members who purchased and/or leased the Defective Vehicles that the Defective Vehicles were “merchantable” within the meaning of Cal. Civ. Code §§1791.1(a) and 1792.

236. The Defective Vehicles are not merchantable as they do not meet emission regulations and cannot be legally sold in their present state.

237. The Defective Vehicles are not of the quality that a buyer would expect and are not merchantable. Because the Defective Vehicles are not merchantable, Volkswagen breached the implied warranty of merchantability within the meaning of Cal. Civ. Code §§1791.1(b) and 1792.1.

238. As a proximate result of VW’s breach of the implied warranty of merchantability, Plaintiffs and the California Class sustained damages. Pursuant to Cal. Civ. Code §§1791.1(d), 1794(a), and 1794(b)(2), Plaintiffs and the California Class are entitled to damages and other legal and equitable relief including, at their

1 election, the purchase price of the Defective Vehicles or any diminution in value.  
2 Plaintiffs and the California Class are also entitled to costs and attorneys' fees  
3 pursuant to Cal. Civ. Code §1794.

4 **COUNT X**

5 **BREACH OF CONTRACT**

6 **(On Behalf of All Plaintiffs Against VW AG and VW America)**

7 239. Plaintiffs incorporate all allegations made herein.

8 240. This Count for common law breach of contract is brought by all Plaintiffs  
9 on behalf of the Nationwide Class, or alternatively the California Class.

10 241. The conduct alleged herein, where VW surreptitiously installed defeat  
11 devices in the Defective Vehicles to fraudulently pass EPA emissions tests, constitutes  
12 a significant and material breach of contract. The Defective Vehicles would not  
13 achieve the performance benchmarks represented by VW without using the defeat  
14 device to fraudulently pass the EPA emissions tests.

15 242. Had VW not deceived Plaintiffs, the Class and the EPA, Plaintiffs and  
16 Class members would not have purchased or leased the Defective Vehicles, or would  
17 not have purchased the Defective Vehicles at the premium prices charged.

18 243. The sale of these Defective Vehicles constitutes a contract between VW  
19 and the purchaser or lessee, and these contracts were breached by VW's brazen  
20 deception and decision to circumvent EPA regulations, thus inducing purchase or  
21 lease, and leaving Plaintiffs and the Class with Defective Vehicles that were of greatly  
22 diminished value and/or performance, and/or increased costs.

23 244. As a direct and proximate result of this breach of contract, Plaintiffs and  
24 the other Class members are entitled to legal and equitable relief against VW,  
25 including but not limited to, damages, incidental and consequential damages,  
26 attorneys' fees, costs of suit, and other relief as appropriate.

**PRAYER FOR RELIEF**

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

(A) Certification of the proposed Nationwide Class and/or California Class, including appointment of Plaintiffs' counsel as Class Counsel;

(B) An order permanently enjoining Defendants from continuing the unlawful, deceptive, fraudulent, and unfair business practices alleged in this Complaint;

(C) Injunctive relief in the form of a buy-back program, recall, and/or reimbursement of Defective Vehicle purchases;

(D) Costs, restitution, damages, including treble and/or punitive damages, and disgorgement in an amount to be determined at trial;

(E) Pre- and post-judgment interest on any amounts award;

(F) An award of costs and attorneys' fees; and

(G) Such other or further relief as may be appropriate.

**DEMAND FOR JURY TRIAL**

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

DATED: October 19, 2015

ROBBINS GELLER RUDMAN  
& DOWD LLP  
MICHAEL J. DOWD  
JASON A. FORGE  
RACHEL L. JENSEN

*s/ Jason A. Forge*  
\_\_\_\_\_  
JASON A. FORGE

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Attorneys for Plaintiffs

JS 44 (Rev. 12/12)

**CIVIL COVER SHEET**

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

**I. (a) PLAINTIFFS**

CAROLINE HOAG and PAUL BYRNE, Individually and on Behalf of All Others Similarly Situated

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

(c) Attorneys (Firm Name, Address, and Telephone Number)  
Jason A. Forge 619/231-1058  
Robbins Geller Rudman & Dowd LLP  
655 West Broadway, Suite 1900, San Diego, CA 92101

**DEFENDANTS**

VOLKSWAGEN AG, VOLKSWAGEN GROUP OF AMERICA, INC., MARTIN WINTERKORN, MICHAEL HORN and DOES 1-25

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)

**'15CV2367 AJB DHB****II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

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

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

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input 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	<b>PERSONAL INJURY</b> <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	<b>PERSONAL INJURY</b> <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 <b>PERSONAL PROPERTY</b> <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 <b>LABOR</b> <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 <b>IMMIGRATION</b> <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 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <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)) <b>FEDERAL TAX SUITS</b> <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 checked="" type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <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	<b>CIVIL RIGHTS</b> <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	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <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 <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

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

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

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
18 U.S.C. §1961, et seq., 15 U.S.C. §2301

Brief description of cause:

Class Action Complaint for Violations of the Racketeer Influenced and Corrupt Organizations Act (RICO)

**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 Larry A. BurnsDOCKET NUMBER 3:15-cv-02106

DATE 10/19/2015 SIGNATURE OF ATTORNEY OF RECORD  
s/ Jason A. Forge

**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.

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

CAROLINE HOAG and PAUL  
BYRNE, Individually and on Behalf of  
All Others Similarly Situated,

Plaintiffs,

vs.

VOLKSWAGEN AG, VOLKSWAGEN  
GROUP OF AMERICA, INC.,  
MARTIN WINTERKORN, MICHAEL  
HORN, and DOES 1-25,

Defendants.

Case No. **'15CV2367 AJB DHB**

**CLASS ACTION**

**DECLARATION OF RACHEL L.  
JENSEN**



1 I, Rachel L. Jensen, declare as follows:

2 1. I am a member of the law firm of Robbins Geller Rudman & Dowd LLP,  
3 counsel for Plaintiffs in the above-captioned case. I have personal knowledge of the  
4 matters stated herein and, if called upon, I could and would competently testify  
5 thereto.

6 2. My law firm has filed the Complaint in this matter on behalf of Plaintiffs  
7 and those similarly situated. The Complaint includes claims against Volkswagen  
8 Group of America, Inc., Volkswagen AG, Martin Winterkorn, Michael Horn, and  
9 Does 1-25 ("Defendants"), by Plaintiffs Caroline Hoag and Paul Byrne for violations  
10 of California's Consumers Legal Remedies Act, California Civil Code §1750, *et seq.*,  
11 among others. I file this declaration pursuant to California Civil Code §1780(d).

12 3. Plaintiffs filed this action in the Southern District of California because  
13 they reside here, they purchased and/or leased affected Defective Vehicles in this  
14 District, and Defendants conduct a substantial amount of business within this District,  
15 including the marketing, distribution and sale of the Defective Vehicles of which  
16 Plaintiffs complain. This District is, therefore, a proper place for a trial of this action.

17 I declare under penalty of perjury under the laws of the United States of  
18 America that the foregoing is true and correct. Executed this 16th day of October,  
19 2015, at San Diego, California.

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21 \_\_\_\_\_  
22 RACHEL L. JENSEN  
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