

US DISTRICT COURT  
WESTERN DIST ARKANSAS  
FILED

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS

OCT 14 2015

Jimmie C. Lamproe, Jr., individually and behalf of all  
others similarly situated,

DOUGLAS F. YOUNG, Clerk  
By Deputy Clerk

Plaintiff,

Case No.: 15-2221

v.

JURY TRIAL DEMANDED

Volkswagen Group of America, Inc., a New Jersey  
corporation, and Volkswagen AG, a German  
corporation,

Defendants.

**CLASS ACTION COMPLAINT**

Jimmie C. Lamproe, Jr. (“Plaintiff”), on behalf of himself and all others similarly situated, upon personal knowledge of facts pertaining to him and on information and belief as to all other matters, by and through undersigned counsel, brings this Class Action Complaint against Volkswagen Group of America, Inc. and Volkswagen AG (collectively, “VW”).

**NATURE OF THE ACTION**

1. This action arises out of a brazen scheme by VW to install in vehicles (the “Affected Vehicles”)—advertised as “Clean Diesel”—a software program that would conceal from regulators the quality and quantity of pollutants they emitted. This so-called “defeat device” enabled VW to deceive its customers, the U.S. Environmental Protection Agency (“EPA”), and State regulators, and to market and sell in the United States approximately 482,000 purportedly “Clean Diesel” vehicles whose emissions exceeded U.S. limits by 10 to 40 times from 2008 until September 18, 2015, when the EPA issued VW a Notice of Violation. Ex. A.

2. After receiving the Notice of Violation and being ordered to recall approximately 482,000 vehicles on U.S. roads, VW admitted to lying to regulators and its customers. Michael Horn, president and CEO of VW's U.S. operations announced, "We were dishonest to our customers" and "We totally screwed up." VW's conduct, however, did not prevent VW from enjoying substantial profits at its customers' expense for at least six years, and possibly longer.

3. VW has vowed to do "everything that must be done" to win back its customers' trust. Yet, simply turning off the defeat device will not solve the problem; nor will turning on the pollution controls full-time. This is because the Affected Vehicles trade emission controls for more torque, superior performance, and better gas mileage. If the Affected Vehicles are made to run cleaner, they will also run slower and at a higher fuel cost. This has a detrimental impact on the vehicles' performance, appeal, and resale value. VW has already issued a stop-sale alert on Affected Vehicles.

4. Plaintiff brings this proposed class action on behalf of himself and all others similarly situated (the "Class") to recover damages, obtain injunctive relief, and seek all other remedies available for VW's violation of consumer protection laws, breaches of warranties, and unjust enrichment.

### **PARTIES**

5. Jimmie C. Lamproe, Jr., is a citizen of Arkansas. On July 8, 2015, he purchased a used 2012 VW Jetta TDI from Fort City Motors in Ft. Smith, Arkansas. When deciding to purchase the vehicle, he considered and reasonably relied on VW's representations and advertisements that TDI was a clean diesel engine. He did not know that the vehicle did not comply with emission regulations or that a defeat device was installed on it.

6. Volkswagen AG is currently the world's largest automaker. It is a German corporation headquartered in Wolfsburg, Germany. Volkswagen AG manufactures and delivers through the stream of commerce cars for sale in the State of Arkansas, markets its vehicles in Arkansas, and has agents in Arkansas to facilitate sales and provide support to its customers in Arkansas.

7. Volkswagen Group of America, Inc. is a New Jersey corporation conducting substantial business in all 50 states, including Arkansas, with a principal place of business in Herndon, Virginia.

#### **JURISDICTION AND VENUE**

8. The Court has jurisdiction over this action pursuant to the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1332(d), because the matter in controversy in the aggregate exceeds the sum or value of \$5,000,000, exclusive of interest and costs, at least one member of the proposed class is a citizen of a state different from any defendant, and the number of members of all proposed plaintiff classes in the aggregate is 100 or more.

9. The Court has personal jurisdiction over VW because it manufactured and placed into the stream of commerce vehicles intended to be sold in the State of Arkansas, marketed its products in Arkansas, and placed agents to facilitate sales and provide services to customers in Arkansas.

10. Venue is proper in this District under 28 U.S.C. § 1391 because VW caused harm to Plaintiff and Class members residing in this District.

#### **FACTUAL BACKGROUND**

11. The Affected Vehicles include vehicles manufactured by VW that are equipped with a 2.0 liter 4-cylinder turbocharged direct injection ("TDI") diesel engine, including models

2009–2015 VW Jetta, 2009–2014 VW Jetta Sportwagen, 2012–2015 VW Beetle, 2012–2015 VW Beetle Convertible, 2010–2015 VW Golf, 2015 VW Golf Sportwagen, 2012–2015 VW Passat, and 2010–2015 Audi A3. These are the models that are currently reported as being affected. Further investigation may reveal that additional vehicles should be added to this list.

12. VW mass-marketed the Affected Vehicles as good for the environment. According to the New York Times, VW emphasized the message “relentlessly.”<sup>1</sup> ispot.tv reports that 45% of VW’s total annual television ad spending of about \$165 million, \$77 million, was directed to promoting its diesel cars.<sup>2</sup> The advertising campaign had a large presence online, as well. For instance, on April 15, 2015, on VW’s website, VW stated:

a. “Hybrids aren’t the only game in town. TDI® Clean Diesel engines offer up impressive efficiency numbers too.”

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

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

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<sup>1</sup> Jay Mouawad and Sydney Ember, *VW’s Pitch to Americans Relied on Fun and Fantasy*, N.Y. Times, Sept. 27, 2015, at B1, also available at <http://www.nytimes.com/2015/09/28/business/media/vws-pitch-to-americans-relied-on-fun-and-fantasy.html?ribbon-ad-idx=2&rref=business&module=Banner&version=context&region=Header&action=click&contentCollection=Business%20Day&pgtype=article> (last visited Sept. 28, 2015).

<sup>2</sup> *Id.*; see, e.g., <https://youtu.be/RxBUCN0pSpI>; <https://www.youtube.com/watch?v=M154UuAoLSo> (last visited Sept. 28, 2015).

d. “Our commitment to making vehicles that are eco-conscious is part of bigger thinking. Because by building efficient vehicles that people actually want to drive, we’re also building a better future for all of us.”

13. VW omitted that Affected Vehicles emitted pollutants in excess of legal limits and that VW equipped Affected Vehicles with an illegal defeat device to conceal the true quantity and quality of pollutants emitted.

14. Consumers were inundated with the message that TDI was a novel technological innovation that made VW cars drive faster, longer, and cleaner. VW sold 482,000 Affected Vehicles in the U.S. over the relevant time period.

15. VW’s representations, advertisements, and omissions about TDI were materially false and willfully misleading. On September 18, 2015, the EPA determined that, in violation of federal emission standards, VW manufactured and installed defeat devices in certain model year 2009–2015 diesel light-duty vehicles equipped with 2.0 liter engines. According to the EPA, “these defeat devices bypass, defeat, or render inoperative elements of the vehicles’ emission control system that exist to comply with [the Clean Air Act, 42 U.S.C. §§ 7401–7671q] emission standards.”

16. The defeat device that VW designed, manufactured, and installed in each Affected Vehicle consisted of a sophisticated software algorithm and sensors to closely track conditions indicative of emission testing, including such factors as the position of the steering wheel, vehicle speed, duration of operation, and barometric pressure. When conditions indicated that the vehicle was undergoing an emission test, the software would switch the vehicle into EPA-compliant mode to emit less pollutants. At all other times, however, the vehicle’s emission control systems “underperformed,” in the words of the EPA, and allowed the Affected Vehicles

to emit certain pollutants 10 to 40 times higher than the limits imposed by EPA regulations. The defeat device enabled Affected Vehicles to pass emission tests, circumvent regulations, and made Plaintiff and the other Class members unwitting accomplices in the deterioration of their environment.

17. The EPA also determined that, “[d]ue to the existence of the defeat devices in these vehicles, these vehicles do not conform in all material respects to the vehicle specifications described in applications for the certificates of conformity that purportedly cover them.” The Affected Vehicles were sold to Plaintiff and the other Class members in violation of U.S. law as a result.

18. As a result, the U.S. has commanded VW to issue a recall on all Affected Vehicles. California Air Resources Board Executive Officer Richard Corey announced, “Our goal now is to ensure that the affected cars are brought into compliance . . . .”

19. VW has admitted to its liability. A letter from Michael Horn can be located at <http://www.vwdieselinfo.com/>. The letter admits to failing to comply with applicable emissions standards set by the EPA and California Air Resources Board. Volkswagen AG CEO Martin Winterkorn resigned amidst the scandal.

20. VW has indicated that it is “committed to do what must be done,” that it intends to cooperate with the government’s investigation, and that it will notify consumers regarding a remedy when one is determined. Yet, to date, the promise rings hollow, as Plaintiff and the other Class members are left without an adequate remedy.

21. For the Affected Vehicles, there is a correlation between engine performance and emissions. They yield better performance, including increased torque and acceleration, because the pollution controls are disengaged during normal operation. Therefore, if and when the

Affected Vehicles are brought into compliance with regulations, even if at VW's expense, they will no longer perform with the same torque, acceleration, and fuel efficiency as represented and advertised. This failure to conform to advertisements, specifications, and representations will cause additional harm to Plaintiff and the other Class members. They will have slower cars with reduced fuel efficiency, which will require them to buy more diesel fuel and will reduce the resale value of Affected Vehicles. They will not have what they were sold.

22. TDI diesel engines are more costly than regular gas engines. VW charged customers a premium between 7% and 27% for the TDI diesel models.<sup>3</sup>

23. According to CarsDirect.com, "With TDI cars costing more than their gasoline counterparts, they are still only bought by those with a real commitment to the environment, or who want to save money by converting the car to biodiesel fuel."<sup>4</sup>

24. Now that these customers know that truth—that their diesel cars are actually dirty and they have been contributing to, rather than solving, the problem—they reasonably feel cheated. They should be entitled to sell their car back to VW for a fair price on their own terms and sever ties with VW rather than be forced to accept VW's "remedy."

### **CLASS ACTION ALLEGATIONS**

25. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiff brings this action as a class action, individually and on behalf of the following Class of similarly situated individuals:

All persons who purchased or leased in the State of Arkansas one or more of the following cars equipped with a 2.0 liter turbocharged direct injection ("TDI")

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<sup>3</sup> <http://www.bloomberg.com/news/articles/2015-09-23/volkswagen-s-other-diesel-ruse-premium-pricing> (last visited Sept. 29, 2015).

<sup>4</sup> <http://www.carsdirect.com/car-buying/tdi-diesel-cars-pros-and-cons-of-turbocharged-direct-injection> (last visited Sept. 29, 2015).

diesel engine: 2009–2015 VW Jetta, 2009–2014 VW Jetta Sportwagen, 2012–2015 VW Beetle, 2012–2015 VW Beetle Convertible, 2010–2015 Audi A3, 2010–2015 VW Golf, 2015 VW Golf Sportwagen, and 2012–2015 VW Passat.

Excluded from the Class are (i) VW and its owners, officers, directors, employees, agents, and representatives and its parent entities, subsidiaries, affiliates, successors, and assigns; (ii) all VW auto dealerships in the state of Arkansas and their officers, directors, employees, agents, and representatives, parents, subsidiaries, affiliates, successors, and assigns; and (iii) the Court, Court personnel, and members of their immediate families.

26. **Numerosity—Federal Rule of Civil Procedure 23(a)(1).** The members of the Class are so numerous that joinder of the Class members would be impracticable. The precise number of Affected Vehicles is currently unknown but can be ascertained through VW's records. Disposition of this matter as a class action will provide substantial benefits and efficiencies to the Parties and the Court.

27. **Commonality and Predominance—Federal Rule of Civil Procedure 23(a)(2) and 23(b)(3).** Common questions of law and fact exist as to all Class members and predominate over any potential question that affects only individual Class members. Such common questions of law or fact include, inter alia:

- a) whether VW's conduct constituted an unconscionable business act or practice in violation of the Arkansas Deceptive Trade Practices Act;
- b) whether VW's conduct constituted a deceptive business act or practice in violation of the Arkansas Deceptive Trade Practices Act;
- c) whether VW's representations and advertisements constitute express warranties;
- d) whether VW's conduct breached express warranties;
- e) whether VW's conduct breached the implied warranty of merchantability;



f) whether VW's conduct proximately caused damage and losses to Plaintiff and the Class and the measure of those damages and losses;

g) whether in equity and good conscience Plaintiff and the Class is entitled to disgorge VW's unjust retention of profits earned through conduct giving rise to this litigation; and

h) whether Plaintiff and the other members of the Class are entitled to damages, injunctive relief, and other equitable relief, and the measure of such damages and relief.

VW engaged in a common course of conduct giving rise to the legal rights sought to be enforced by Plaintiff, individually and on behalf of the other Class members. Individual questions, if any, pale by comparison, in both quality and quantity, to the numerous common questions that dominate this action.

28. **Typicality—Federal Rule of Civil Procedure 23(a)(3).** Plaintiff's claims are typical of Class members' claims in that Plaintiff's claims and Class members' claims all arise from VW's deceptive and misleading advertising and sale of Affected Vehicles that do not comply with U.S. and State emission standards. Further, there are no defenses available to VW unique to Plaintiff.

29. **Adequacy of Representation—Federal Rule of Civil Procedure 23(a)(4).** Plaintiff and his counsel will fairly and adequately represent the interests of Class members. Plaintiff has no interests antagonistic to, or in conflict with, Class members' interests. Additionally, Plaintiff's attorneys are highly experienced in the prosecution of consumer class actions and intend to vigorously prosecute this action on behalf of Plaintiff and the other Class members.

30. **Insufficiency of Separate Actions—Federal Rule of Civil Procedure 23(b)(1).** Absent a representative class action, members of the Class would continue to suffer the harm described herein, for which they would have no remedy. Even if separate actions could be

brought by individual consumers, the resulting multiplicity of lawsuits would cause undue hardship and expense for both the Court and the litigants, as well as create a risk of inconsistent rulings that might be dispositive of the interests of similarly situated consumers, substantially impeding their ability to protect their interests, while establishing incompatible standards of conduct for VW. The Class thus satisfies the requirements of Fed. R. Civ. P. 23(b)(1).

**31. Declaratory and Injunctive Relief—Federal Rule of Civil Procedure 23(b)(2).**

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

**32. Superiority—Federal Rule of Civil Procedure 23(b)(3).** A class action is superior to other available means for fairly and efficiently adjudicating this controversy, and no unusual difficulties are likely to be encountered in the management of this matter as a class action. Additionally, the damages and other detriment suffered by Plaintiff and the other Class members are relatively small compared to the burden and expense that would be required to individually litigate their claims against VW. So, it would be impracticable for Class members to individually seek redress for VW's wrongful conduct. Even if Class members could afford individual litigation, the court system should not be required to bear the burden and expense of such inefficiency. Individualized litigation would also create the potential for inconsistent or contradictory judgments and increase the delay and expense to all parties and the court system. By contrast, the class action device provides the benefits of a single adjudication, economy of scale, and comprehensive supervision by a single court.

**CLAIMS FOR RELIEF**

**COUNT I**

**Violation of the Arkansas Deceptive Trade Practices Act**

33. Plaintiff repeats and realleges all preceding paragraphs as if fully set forth herein.

34. The Arkansas Deceptive Trade Practices Act prohibits unconscionable, false, and deceptive acts or practices in business, commerce, or trade, including knowingly making false representations as to the characteristics, ingredients, uses, benefits, alterations, source, sponsorship, approval, or certification of goods or services or as to whether goods are original or new or of a particular standard, quality, grade, style, or model and the omission of any material fact in connection with the sale or advertising of goods with the intent that others rely upon the omission. Ark. Stat. §§ 4-88-107; 4-88-108.

35. Plaintiff and the other Class members are consumers that purchased or leased an Affected Vehicle for end use and not for resale.

36. VW's conduct as described herein, in the conduct of trade and commerce in Arkansas, in misrepresenting the capabilities and character of Affected Vehicles and in installing defeat devices designed to deceive Class members and regulators and to conceal and suppress the actual quantity and quality of emissions, constitutes unconscionable, false, and deceptive acts or practices likely to mislead a reasonable consumer.

37. A reasonable consumer would consider whether the vehicle satisfied federal emission standards or had a defeat device a material consideration when purchasing a vehicle. Had Plaintiff or the other Class members known that Affected Vehicles failed to comply with

emission standards or were equipped with an illegal defeat device, they would not have purchased an Affected Vehicle.

38. VW's unfair and deceptive acts or practices were the foreseeable and actual cause of Plaintiff's and the other Class members' damages on account of overpaying for a car that did not conform to specifications. Moreover, if VW cures the noncompliance with emission standards, the Affected Vehicles will not possess the same engine performance and fuel efficiency as before. As a result, the Affected Vehicles will fail to conform to representations, specifications, and warranties even if VW recalls the Affected Vehicles and rectifies their noncompliance with emission standards. In addition, the Affected Vehicles will cost more to operate and maintain, and their resale value will be substantially diminished.

## **COUNT II**

### **Breach of Express Warranty**

39. Plaintiff repeats and realleges all preceding paragraphs as if fully set forth herein.

40. VW, through extensive advertising campaigns, expressly warranted that Affected Vehicles were Clean Diesel, fuel efficient, fast, and powerful. These advertisements and representations cultivated and reinforced the notion that Affected Vehicles were good for the environment because they were "Clean Diesel," while being capable of superior performance. These representations formed the basis of the bargain between Plaintiff and VW, and the other Class members and VW.

41. VW breached these express warranties because the Affected Vehicles did not comply with emission standards at any time prior to, during, or after sale to Plaintiff and the other Class members. The Affected Vehicles actually emit 10–40 times more of certain pollutants than the EPA allows. Accordingly, the Affected Vehicles are not Clean Diesel.

42. Plaintiff and the other Class members suffered damages as a result of VW's breach of express warranties. Plaintiff and other Class members overpaid for their Affected Vehicles that did not conform to specifications and regulations. Moreover, if VW cures the noncompliance with emission standards, the Affected Vehicles will not possess the same engine performance and fuel efficiency as before. As a result, the Affected Vehicles will fail to conform to specifications and warranties even if VW recalls the Affected Vehicles and rectifies their noncompliance with emission standards. In addition, the Affected Vehicles will cost more to operate and maintain, and their resale value will be substantially diminished.

### **COUNT III**

#### **Breach of Implied Warranty of Merchantability**

43. Plaintiff repeats and realleges all preceding paragraphs as if fully set forth herein.

44. Ark. Stat. § 4-2-314 implies in the sale by a merchant of each Affected Vehicle a warranty that the goods shall be merchantable, which requires, among other things, that the goods pass without objection in the trade under the contract description.

45. The Affected Vehicles do not pass without objection in the trade because, at the time of sale and all other times, they were equipped with a defeat device designed to circumvent emission testing and emit 10–40 times more of certain pollutants than legally permitted.

46. Plaintiff and the other Class members were damaged by VW's breach of the implied warranty of merchantability. Plaintiff and the other Class members overpaid for their Affected Vehicles that were not at the time of sale, and are not now, merchantable. Moreover, if VW removes the defeat device and cures the noncompliance with emission standards so that the vehicles are merchantable, the Affected Vehicles will not possess the same engine performance and fuel efficiency as before. As a result, the Affected Vehicles will fail to conform to

specifications and warranties even if VW recalls the Affected Vehicles and rectifies their noncompliance with emission standards. In addition, the Affected Vehicles will cost more to operate and maintain, and their resale value will be substantially diminished.

47. All conditions precedent have occurred or been performed.

48. VW has actual notice of its breach of warranty. Through the EPA Notice of Violation, VW learned of the facts giving rise to this litigation. VW's warranty disclaimers, exclusions, and limitations, to the extent that they may be argued to apply, were at the time of sale and continue to be unconscionable and unenforceable to disclaim liability for a known, intentionally designed condition. VW knew when it made the warranties, and any disclaimers, limitations, or exclusions that Affected Vehicles did not conform to U.S. EPA emission standards and also that they were equipped with a defeat device to conceal the noncompliance until long after the warranty period expired. Curing VW's noncompliance with emission standards will negatively impact the power, performance, and efficiency of Affected Vehicles, so affording VW an opportunity to cure will be futile.

#### **COUNT IV**

##### **Unjust Enrichment**

49. Plaintiff repeats and realleges paragraphs 1–32 as if fully set forth herein.

50. Plaintiff and the other Class members conferred a benefit to VW by paying premiums for Affected Vehicles, expecting them to comply with emission standards. VW appreciated the payment while intentionally equipping Affected Vehicles with defeat devices designed to defraud regulators and the Class members and cultivating a brand identity associated with environmentalism and clean energy. As a result, VW was able to sell vehicles that did not comply with emission standards.

51. In equity and good conscience, VW should not retain this benefit to the detriment of Plaintiff and the other Class members. As a result, Plaintiff and the other Class members are entitled to disgorge the benefits the Class conferred to VW on account of its fraudulent scheme.

**Request For Relief**

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, respectfully requests that the Court enter judgment against VW as follows:

- a. Certifying the proposed Classes, appointing Plaintiff's Counsel as Class counsel, and appointing Plaintiff as Class Representative;
- b. Awarding Plaintiff and the other Class members actual, compensatory, nominal, and consequential damages;
- c. Awarding Plaintiff and the other Class members statutory damages;
- d. Awarding Plaintiff and the other Class members declaratory and injunctive relief;
- e. Revocation of acceptance;
- f. Awarding Plaintiff and the other Class members treble or exemplary damages, should the finder of fact determine that VW acted with malice or oppression;
- g. Awarding Plaintiff and the other Class members pre-judgment and post-judgment interest on all amounts awarded;
- h. Awarding Plaintiff and the other Class members reasonable attorneys' fees, costs, and expenses; and
- i. Granting such other relief as the Court deems just and appropriate.

**Jury Trial Demand**

Plaintiff, individually and on behalf of all others similarly situated, hereby requests a jury trial, pursuant to Federal Rule of Civil Procedure 38, on all claims so triable.

Dated: October 13, 2015

Respectfully submitted,

By: 

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