

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

MARLENE A. LEMIEUX,)	
individually and on behalf)	
of all others similarly situated)	
)	
Plaintiffs,)	
)	CIVIL CASE NO. <u>4:15-cv-157 (CDL)</u>
v.)	
)	CLASS ACTION
VOLKSWAGEN GROUP OF)	
AMERICA, INC.,)	
)	
Defendant.)	

CLASS ACTION COMPLAINT

COMES NOW, MARLENE A. LEMIEUX (“Plaintiff”), in the above-styled action, files her Complaint both individually and on behalf of a class of similarly-situated individuals against the Defendant, VOLKSWAGEN GROUP OF AMERICA, INC. (“Defendant”), and shows as follows:

INTRODUCTION

1. This class action Complaint concerns Defendant’s blatant avoidance of federal law in installing “defeat devices” on diesel powered Volkswagen and Audi vehicles sold in the United States from 2009 to September of 2015. Defendant specifically advertised said vehicles to be environmentally friendly automobiles capable of providing the best of both worlds to American consumers with regard to performance, fuel economy, and emissions. Although Defendant was aware of the fact that the “defeat device” specially programmed its diesel-powered vehicles to produce an unlawful amount of pollutants into the air, while also allowing the vehicles to cheat on U.S. emissions tests, Defendant continued to represent its diesel line of vehicles as “green” to consumers and referred to the vehicles as “clean diesel” automobiles. However, following a September 18, 2015 Notice of Violation submitted to Defendant by the Environmental Protection Agency, Defendant has admitted that said representations were completely false. In fact, Defendant’s diesel-powered vehicles are the opposite of “green,” producing nearly 40 times

the legal amount of pollutants into the atmosphere while operating on the road. In this case, Defendant chose to put profits above being truthful to its customers. As a result of this malicious and fraudulent conduct, Defendant has harmed the environment, as well as American consumers throughout the country.

PARTIES

2. Plaintiff is a Georgia citizen, a resident of Harris County, Georgia, and is over 18 years of age.

3. Defendant is a corporation doing business in every U.S. state and the District of Columbia, is organized as a corporation under the laws of New Jersey, and has its principal place of business at 2200 Ferdinand Porsche Drive, Herndon, Virginia 20171. Thus, Defendant is a citizen of New Jersey and Virginia pursuant to 28 U.S.C. § 1332.

4. At all relevant times pertaining to this Complaint, Defendant manufactured, distributed, sold, leased, and warranted the Defeat Device Vehicles under the Volkswagen and Audi brand names throughout the United States. Defendant and/or its agents designed its “Clean Diesel” engines and engine control systems in the Defeat Device Vehicles, including the “defeat device” itself. Volkswagen also developed and disseminated owners’ manuals and warranty booklets, advertisements, and other promotional materials relating to the Defeat Device Vehicles.

JURISDICTION AND VENUE

5. This action arises under the U.S. Class Action Fairness Act of 2005, 28 U.S.C. Sections 1332(d), 1453, and 1711-15, because at least one Class member is of diverse citizenship from one defendant, there are more than 100 Class members, and the aggregate amount in controversy exceeds \$5 million, exclusive of interests and costs.

6. This Court has subject matter jurisdiction over this case pursuant to 28 U.S.C. § 1332.

7. This Court has personal jurisdiction over Defendant, as Defendant conducts business in Georgia, and has sufficient minimum contacts with Georgia.

8. Venue is proper in this Court under 28 U.S.C. § 1391, as the unlawful practices alleged herein have been committed within the Middle District of Georgia, and Defendant has caused harm to Class members residing in said District.

FACTUAL ALLEGATIONS

9. This case arises out Defendant's intentional violation of the laws of the United States, as well as the rules and regulations set forth by the Environmental Protection Agency, by selling diesel-powered vehicles in the United States equipped with a "defeat device" in what Defendant purported to be "Clean Diesel" automobiles.

10. Defendant marketed its diesel vehicles to be low-emission, fuel-efficient cars. The "Clean Diesel" marketing message is commonly associated with Defendant, and is at the core of Defendant's image in the United States. The "Clean Diesel" brand has ultimately led to unprecedented success for Defendant. As a result, Defendant has become the largest seller of diesel passenger vehicles in the United States.



11. On September 18, 2015, the Environmental Protection Agency submitted a Notice of Violation to Defendant, stating that Defendant had cheated emissions standards in their diesel-powered vehicles through the use of a “defeat device.”

12. The “defeat device” is a form of software installed in Defendant’s diesel-powered vehicles which alters the emissions systems of the vehicles’ engine. Modern engines typically include computerized control systems that can gauge engine performance and efficiency. Among other things, these systems monitor a vehicle’s engine and its emissions, control the fuel that is injected into the engine, track the engine’s valve and ignition time, and ensure that the proper amount of air is flowing into the vehicle’s engine. These sensors also make exhaust system readings, which can measure the car’s exhaust and the chemical components within that exhaust. Like most modern engines, Defendant’s vehicles are equipped with computerized engine systems that monitor vehicle performance and emissions.

13. These computer systems allow for emission testing stations to plug a diagnostic device into the car’s on-board diagnostic port. Using the diagnostic device allows for the emissions testing station to measure the substances emitted from the vehicle, which ultimately gives them the ability to track the vehicle’s compliance with EPA rules and regulations.

14. Knowing that emission testing stations utilize each vehicle’s on-board computer system to measure emissions, Defendant wrongfully programmed the engine computers of its diesel powered vehicles with the “defeat device” software. Such a device can specifically detect when a vehicle is being tested for emissions compliance. In fact, the device ensured that the vehicle subject to emissions testing would meet the EPA’s emissions standards at the time of the test, concealing the fact that the system would subsequently shut off most of the emission control systems in the car following the test’s completion. Ultimately the test results would show that Defendant’s vehicles were well within the emission levels require for compliance with U.S. standards, however the level of emissions would change dramatically after the vehicles returned to the road. Outside of an emissions test, the software allowed, and continues to allow, the Defeat Device Vehicles to emit nitrogen oxides at up to 40 times the standard allowed by federal law.

15. Nitrogen oxide pollution contributes to ground-level ozone and fine particulate matter, Exposure to such pollutants has been associated with a variety of serious health risks involving respiratory and cardiovascular illness.

16. Pursuant to the Clean Air Act, strict standards are imposed for vehicle emissions like the one's emitted from Defendant's vehicles. Such standards require vehicle manufacturers to certify to the EPA that the vehicles sold in the United States meet applicable federal emissions standards to control air pollution. Each and every vehicle sold in the United States must meet the EPA's standards and be covered by an EPA-issued certificate of conformity. Cars with "defeat devices" like the ones used by Defendant cannot be certified by the EPA, as they fail to meet the necessary emission standards.

17. Notwithstanding the Clean Air Act and the EPA's rules and regulations regarding vehicle emissions, Defendant intentionally designed and sold their diesel-powered vehicles with a defeat device from 2009 to September of 2015, allowing them to cheat U.S. Emissions standards and mislead consumers regarding the amount of pollutants their vehicles created. Nearly 11 million Volkswagen diesel-powered vehicles and 2.1 million Audi diesel-powered vehicles are equipped with said devices overall.

18. While aware of the fact that their vehicles were equipped with the defeat device, as well as the capabilities of said device and the fact that their vehicles were actually emitting substantially higher amounts of pollutants into the atmosphere, Defendant continued to advertise its diesel vehicles as low-emission, environmentally friendly, and fuel-efficient cars. Their success in the diesel market is primarily based on the promotion of their fraudulent representations to American consumers.

19. Defendant continued to advertise their vehicles as environmentally friendly "Clean Diesel" automobiles, all the while knowing that the "defeat devices" were allowing their vehicles to emit 40 times the legal limit of emissions into the atmosphere. In claiming that their "Clean Diesel" automobiles were both environmentally friendly, fuel efficient, and capable of efficient performance, Defendant stated that driving said vehicles would be "Cake. Eating it too."



20. Defendant launched a “Think Blue” program promoting not only the fact that their vehicles were “responsible” and “environmentally conscious”, but also the fact that their company exhibited said qualities as well.



21. In addition to its eco-friendly advertising, Defendant directed consumers to www.clearlybetterdiesel.org, a website Defendant used to promote its “clean” diesel technology, which says the technology reduces smog and “meets the highest standards in all 50 states, thanks to ultra-low sulfur diesel (ULSD) fuel and innovative engine technology that burns cleaner.”





22. Defendant states on its website that it “takes environmental responsibility very seriously. When it comes to making our cars as green as possible, Volkswagen has an integrated strategy on reducing fuel consumption and emissions, building the world’s cleanest diesel engines and developing totally new power systems, which utilize new fuel alternatives.” It also notes that the Audi A3 TDI and the Volkswagen Jetta TDI were named the 2010 Green Car of the Year and the 2009 Green Car of the Year, respectively. Both models were later determined to be equipped with “defeat devices.”

23. According to the EPA’s Notice of Violation, which was submitted to Defendant on September 18, 2015, Defendant installed its “defeat device” in at least the following diesel models: 2009-2015 Volkswagen Jetta, 2009-2015 Volkswagen Golf, 2014-15 Volkswagen Passat; 2009-2014 Volkswagen Jetta Sportwagen; and 2009-2015 Audi A3. Discovery will potentially reveal additional models and model years that can be included with the vehicles referenced above. The following table provides the EPA’s list of affected vehicles in their Notice of Violation to Defendant:

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

24. In addition to the egregious concealment of the “defeat devices,” Defendant charged substantial premiums for the Defeat Device Vehicles. This ultimately led to consumers paying thousands of dollars more for the diesel version of a particular Volkswagen or Audi automobile. Compared to the base models offered by Defendant, the “Clean Diesel” models were typically two to three thousand dollars or more in price. For example, for the 2015 Volkswagen Jetta, the base S model with a gasoline engine has a starting MSRP of \$18,780. The base TDI S CleanDiesel Jetta, however, has a starting MSRP of \$21,640, a \$2,860 increase for the diesel version of the vehicle. The following table lists the premiums for each affected model:

“Clean Diesel” Price Premiums

Model	Base	Mid-level	Top-line
VW Jetta	\$2,860	\$4,300	\$6,315
VW Beetle	\$4,635	n/a	\$2,640
VW Golf	\$2,950	\$1,000	\$1,000
VW Passat	\$5,755	\$4,750	\$6,855
Audi A3	\$2,805	\$3,095	\$2,925

25. Plaintiff and Class members were willing to pay higher premiums like the ones above for Defendant’s diesel-powered vehicles based on the fact that the vehicles were environmentally-friendly, “green” cars that produced low emissions and performed efficiently.

26. Although the EPA has ordered Defendant to recall the Defeat Device Vehicles and repair them so that they comply with EPA emissions requirements at all times during normal operation, purchasers of the Defeat Device Vehicles will continue to suffer significant harm. Defendant will be unable to make their diesel-powered vehicles comply with U.S. emissions standards without substantially limiting the performance of their vehicles. The end result would have a negative effect on the vehicle’s efficiency as a whole, and would limit the fuel economy that Defendant has continually bolstered in its marketing the Defeat Device Vehicles.

27. The value of the Defeat Device Vehicles will diminish rapidly as a result of Defendant’s fraudulent conduct. Not only did Plaintiff and Class members pay too much for cars now worth

substantially less, but they will end up paying more to fuel their less efficient cars over the years they own their vehicles.

28. As a result of Defendant's unfair, deceptive, and/or fraudulent business practices, Plaintiff and Class members have suffered losses in money and/or property.

29. Had Plaintiff and Class members known of the defeat device's presence in their vehicles at the time they purchased their Defeat Device Vehicles, they would not have purchased those vehicles.

30. Defendant's conduct, which amounts to an intentional and deliberate strategy to mislead the American public into believing that purchasing Defendant's cars would help rather than harm the environment, has caused serious harm to consumers across the country.

31. Defendant's former CEO, Martin Winterkorn, specifically stated that he was "deeply sorry that we have broken the trust of our customers and the public," and that Defendant would be suspending sales of the diesel-powered vehicles with the defeat devices. Defendants have ultimately admitted that they cheated the EPA's mandatory emissions standards. However, Defendant's actions go further than cheating those standards. Defendant cheated its customers, harmed the environment, and broke the trust of the American public as a whole.

NAMED PLAINTIFF ALLEGATIONS

34. Plaintiff purchased one of Defendant's vehicles, a diesel-powered Volkswagen Jetta Sportwagen, in Columbus, Georgia. The vehicle is one of the affected vehicles listed by the EPA in its Notice of Violation to Defendant. Plaintiff still owns the car.

35. Plaintiff purchased the car specifically for its fuel efficiency and "Clean Diesel" technology. In purchasing her vehicle, Plaintiff relied on the representation that the Volkswagen Sportwagen was capable of high gas mileage and featured a clean, environmentally friendly diesel engine. These factors were substantially important to Plaintiff in making her decision to purchase the vehicle.

36. On September 23, 2015, Plaintiff first learned of Defendant's scheme to cheat the EPA's emission standards, and that her car does not, in fact, meet the regulatory requirements previously represented to her.

CLASS ALLEGATIONS

37. Plaintiff seeks to represent a Class of plaintiffs as follows:

All United States consumers who purchased a Volkswagen “Defeat Device Vehicle.”

AND

All Georgia consumers who purchased a Volkswagen “Defeat Device Vehicle.”

38. 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 are Volkswagen and its subsidiaries and affiliates; all persons who make a timely election to be excluded from the Class; governmental entities; and the judge to whom this case is assigned and his/her immediate family. Plaintiff reserves the right to revise the Class definition based upon information learned through discovery.

39. Certification of Plaintiff’s claims for class-wide treatment is appropriate because Plaintiff and Class members can prove the elements of their claims on a class-wide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claim.

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

41. The proposed class should be certified under FED. R. CIV. P. 23(a), and Fed. R. Civ. P. 23(b)(2), and/or (b)(3).

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

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

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

43. Common questions of law or fact predominate over individualized questions. These questions include, but are not limited to, the following:

- a. Whether Defendant's automobiles meet the EPA emission requirements;
- b. Whether Defendant installed a "defeat device" in order to make it appear that its automobiles meet the EPA emission requirements;
- c. Whether such conduct is deceptive;
- d. Whether such conduct violates its conduct with its customers;
- e. Whether the Defendants misrepresented that its automobiles met the EPA emission requirements in order to charge a fee or obtain new customers;
- f. Whether injunctive relief, restitution and/or other equitable relief is an appropriate remedy to correct the alleged violations.

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

44. Plaintiff's claims are typical of the claims that a Class member could assert for Defendant's fraudulent conduct.

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

45. Plaintiff does not have any conflicts with the proposed Classes and there are no defenses (to Plaintiff's knowledge) that are unique to Plaintiff's circumstances. Plaintiff has also retained counsel in this case who are well qualified and experienced in prosecuting class actions. Plaintiff will fairly and adequately protect the interest of the Class.

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

46. Defendant acted in a uniform manner towards the putative Class members making injunctive, declaratory and other equitable relief appropriate.

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

47. As noted above, common questions of law or fact predominate over individualized inquiries. The class action is a superior method for adjudicating these claims because it provides for a

more efficient method of resolving questions over the legality of the Defendant's practices and without a class action it is unlikely that absent class members would prosecute this case on an individual basis given the amounts in controversy.

WHEREFORE, Plaintiff and Class members request a determination from this Court that the action is properly maintainable as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure.

COUNT ONE: BREACH OF CONTRACT

48. Plaintiff incorporates by reference the allegations in paragraphs 1 through 47 as if fully set forth herein.

49. Plaintiff brings a cause of action against Defendant for breach of contract on behalf of herself and the Class.

50. The installation of a "defeat device" was not authorized under the terms of Plaintiff and Class members' contract with Defendant.

51. Defendant breached said contract by installing the "defeat device" in violation of the duty of good faith and fair dealing.

52. Defendant's misrepresentations and omissions alleged within this Complaint, including Defendant's failure to disclose the existence of the "defeat device" caused Plaintiff and the other Class members to purchase Defeat Device Vehicles. Absent the existence of Defendant's deception, Plaintiff and Class members would not have purchased these Defeat Device Vehicles, nor would they have purchased said vehicles for the higher price they ultimately paid. If Plaintiff and Class members had known of Defendant's inherently deceptive conduct pertaining to their "Clean Diesel" vehicles, they would have purchased a less expensive vehicle without a "Clean Diesel" engine system with a "defeat device."

53. Plaintiff and Class members suffered harm as a result of the Defendant's breach, and did not receive the benefit of their bargain.

WHEREFORE, Plaintiff and Class members demand an award of all damages allowed by law for Count One of this Complaint, including, but not limited to, compensatory damages in an amount in excess of the jurisdictional minimum of this Court, together with interest, attorneys' fees and costs.

COUNT TWO: BREACH OF EXPRESS WARRANTY

54. Plaintiff incorporates by reference the allegations in paragraphs 1 through 53 as if fully set forth herein.

55. Plaintiff brings this cause of action against Defendant for breach of express warranty on behalf of herself and the Class.

56. Defendant made numerous representations, descriptions, and promises to Plaintiff and Class members regarding the performance and emission controls of its diesel vehicles.

57. Defendant expressly provided in their advertisements that their diesel-powered vehicles would produce a low amount of emissions. Further, Defendant marketed their diesel-powered vehicles as "Clean Diesel," "environmentally friendly," and "green" vehicles.

58. However, because Defendant installed "defeat devices" in their diesel vehicles, Plaintiff and Class members' vehicles produced emissions at a substantially higher rate. Not only were the emissions from the vehicles higher than originally warranted by Defendant, but they were also higher than the legal limit set forth by the EPA.

59. Defendant knew, or should have known, that its representations, descriptions, and promises were completely false. Additionally, Defendant was aware that it had installed "defeat devices" in the vehicles it sold to Plaintiff and Class members, but continued to market the vehicles as environmentally friendly vehicles.

60. Plaintiff and Class members relied on said warranties when purchasing her vehicle, and said vehicles failed to perform as warranted.

61. Defendant's "defeat devices" caused the emission reduction systems in their vehicles to perform at levels substantially worse than advertised. Thus, Plaintiff and Class members' vehicles produced a substantially higher amount of pollutants than Defendant warranted. The "defeat devices" are

defects in Plaintiff and Class members' vehicles, and Defendant breached its express warranty by providing a product that contains an undisclosed defect to Plaintiff and Class members.

62. As a direct and proximate result of Defendant's egregiously misleading representations and warranties, Plaintiff and Class members suffered significant harm.

WHEREFORE, Plaintiff and Class members demand an award of all damages allowed by law for Count Two of this Complaint, including, but not limited to, compensatory damages in an amount in excess of the jurisdictional minimum of this Court, together with interest, attorneys' fees and costs.

COUNT THREE: BREACH OF IMPLIED WARRANTY

63. Plaintiff incorporates by reference the allegations in paragraphs 1 through 62 as if set forth herein.

64. Plaintiff brings a cause of action against Defendant for breach of implied warranty on behalf of herself and the Class.

65. Defendant made numerous representations, descriptions and promises to Plaintiff and Class members regarding its "Clean Diesel" engines and its overall functionality.

66. Defendant knew that its representations as to its "Clean Diesel" vehicles were false, and continued to market them as environmentally friendly automobiles to Plaintiff and Class members.

67. Plaintiff and Class members reasonably relied on Defendant's representations when they purchased the Defeat Device Vehicles.

68. Defendant's vehicles did not conform to the promises or affirmations of fact made in Defendant's advertisements, including the representation that Defendant's vehicles would meet even the most demanding emission standards.

69. As a direct and proximate result of Defendant's Defeat Device Vehicles failing to conform to Defendant's implied warranty of regarding their functionality, Plaintiff and Class members have suffered harm.

WHEREFORE, Plaintiff and Class members demand an award of all damages allowed by law for Count Three of this Complaint, including, but not limited to, compensatory damages in an amount in excess of the jurisdictional minimum of this Court, together with interest, attorneys' fees and costs.

COUNT FOUR: FRAUD

70. Plaintiff incorporates by reference the allegations in paragraphs 1 through 69 as if set forth herein.

71. Plaintiff brings a cause of action against Defendant for fraud on behalf of herself and the Class.

72. Defendant misrepresented that Plaintiff and Class members' met all EPA environmental regulations and did not contain a "defeat device" specifically designed to defeat emission testing programs.

73. Defendant willfully and intentionally concealed and suppressed material facts concerning the quality and character of Defeat Device Vehicle. In doing so, Defendant acted in such a manner as to deceive and mislead Plaintiff and Class members.

74. Defendant engaged in deception to evade federal and state vehicle emissions standards by installing "defeat devices" designed to conceal its vehicles' emissions of pollutants into the atmosphere.

75. The "defeat devices" installed on the vehicles were designed to operate only during emissions certification testing. In doing so, the vehicles would show a substantially lower amount of emissions when being tested for compliance with EPA regulations, and then subsequently return to an unlawfully high level of emissions after the test was complete.

76. Defendant's fraudulent conduct allowed for the vehicles to pass the emissions certification based on false readings. Said conduct allowed for Defendant's vehicles to operate on the roads while producing noxious emissions at 40 times the level allowed by U.S. standards.

77. Plaintiff and Class members reasonably relied upon Defendant's false representations regarding their "Clean Diesel" vehicles and had no way of knowing that the representations were false and misleading.

78. Plaintiff and Class members have sustained damages as a result of Defendant's false and/or reckless misrepresentations because they own vehicles that are diminished in value as a result of Defendant's concealment of the true quality and quantity of those vehicles' emissions and Defendant's failure to timely disclose the actual emissions qualities and quantities to hundreds of thousands of Volkswagen and Audi diesel-powered vehicles.

WHEREFORE, Plaintiff and Class Members demand an award of all damages allowed by law for Count Four of this Complaint, including, but not limited to, compensatory and punitive damages in an amount in excess of the jurisdictional minimum of this Court, together with interest, attorneys' fees and costs.

COUNT FIVE: NEGLIGENT MISREPRESENTATION

79. Plaintiff incorporates by reference the allegations in paragraphs 1 through 78 as if set forth herein.

80. Plaintiff brings a cause of action against Defendant for negligent misrepresentation on behalf of herself and the Class.

81. Defendant represented to Plaintiff and Class members that their vehicles met all EPA environmental regulations and did not contain a "defeat device" specifically designed to defeat emission testing programs.

82. Defendant lacked reasonable grounds for believing the truth of this representation, as Defendant knew or should have known that it created a vehicle that it marketed as able to meet all EPA emissions standards when in fact it did not.

83. Plaintiff and Class members justifiably relied on Defendant's representations, which led to their purchase of the Defeat Device Vehicles.

84. Plaintiff and Class members suffered harm as a result of Defendant's negligent misrepresentation.

WHEREFORE, Plaintiff and Class members demand an award of all damages allowed by law for Count Five of this Complaint, including, but not limited to, compensatory and punitive damages in an

amount in excess of the jurisdictional minimum of this Court, together with interest, attorneys' fees and costs.

COUNT SIX: UNJUST ENRICHMENT

85. Plaintiff incorporates by reference the allegations in paragraphs 1 through 84 as if set forth herein.

86. Plaintiff brings a cause of action against Defendant for unjust enrichment on behalf of herself and the Class.

87. Defendant charged Plaintiff and Class members and retained a premium for all "Clean Diesel" vehicles, which were said to meet the EPA emission standards, at a higher rate than other vehicles offered. Said vehicles failed to meet the standards represented by Defendant.

88. Instead, Defendant's vehicles were deliberately designed to cheat U.S. emission standards. Defendant marketed the diesel-powered vehicles as environmentally-friendly automobiles, and sold them at a higher cost for exactly that reason. However, the vehicles were, and continue to be, the opposite of environmentally-friendly. Thus, Defendants knowingly obtained the proceeds by deceiving Plaintiff and Class members with regard to their "Clean Diesel" vehicles.

89. Retention of the additional proceeds from the excessive premiums (or any other benefit received) is unjust and unreasonable, as the profits obtained from "Clean Diesel" vehicles were wrongfully obtained by deceit and continue to belong to Plaintiff and Class members.

90. As a direct and proximate result of the above described practices, Plaintiff and members of the Georgia Subclass sustained damages in an amount to be proven at trial.

WHEREFORE, Plaintiff and Class members request that this Court enter an injunction directing Defendants to perform an equitable accounting over the fees improperly charged and unjustly retained, create a constructive trust, and disgorge the *res* of said constructive trust to the putative Class members via resulting restitution. To the extent the members of the putative Class members cannot be located, said disgorgement via restitution should be *cy pres*.

COUNT SEVEN: VIOLATION OF MAGNUSON-MOSS WARRANTY ACT

91. Plaintiff incorporates by reference each and every prior and subsequent allegation of this Complaint as if fully set forth herein.

92. Plaintiff and Class members assert this Count on behalf of themselves and the other members of the Class.

93. Defendant's Defeat Device Vehicles are a "consumer product," as defined in 15 U.S.C. § 2301(1).

94. Plaintiff and Class members are "consumers," as defined in 15 U.S.C. § 2301(3).

95. Defendant is a "warrantor" and "supplier" as defined in 15 U.S.C. § 2310(4) and (5).

96. 15 U.S.C. § 2310(d) (1) provides a cause of action for any consumer who is damaged by the failure of a warrantor to comply with an implied warranty.

97. Defendant provided Plaintiff and Class members with "implied warranties," as defined in 15 U.S.C. § 2301(7).

98. Defendant has breached these warranties as described in more detail above. Defendant's Defeat Device vehicles are defective, as described above, which resulted in the problems and failures also described above.

99. By Defendant's conduct as described herein, including Defendant's knowledge of their defective vehicles and inaction when faced with such knowledge, Defendant has failed to comply with its obligations under its written and implied promises, warranties, and representations.

100. All jurisdictional prerequisites have been satisfied.

101. Plaintiff and Class members are in privity with Defendant, as they purchased the defective product from Defendant and/or its agents.

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

WHEREFORE, Plaintiff and Class members demand an award of all damages allowed by law for Count Seven of this Complaint, including, but not limited to, compensatory, treble, and punitive damages in an amount in excess of the jurisdictional minimum of this Court, together with interest, attorneys' fees and costs.

JURY DEMAND

PLAINTIFF AND CLASS MEMBERS DEMAND A JURY FOR ALL ISSUES TRIABLE.

Respectfully Submitted,

/s/ J. Benjamin Finley

J. Benjamin Finley

GA Bar No. 261504

bfinley@thefinleyfirm.com

MaryBeth V. Gibson

GA Bar No.725843

mgibson@thefinleyfirm.com

George W. Walker, III

GA Bar No.548316

gwwalker@thefinleyfirm.com

R. Walker Garrett

GA Bar No. 626132

wgarrett@thefinleyfirm.com

OF COUNSEL:

THE FINLEY FIRM, P.C.

200 13th Street

Columbus, Georgia, 31901

(706) 322-6226 (*phone*)

(706) 322-6221 (*fax*)

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

Marlene A. Lemieux, Individually and on behalf of those similarly situated

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

(c) Attorneys (Firm Name, Address, and Telephone Number) J. Benjamin Finley, MaryBeth V. Gibson, T: 706-322-6226 George W. Walker, III & R. Walker Garrett F: 706-622-6221 The Finley Firm, PC, 200 13th Street, Columbus, GA 31901

DEFENDANTS

Volkswagen Group of America, Inc.

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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation).

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

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

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, 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): 28 USC 1332. Brief description of cause: Fraudulent concealment of vehicle defect

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 09/30/2015 SIGNATURE OF ATTORNEY OF RECORD /s/ J. Benjamin Finley

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.