

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

JEREMY KIRKWOOD, on Behalf of Himself and All Others Similarly Situated,)	
)	Case No.
<i>Plaintiff,</i>)	
)	CLASS ACTION COMPLAINT
v.)	
)	
VOLKSWAGEN GROUP OF AMERICA, INC., a New Jersey Corporation,)	<u>JURY TRIAL DEMANDED</u>
)	
<i>Defendant.</i>)	
)	
)	
)	

CLASS ACTION COMPLAINT

Plaintiff Jeremy Kirkwood (“Kirkwood”), on behalf of himself and all others similarly situated alleges as follows:

INTRODUCTION

1. This is an action against Volkswagen Group of America, Inc. (“Volkswagen”) for the intentional installation of defective diesel engine systems containing a “defeat device” in approximately 500,000 affected vehicles that were sold in the United States and Tennessee (the “Affected Vehicles”) to Plaintiff and the Class.

2. These Affected Vehicles were specifically designed to undermine the emissions tests of the Environmental Protection Agency (“EPA”) and other state testing agencies by producing artificially low levels of pollutants during emissions tests, and dramatically higher levels of pollutants during real-world driving. Volkswagen’s defeat devices detected when an emissions test was performed and then reduced the power/performance of the vehicle to meet test benchmarks.

Later, when driven in real-world conditions, the Defective Vehicles emitted up to 40 times the legal limits of pollutants.

3. Volkswagen engaged in a comprehensive advertising campaign describing the Affected Vehicles as “green” and “clean,” yet knowing they were anything but. As a result of this fraudulent scheme and the deceptive advertisements, Volkswagen enjoyed massive success – Volkswagen has become the world’s top automaker for the first half of 2015, and is now one of the largest sellers of diesel passenger vehicles in the United States. The Affected Vehicles were touted as environmentally friendly, fuel efficient, and capable of high level performance. However, in order to meet emissions regulations without the use of a defeat device, the Affected Vehicles would have to significantly cut their efficiency and/or performance. This leaves defrauded customers with a far worse vehicle than what was advertised and promised

4. Had Plaintiff and Class members known of the “defeat devices” at the time they purchased or leased their vehicles, they would not have purchased or leased those vehicles, or would have paid substantially less for the vehicles than they did. Moreover, when and if Volkswagen recalls the Affected Vehicles and degrades the CleanDiesel engine performance in order to make the Affected Vehicles compliant with EPA standards, Plaintiff and Class members will be required to spend additional sums on fuel and will not obtain the performance characteristics of their vehicles when purchased. Additionally, Affected Vehicles will necessarily be worth less in the marketplace because of their decrease in performance and efficiency.

5. As a result, Plaintiff brings this action individually and on behalf of all other current and former owners or lessees of Affected Vehicles in the United States for violation of federal law and Tennessee for violations of Tennessee state law. Plaintiff seeks damages, injunctive relief, and equitable relief for the conduct of Volkswagen related to the “defeat device” and its unlawful conduct as alleged herein.

JURISDICTION AND VENUE

6. This Court has federal question jurisdiction under 28 U.S.C. § 1332. Additionally, this Court has jurisdiction over this action pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d), because the amount in controversy exceeds \$5,000,000.00, exclusive of costs and interest, and the proposed Class consists of 100 or more members and minimal diversity exists. This Court also has supplemental jurisdiction over the state law claims. 28 U.S.C. § 1367.

7. Venue is proper in this District under 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to these claims occurred in this District. Plaintiff Kirkwood resides in this District and purchased the vehicle at issue in this District.

PARTIES

8. Plaintiff Kirkwood is a citizen of Tennessee residing in Murfreesboro, TN 37219. In 2014, Plaintiff Kirkwood purchased a 2014 VW Passat TDI at Signature Volkswagen of Murfreesboro, an authorized Volkswagen dealership in Murfreesboro, Tennessee. Plaintiff Kirkwood still owns this vehicle.

9. Volkswagen Group of America, Inc., is a corporation doing business in all 50 states (including the District of Columbia) and is organized under the laws of the State of New Jersey, with its principal place of business located at 2200 Ferdinand Porsche Dr., Herndon, Virginia 20171. At all times relevant to this action, Volkswagen manufactured, distributed, sold, leased, and warranted the Affected Vehicles under the Volkswagen and Audi brand names throughout the United States. Volkswagen and/or its agents designed, manufactured, and installed the CleanDiesel engine systems in the Affected Vehicles, which included the “defeat device.” Volkswagen also developed and disseminated the owner’s manuals and warranty booklets, advertisements, and other promotional materials relating to the Affected Vehicles.

CLASS ACTION ALLEGATIONS

A. Definition of the Classes

10. Plaintiff brings 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 the following classes (collectively, the “Classes”).

1. Nationwide Class Under the Magnuson - Moss Warranty Act

All persons or entities in the United States who are current or former owners and/or lessees of an “Affected Vehicle.” Affected Vehicles include, without limitation: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2014-2015 VW Passat; and MY 2009-2015 Audi A3. Excluded from the Class are individuals who have personal injury claims resulting from the “defeat device” in the Clean Diesel system. Also excluded from the Class is any parent company, subsidiary or affiliate of Volkswagen, all officers and directors who are or have been employed by defendant during the relevant period, and all judges and justices assigned to hear any aspect of this case.

2. Tennessee Class for Violations of Tennessee Law

All persons or entities in Tennessee who are current or former owners and/or lessees of an “Affected Vehicle.” Affected Vehicles include, without limitation: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2014-2015 VW Passat; and MY 2009-2015 Audi A3. Excluded from the Class are individuals who have personal injury claims resulting from the “defeat device” in the Clean Diesel system. Also excluded from the Class is any parent company, subsidiary or affiliate of Volkswagen, all officers and directors who are or have been employed by defendant during the relevant period, and all judges and justices assigned to hear any aspect of this case.

B. The Prerequisites to Rule 23(a) Are Satisfied

1. Numerosity

11. The Classes are comprised of thousands of members geographically dispersed throughout the United States and Tennessee and are so numerous that joinder of all members is impracticable. While the precise number of members of the Classes are unknown to Plaintiff, members of the Classes can be identified from records maintained by Volkswagen and/or its agents.

2. Commonality

12. Questions of law and fact common to all members of the Classes predominate over any questions affecting only individual members. Among the common questions are the following:

- (a) Whether Volkswagen engaged in the conduct alleged herein;
- (b) Whether Volkswagen designed, advertised, marketed, distributed, leased, sold, or otherwise placed Affected Vehicles into the stream of commerce in the United States and Tennessee;
- (c) Whether the CleanDiesel engine system in the Affected Vehicles contains a defect in that it does not comply with U.S. EPA requirements;
- (d) Whether the CleanDiesel engine systems in Affected Vehicles can be made to comply with EPA standards without substantially degrading the performance and/or efficiency of the Affected Vehicles;
- (e) Whether Volkswagen knew about the “defeat device” and, if so, how long Volkswagen has known;
- (f) Whether Volkswagen designed, manufactured, marketed, and distributed Affected Vehicles with a “defeat device”;
- (g) Whether Volkswagen’s conduct violates state and federal laws as asserted herein;
- (h) Whether Plaintiff and the other Class members overpaid for their Affected Vehicles;
- (i) Whether Plaintiff and the other Class members are entitled to equitable relief, including, but not limited to, restitution or injunctive relief; and
- (j) Whether Plaintiff and the other Class members are entitled to damages and other monetary relief and, if so, in what amount.

3. Typicality

13. Plaintiff has claims that are typical of the claims of other members of the Classes because, among other things, all members of the Classes were comparably injured through Volkswagen's wrongful conduct as described herein.

4. Adequacy

14. Plaintiff will fairly and adequately represent and protect the interests of the Classes in that he has no interests that are antagonistic to or which irreconcilably conflict with those of other members of the Classes. Plaintiff has retained counsel competent and experienced in the prosecution of class action litigation.

C. This Action May Be Maintained as a Class Action

1. The Requirements of Rule 23(b)(3) Are Satisfied

15. As noted above, there are numerous questions of law and fact common to the Classes which predominate over any questions affecting only individual members. Moreover, a class action is superior to all other available methods for the fair and efficient adjudication of this controversy. Such treatment will permit a large number of similarly situated, geographically dispersed persons or entities to prosecute their common claims in a single forum simultaneously, efficiently, and without unnecessary duplication of evidence, effort, or expense that numerous individual actions would engender. The benefits of proceeding through the class mechanism, including providing injured persons or entities a method for obtaining redress on claims that could not practicably be pursued individually, substantially outweighs potential difficulties in management of this class action.

2. The Requirements of Rule 23(b)(3) Are Satisfied

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

FACTS

17. Automobile manufacturers must abide by federal law and must adhere to EPA rules and regulations. This case arises from Defendant's purposeful and intentional breach of the laws of the United States and the rules and regulations of the EPA by selling in the United States and Tennessee vehicles manufactured by its affiliates Volkswagen AG and Audi AG that purposefully evaded federal and state law which ultimately led to a Notice of Violation ("NOV") by the EPA.

18. Volkswagen uses sophisticated software in the Volkswagen and Audi diesel vehicles in the United States and Tennessee which detects when the vehicle is undergoing official emissions testing and turns full emissions controls on only during the test. But otherwise, that is at all other times that the vehicle is running, the emissions controls are suppressed. This results in cars that meet emissions standards in the laboratory or state testing station, but during normal operation emit nitrogen oxides (NOx) at up to 40 times the standard allowed under United States laws and regulations. The software produced and used by Volkswagen is a "defeat device" as defined by the Clean Air Act.

19. The Clean Air Act has strict emissions standards for vehicles and it requires vehicle manufacturers to certify to the EPA that the vehicles sold in the United States meet applicable federal emissions standards to control air pollution. Every vehicle sold in the United States must be covered by an EPA issued certificate of conformity. Under federal law, cars equipped with defeat devices, which reduce the effectiveness of the emissions control system during normal driving conditions, cannot be certified. By manufacturing and selling cars with defeat devices that allowed for higher levels of emissions that were certified to EPA, Volkswagen violated the Clean Air Act, defrauded its customers, and engaged in unfair competition under state and federal law.

20. According the EPA NOV, Volkswagen installed its "defeat device" in at least the following diesel models of its vehicles: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY

2009-2015 VW Golf; MY 2014-2015 VW Passat; and MY 2009-2015 Audi A3. Discovery may reveal that additional vehicle models and model years are properly included as Affected Vehicles.

21. Volkswagen expressly marketed and advertised its CleanDiesel models as extraordinarily clean, EPA certified in all 50 states, and powerful. For example, Defendant's marking materials stated the CleanDiesel was "cleaner than conventional diesels, emitting as much as 95% fewer sooty emissions than previous diesels, as well as a reduction in oxides of oxygen and sulfur."

22. However, as a result of Defendant's use of the "defeat devices" these engines are not clean and, in fact, these engines produce emission levels that are not in compliance with U.S. laws and regulations which resulted in the EVP NOV. On September 20, 2015, Volkswagen admitted that the EPA allegations were true. It admitted using a "defeat device" in the Affected Vehicles. Its CEO Martin Winterkorn stated: "I personally am deeply sorry that we have broken the trust of our customers and the public."

23. As a result, Volkswagen has been ordered by the EPA to recall the Affected Vehicles and repair them so that they comply with EPA emissions requirements at all times during normal operation. However, Volkswagen will not be able to make the Affected Vehicles comply with emissions standards without substantially degrading their performance characteristics, including their horsepower and their efficiency. As a result, even if Volkswagen is able to make Class members' Affected Vehicles EPA compliant, Class members will nonetheless suffer actual harm and damages because their vehicles will no longer perform as they did when purchased and as advertised. This will necessarily result in a diminution in value of every Affected Vehicle and it will cause owners of Affected Vehicles to pay more for fuel while using their affected vehicles.

24. Had Plaintiff and other Class members known of the "defeat devices" at the time they purchased or leased their vehicles, they would not have purchased or leased those vehicles, or would

have paid substantially less for the vehicles than they did. Moreover, when and if Volkswagen recalls the Affected Vehicles and degrades the CleanDiesel engine performance in order to make the Affected Vehicles compliant with EPA standards, Plaintiffs and Class members will be required to spend additional sums on fuel and will not obtain the performance characteristics of their vehicles when purchased. Additionally, Affected Vehicles will necessarily be worth less in the marketplace because of their decrease in performance and efficiency.

CAUSES OF ACTION

MAGNUSON - MOSS WARRANTY ACT, (15 U.S.C. § 2301 *et seq.*)

(Nationwide Class)

25. Plaintiff incorporates herein by reference, as though fully set forth at length, each and every allegation and statement contained in the foregoing paragraphs.

26. This Court has jurisdiction to decide claims brought under 15 U.S.C. § 2301, *et seq.* by virtue of 15 U.S.C. § 2310(d).

27. Plaintiff and all similarly situated individuals are “consumers” within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(3).

28. Volkswagen is a “supplier” and “warrantor” within the meaning of the Magnuson Moss Warranty Act, 15 U.S.C. § 2301(4) – (5).

29. The vehicles in question manufactured by Volkswagen are each a “consumer product” within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(1).

30. Plaintiff and those similarly situated have a cause of action as a result of the damages they have incurred based on the facts described above by the failure of Volkswagen – the warrantor – to comply with a written or implied warranty. 15 U.S.C. § 2310(d)(1).

31. Volkswagen’s implied warranties are covered under the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(7).

32. Volkswagen breached these implied warranties by, among other things, providing the Affected Vehicles in a manner: (a) that was not of merchantable quality; (b) that presented an unreasonable risk of unintended acceleration; (c) that was not fit for the ordinary purpose for which these vehicles are used; and (d) that was not fully operational safe or reliable.

33. As a result of Volkswagen's breach of implied warranties, Plaintiff and those similarly situated suffered economic losses, including cost of repair, diminution in the value and other economic damage and losses.

34. Plaintiff and those similarly situated individuals are entitled to damages in an amount to be proven at trial, together with interest thereon and costs.

BREACH OF EXPRESS WARRANTY

(Tennessee Class)

35. Plaintiff incorporates herein by reference, as though fully set forth at length, each and every allegation and statement contained in the foregoing paragraphs.

36. By advertising the "green" and "clean" qualities of its diesel engines, Volkswagen expressly warranted to Plaintiff and the Class that the vehicles at least complied with all applicable laws and regulations relating to exhaust emissions, as it would be impossible for an automobile to be "green" if it emitted more pollutants than were allowed by applicable environmental laws and regulations.

37. Moreover, by advertising the low emissions in combination with statements regarding the performance, torque, and fuel efficiency, Volkswagen warranted to Plaintiff and the Class that the Affected Vehicles would exhibit this combination of characteristics. Such statements became the basis of the bargain for Plaintiff and the Class because such statements are among the facts a reasonable consumer would consider material in the purchase of a vehicle.

38. In fact, in ordinary driving conditions, the Affected Vehicles did not comply with applicable environmental regulations, and instead emitted between 10 and 40 times the amount of pollutants allowed during normal operation. As such, it was unlawful for Volkswagen to sell the vehicles to the public.

39. In addition, Volkswagen stated that the Affected Vehicles achieved certain fuel economy when tested in accordance with applicable EPA regulations. Those statements created an express warranty that the Affected Vehicles achieved the stated fuel efficiency, allowing Plaintiff and the Class to make comparisons with other vehicles.

40. Testing under EPA regulations presupposes that the vehicles comply with all laws and regulations applicable to automobiles, including environmental regulations.

41. In fact, had the Affected Vehicles been tested in accordance with EPA fuel efficiency standards while also complying with pollution regulations, they would have achieved significantly lower fuel efficiency than was stated on the EPA mileage sticker on the vehicle.

42. In addition, the Affected Vehicles are not adequately labeled because they misstate that the Affected Vehicles comply with EPA regulations, and the stated gas mileage for comparison purposes was not achieved by testing in accordance with EPA testing procedures.

43. As a result of the foregoing breaches of express warranty, Plaintiff and the Class have been damaged in that they purchased vehicles that were unlawfully sold, did not comply with government regulations, did not perform as promised, and were less valuable than what they paid for.

BREACH OF CONTRACT

(Tennessee Class)

44. Plaintiff incorporates herein by reference, as though fully set forth at length, each and every allegation and statement contained in the foregoing paragraphs.

45. Plaintiff pleads his claim for breach of contract in the alternative to his claim for unjust enrichment.

46. Volkswagen's misrepresentations and omissions alleged herein, including Volkswagen's failure to disclose the CleanDiesel engine system was not EPA-compliant and the existence of the "defeat device" as alleged herein, caused Plaintiffs and the other Class members to make their purchases or leases of the vehicles in question.

47. Absent those misrepresentations and omissions, Plaintiff and the other Class members would not have purchased or leased their vehicles, would not have purchased or leased these vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain non EPA-compliant engine systems and a "defeat device." Accordingly, Plaintiff and those similarly situated putative class members overpaid for the Affected Vehicles and did not receive the benefit of their bargain.

48. Each and every sale or lease of such vehicle constitutes a contract between Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the other similarly situated putative class members defective vehicles and by misrepresenting or failing to disclose that the CleanDiesel engine system was not EPA-compliant and failing to disclose the existence of the "defeat device," including information known to Volkswagen rendering each vehicle illegal under U.S. environmental laws, and thus less valuable, than vehicles not equipped with CleanDiesel engine systems.

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

UNJUST ENRICHMENT

(Tennessee Class)

50. Plaintiff incorporates herein by reference, as though fully set forth at length, each and every allegation and statement contained in the foregoing paragraphs.

51. Volkswagen has been unjustly enriched by benefiting from manufacturing and selling the Affected Vehicles with faulty technology that it knew deceived customer, the general public, and the U.S.

52. Under Tennessee law, a claim for unjust enrichment has three required elements: “[1] A benefit conferred upon the defendant by the plaintiff, [2] appreciation by the defendant of such benefit, [3] and acceptance of such benefit under such circumstances that it would be inequitable for him to retain the benefit without payment of the value thereof.” *Paschall's, Inc. v. Dozier*, 407 S.W.2d 150, 155 (Tenn. 1966).

53. The relevant statute of limitations for the Rule 23 Class members’ unjust enrichment claims is six years. See T.C.A. § 28-3-109(a)(3).

54. Volkswagen has received the benefit of the priced paid by Plaintiff and similarly situated consumers of the Affected Vehicles.

55. Volkswagen has appreciated the benefit of the sale of the Affected Vehicles at prices that were paid on the “defeat device” technology, even though Volkswagen knew that such technology was defective. It would be inequitable for Volkswagen to retain the benefit paid by Plaintiff and those similarly situated for the Affected Vehicles.

56. Thus, Volkswagen has been unjustly enriched, and the Class members are entitled to all appropriate relief.

NEGLIGENT MISREPRESENTATION

(Tennessee Class)

57. Plaintiff incorporates herein by reference, as though fully set forth at length, each and every allegation and statement contained in the foregoing paragraphs.

58. In making misrepresentations regarding the emissions quality of the Affected Vehicles, Volkswagen was acting in the course of its regular business, and in relation to transactions in which it has a pecuniary interest.

59. The information that Volkswagen provided regarding the emissions quality was false.

60. Volkswagen intended that Plaintiff and those similarly situated consumers would be guided by and rely on such representations in the course of making a decision to purchase one of the Affected Vehicles.

61. Volkswagen failed to exercise reasonable care in ensuring that the Affected Vehicles could and actually did have emissions quality, and failed to exercise reasonable care in representing the emissions quality with the Affected Vehicles.

62. Plaintiff and those similarly situated were reasonable and justified in relying on Volkswagen's aforementioned representations about the Affected Vehicles.

FRAUD

(Tennessee Class)

63. Plaintiff incorporates herein by reference, as though fully set forth at length, each and every allegation and statement contained in the foregoing paragraphs.

64. Volkswagen intentionally concealed and suppressed material facts concerning the quality of the Affected Vehicles. As alleged herein, notwithstanding references in the very model names of the subject vehicles as "Clean Diesel," or to their engines as "TDI Clean Diesel" engines, Volkswagen engaged in a secret scheme to evade federal and state vehicle emissions standards by

installing software designed to conceal its vehicles' emissions of the pollutant nitrogen oxide, which contributes to the creation of ozone and smog.

65. The software installed on the vehicles at issue was designed nefariously to kick-in during emissions certification testing, such that the vehicles would show far lower emissions than when actually operating on the road. The result was what Volkswagen intended: vehicles passed emissions certifications by way of deliberately induced false readings. Reportedly, Volkswagen's deliberate, secret scheme resulted in noxious emissions from these vehicles at 40 times applicable standards.

66. Plaintiff and Class members reasonably relied upon Volkswagen's false representations to their detriment and suffered damages.

67. Absent Defendant's misrepresentations and omissions, Plaintiff and the other Class members would not have purchased or leased their vehicles, would not have purchased or leased these vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain non EPA-compliant engine systems and a "defeat device." Accordingly, Plaintiff and those similarly situated putative class members overpaid for the Affected Vehicles and did not receive the benefit of their bargain.

68. Plaintiff and other Class members had no way of knowing about Defendant's misrepresentations because Volkswagen knowingly concealed these material facts as detailed herein.

TENNESSEE CONSUMER PROTECTION ACT OF 1977

(Individual Claim Under T.C.A. § 47-18-101, *et seq.*)

69. Plaintiff incorporates herein by reference, as though fully set forth at length, each and every allegation and statement contained in the foregoing paragraphs.

70. This claim is brought by Plaintiff on behalf of himself individually.

71. Volkswagen and Plaintiff are "persons" as that term is defined by T.C.A. §47-18-103.

72. Plaintiff is a “consumer” as that term is defined by T.C.A. §47-18-103.

73. Volkswagen engaged in “trade,” “commerce,” or “consumer transactions” as those terms are defined by T.C.A. §47-18-103.

74. The Affected Vehicles designed, manufactured, marketed and sold by Volkswagen are “goods” within the meaning of T.C.A. §47-18-103.

75. The Tennessee Consumer Protection Act of 1977 prohibits unfair or deceptive acts. T.C.A. § 47-18-104.

76. Volkswagen sold Affected Vehicles in Tennessee and throughout the United States during the relevant period.

77. Volkswagen violated the Tennessee Consumer Protection Act of 1977 when it represented, through advertising, warranties, and other express representations, that the Affected Vehicles had characteristics and benefits that they did not actually have.

78. Volkswagen violated the Tennessee Consumer Protection Act of 1977 when it represented, through advertising, warranties, and other express representations, that the Affected Vehicles were of a particular standard or quality when they were not.

79. Volkswagen violated the Tennessee Consumer Protection Act of 1977 by intentionally installing “defeat devices” in order to obtain the approval of the EPA and failing to disclose the existence and effects of the “defeat device” in its certification to the EPA.

80. Volkswagen’s violations occurred in connection with its conduct of trade or commerce in Tennessee and throughout the United States.

81. Volkswagen’s violations caused the Plaintiff to purchase his vehicle, which he would not otherwise have purchased had he known the true nature, quality and characteristics of the Affected Vehicles.

82. Volkswagen willfully and knowingly violated the Tennessee Consumer Protection Act of 1977 with the intent to deceive and mislead Plaintiff and other consumers and to induce them to purchase Affected Vehicles at higher prices, which did not match the Affected Vehicles' true value.

83. As a result of Volkswagen's unlawful business practices, Plaintiff is entitled to an award for his actual damages, treble damages, attorneys' fees and costs pursuant to T.C.A. § 47-18-109.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of members of the Class, respectfully requests that the Court enter judgment in his favor and against Volkswagen, as follows:

- A. Certification of the proposed Classes in accordance with Rule 23(a), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure, including appointment of Plaintiff's counsel as Class Counsel;
- B. An order temporarily and permanently enjoining Volkswagen from continuing the unlawful, deceptive, fraudulent, and unfair business practices alleged herein;
- C. Injunctive relief in the form of a rescission, recall or free replacement program;
- D. A judgment against Volkswagen and in favor of Plaintiff and the class he seeks to represent for costs, restitution, damages, including punitive damages, and disgorgement in an amount to be determined at trial;
- E. Revocation of acceptance;
- F. An order requiring Volkswagen to pay both pre- and post- judgment interest on any amounts awarded;
- G. An award of costs and attorneys' fees; and
- H. Such other and further relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial for all claims so triable.

Dated: October 16, 2015

Respectfully submitted,

/s/ Charles Yezbak

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yezbak@yezbaklaw.com

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

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

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

DEFENDANTS

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

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

Attorneys (If Known)

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

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

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

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

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

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

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

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

VI. CAUSE OF ACTION

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

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

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

CHECK YES only if demanded in complaint:

JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____

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.

UNITED STATES DISTRICT COURT
for the
Middle District of Tennessee

JEREMY KIRKWOOD, on Behalf of Himself and All
Others Similarly Situated,

Plaintiff(s)

v.

VOLKSWAGEN GROUP OF AMERICA, INC., a New
Jersey Corporation

Defendant(s)

Civil Action No. 3-15-1104

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) VOLKSWAGEN GROUP OF AMERICA, INC., a New Jersey Corporation
Registered Agent:
CORPORATION SERVICE COMPANY
2908 POSTON AVE
NASHVILLE, TN 37203-1312

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you
are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ.
P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of
the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney,
whose name and address are: Charles P. Yezbak, III
Yezbak Law Offices
2002 Richard Jones Road
Suite B-200
Nashville, TN 37215

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint.
You also must file your answer or motion with the court.

KEITH THROCKMORTON

CLERK OF COURT

[Handwritten signature]

Signature of Clerk or Deputy Clerk

Date: 10/16/2015

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: