UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

MICHAEL MASTON, on behalf of himself and all others similarly situated,

Plaintiff,

v.

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

Defendants.

Case No. 2:15-cv-213

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

The allegations herein are based on personal knowledge as to Plaintiff's own conduct and are made on information and belief as to all other matters based on an investigation by counsel:[1]

I. INTRODUCTION

1. Plaintiff Michael Maston ("Plaintiff") brings this class action against Volkswagen Group of America, Inc. ("Volkswagen" or "Defendant") for violations of various state statutes and common law duties, individually and on behalf of all persons in the United States who own, owned, lease or leased one or more of the following 2.0 liter diesel-engine vehicles: the 2009 to 2015 model year Volkswagen Jetta; the 2009 to 2014 model year Volkswagen Jetta Sportwagen; the 2010 to 2015 model year Volkswagen Golf; the 2012 to 2015 model year Volkswagen Beetle; the 2012 to 2015 model year Volkswagen Beetle Convertible; the 2012 to 2015 model

[1] Counsel's investigation includes an analysis of publicly available information, news articles, reports to federal regulators, other statistics and additional analysis.

year Volkswagen Passat; the 2015 model year Volkswagen Golf Sportwagen; and the 2010 to 2015 model year Audi A3 (collectively, the "Non-compliant Vehicles").

2. As detailed herein, Plaintiff and the Class suffered diminished market value and other damages related to the Non-compliant Vehicles purchased or leased by Plaintiff and the Classes (defined *infra*) as a direct result of Volkswagen omitting material information and issuing misleading statements about the emission standards of those vehicles. As disclosed in letters by the United States Environmental Protection Agency ("EPA") and Air Resource Board of the California Environmental Protection Agency ("Cal EPA"), dated September 18, 2015,[2] Volkswagen sold the Non-compliant Vehicles with a "defeat device" system to falsely indicate compliance with federal and California environmental laws when undergoing emission testing. In reality, the "defeat device" caused the Non-compliant Vehicles to emit, in some cases, up to 40 times the EPA allowable emission of nitrogen oxides ("NOx"). See Exhibit A at 3-4.

3. NOx is a highly toxic emission. In a 1997 report entitled *Nitrogen Oxides: Impacts on Public Health and the Environment*, the EPA characterizes nitrogen oxides as some of the most dangerous and harmful pollutants to human health and the natural environment.[3] The report describes how, *inter alia*, NOx pollutants make their way into the drinking water creating a health hazard for infants and how even short-term exposure to NOx pollutants is associated with a variety of acute and chronic health effects, especially in children. The report also lists the harmful effects of NOx pollutants on the environment. Given the toxic nature of NOx, the emission of the pollutant from vehicles, including the Non-compliant Vehicles, is regulated and subject to specific limitations. *See* 40 C.F.R. § 86.1811-04; *see also* Exhibit A at 2 ("Light-duty

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2 The EPA and Cal EPA letters are attached hereto as Exhibits A and B, respectively.

3 *See* Office of Air and Radiation, *Nitrogen Oxides: Impacts on Public Health and the Environment*, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, (Aug., 1997), available at http://www3.epa.gov/ttn/oarpg/t1/reports/noxrept.pdf.

vehicles must satisfy emission standards for air pollutants, *including NOx*") (citing 40 C.F.R. § 86.1811-04) (emphasis added).

4. Compliance with emission regulations has been a cornerstone of Volkswagen's marketing campaigns for its diesel vehicles. For example, since 2008, Volkswagen has marketed its 2.0 liter diesel engine vehicles as having the "world's cleanest diesel engines"[4] that comply with the world's "most demanding emissions laws."[5] On Volkswagen's main website *VW.com*, Volkswagen states that, with respect to its TDI Clean Diesel vehicles,[6] "[Volkswagen's] commitment to making vehicles that are eco-conscious is part of bigger thinking."[7] In Volkswagen brochures, distributed to customers and the Class, Volkswagen has touted that its "Clean diesel vehicles meet the strictest EPA standards in the U.S. Plus, TDI technology helps reduce sooty emissions by up to 90%, giving you a fuel-efficient and eco-conscious vehicle." See Exhibit C.[8] The brochure identifies the Volkswagen Jetta TDI, the Volkswagen Jetta SportWagen TDI, the Volkswagen Golf TDI, the Volkswagen Passat TDI, and the Volkswagen Beetle TDI – each of which is now included in the Non-compliant Vehicles list.

5. Volkswagen's statements were blatantly false. As detailed in the EPA's Notice of Violation ("NOV") letter dated September 18, 2015, Volkswagen admitted to the EPA and the Cal EPA that it manufactured and installed sophisticated software in all of the Non-compliant

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[4] Environment, *Environmental Responsibility*, VW, available at http://update.vw.com/environment/index.htm (last visited Sept. 20, 2015).

[5] About Audi, *Responsibility Report 2015*, AUDI USA, http://www.audiusa.com/content/dam/audiusa/Documents/Audi_Responsibility_Report_Web.pdf (last visited Sept. 20, 2015) (hereinafter, "Audi Responsibility Report").

[6] References to "Clean Diesel" herein are to Volkswagen's marketing campaign for the Non-compliant Vehicles.

[7] Features, *Clean Diesel*, VW, http://www.vw.com/features/clean-diesel/ (last visited Sept. 20, 2015).

[8] Volkswagen Brochures, *TDI Volkswagen Brochure*, GALPIN VOLKSWAGEN, http://www.galpinvolkswagen.com/Media/Default/Page/brochures/pdf/tdi.pdf (last visited Sept. 20, 2015) (Exhibit C).

Vehicles, which detected when the vehicle was undergoing EPA emission standards compliance testing, in order to manipulate the emission results. See Exhibit A. Specifically, Volkswagen programmed the Noncompliant Vehicles to fully engage their emission control systems only when the Non-compliant Vehicles' software detected it was receiving various inputs associated with the EPA's emission standards compliance testing. See id. When Volkswagen's software detected the various inputs associated with the EPA's emission testing, it activated a pre-loaded program designed to produce EPA compliant (but false) emission results. See id. During non-testing conditions, the Non-compliant Vehicles ran a program that was designed to substantially reduce the effectiveness of their emission control system. See id. As a result of Volkswagen's actions, the Non-compliant Vehicles emitted NOx at 10 to 40 times above EPA compliant levels during real world driving conditions. See id.

6. The software Volkswagen created to manipulate the EPA's emission compliance tests is a "defeat device," as defined by the Clean Air Act ("CAA"). See 42 U.S.C. § 7522(a)(3)(B). A "defeat device" is designed to bypass, defeat, or render inoperative a vehicle's emission control system put in place to comply with CAA emission standards. See id. As stated by Cynthia Giles, Assistant Administrator for the Office of Enforcement and Compliance Assurance at the EPA, in the EPA's September 18, 2015 press release, announcing Volkswagen's wrongdoing: "Using a defeat device in cars to evade clean air standards is illegal and a threat to public health."[9]

7. The disclosures have revealed that approximately 482,000 Volkswagen diesel vehicles are in violation of EPA and Cal EPA emission standards. *See* EPA Press Release. More

[9] 2015 Press Releases, EPA, *California Notify Volkswagen of Clean Air Act Violations*, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, (Sept. 18, 2015), http://yosemite.epa.gov/opa/admpress.nsf/21b8983ffa5d0e4685257dd4006b85e2/dfc8e33b5ab162b985257ec40057813b!OpenDocument (hereinafter "EPA Press Release").

Volkswagen vehicles may be found to be in violation of EPA and Cal EPA regulations, as both the EPA and the Cal EPA are investigating whether other Volkswagen diesel vehicles violate federal and state emission standards. *See* Exhibit A at 5; Exhibit B at 4.

8. Thus, Volkswagen marketed and sold the Non-compliant Vehicles as eco-friendly, emission compliant vehicles while knowing that each one of the Noncompliant Vehicles was designed to manipulate emission compliance tests. As noted by Tyson Slocum, director of the energy program at Public Citizen, a consumer advocacy group, "This is several steps beyond the violations that we've seen from other auto companies . . . . They appear to have designed a system with the ***intention to mislead consumers*** and the government."[10]

9. The disclosure of the foregoing facts has resulted in economic harm to Plaintiff and the Classes.

II. JURISDICTION AND VENUE

10. This Court has jurisdiction over the subject matter of this action pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d)(2), because members of the proposed Plaintiff Class are citizens of states different from Defendant's home state, and the aggregate amount in controversy exceeds $5,000,000, exclusive of interest and costs.

11. Venue is proper in this district under 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claims alleged herein occurred in this District as Volkswagen conducts operations within this District.

III. PARTIES

12. Plaintiff Michael Maston resides in Ludlow, Vermont, and purchased a model year 2009 Volkswagen Jetta Sportwagen diesel.

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[10] Coral Davenport, *VW Is Said to Cheat on Diesel Emissions; U.S. to Order Big Recall*, THE NEW YORK TIMES, Sept. 18, 2015 (emphasis added).

13. Plaintiff selected and ultimately purchased their respective vehicles, in part, because of the "clean diesel" system, as represented through advertisements and representations made by Defendant. Specifically, prior to the vehicle purchase, Plaintiff viewed advertisements regarding the clean diesel technology. Plaintiff recalls that the advertisements and representations touted the cleanliness of the engine system for the environment as well as the efficiency and power/performance of the engine system. None of the advertisements reviewed or representations received by Plaintiff contained any disclosure relating to the "defeat device" or that Defendant had purposefully falsified its certification of EPA compliance. Had Defendant disclosed that the purportedly clean diesel engine in Plaintiff's respective vehicles actually emitted up to 40 times the permitted levels of pollutants, including NOx, Plaintiff would not have purchased his vehicle, or would have paid less for his vehicle.

14. Plaintiff has suffered an ascertainable loss as a result of Defendant's omissions and/or misrepresentations associated with the clean diesel engine system, including but not limited to, out-of-pocket loss and future attempted repairs, future additional fuel costs, and diminished performance and value of their respective vehicles.

15. Neither Volkswagen nor any of its agents, dealers, or other representatives informed Plaintiff of the existence of the "defeat device" and/or defective design of the clean diesel engine prior to purchase.

16. Defendant Volkswagen is a corporation doing business throughout the United States and is organized under the laws of the State of New Jersey. At all times relevant to this action, Volkswagen manufactured, distributed, sold, leased, and warranted the Non-compliant Vehicles under the Volkswagen and Audi brand names throughout the United States. Volkswagen and/or its agents designed, manufactured, and installed the clean diesel engine

systems in the Non-compliant 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 Non-compliant Vehicles.

IV. FACTUAL ALLEGATIONS

A. Volkswagen Markets and Sells the Non-compliant Vehicles as some of the Cleanest Diesel Operating Vehicles in the World

17. Volkswagen's advertisements assure consumers that its vehicles are equipped with the cleanest diesel engines in the market that are environmentally friendly and meet federal and state emission standards.

18. For instance, in a press release dated October 29, 2008, Volkswagen claimed that the 2.0 liter diesel engine in its 2009 model-year Jetta, one of the Noncompliant Vehicles, "fulfills stringent Californian [sic] emissions standards."[11]

19. Volkswagen's assurances are repeated on vehicle window labels, which provide information on a vehicle's: features, performance, warranty, price, and environmental impact. For instance, the Manufacturer's Suggested Retail Price ("MSRP") labels, placed on the windows of new cars include a green box titled "Environmental Performance." See Exhibit D.[12] This green box informs a potential buyer of the vehicle's impact on the environment. Vehicles receive a "Global Warming Score" and a "Smog Score." The scores are on a scale from 1 to 10, with 1 being the dirtiest and 10 being the "Cleanest." The rating and scores in the green box are administered and granted by the Cal EPA. On the MSRP label for a 2012 model year

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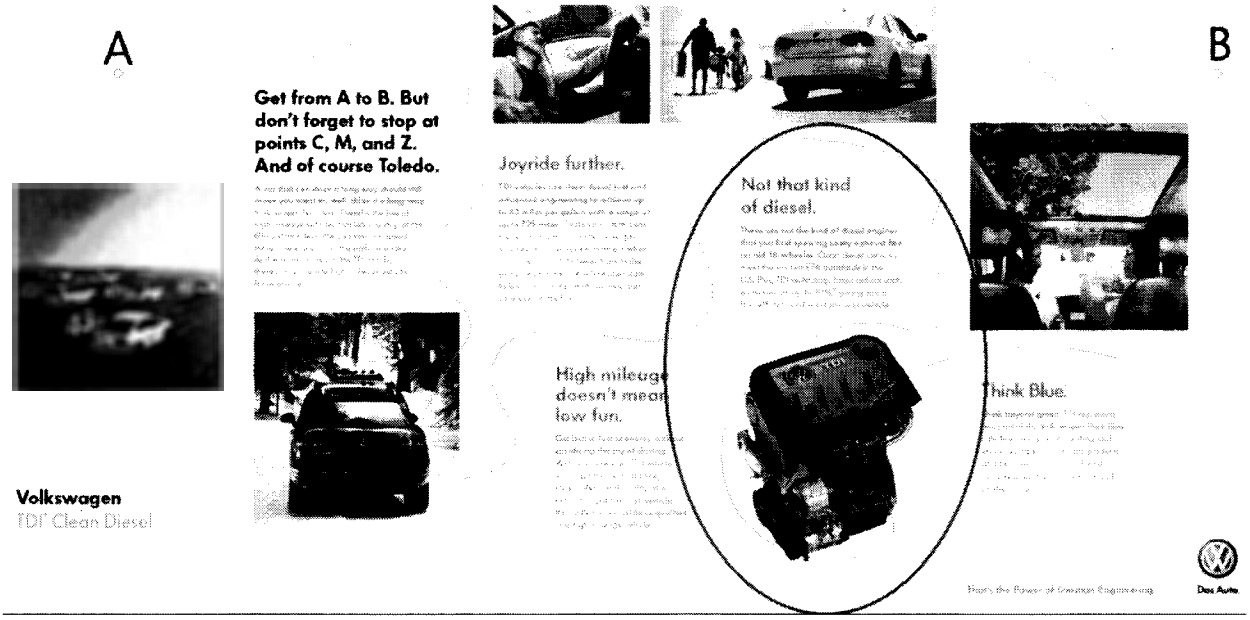
[11] News, *Volkswagen in Fuel Economy Guide 2009*, VOLKSWAGEN AG, (Oct. 29, 2008), http://www.volkswagenag.com/content/vwcorp/info_center/en/news/2008/10/vw_in_ fuel_economy_guide.html (last visited Sept. 20, 2015).

[12] News Release, *New car label makes it easier to choose clean, efficient transportation*, CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY AIR RESOURCES BOARD, (June 19, 2008), http://www.arb.ca.gov/newsrel/nr061908b.htm (Exhibit D).

Volkswagen Passat, one of the Non-compliant Vehicles, the green box shows that the car received a "Global Warming Score" of 8, or 3 points higher than average score of a new vehicle. *See* Exhibit E.[13] The green box also shows that the car received a "Smog Score" of 5, the average score for a new vehicle. *See id.* Both of the Environmental Performance scores for the 2012 model-year Volkswagen Passat were based on the fraudulent emission results the "defeat device" produced. In reality, as detailed in the EPA's letter, the 2012 model-year Volkswagen Passat, and all the other Non-compliant Vehicles, were emitting pollutants at up to 40 times the emission standard.

20. Volkswagen's advertisements echoed the eco-friendly theme it promoted for its purportedly clean diesel vehicles – including "***meeting the strictest EPA standards***":



See Exhibit C (emphasis added).

[13] 2012 Volkswagen Passat TDI SEL MSRP Sticker http://gtcarlot.com/data/Volkswagen/Passat/2012/51988435/Window%20Sticker-62697023.html (last visited Sept. 20, 2015).

21. Likewise, Volkswagen's marketing for its Audi line represented that "Audi pioneered TDI® clean diesel engines to deliver more torque, lower fuel consumption and reduce CO2 emissions, compared to equivalent gasoline engines. The result of this revolutionary engineering delivers remarkable performance, while achieving increased fuel economy."[14]

22. Thus, Volkswagen sought to create an image of its diesel cars as having the cleanest diesel engines, being environmentally friendly, and meeting federal and state emission regulations. As explained by the *Los Angeles Times*, the Volkswagen marketed the Non-compliant Vehicles as "clean diesels" that were "fun-to-drive alternatives to hybrids" and specifically marketed the vehicles to "eco-conscious buyers."[15]

23. Moreover, as set forth in the chart below, Volkswagen demanded significant premiums over gasoline-engine vehicles from consumers across each of the Non-compliant Vehicles:

Clean Diesel Price Premium									
Model	Base			Mid-level			Top-Level		
	Gas	Diesel	Premium	Gas	Diesel	Premium	Gas	Diesel	Premium
VW Jetta	$18,780	$21,640	**$2,860**	$22,325	$24,075	**$1,750**	$25,380	$26,410	**$1,030**
VW Jetta Sportwagen (2014)	$20,995	$26,565	**$5,570**	$24,885	$26,565	**$1,680**	NA	NA	**NA**
VW Golf	$20,175	$22,575	**$2,400**	$25,225	$26,225	**$1,000**	$27,425	$28,425	**$1,000**
VW Golf Sportwagen	$21,625	$24,575	**$2,950**	$27,025	$28,025	**$1,000**	$29,385	$30,385	**$1,000**
VW Beetle	$20,695	$25,330	**$4,635**	$23,605	$28,525	**$4,920**	$25,885	NA	**NA**
VW Beetle Convertible	$25,595	$29,675	**$4,080**	$27,995	$28,525	**$530**	$30,425	$31,125	**$700**
VW Passat	$21,340	$27,095	**$5,755**	$26,280	$29,125	**$2,845**	$31,790	$33,925	**$2,135**
Audi A3	$30,900	$33,200	**$2,300**	$33,600	$35,900	**$2,300**	$39,750	$42,050	**$2,300**

B. Volkswagen Designs and Implements a Software Program in the Non-compliant Vehicles to Manipulate Emission Tests

24. Notwithstanding the eco-friendly image Volkswagen was touting to the market, between the 2009 and 2015 model years, Volkswagen designed and installed a software program,

[14] http://www.audiusa.com/technology/efficiency/tdi, last visited Sept. 20, 2015.

[15] Jerry Hirsch, *VW cheated on U.S. pollution tests for 'clean diesel'*, LOS ANGELES TIMES, Sept. 18, 2015.

the "defeat device," in the electronic control module ("ECM") of the Non-compliant Vehicles. *See* Exhibit A at 3.

25. Under EPA regulations, Volkswagen was required to submit Certificate of Conformity ("COC") applications for the Non-compliant Vehicles which must identify any auxiliary emission control devices ("AECDs"), and justifications for use of the AECDs, such as the "defeat device" installed in the Non-compliant Vehicles. *See id.* at 2. Submission of the COC, gives the EPA the opportunity to evaluate the AECDs to determine whether their use is justified. *See id.* Each of the Noncompliant Vehicles contains an AECD, the "defeat device," that was not described in the application for the COC that purportedly covers the vehicle. *See id.* Vehicles equipped with "defeat devices" such as those installed by Volkswagen cannot be certified by the EPA, and manufacturers are prohibited from selling any vehicle that is not covered by an EPA-issued COC. *See id.* at 3.

26. According to federal and state regulators, the "defeat device" was able to detect when the Recalled Vehicle was undergoing EPA emission standards compliance testing based on certain inputs the vehicle received during the test. *See id.* The "defeat device" would then activate the "dyno calibration" program which Volkswagen had pre-loaded into the vehicle's ECM. *See id.* at 4. The "dyno calibration" program fully engaged the vehicle's emission control system so that the vehicle produced EPA compliant emission results. *See id.*

27. At all other times, during real world driving conditions, the "defeat device" would run a separate program which Volkswagen referred to as the "road calibration" program. *See id.* The "road calibration" emitted ***up to 40 times*** the pollutants allowed under federal and state emission standards. *See id.*

C. Volkswagen Conceals the "Defeat Device" so Effectively that it Escapes the Attention of Regulators and Consumers for Six years

28. Volkswagen intentionally concealed the existence of the "defeat device" from consumers and federal and state regulators for years.

29. Volkswagen's concealment of the "defeat device" was intended to deceive consumers into believing they were purchasing one of the cleanest diesel cars on the market with stated performance features. Indeed, "[e]xperts in automotive technology said that disengaging the pollution controls on a diesel-fueled car can yield better performance, including increased torque and acceleration."[16] As explained by Drew Kodjak, executive director of the International Council on Clean Transportation, "[w]hen the pollution controls are functioning on these vehicles, there's a trade-off between performance and emissions . . . . This is cutting corners."[17] Corroborating Mr. Kodjak, other market professionals noted that "[i]t had been surprising that Volkswagen diesel models were able to get impressive horsepower output and fuel economy performance using less costly pollution control technology than employed in some other automakers' engines . . . . The software workaround may have enabled the performance without the expected pollution controls."[18]

30. Plaintiff and the Classes reasonably relied on Volkswagen's misrepresentations in purchasing the Non-compliant Vehicles or paying a premium for an emission compliant vehicle with the represented performance specifications.

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16 Coral Davenport, *VW Is Said to Cheat on Diesel Emissions; U.S. to Order Big Recall*, THE NEW YORK TIMES, Sept. 18, 2015.

17 *Id.*

18 Jeff Plungis, *Volkswagen Admits to Cheating on U.S. Emissions Tests*, BLOOMBERG, Sept. 18, 2015.

D. Volkswagen Admits the Truth to the EPA About the "Defeat Device" in the Non-compliant Vehicles

31. On September 3, 2015, Volkswagen admitted to EPA and Cal EPA staff that the Non-compliant Vehicles were designed and manufactured with a "defeat device" that bypassed, defeated, or rendered inoperative elements of the Noncompliant Vehicles' emission control system. *See* Exhibit B.

32. Volkswagen's admission was more than a year in the making. The EPA was first alerted of emissions problems in the Non-compliant Vehicles by the West Virginia University's Center for Alternative Fuels, Engines & Emissions ("WVU Center") in May 2014. *See* Exhibit A at 4. The WVU Center determined that testing on a 2012 model year diesel Volkswagen Jetta and 2013 model year diesel Volkswagen Passat, both of which are on the Non-compliant Vehicles list, yielded significantly higher emissions than reported. *See id.* Over the course of 2014, Volkswagen reassured both the EPA and the Cal EPA that its Non-compliant Vehicles were operating within federal and state emission regulations, and that the higher emission results could be attributed to various technical issues and unexpected real world conditions. *See id.*

33. In December 2014, Volkswagen issued a voluntary recall of certain of the Non-compliant Vehicles in order to fix the issues causing the higher emission results. *See id.* On May 6, 2015 the EPA and the Cal EPA subsequently tested the vehicles Volkswagen alleged it fixed in the December 2014 voluntary recall. *See* Exhibit B at 3. The subsequent testing revealed that Volkswagen had not fixed the emission issue and the vehicles Volkswagen allegedly fixed in the voluntary recall, failed the emission tests. *See id.* The Cal EPA shared the results of the emission tests with Volkswagen on July 8, 2015. *See id.*

34. Following this latest failure, the EPA and Cal EPA threatened to withhold certifications of conformity for the 2016 model year diesel vehicles, effectively suspending vehicle sales of these vehicles unless Volkswagen corrected the emission issue. *See* Exhibit A at 4.

35. After the regulators' threat, Volkswagen finally admitted to the EPA and the Cal EPA, on September 3, 2015, that it had designed and manufactured the Non-compliant Vehicles with a "defeat device." *See* Exhibit B.

E. The "Defeat Device" and its Effect on Volkswagen's Reputation as Having Clean Diesel Vehicles Will Adversely Affect the Classes

36. Vehicles are purchased or leased under the reasonable assumption that they comply with federal and state emission standards and performance specifications as advertised. Moreover, vehicle owners (and lessees) have a reasonable expectation that car manufacturers will abide by federal and state emission standards and federal, state and common law obligations to affirmatively disclose known defects, including the "defeat device," in a timely manner. This did not happen with respect to the Noncompliant Vehicles.

37. As a result of Volkswagen's admitted use of "defeat devices" in the Noncompliant Vehicles, devices which artificially enhanced road performance, all purchasers of the Non-compliant Vehicles overpaid for their cars at the time of purchase.

38. As news of the Non-compliant Vehicles' failure to follow federal and state emission standards surfaced on September 18, 2015, the value of Volkswagen's vehicles had diminished and will continue to do so as purchasers, owners and persons leasing these vehicles are encumbered with the stigma of operating a high polluting vehicle designed to evade emission testing. As noted in a September 18, 2015 article in the *Los Angeles Times*, "people buy diesel

cars from Volkswagen because they feel they are clean diesel cars, and they are told they are clean diesel cars . . . . I don't want to be spewing noxious gases into the environment."[19]

39. These reports, along with the reports that are to follow in the coming days and weeks, have materially negatively impacted the value of the Non-compliant Vehicles, including Plaintiff's vehicle, and will continue to do so in the future. Indeed, an analyst for Kelly Blue Book described the disclosures as "pretty ugly" and noted that "Volkswagen has far outstripped everyone else in selling diesel cars. This challenges everything they've been saying about those vehicles."[20] Moreover, *Consumer Reports* has suspended its "recommended" rating for the Volkswagen Jetta and Passat diesels.[21] According to *Consumer Reports*, "These recommendations will be suspended until Consumer Reports can re-test these vehicles with a recall repair performed. Once the emissions systems are functioning properly, we will assess whether the repair has adversely affected performance or fuel economy."[22]

V. TOLLING OF THE STATUTE OF LIMITATIONS

A. Discovery Rule Tolling

40. Class Members could not reasonably discover Volkswagen's deception with respect to its Clean Diesel marketing campaign and its use of a "defeat device" in the Non-compliant Vehicles prior to the disclosure of the EPA and Cal EPA letters.

41. In fact, it took investigations from three separate investigatory entities, including two environmental regulators, to discover Volkswagen's "defeat device." *See* Exhibit A at 4

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[19] Samantha Masunga, *Volkswagen customers sound off on Twitter,* THE LOS ANGELES TIMES, Sept. 18, 2015, *available at* http://www.latimes.com/business/la-fivw-reaction-20150918-htmlstory.html.

[20] Jerry Hirsch, *VW cheated on U.S. pollution tests for 'clean diesel'*, LOS ANGELES TIMES, Sept. 18, 2015.

[21] Jon Linkov, *VW, Audi Cited by EPA for Cheating on Diesel Emissions Tests*, Consumer Reports, Sept. 21, 2015, *available at* http://www.consumerreports.org/cro/cars/vw--audi-cited-by-epa-for-cheating-ondiesel-emissions-tests.

[22] *Id.*

(referring to the WVU Center, the EPA, and the Cal EPA). As detailed in the Cal EPA's letter, the Cal EPA was required to use a sophisticated over-the-road Portable Emission Measurement System ("PEMS") and then develop a special dynamometer cycle to determine why the Non-compliant Vehicles were failing the emission tests when tested for normal driving conditions. *See* Exhibit B. The difficulty of detecting the "defeat device" and the sophistication of the "defeat device," described herein, establish Volkswagen' intention of hiding its actions from both regulators and consumers.

42. Within the time period of any applicable statutes of limitation, Plaintiff and members of the proposed Classes could not have discovered through the exercise of reasonable diligence that Volkswagen was concealing the conduct complained of herein.

43. Plaintiff and other Class members did not discover and did not know of any facts that would have caused a reasonable person to suspect that Volkswagen did not report information within its knowledge concerning the use of a "defeat device" in the Non-compliant Vehicles to federal and state regulators, its dealerships, or consumers. A reasonable and diligent investigation would not have disclosed that Volkswagen possessed information, which Volkswagen chose to conceal, about its "defeat device" scheme to evade emission standards. Plaintiff learned of the "defeat device" installed on their respective Volkswagen vehicles shortly after news of Volkswagen's actions made headlines on the national media in September 2015.

44. For these reasons, all applicable statutes of limitation have been tolled by operation of the discovery rule with respect as to all the Non-compliant Vehicles.

B. Fraudulent Concealment Tolling

45. Volkswagen's knowing and active fraudulent concealment and denial of the facts alleged herein, have tolled all applicable statutes of limitations.

46. Volkswagen falsely represented that its vehicles: complied with and exceeded federal and state emission standards; emitted NOx and other pollutants at levels in compliance or below federal and state standards; and were eco-conscious.

C. Tolling by Estoppel

47. Volkswagen was under a continuous duty to disclose to Plaintiff and the Classes the true character, quality, and nature of the Non-compliant Vehicles emissions, emission control system, and the compliance of the emission control system with applicable federal and state law.

48. Volkswagen knowingly, affirmatively, and actively concealed the true nature, quality, and character of the Non-compliant Vehicles' emissions and emission control system.

49. At all times, Volkswagen was under a continuous duty to disclose to Plaintiff and the Classes that it engaged in the fraudulent actions detailed herein to evade federal and state emission and clean air standards and to artificially enhance the road performance of the Non-compliant Vehicles.

50. Based on the foregoing, Volkswagen is estopped from relying on any statutes of limitations in defense of this action.

VI. CLASS ACTION ALLEGATIONS

51. Plaintiff bring this action pursuant to Federal Rules of Civil Procedure 23(a), (b)(2) and/or (b)(3) on behalf of the following Classes: (i) All persons and entities that purchased, leased or own the Non-compliant Vehicles in the United States (the "Nationwide Class"); and (ii) All persons or entities that purchased, leased or own the Non-compliant Vehicles in the states of Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Hampshire, New Jersey,

New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin and Wyoming (the "Consumer Protection Statute Class").

52. Excluded from the Classes are individuals who have personal injury claims resulting from the "defeat device" in a Recalled Vehicle. Also excluded from the Classes, are Volkswagen and its parent, subsidiaries and affiliates. Plaintiff reserves the right to revise the definition of the Classes based upon subsequently discovered information.

53. The Classes are so numerous that joinder of all members is impracticable.

54. A Class action is superior to all other available methods for the fair and efficient adjudication of this controversy.

55. Plaintiff's claims are typical of the claims of the Classes. As alleged herein, Plaintiff and members of the Classes all sustained damages arising out of the Defendant's same course of unlawful conduct.

56. There are questions of law and fact common to the Classes that predominate over individual issues, including but not limited to the following:

- Whether Volkswagen sold the Non-compliant Vehicles with a "defeat device";
- Whether Volkswagen sold the Non-compliant Vehicles with a "defeat device" in order to circumvent federal and state clean air statutes and emission regulations;
- Whether Volkswagen's use of the "defeat device" manipulated the performance and/or fuel efficiency of the Non-compliant Vehicles;
- Whether Volkswagen's misrepresentations and omissions concerning the use of a "defeat device" were likely to deceive a reasonable person;

- Whether Volkswagen's Clean Diesel marketing campaign included false and misleading statements by failing to disclose Volkswagen's use of a "defeat device" in the Non-compliant Vehicles;
- Whether Volkswagen's Clean Diesel marketing campaign was likely to deceive a reasonable person;
- Whether Volkswagen's Clean Diesel marketing campaign included false and misleading statements by claiming that the Non-compliant Vehicles were environmentally friendly and/or failing to disclose that the Noncompliant Vehicles fail to meet federal and state emission standards;
- Whether a reasonable customer would pay less for a Non-compliant Vehicle if the use of a "defeat device" was disclosed at the time of purchase or lease;
- Whether a reasonable customer would pay less for a Non-compliant Vehicle that did not comply with federal and state clean air statutes and emission regulations;
- Whether damages, restitution, equitable, injunctive, compulsory, or other relief is warranted; and
- Whether injunctive relief enjoining the reoccurrence of Defendant's conduct and/or declaratory relief that such conduct is unlawful, is warranted.

57. The interest of Class members in individually controlling the prosecution of separate actions is theoretical and not practical. The Classes have a high degree of similarity and are cohesive. Moreover, individual litigation creates a potential for inconsistent or contradictory judgments, and increases the delay and expense to all parties and the courts. Plaintiff anticipates no difficulty in the management of this matter as a class action.

58. Class action status is also warranted under Rule 23(b)(2) because Defendant has acted or refused to act on grounds generally applicable to the Classes, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Classes as a whole.

59. Class action status is also warranted under Rule 23(b)(3) because questions of law or fact common to the members of the Classes predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of this controversy.

60. Plaintiff is an adequate representative who has selected highly competent counsel who is fully qualified to represent the Classes. Plaintiff intends to prosecute this action vigorously.

VII. CLAIMS FOR RELIEF

FIRST CLAIM
Common Law Breach of Contract
On behalf of the Nationwide Class

61. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

62. Volkswagen breached contractual obligations by tendering to Plaintiff and the Class vehicles equipped with a "defeat device" designed to reduce the effectiveness of the vehicle's emission control system, causing the Non-compliant Vehicles to emit pollutants at up to 40 times the EPA emission standards.

63. The "defeat device" present in the Non-compliant Vehicles did not constitute merely a minor breach, as the existence of the "defeat devices" caused the Non-compliant Vehicles to emit pollutants at a far higher rate than Volkswagen warranted and in violation of

federal and state emission standards. As such, Plaintiff and the Class would not have purchased or leased the Non-compliant Vehicles at the price they paid, or at all, had they known of the presence of the "defeat device."

64. As a direct and proximate result of Defendant's breach of contract or warranty, Plaintiff and the Class have suffered damages.

SECOND CLAIM
Fraudulent Misrepresentation & Fraudulent Concealment
On behalf of the Nationwide Class

65. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

66. As described above, Defendant made material omissions and affirmative misrepresentations regarding the Non-compliant Vehicles.

67. Defendant knew these representations were false when made.

68. The vehicles Plaintiff and the Class purchased or leased were defective because the vehicles were subject to a "defeat device" that would reduce the effectiveness of the Non-compliant Vehicles' emission control system as well as their road performance.

69. Defendant had a duty to disclose that these vehicles were defective in that the vehicles were subject to a "defeat device" that would reduce the effectiveness of the vehicles' emission control system.

70. The aforementioned concealment was material because if it had been disclosed Plaintiff and the Class would not have purchased or leased the vehicles at the price they paid, or would not have purchased or leased the vehicles at all.

71. The aforementioned representations were material because they were facts that would typically be relied upon by a person purchasing or leasing a motor vehicle – including

vehicles sold under a Clean Diesel marketing campaign. Defendant knew or recklessly disregarded that its representations as to the Noncompliant Vehicles were false and or omitted material information. Defendant intentionally made the false statements in order to induce Plaintiff and the Class to purchase or lease the Non-compliant Vehicles.

72. Plaintiff and the Class relied upon Volkswagen's representations and omissions in purchasing or leasing the Non-compliant Vehicles.

73. As a result of their reliance, Plaintiff and the Class have been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase and/or the diminished value of their vehicles.

74. Defendant's conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of Plaintiff. Plaintiff and the Class are therefore entitled to an award of punitive damages.

THIRD CLAIM
Unjust Enrichment,
On behalf of the Nationwide Class

75. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

76. Plaintiff and the Class paid the value of vehicles that have fully operational emission control systems that comply with federal and state emission standards, would not be compromised by the need for repairs, and could be legally operated, but were provided with vehicles that are defective, needed repairs, and could not be legally operated.

77. As such, Plaintiff and the Class conferred a windfall upon Volkswagen, which knew of the windfall and has unjustly retained such benefits.

78. As a direct and proximate result of Volkswagen's unjust enrichment, Plaintiff and the Class have suffered and continue to suffer various damages, including, but not limited to, restitution of all amounts by which Defendant was enriched through its misconduct.

FOURTH CLAIM
Violations of State Consumer Protection and Unfair Competition Statutes
On behalf of the Consumer Protection Statute Class

79. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

80. Defendant engaged in unfair competition or unfair, unconscionable, deceptive, or fraudulent acts or practices with respect to the sale of the Noncompliant Vehicles in violation of the following state consumer protection and unfair competition statutes.

81. Defendant has violated Alaska Stat. § 45-50-471 *et seq.*

82. Defendant has violated Ariz. Rev. Stat. § 44-1521 *et seq.*

83. Defendant has violated Arkansas Code § 4-88-101 *et seq.*

84. Defendant has violated Cal. Civ. Code § 1770 *et seq.*, Cal. Bus. & Prof. Code § 17200 *et seq.*, and Cal. Bus. & Prof. Code § 17070.

85. Defendant has violated Colo. Rev. Stat. § 6-1-101 *et seq.*

86. Defendant has violated Conn. Gen. Stat. § 42-110A, *et seq.*

87. Defendant has violated 6 Del. Code § 2513 *et seq.* and 6 Del. Code § 2532 *et seq.*

88. Defendant has violated D.C. Code Ann. § 28-3901 *et seq.*

89. Defendant has violated Florida Stat. § 501.201 *et seq.*

90. Defendant has violated Ga. Code Ann. § 10-1-370 *et seq.*

91. Defendant has violated Haw. Rev. Stat. Ann. § 481A-3.

92. Defendant has violated Idaho Code § 48-601 *et seq*.

93. Defendant has violated 815 Ill. Comp. Stat. 505/1 *et seq*. and 815 Ill. Comp. Stat. 510/1 *et seq*.

94. Defendant has violated Ind. Code § 24-5-0.5-3.

95. Defendant has violated Iowa Code § 714H.1 *et seq*.

96. Defendant has violated Kan. Stat. Ann. § 50-623 *et seq*.

97. Defendant has violated Ky. Rev. Stat. § 367.110 *et seq*.

98. Defendant has violated Me. Rev. Stat. Ann. Tit. 5 § 205-A *et seq*.

99. Defendant has violated Md. Code Com. Law § 13-101 *et seq*.

100. Defendant has violated Mass. Gen. Laws chapter 93A § 1 *et seq*.

101. Defendant has violated Mich. Comp. Laws § 445.901.

102. Defendant has violated Minn. Stat. § 325F.69 *et seq*. and Minn. Stat. § 325D.43 *et seq*.

103. Defendant has violated Mo. Ann. Stat. 407.020.

104. Defendant has violated Neb. Rev. Stat. § 87-302 and Neb. Rev. Stat. § 59-1601 *et seq*.

105. Defendant has violated Nev. Rev. Stat. § 598.0903 *et seq*.

106. Defendant has violated New Hampshire Rev. Stat. § 358-A:1 *et seq*.

107. Defendant has violated N.J. Stat. Ann. § 56:8-1, *et seq*.

108. Defendant has violated New Mexico Stat. Ann. § 57-12-1 *et seq*.

109. Defendant has violated N.Y. Gen. Bus. Law § 349 *et seq*.

110. Defendant has violated North Carolina Gen. Stat. § 75-1.1 *et seq*.

111. Defendant has violated N.D. Cent. Code § 51-15-02.

112. Defendant has violated Ohio Rev. Code Ann. § 1345.01 *et seq*. and Ohio Rev. Code Ann. § 4165.01 *et seq.*

113. Defendant has violated Okla. Stat. Tit. 15 § 751 *et seq*. and 78 Okla. Stat. Ann. § 51 *et seq*.

114. Defendant has violated Or. Rev. Stat. § 646.605 *et seq*.

115. Defendant has violated 73 Pa. Stat. § 201-1 *et seq.*

116. Defendant has violated Rhode Island Gen. Laws § 6-13.1-1 *et seq*.

117. Defendant has violated S.D. Codified Laws § 37-24-6 *et seq*.

118. Defendant has violated Tex. Bus. & Com. Code § 17.41 *et seq.*

119. Defendant has violated Utah Code Ann. § 13-11-1 *et seq.*

120. Defendant has violated Vt. Stat. Ann. Tit. 9, § 2451 *et seq*.

121. Defendant has violated Va. Code Ann. 59.1-200 *et seq.*

122. Defendant has violated Rev. Code Wash. Ann. § 19.86.010 *et seq.*

123. Defendant has violated W. Va. Code § 46A-1-101 *et seq*.

124. Defendant has violated Wisc. Stat. § 100.18 *et seq.*

125. Defendant has violated Wyo. Stat. § 45-12-105 *et seq.*

126. Defendant's misrepresentations and omissions regarding the emission compliance of its vehicles as set forth in this Complaint were likely to deceive a reasonable consumer, and the information would be material to a reasonable consumer.

127. Defendant's intentional and purposeful acts, described above, were intended to and did cause Plaintiff and the Class to pay artificially inflated prices for Non-Compliant Vehicles purchased or leased in the states (and the District of Columbia) listed above.

128. As a direct and proximate result of Defendant's unlawful conduct, Plaintiff and Class members have been injured in their business and property in that they paid more for the Non-compliant Vehicles than they otherwise would have paid in the absence of Defendant's unlawful conduct.

129. All of the wrongful conduct alleged herein occurred in the conduct of Defendant's business. Defendant's wrongful conduct is part of a pattern or generalized course of conduct that was perpetrated nationwide.

130. Plaintiff and Class members are therefore entitled to all appropriate relief as provided for by the laws of the states listed above, including but not limited to, actual damages, injunctive relief, attorneys' fees, and equitable relief, such as restitution and/or disgorgement of all revenues, earnings, profits, compensation, and benefits which may have been obtained by Defendant as a result of its unlawful conduct.

VIII. PRAYER FOR RELIEF

131. WHEREFORE, Plaintiff requests that this Court enter a judgment against Defendant and in favor of Plaintiff and the Classes and award the following relief:

A. That this action be certified as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure, declaring Plaintiff as the representative of the Classes and Plaintiff's counsel as counsel for the Classes;

B. That the conduct alleged herein be declared, adjudged and decreed to be unlawful;

C. Compensatory, consequential, and general damages in an amount to be determined at trial;

D. Costs and disbursements of the action;

E. Restitution and/or disgorgement of Defendant's ill-gotten gains, and the imposition of an equitable constructive trust over all such amounts for the benefit of the Classes;

F. Pre- and post-judgment interest;

G. Reasonable attorneys' fees;

H. That Defendant be enjoined from the conduct challenged herein;

I. Such monetary, injunctive other relief to each of the subclasses that is provided for by the state statutes pursuant to each Count alleged; and

J. Such other and further relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury as to all claims in this action.

Dated: ~~September __, 2015~~
October 1, 2015

GRAVEL & SHEA PC

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Counsel for Plaintiff

EXHIBIT A

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

SEP 18 2015

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

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

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

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

Re: Notice of Violation

Dear Mr. Geanacopoulos and Mr. Johnson:

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

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

Law Governing Alleged Violations

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

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

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

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

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

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

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

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

Alleged Violations

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

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

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

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

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

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

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

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

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

Enforcement

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

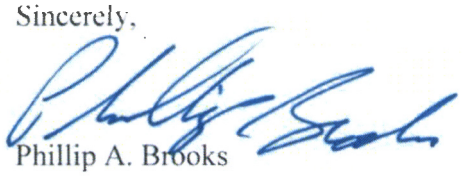
The EPA is authorized to refer this matter to the United States Department of Justice for initiation of appropriate enforcement action. Among other things, persons who violate section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), are subject to a civil penalty of up to $3,750 for each violation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

[1] $2,750 for violations occurring prior to January 13, 2009.
[2] $32,500 for violations occurring prior to January 13, 2009.

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

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

Sincerely,



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

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

EXHIBIT B

ARB LETTER TO VW

Air Resources Board

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

Matthew Rodriquez
Secretary for
Environmental Protection

Edmund G. Brown Jr.
Governor

Reference No. IUC-2015-007

September 18, 2015

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

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

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

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

Dear Mr. Geanacopoulos and Mr. Johnson:

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

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

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

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

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

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

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

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

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

Sincerely,

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

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

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

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

EXHIBIT C

A

Get from A to B. But don't forget to stop at points C, M, and Z. And of course Toledo.

A car that can drive a long way should still make you want to, well, drive it a long way. Volkswagen TDI Clean Diesel is the line of high-mileage vehicles that lets you stop at the filling station less often, so you can spend more time enjoying all the paths you take.* And with six models in the TDI family, there's an enjoyable high-mileage vehicle for everyone.

Joyride further.

TDI vehicles use clean diesel fuel and advanced engineering to achieve up to 43 miles per gallon with a range of up to 795 miles.* That's up to 30% better fuel economy than comparable gas engines. You'll probably notice it when you take up to 30% fewer trips to the pump. Visit thinkblue.volkswagen.com to learn driving tips that can help you save even more fuel.

Not that kind of diesel.

These are not the kind of diesel engines that you find spewing sooty exhaust like an old 18-wheeler. Clean diesel vehicles meet the strictest EPA standards in the U.S. Plus, TDI technology helps reduce sooty emissions by up to 90%;** giving you a fuel-efficient and eco-conscious vehicle.

High mileage doesn't mean low fun.

Get better fuel economy without sacrificing the joy of driving. With a Volkswagen TDI vehicle, you'll get the performance, style, safety, and quality of a turbocharged German vehicle. It's just that you'll get those qualities in a high-mileage vehicle.

Think Blue.:

Think beyond green. TDI represents one part of the Volkswagen Think Blue initiative, our goal of creating and encouraging eco-conscious products and behaviors. Join us in being more responsible on the road and on the planet

B

Volkswagen
TDI* Clean Diesel

That's the Power of German Engineering. | Das Auto.

Volkswagen offers more clean diesel vehicles than any other manufacturer. With six models, there's a TDI option for every driver.

Jetta TDI • Jetta SportWagen TDI • Golf TDI
Passat TDI • Beetle TDI • Touareg TDI

vw.com

Das Auto.

Results may vary greatly. And awesomely.

Maybe even enough to double the range of a Passat. Mileage experts John and Helen Taylor recently did just that when they went almost halfway across the country on a single tank of diesel fuel. We gave the Taylors a 2012 Volkswagen Passat TDI SE for their trip and they drove it from Houston, TX, to Sterling, VA, on one tank of diesel – that's 1,626.1 miles at a whopping 84.1 miles per gallon. And we thought 43 highway miles per gallon was impressive!*

EXHIBIT D

California Environmental Protection Agency

NEWS RELEASE

Air Resources Board

Release 08-55
FOR IMMEDIATE RELEASE
June 19, 2008

Dimitri Stanich
(916)322-2825
www.arb.ca.gov

New car label makes it easier to choose clean, efficient transportation

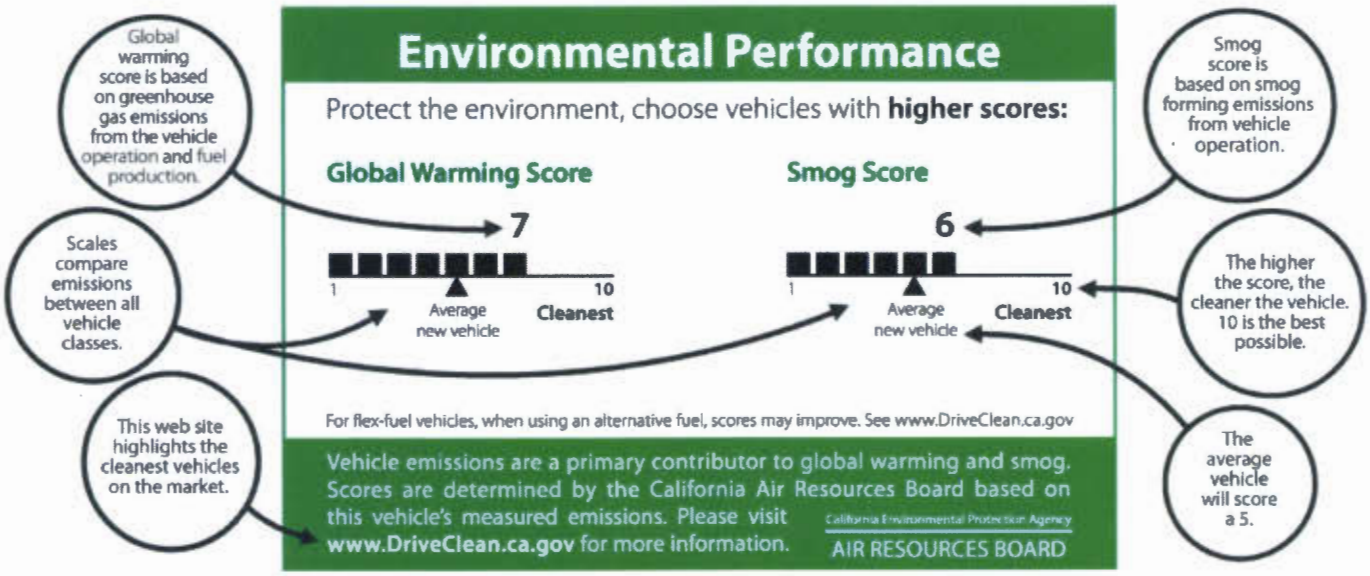
Smog and global warming impacts posted for all to compare

SACRAMENTO: Beginning January 1, 2009 all new cars sold in California will carry a label which clearly informs consumers of the state's assessment of the vehicle's environmental impact.

The new regulation signed into law this week by the Secretary of State, creates a simple ranking system that will provide consumers with practical information that can be used to choose the most environmentally friendly vehicle that meets their transportation needs. Showroom models could start showing these labels as early as July 2008.

"This label will arm consumers with the information they need to choose a vehicle that saves gas, reduces greenhouse gas emissions and helps fight smog all at once," said Mary Nichols. "Consumer choice is an especially powerful tool in our fight against climate change. We look forward to seeing these stickers on 2009 model cars as they start hitting the showrooms in the coming months."

The environmental performance label will provide two scores on a scale of 1-10, a Smog Score and a Global Warming Score. The average new car will score five on both scales. The higher the score the less impact the car has on the environment. The California Air Resources Board also hosts a consumer web site, www.DriveClean.ca.gov, that provides information on the cleanest, most efficient cars on the market.



The Air Resources Board is a department of the California Environmental Protection Agency. ARB's mission is to promote and protect public health, welfare, and ecological resources through effective reduction of air pollutants while recognizing and considering effects on the economy. The ARB oversees all air pollution control efforts in California to attain and maintain health based air quality standards.

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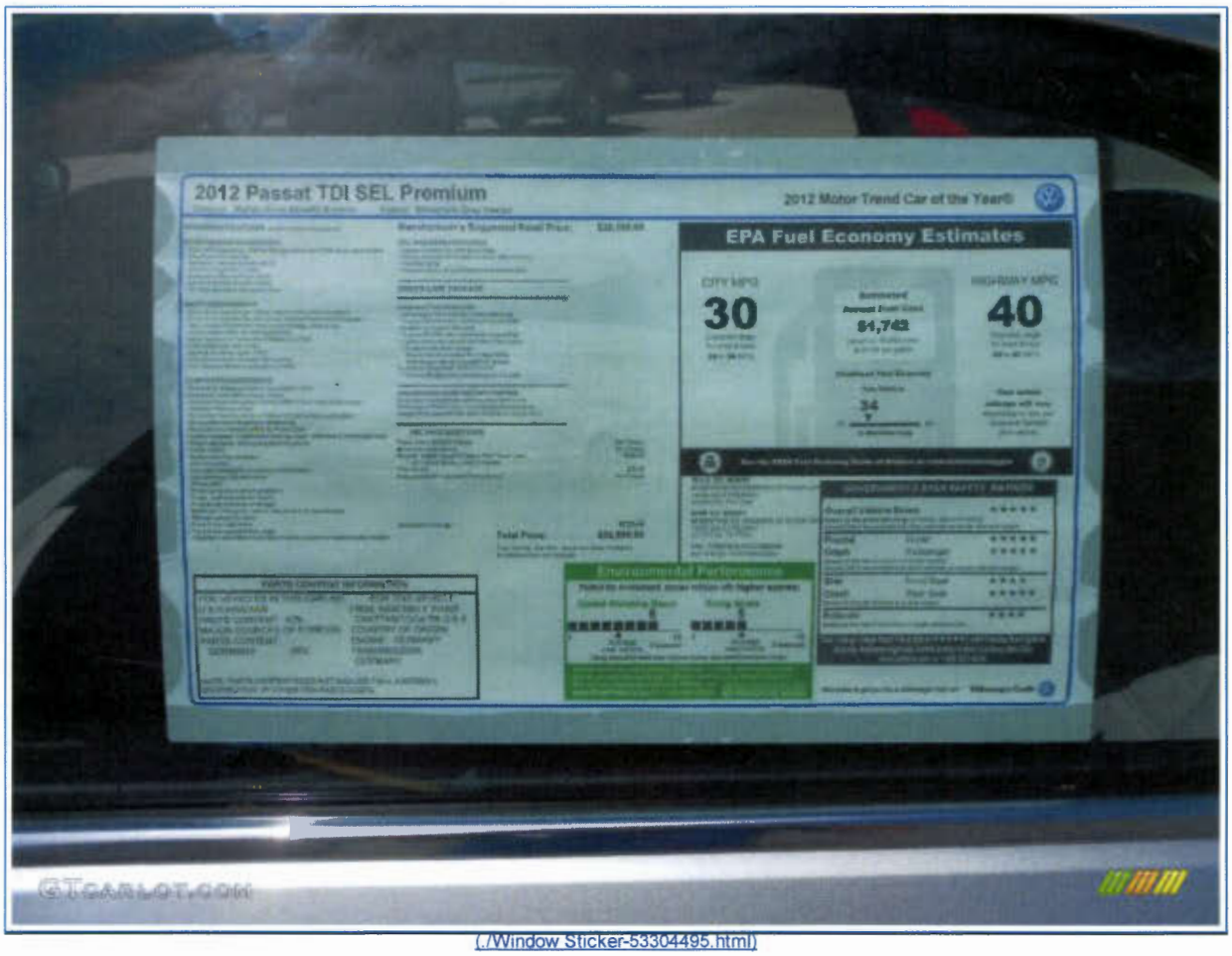
EXHIBIT E

2012 Volkswagen Passat TDI SEL Window Sticker Photo #62697023



(./Window Sticker-53304495.html)


(./Window Sticker-62697023.html)


(./Window Sticker-53304495.html)


(./Window Sticker-52963527.html)

Search

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Thank you for visiting GTCarlot.com

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS
MICHAEL MASTON, on behalf of himself and all others similarly situated,

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

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Norman C. Williams, Gravel & Shea PC
76 St. Paul Street, 7th Floor, Burlington, VT 05402
(802) 658-0220

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

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

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

	PTF	DEF		PTF	DEF
Citizen of This State	☒ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☒ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

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

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☒ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State 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 *(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)*:
28 U.S.C. § 1332(d)(2) and 1391
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 10/1/2015 SIGNATURE OF ATTORNEY OF RECORD Norman Williams

FOR OFFICE USE ONLY
RECEIPT # 46801 AMOUNT 400.00 APPLYING IFP _____ JUDGE 1012 MAG. JUDGE _____
3682 sm issued. 2:15-cv-213