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U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS, FLORIDA

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2: 15-CV-642-FtM-29 MRM

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

MICHAEL J. PETERSON,
individually and on behalf of all
others similarly situated,
Plaintiff,

v.

VOLKSWAGEN GROUP OF
AMERICA, INC., a New Jersey
corporation, and **VOLKSWAGEN AG,**
a German corporation,
Defendants.

Case No.:

CLASS ACTION COMPLAINT

- (1) VIOLATION OF MAGNUSON-MOSS WARRANTY ACT
- (2) BREACH OF CONTRACT
- (3) FRAUD BY CONCEALMENT
- (4) VIOLATION OF THE LANHAM ACT
- (5) VIOLATION OF FLORIDA UNFAIR AND DECEPTIVE TRADE PRACTICES ACT
- (6) VIOLATION OF FLORIDA UNFAIR AND DECEPTIVE TRADE PRACTICES ACT (SENIOR AND HANDICAPPED PERSONS)
- (7) BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

JURY TRIAL DEMANDED

Plaintiff Michael J. Peterson (**"Plaintiff"**), by and through their counsel of record, brings this action on behalf of himself and all others similarly situated against Volkswagen Group of America, Inc., a New Jersey corporation, (**"VW America"**) and Volkswagen AG, a German corporation, (**"VW AG"**) (VW America and VW AG are sometimes collectively referenced as **"Volkswagen"** for ease of reading when the allegations implicate both entities), and alleges the following on information and belief, except as to those allegations specific to Plaintiff, as follows:

I. NATURE OF THE ACTION

1. This case represents a shocking example of an active, extensive, methodical scheme implemented worldwide over a number of years specifically to defraud consumers, the general public, the Government, and agencies charged with protecting health, safety, the environment, and legitimate trade.

2. This fraudulent scheme negatively impacted not only consumers like Plaintiff Michael J. Peterson, and thousands of individual Class members nationwide, but even the general public, who rely on the statutes enacted by Congress, and the regulations enforced by the Environmental Protection Agency (**"EPA"**) and the California Air Resource Board (**"CARB"**), to ensure air quality is maintained at a safe level.

3. Specifically, Volkswagen employed a deliberate artifice known as a “defeat device,” which it secretly disseminated to hundreds of thousands of vehicles in order to peddle underperforming, nonconforming, illegal, gas-guzzling, pollutive vehicles on to consumers, and to actively and methodically fool the EPA and CARB by concealing the illegal, pollutive, inefficient, underperforming nature of the vehicles.

4. Volkswagen’s actions in this case injured Plaintiff, the Class, and the public in far-reaching ways, but as to the Class and this Complaint, certain of the resulting injuries are common and quantifiable.

II. THE PARTIES

5. Plaintiff Michael J. Peterson is a Florida citizen residing in Naples, Florida. On 5 August 2014, he purchased a model year 2014 VW Passat TDI with a diesel motor (the “VW Diesel Model”). Plaintiff selected the VW Diesel Model specifically because he was told it was a “clean,” “efficient,” “environmentally-friendly” vehicle with specific fuel economy and greenhouse gas ratings and exceptional performance metrics. Plaintiff previously-owned 2 other efficient vehicles, a 2005 Honda Accord Hybrid and a 2009 Toyota Highlander, that Plaintiff sold below market specifically so that Plaintiff could purchase the VW Diesel Model. Plaintiff intended that the VW Diesel Model would be fully compliant under EPA and other air standards. In addition,

Plaintiff was attracted to and did purchase the VW Diesel Model because of specific representations, which Plaintiff read and relied upon, that the vehicle had specific environmental ratings, emission standards, horsepower, and other performance criteria.

6. Plaintiff trusted in and believed the representations that Plaintiff read and relied upon in making his purchase, and at the time of his purchase, Plaintiff did not know, and had no reason to suspect, that any of the statements he relied upon to make his purchase were false or untrue in any way.

7. VW AG is the parent company of VW America. VW AG's headquarters and principal place of business are located in Wolfsburg, Germany. Volkswagen AG conducts substantial business in the United States and in this District, including its control of VW America; its development and procuring manufacturing plants, including in Chattanooga, Tennessee; its network of dealerships; and its distribution for sale of hundreds of thousands of defective vehicles across the United States and in this District.

8. VW America does business in all 50 states (and the District of Columbia), with its principal place of business located at 2200 Ferdinand Porsche Dr., Herndon, Virginia 20171. VW America was founded in 1955 and it is a wholly owned subsidiary of VW AG. VW sells the defective vehicles

throughout the United States at over 500 independent dealers (where both new and used defective vehicles were sold).

9. VW America's activities in the United States include maintaining sales, marketing, and services offices, parts distribution centers, financial service centers, parts and vehicle processing, research and development, and operating a manufacturing facility in Tennessee.

10. VW America also operates an Electronics Research Laboratory in Belmont, California, which is strategically located near Silicon Valley. Further, VW America operates a test center located in this District in Oxnard, California, which holds Volkswagen's largest emissions compliance laboratory and vehicle test center outside of Germany. Upon information and belief, Volkswagen's testing and implementation of their defeat devices and fraudulent scheme were carried out, at least in part, by and through the test center in Oxnard, California.

11. Volkswagen marketed, sold, distributed, or leased approximately 482,000 diesel passenger cars in the United States since 2008, including the VW Diesel Model and the following diesel vehicles that are the subject of this Complaint:

- Jetta Model Years 2009-2015
- Beetle Model Years 2009-2015
- Audi A3 Model Years 2009-2015

- Golf Model Years 2009-2015
- Passat Model Years 2014-2015

Due to the conduct described in this Complaint, the above-described vehicles are hereinafter referred to as the “***Defective Vehicles.***”

12. At all relevant times, including during the Class Period, Volkswagen manufactured, distributed, sold, leased, and warranted the Defective Vehicles under the Volkswagen and Audi brand names throughout the United States. Volkswagen and/or its agents designed, manufactured, and installed the engine systems in the Defective Vehicles, which included the defeat device described with more particularity herein. Volkswagen also developed and disseminated the owner’s manuals and warranty booklets, advertisements, and other promotional materials relating to the Defective Vehicles.

13. At all relevant times, including during the Class Period, each Defendant acted as an agent, servant, employee, or joint venturer of the other Defendant, and in doing the things alleged acted within the course of such agency, employment, and/or in furtherance of the joint venture to accomplish the scheme. Each of the Defendants’ acts alleged herein was done with the permission and consent of the other Defendant. While each of the Defendants are separate legal entities, each Defendant works together under a common identity as portrayed to the public and there is a sufficient unity of interest and

control between each Defendant such that the acts of one are for the benefit and can be imputed to the acts of the other.

14. Other persons or entities are involved in the manufacture, sale, distribution, design, and marketing of the Defective Vehicles, but are not presently known to Plaintiff.

III. JURISDICTION AND VENUE

15. Jurisdiction is appropriate pursuant to 28 U.S.C. §§ 1332(d), the Class Action Fairness Act. There are at least 100 members in the proposed class, the aggregate claims for the matter in controversy exceeds \$5,000,000.00 without accounting for interests and costs, and Plaintiff, and other class members which Plaintiff will seek to represent, are citizens of States other than of Volkswagen's citizenship. The Court also has jurisdiction pursuant to 28 U.S.C. § 2301 et seq., and the Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a).

16. The Court also has personal jurisdiction over the Parties because Plaintiff citizen and resides here, and because Volkswagen has conducted and continue to conduct substantial business in Florida, including, *inter alia*, the sale of vehicles.

17. Venue is appropriate because, among other things: (a) Plaintiff is a resident and citizen of this District; (b) Volkswagen aimed its activities at

residents in this District; (b) the acts and omissions that give rise to this Action took place in this judicial district; and (c) most if not all of the parties reside and/or have their primary places of business in this judicial district.

18. Venue is further appropriate pursuant to 28 U.S.C. § 1391 because Volkswagen sells a large amount of vehicles in this District, including Defective Vehicles, has contractual relationships with dealerships in this District, and the acts complained of occurred within this District. Venue is also proper in this Court because Volkswagen caused harm to large numbers of Class Members residing in this District.

IV. SUBSTANTIVE ALLEGATIONS

A. Applicable Regulations That Protect the Public and the Class

19. In 1970, Congress enacted the Clean Air Act, which has been amended over time. The Clean Air Act mandated a 90% reduction in emissions from new automobiles by 1975. In 1970, Congress also established the Environmental Protection Agency ("EPA") with broad powers including maintaining standards to ensure and monitor compliance with statutory schemes such as the Clean Air Act. Automobile emissions, including nitrogen oxide (NOx) levels, are regulated federally by the EPA and other agencies in the United States, including at the California state level (CARB).

20. The federal Clean Air Act specifically prohibits the sale of any vehicle that does not comply with EPA emissions regulations. *See* 42 U.S.C. § 7522. Vehicle manufacturers are required to certify to the EPA that the vehicles meet applicable standards. The EPA maintains a special program for certification and issues certificates of conformity to vehicles that pass the standards. At all relevant times, including during the Class Period, all vehicles sold in the United States, must have an EPA-issued certificate of conformity. The Defective Vehicles, in particular, were required to satisfy federal emission standards, including for nitrogen oxide (NO_x) levels. *See* 40 C.F.R. § 86.1811.04; Clean Air Act § 101(b)(1)-(2); 42 U.S.C. § 7401(b)(1)-(2).

21. EPA regulations established between 2004 and 2009 for light-duty vehicles (using any type of fuel) fall within Tier 2, which then includes certification levels called bins. Volkswagen decided to certify its TDI engines, including those within the Defeat Device Vehicles, to Tier 2, Bin 5. The nitrogen oxide (NO_x) emission levels for Tier 2 Bin 5 are: .05 g/mi for a vehicle's intermediate life (5 years/50,000 miles) and .07 g/mi for a vehicle's full useful life (10 years/120,000 miles). 40 C.F.R. § 86.1811-04(c). Further, any manufacturer's fleet average of nitrogen oxide (NO_x) for any given model year must be under .07 g/mi. *Id.* at § 86.1811-04(d).

22. California has established Low-Emission Vehicle Regulations which mandate emission reduction standards for vehicles in California. California's regulations are the strictest in the United States. In California, CARB's Low-Emissions Vehicle (LEV) II emission standards are provided in Cal. Code. Regs. Tit. 13 § 1961 allow for light-duty vehicle nitrogen oxide (NOx) emissions of: no more than .05 g/mi initially, and no more than .07 g/mi over their useful life.

23. Nitrogen oxide (NOx) pollution generates nitrogen dioxide and contributes to ground-level ozone and fine particulate matter, which has been associated with serious health problems such as asthma and respiratory illnesses, lower birth weight, and respiratory- and cardiovascular-related effects.

24. Because vehicles cannot be sold unless vehicles comply with these strict standards, manufacturers have devised multiple ways to reduce levels of nitrogen oxide (NOx) levels in exhaust emissions. When the manufacturers apply for emission certification, they are required to list all auxiliary emission control devices in the vehicle, which includes any element of design 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.

25. Of particular relevance to the Class, defeat devices are prohibited. A defeat device is any item which enables the vehicle's emission system during

emissions testing, but then acts to reduce the efficacy of the system during normal operation. The federal Clean Air Act makes it a violation for any person to sell, manufacture, or install any component in a motor vehicle “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* . . . in compliance with the 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.” Clean Air Act, 42 U.S.C. § 7522(a)(3)(B) (emphasis added); 40 C.F.R. § 86.1854012(a)(3)(ii). The EPA has recognized that electronic control systems that can affect the emission system may be defeat devices.

B. Prior History of Defeat Devices

26. In 1998, the Justice Department, on behalf of the Environmental Protection Agency, sued Mack Trucks, Inc., one of the leading U.S. manufacturers of heavy duty diesel engines. The lawsuit alleged that Mack sold engines with devices that defeated the engines’ emission control system (so-called “defeat devices”) and resulted in the illegal emission of excess amounts of nitrogen oxide (NOx). At the time of the lawsuit, Steve Herman, then the EPA’s Assistant Administrator for Enforcement and Compliance Assurance, stated that the “use of defeat devices had and will continue to have a significant

adverse impact on the public, resulting in an estimated 700,000 tons of excess harmful nitrogen oxide emissions and more than \$1 billion in extra health care costs over the life of the engines.” The EPA also sued Caterpillar, Inc., Cummins Engine Company, Detroit Diesel Corporation, Navistar International Transportation Corporation, Renault Vehicles Industriels, s.a., and the Volvo Truck Corporation for their use of defeat devices. The cases eventually settled with manufacturers agreeing to pay a cumulative \$1 billion.

27. The litigation, the settlement, and the effects on the automobile industry, were well-publicized, such that a multinational corporation like Volkswagen must have been aware of the ability of manufacturers to install and use defeat devices as of at least 1998.

C. Volkswagen’s Defeat Device: The Fraud Is Exposed

28. Following that settlement, and because the EPA was thereafter aware that “enterprising” manufacturers would find a way to cheat the system rather than spending their time actually coming up with design innovations that would protect the public and comply with the law, it launched probes into discovering such devices. The EPA provides funding to universities and nonprofits who work on such probes. Such partners included West Virginia University and the International Council on Clean Transportation, who developed tests to uncover and expose defeat devices.

29. The defeat device at issue in the Defective Vehicles was clever and sophisticated. Each of the Defective Vehicles was equipped with software with an algorithm that was designed to detect when the vehicle was undergoing official emissions testing. Full emissions controls were turned on during these mandated tests. Specifically, the electronic control module of the Defective Vehicles ran software which produced compliant emission results during government testing. Volkswagen referred to this mode as the “dyno calibration” (referring to the dynamometer, the equipment used in emissions testing). At all other times during normal operation, the software was activated and the electronic control module ran a “road calibration” which reduced the emissions control system’s effectiveness. Emissions of nitrogen oxide (NO_x) thus increased by up to 40 times, depending on the drive cycle at issue.

30. Based on the design of the above-described defeat device that Volkswagen implemented, it is beyond dispute that Volkswagen knew its devices would bypass, defeat, or render inoperative elements of the vehicle related to compliance with the Clean Air Act emission standards and would violate the Clean Air Act and CARB standards.

31. Volkswagen successfully hid its scheme to defraud consumers and the government for 6 years, but in September 2015, the truth came out.

32. In May 2014, CARB and the EPA were first informed of anomalies consisting of huge quantities of nitrogen oxide (NOx) emanating from Volkswagen vehicles during tests. West Virginia University's Center for Alternative Fuels, Engines & Emissions thereafter published results of a study that found significantly higher in-use emissions from two of Volkswagen's light-duty diesel vehicles.

33. Volkswagen contested the results of the study, but did issue a voluntary recall in December of 2014 to address the problem. CARB, in partnership with the EPA, conducted follow up testing on these vehicles in laboratory and road testing to confirm results. Testing demonstrated the recall would have only limited benefit, so CARB broadened the tested vehicles to pinpoint the exact nature of the problem, and to investigate why the vehicles' onboard computer diagnostic system did not detect the emissions.

34. None of Volkswagen's proffered explanations – all of which constituted further misrepresentations to the public, to CARB, and to the EPA – explained the consistently higher nitrogen oxide (NOx) results noted during CARB's testing. CARB and the EPA determined that they would not issue certificates of conformity for 2016 model year vehicles in view of the test results, until Volkswagen could provide an appropriate explanation, and

explain the extremely anomalous test results and confirm that 2016 model year vehicles would not be similarly situated.

35. Backed into a corner, Volkswagen was forced to admit the truth: it had implemented the deceitful artifice of the defeat device in order to obtain government approval to sell its defective, dangerous, and nonconforming vehicles to the unsuspecting public.

D. Volkswagen's Admissions of Liability

36. Specifically, on September 3, 2015, Volkswagen admitted liability to the EPA and CARB, telling the agencies that "these vehicles were designed and manufactured with a defeat device to bypass, defeat, or render inoperative elements of the vehicles' emission control system."

37. On September 18, 2015, the EPA issued a Notice of Violation ("**NOV**") of the Clean Air Act to Defendant Volkswagen AG, Defendant Volkswagen of America, Inc., and to Audi AG, a wholly owned subsidiary of Volkswagen AG that is also involved in this scheme. The NOV stated that Volkswagen's diesel cars from model years 2009-2015 included software that constitutes a defeat device. The EPA found that Volkswagen deliberately circumvented regulations, and violated Clean Air Act § 203(a)(3)(B), 42 U.S.C. § 7522(a)(3)(B). CARB also issued its own letter of violation.

38. As detailed in the NOV, the software in the Volkswagen and Audi diesel vehicles Volkswagen sold in the United States uses a defeat device to detect when the vehicle is undergoing official emissions testing and turns full emissions controls on only during the test. When not undergoing testing, at all other times that the vehicle is running, the emissions controls are disabled. This results in cars that meet emissions standards only in the laboratory or state testing stations. However, during normal operation, the vehicles emit nitrogen oxide (NOx) at up to **40 times the standard** allowed under United States laws and regulations. Volkswagen's defeat device is exactly what the EPA and CARB regulations are designed to protect the public from, and Volkswagen violated Clean Air Act § 203(a)(1), 42 U.S.C. § 7522(a)(1) by selling, offering for sale, introducing into commerce, delivering for introduction into commerce, and/or importing these vehicles, or for causing any of the foregoing acts.

39. By including defeat devices in its vehicles, Volkswagen ensured that the Defective Vehicles do not conform to the vehicle specifications described in (1) the applications for the certificates of conformity that allegedly cover them or (2) the vehicle specifications that were represented to consumers such as Plaintiff and the Class who ultimately purchased them.

40. On September 23, 2015, Volkswagen's C.E.O., who had claimed he would build the trusted Volkswagen brand into a market leader by 2018,

resigned amidst the scandal, admitting there was “misconduct” and apologizing for breaking the trust of the public. Michael Horn, the head of Volkswagen America, similarly admitted the company had “screwed up.”

41. Volkswagen will likely never recover the good will it has lost as a result of scamming Plaintiff and the Class members, and endangering the health of millions of individual Florida residents who are forced to breathe the emissions from the Defective Vehicles.

E. Consumers Like Plaintiff and the Class Were Harmed

As a Result of Volkswagen’s Actions

42. Consumers, including Plaintiff and the Class Members, paid substantial premiums for their Volkswagen and Audi vehicles. These consumers – including specifically Plaintiff – deliberately sought out vehicles that would assist in reducing the effects of global warming and would have reduced emissions and better fuel economy. Plaintiff, and the Class Members, thought they had found such vehicles when they purchased or leased the Defective Vehicles. Volkswagen even misrepresented its vehicles as “Clean Diesel” – a contorted description of its vehicles if there ever was one.

43. Volkswagen also charged an additional premium price for the “Clean Diesel” option on each of the Defective Vehicles, ranging between \$2,000 and \$6,800 per premium. Not only did Plaintiff and the Class members pay this

premium, but now, in the wake of the revelations about Volkswagen's despicable conduct, the vehicles have lost value, and are not worth what they would have been in a trade or sale had Volkswagen's statements actually been true when made. On September 20, 2015, for example, Volkswagen announced it would halt all sales of the Defective Vehicles, obviously an extreme circumstance that causes consumers to wonder about the safety, efficiency, and efficacy of the alleged "Clean Diesel" vehicles – and with good reason.

44. It is also likely the Defective Vehicles currently in circulation, such as those owned by Plaintiff and the Class, will be recalled and the devices used to fix the problem on the Defective Vehicles will reduce fuel economy and acceleration, and Plaintiff and the Class will lose access to their vehicles during the remediation. Plaintiff and the Class can't even sell their vehicles because they are non-compliant with federal and, for Florida Class Members and Plaintiff, Florida law. Plaintiff and the Class have therefore suffered damages due to Volkswagen's intentional, unfair, deceptive, and fraudulent conduct and have suffered losses in money and property.

45. Had Plaintiff and the Class known the truth about Volkswagen's deception, they never would have purchased the Defective Vehicles, or paid a substantially lower price.

46. Volkswagen's deception was such that Plaintiff and Class Members had no way of knowing that the alleged Clean Diesel vehicle was anything but "clean." It was not until the CARB and the EPA took investigatory action that Volkswagen's deception was revealed. In fact, it took sophisticated laboratory testing, special equipment, and open road testing using portable equipment for Volkswagen's fraud to be revealed. It is clear that Volkswagen's deception was a purposefully, well-planned scheme to deceive federal and state regulators as well as the consuming public, including Plaintiff and Class Members. Plaintiff and the Class had no way of discovering the deception until September 18, 2015, when the EPA issued its Notice of Violation.

47. Volkswagen's concealment was knowing, intentional and active throughout at least the 2009 to 2015 time period. Volkswagen used its reputation as a respected manufacturer to pull the wool over the consuming public's eyes, including Plaintiff and Class Members. Volkswagen intentionally covered up and failed to disclose that the Defective Vehicles were outfitted with the defeat device and that without the defeat device, the Defective Vehicles were in violation of federal and state emissions standards and would suffer from sub-optimal performance. Volkswagen intentionally and falsely represented to Plaintiff and Class Members that the Defective Vehicles

complied with and even surpassed federal and state emissions standards, labeling its vehicles “Clean Diesel” or “TDI Clean.”

48. Volkswagen had a continuing duty to disclose to Plaintiff and Class Members the true character, quality, and amount of emissions from the Defective Vehicles. The continuing duty also applied to compliance with federal and state emissions standards.

49. Volkswagen’s deceit was active, knowing, and affirmative – concealing both the defeat device, the true performance of the vehicle when the defeat device was not employed, and level of emissions the Defective Vehicles would emit during normal operation.

50. Based on the foregoing, any potential statutory limit is tolled by virtue of the discovery rule, Volkswagen’s fraudulent concealment, and equitable estoppel.

V. CLASS ACTION ALLEGATIONS

51. Plaintiff brings this action on his own behalf and pursuant to the Federal Rules of Civil Procedure Rule 23(a), (b)(2), and (b)(3) and on behalf of the following class(es) of persons:

The Class:

All persons, including individual, non-corporate entities, or corporations, where ever organized or existing in the United States who

are former or current owners of any of the following vehicles, without limitation:

- Jetta Model Years 2009-2015
- Beetle Model Years 2009-2015
- Audi A3 Model Years 2009-2015
- Golf Model Years 2009-2015
- Passat Model Years 2014-2015

The Florida Subclass:

All persons, including individual, non-corporate entities, or corporations, where ever organized or existing in Florida who are former or current owners of the following vehicles, without limitation:

- Jetta Model Years 2009-2015
- Beetle Model Years 2009-2015
- Audi A3 Model Years 2009-2015
- Golf Model Years 2009-2015
- Passat Model Years 2014-2015

The Florida Senior Subclass:

All persons in Florida who are 60 years of age or older or who are “handicapped persons” within the meaning of § 501.2077(1)(b), Florida

Statutes and who are former or current owners of the following vehicles, without limitation:

- Jetta Model Years 2009-2015
- Beetle Model Years 2009-2015
- Audi A3 Model Years 2009-2015
- Golf Model Years 2009-2015
- Passat Model Years 2014-2015

52. This action is properly maintained as a class action because Plaintiff can prove the elements of each claim on a class-wide basis, using the same evidence that Plaintiff would use to maintain and prove an individual action. Thus, the action may be properly maintained on behalf of each of the proposed Classes pursuant to Fed. R. Civ. Proc. 23.

53. The Class is so numerous that joinder of all members would be impracticable. The precise number of Class Members is unknown at this time. However, based on information and belief, the Class and Subclass is made up of hundreds of thousands of members, evidenced by the EPA's estimate that there are at least 482,000 Defective Vehicles nationwide, including tens of thousands in Florida since 2008 alone.

54. Questions of law and fact common to the Members of the Class predominate over any questions affecting any individual member, and a class

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

55. Common questions of law and fact include but are not limited to:

- a. Whether the Defective Vehicles contain a defeat device to cheat federal and California emissions standards;
- b. Whether the defeat device complies with federal and state emissions regulations;
- c. Whether Volkswagen designed, manufactured, produced, marketed, distributed, sold, lease or otherwise put the Defective Vehicles equipped with the defeat device into the stream of commerce;
- d. Whether Volkswagen's acts, omissions, concealment and fraud in installing the defeat device degrades the value of the Defective Vehicles in the interim period while Plaintiff and Class Members are forced to wait for the promised "recall" and "fix";
- e. Whether there is a "fix" that can restore Defective Vehicles engines such that the Defective Vehicles both meet federal and state emissions standards;
- f. Whether the Defective Vehicles, once "fixed", are substantially downgraded in both engine performance and fuel economy;

- g. Whether the Defective Vehicles, once “fixed,” are environmentally compliant such as to qualify as “Clean Diesel” as otherwise promised by Volkswagen;
- h. Whether Volkswagen’s fraudulent scheme diminished the value of the Defective Vehicles;
- i. Whether Volkswagen knowingly and intentionally designed, manufactured, implemented and distributed the Defective Vehicles to the consuming public, including Plaintiff and Class Members;
- j. Whether Volkswagen’s conduct violates federal and state consumer protection statutes, contract, and warranty laws;
- k. Whether Plaintiff and Class members were unfairly charged and paid a premium for their “Clean Diesel” vehicles;
- l. Whether Plaintiff and Class members are entitled to relief, including but not limited to equitable, injunctive, and restitution; and
- m. Whether Plaintiff and Class Members are entitled to damages, including punitive and other monetary relief.

56. Plaintiff’s claims are typical of other Class Member’s claims because Class Members were comparably injured through Volkswagen’s illegal and wrongful conduct as described herein.

57. Plaintiff is an adequate Class Representative because Plaintiff is committed to prosecuting the action and has retained competent counsel experienced in litigation of this nature. Plaintiff's claims are typical of the claims of other members of the Class and Plaintiff has the same non-conflicting interests as the other members of the Class. The interests of the Class and Subclass would be fairly and adequately represented by Plaintiff and his counsel.

58. Class treatment is superior to any other available means of prosecution of fair and efficient adjudication of this controversy. There are no unusual difficulties that are likely to arise in the management of this action. The damages and other financial detriment suffered by Plaintiff and Class Members is small compared to the burden and expense of prosecuting each action individually. Thus, it would be impracticable for Plaintiff and Class Members to bring individual actions against Volkswagen for its wrongful and illegal conduct. Further, class treatment benefits the courts. Individualized litigation promises inconsistent or contradictory judgments, unnecessary overlap of resources, and increases the delay and expense to all those accessing the courts. Class treatment brings with it the benefit of a single adjudication, the supervision of a single court, and the consolidation of the courts' and the parties' resources.

59. The prosecution of separate actions by individual Class Members would create the risk of inconsistent or varying adjudications with respect to individual Class members which would establish incompatible standards of conduct for Volkswagen or which would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests. Volkswagen has acted, or refused to act, on grounds generally applicable to, and causing injury to, the Class and Florida Subclass. Therefore, preliminary and final injunctive relief and damages for Volkswagen's illegal conduct is appropriate.

VI. CAUSES OF ACTION

FIRST CAUSE OF ACTION

Violation of the Magnuson-Moss Warranty Act 15 U.S.C. § 2301 et seq. (On Behalf of Plaintiffs and the Class)

60. Plaintiff incorporates allegations 1 – 59 by reference as though fully set forth in this paragraph.

61. Plaintiff and the Class bring this claim under the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301 et seq.

62. The Class Vehicles are consumer products as defined in 15 U.S.C. § 2301(1).

63. Volkswagen is a supplier and warrantor as defined in 15 U.S.C. § 2301(4), (5).

64. Plaintiff and the Class received written warranties as defined in 15 U.S.C. § 2301(6)(A) and/or (B), which Volkswagen has breached.

65. Plaintiff and the Class are “consumers” as defined in 15 U.S.C. § 2301(3). They are consumers because they bought a Defective Vehicle, and they are entitled under Florida law to enforce both written and implied warranties.

66. Pursuant to 15 U.S.C. § 2301(e), Plaintiff and the Class are not required to provide Volkswagen notice of this class action and an opportunity to cure until the time the Court determines the representative capacity of Plaintiff pursuant to Fed. R. Civ. Proc. 23.

67. Volkswagen is liable to Plaintiff and the Class pursuant to 15 U.S.C. § 2301(d)(1), because it breached its written warranties.

68. Further, in connection with the sale of the Defective Vehicles, Volkswagen gave an implied warranty under the Magnuson-Moss Warranty Act. As part of that implied warranty, Volkswagen warranted that the Defective Vehicles complied with all applicable federal and state regulations, including emission regulations. Volkswagen breached the implied warranty of merchantability.

69. Volkswagen provided Plaintiff and each member of the Nationwide Class who purchased a new Defective Vehicle with a Manufacturer's Warranty, which provides "bumper-to-bumper" limited express warranty coverage for a minimum of 3 years or 36,000 miles, whichever comes first. This warranty covers emissions related repairs. This warranty is directly applicable to the Defective Vehicles.

70. Volkswagen also provided a Federal Emissions Warranty to members of the Nationwide Class. Vehicles certified to meet California emissions standards and registered in states which have adopted those standards are also entitled to coverage under the California Emissions Warranty.

71. Consistent with federal law, Volkswagen provided Plaintiff and the proposed nationwide class with a "performance warranty" and a "design and defect warranty." These warranties are directly applicable to the Defective Vehicles.

72. In addition to the Nationwide Class, Florida Class members were also provided additional warranty coverage beyond that required by federal law.

73. Volkswagen breached these warranties by selling the Defective Vehicles with a defeat device which reduces the efficacy of the emissions

control systems causing the Defective Vehicles to fail to comply with emissions standards set by federal law. This device cannot be repaired or redressed without materially altering the advertised estimated fuel economy and other performance characteristics of the vehicle.

74. Plaintiff and the Class are entitled to damages caused by Volkswagen's breaches of the warranties, including economic damages based upon either a return of Plaintiff's and Class Members' purchase prices, and/or the difference between the price paid for the Defective Vehicle as warranted and the actual value of the Defective Vehicle as delivered, and consequential damages.

75. In addition, Plaintiff and the Class are entitled to reasonable attorneys' fees and costs as determined by the Court.

Wherefore, Plaintiff and the Class pray for relief as set forth below.

2nd CAUSE OF ACTION
Breach of Contract
(On Behalf of Plaintiffs and the Class)

76. Plaintiff incorporates by reference each of the paragraphs set forth above as though fully set forth hereinafter.

77. Volkswagen's misrepresentations and omissions alleged herein, including Volkswagen's failure to disclose the existence of the "defeat device" and/or defective design as alleged herein, caused Plaintiff and the other Class members to make their purchases or leases of their Defective Vehicles. Absent those misrepresentations and omissions, Plaintiff and the other Class members would not have purchased or leased these Defective Vehicles, would not have purchased or leased these Defective Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the "Clean Diesel" engine system and the "defeat device." Accordingly, Plaintiff and the other Class members overpaid for their Defective Vehicles and did not receive the benefit of their bargain.

78. Each and every sale or lease of a Defective Vehicle constitutes a contract between Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing Plaintiffs and the other Class members defective Defective Vehicles and by misrepresenting or failing to disclose the existence of the "defeat device" and/or defective design, including information known to Volkswagen rendering each Defective Vehicle less safe and emissions compliant, and thus less valuable, than vehicles not equipped with "Clean Diesel" engine systems and "defeat devices."

Wherefore, Plaintiff and the Class pray for relief as set forth below.

3rd CAUSE OF ACTION
Fraud By Concealment
(On Behalf of Plaintiffs and the Class)

79. Plaintiff incorporates by reference each of the paragraphs set forth above as though fully set forth hereinafter.

80. Volkswagen intentionally concealed material facts concerning the quality and performance of the Defective Vehicles. As alleged in this complaint, Volkswagen created a plan to defeat federal and state emissions standards and persuade Plaintiff, Class Members, and the consuming public that its affected vehicles were “Clean,” fuel efficient, with optimal performance. Volkswagen designed, manufactured, and implemented a defeat device to carry out its nationwide deception. Volkswagen intentionally and uniformly marketed the Defective Vehicles with a misleading misnomer: “Clean Diesel” or “TDI Clean.”

81. The defeat device was designed to function only during emissions certification testing, such that the vehicles would show far lower emissions than when actually operating on the road. The result was what Volkswagen intended: vehicles passed emissions certifications by way of contrived false emissions figures. According to the EPA NOV’s, Volkswagen’s scheme to

defraud federal and state regulators and the consuming public results in emissions that is 10 to 40 times in excess federal and state law.

82. Plaintiff and Class Members, including Florida Subclass Members, reasonably relied upon Volkswagen's false representations as the information provided to the public on Volkswagen's vehicles was always the same: that the Diesel option was a clean alternative, promising excellent gas mileage, and impressive engine performance. Plaintiff and Class Members had no way of knowing that Volkswagen's representations were false and dangerously misleading.

83. As alleged herein, Volkswagen employed extremely sophisticated methods of deception.

84. Plaintiff and Class members did not, and could not, uncover Volkswagen's deception on their own. Volkswagen concealed and suppressed material facts concerning Volkswagen's true approach to business, placing profits and sales above compliance with federal and state clean, the public's safety, and the trust of its consumers at any cost.

85. Further, Volkswagen ensure that its employees did not reveal the details of its illegal scheme to regulators or consumers, including Plaintiff and Class Members. Volkswagen's lies served to cover up the true nature of the affected cars performance in terms of fuel economy and emissions standards

and to boost the reputations of its vehicles and to falsely assure purchasers and lessors of its vehicles, that Volkswagen is a reputable and conscious manufacturer that complies with applicable law, including federal and state clean air and emissions regulations.

86. Volkswagen's misrepresentations were material to Plaintiff, Class Members and the consuming public. Plaintiff and Class Members considered the "Clean Diesel" representation in purchasing or leasing the vehicles. Volkswagen's representation that the vehicle was Clean Diesel and that the Defective Vehicles complied with federal and state regulations played a significant role in the value of the vehicles – both in terms of premium charged at the outset, the cost of operating the vehicle on a daily basis, and its future resale value. Plaintiff and Class Members relied upon Volkswagen's misrepresentations and omissions in deciding to buy their Defective Vehicles. Had Plaintiff and Class Members known of Volkswagen's deception, they would have not paid the premiums for the Defective Vehicles or they would have forgone purchasing the vehicles.

87. Volkswagen knew that Plaintiff, Class Members and the consuming public would pay for a vehicle that not only complied with federal and state emissions standards, but that was "clean" and environmentally conscious. An added and compelling factor to Plaintiff and Class Members was that

Volkswagen also promised excellent engine performance, unlike that of its competitor hybrids that lacked the same torque. Thus, Plaintiff and Class Members paid a premium for these Defective Vehicles.

88. Volkswagen had a duty to disclose the implementation of the defeat device's placement in the Defective Vehicles because knowledge of the scheme and its details were only to Volkswagen. Volkswagen exclusively held knowledge and information regarding its deceptive scheme. The facts of Volkswagen's secret scheme were not known to Plaintiff and Class Members and Plaintiff and Class Members, by virtue of simply being part of the consuming public, were not in a position to discover the truth about the Defective Vehicles.

89. Volkswagen's duty to disclose this material information to Plaintiff and Class Members arises because, as part of its business, Volkswagen made general affirmative representations about the qualities of its vehicles claiming that they are "Clean Diesel" cars. This representation is incomplete, misleading and deceptive without also disclosing the existence of the defeat device, the true nature of the affected vehicle's performance when not under testing conditions, and the true nature of the engine and performance of the Defective Vehicles. Volkswagen, having provided information with regard to its vehicles,

had a duty to disclose to Plaintiff and Class Members all facts regarding the true nature of the Defective Vehicles, not only selective and convenient information.

90. Volkswagen actively concealed these material facts to pad and protect its profits and to avoid the perception that its vehicles did not or could not comply with federal and state laws governing clean air and emissions. In order to protect its reputation and line its pockets, Volkswagen created an elaborate and uniform scheme at the expense of Plaintiff, Class Members and the health of the public and the environment.

91. While Volkswagen has issued an apology to the public, it still not made full and adequate disclosures, and continues to defraud Plaintiff and Class members by concealing material information regarding the Defective Vehicles and its emissions scheme.

92. Volkswagen's uniform and widespread misrepresentations and omission harmed Plaintiff and Class Members. Plaintiff and Class Members have sustained damage because they own vehicles that are diminished in value as a result of Volkswagen's concealment of the true quality of the Defective Vehicles.

93. Volkswagen's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiff's and Class Members' rights. Volkswagen's illegal and deceptive acts warrant an

award of punitive damages in an amount sufficient to deter such unscrupulous conduct in the future.

94. Further, Volkswagen is liable to Plaintiff and Class Members for damages in an amount to be proven at trial.

Wherefore, Plaintiff and the Class pray for relief as set forth below.

4th CAUSE OF ACTION

**Violation of the Lanham Act, 15 U.S.C. § 1125(a) et. seq.
(On Behalf of Plaintiffs and the Class)**

95. Plaintiff incorporates allegations 1 to 94 by reference as though fully set forth in this paragraph.

96. Volkswagen made false or misleading statements of fact in commercial advertisements about products, like the VW Diesel Model. The statements were false as to fuel economy, efficiency, emissions, performance, value, and compliance with federal and state laws.

97. The statements deceived Plaintiff and others in the Class. The deception is material and influenced purchasing decisions that consumers, including Plaintiff and the Class, made when deciding what make and model of car to purchase.

98. Volkswagen's false and misleading advertising statements and omissions violated the Lanham Act, 15 U.S.C. § 1125(a).

99. Volkswagen does business in all states and districts of the United States in interstate commerce.

100. Plaintiff and the Class have been injured as a result of the false or misleading statements.

101. Lanham Act, 15 U.S.C. § 1117 entitles Plaintiff and the Class to recover from Volkswagen damages, gains, profits, and advantages, as well as costs in this action, sustained as a result of these violations and those damages, gains, profits, and advantages, as well as costs in this action, are not fully ascertainable at this time because of Volkswagen's deceptive actions and the results on certain elements of those damages, gains, profits, and advantages, as well as costs in this action.

Wherefore, Plaintiff and the Class pray for relief as set forth below.

5th CAUSE OF ACTION

**Violation of Florida Deceptive and Unfair Trade Practices Act
§§ 501.201, et. seq., Florida Statutes
(On Behalf of Plaintiffs and the Florida Subclass)**

102. Plaintiff incorporates allegations 1 to 101 by reference as though fully set forth in this paragraph.

103. The Florida Deceptive and Unfair Trade Practices Act (FDUPTA) §§ 501.201, et. seq., Florida Statutes, makes acts of “unfair competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce” unlawful.

104. Volkswagen’s conduct that violates FDUPTA includes:

- a. willfully concealing from Plaintiff and Class Members that the Defective Vehicles contain the defeat device that is in effect a design defect while at the same time obtaining money from Plaintiff and the Class,
- b. willfully marketing Defective Vehicles as fuel efficient, Clean Diesel, regulation compliant engine systems,
- c. willfully installing an illegal “defeat device” in the Defective Vehicles to fraudulently obtain EPA certification and cause Defective Vehicles to pass emissions tests when in truth not only do they not pass, they violate emissions standard by 10 to 40 times the amount of nitrogen oxide (NOx) emissions permitted by law,
- d. willfully violating federal laws, including the Clean Air Act, and
- e. willfully designing, manufacturing, and selling the Defective Vehicles that violated federal and California laws governing vehicle emissions and emission testing requirements in order to artificially

enhance vehicle performance that would otherwise have not been as advertised had the Defective Vehicles actually complied with applicable laws.

105. Volkswagen numerous misrepresentations concerning the benefits, efficiency, performance and safety features, including that Volkswagen vehicles were “Clean Diesel” environmentally friendly vehicles were misleading.

106. Volkswagen’s misrepresentations and omissions caused Plaintiff and Florida Subclass Members to purchase or lease their Defective Vehicles. Absent those misrepresentations and omissions, Plaintiff and Florida Subclass Members would not have purchased or leased the Defective Vehicles.

107. Plaintiff and Florida Subclass Members have suffered damages, including:

- a. diminution in the value of the Defective Vehicles,
- b. If Volkswagen had not have deliberately omitted the true nature of the Defective Vehicles’ engines and performance ability, Plaintiff and Florida Subclass Members would have purchased or leased less expensive alternative vehicles,
- c. If Volkswagen had not have deliberately omitted the true nature of the Defective Vehicles’ engines and performance ability, Plaintiff

and Florida Subclass Members certainly would not have purchased or leased these Defective Vehicles at the prices paid,

- d. inflated premium purchase or lease price for the Defective Vehicles,
- e. after the publicized recall and fix, Plaintiff and Class Members will pay additional fuel costs or the Defective Vehicles will have reduced performance if and when their Defective Vehicles are fixed to comply with emissions standards and will have loss of use, and
- f. litigation costs and fees.

108. Volkswagen knew, should have known the defective design and manufacture of the Defective Vehicles were not suitable for their intended use.

109. Volkswagen had actual knowledge of these violations.

110. § 501.211(2), Florida Statutes provides that Plaintiff and the Florida Subclass are entitled to recover actual damages, plus attorney's fees and court costs, from Volkswagen.

111. § 501.2105(1), Florida Statutes entitles Plaintiff and the Florida Subclass to recover reasonable attorney's fees and court costs from Volkswagen.

Wherefore, Plaintiff and the Class pray for relief as set forth below.

6th CAUSE OF ACTION

Violation of Florida Deceptive and Unfair Trade Practices Act

§§ 501.2077, Florida Statutes

(On Behalf of Plaintiffs and the Florida Senior Subclass)

112. Plaintiff incorporates allegations 1 to 111 by reference as though fully set forth in this paragraph.

113. § 501.2077(2), Florida Statutes entitles Plaintiff to a civil penalty of \$15,000.00 for each violation where Volkswagen is willfully using or has willfully used, "a method, act, or practice in violation of this part, which method, act, or practice victimizes or attempts to victimize senior citizens or handicapped person."

114. Volkswagen knew or should have known that Volkswagen's conduct was unfair or deceptive to the Florida Senior Subclass.

115. Florida Senior Subclass members are each entitled to \$15,000.00 over and above all other damages to which they are entitled.

Wherefore, Plaintiff and the Class pray for relief of \$15,000.00 over and above all other damages to which they are entitled and all other relief as set forth below.

SEVENTH CAUSE OF ACTION

Breach of Implied Warranty of Merchantability

(On Behalf of Plaintiffs and the Class)

116. Plaintiff incorporates allegations 1 to 111 by reference as though fully set forth in this paragraph.

117. A warranty that the Defective Vehicles were in merchantable condition was implied by law in the instant transaction pursuant to Florida law.

118. These Defective Vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Vehicles are inherently defective in that they do not comply with federal and state emissions standards, rendering certain safety and emissions functions inoperative. Further, the Clean Diesel engine system was not adequately designed, manufactured, and tested.

119. Volkswagen was provided notice of these issues by the investigations of the EPA and CARB. Plaintiff and Class Members have had sufficient direct dealings with either Volkswagen or its agents (dealerships) to establish privity of contract between Plaintiff and Class Members. Notwithstanding this, privity is not required in this case because Plaintiff and Class Members are intended third-party beneficiaries of contracts between Volkswagen and its dealers. Plaintiff and Class Members are the intended beneficiaries of Volkswagen's implied warranties.

120. The dealers of Volkswagen's Affected Vehicles were not intended to be the ultimate consumers of the Defective Vehicles and have no rights under the warranty agreements provided with the Defective Vehicles. The warranty agreements were designed for and intended to benefit the ultimate consumers only. Finally, privity is also not required because Plaintiff's and Class Members' Defective Vehicles are dangerous instrumentalities due to the aforementioned defects and nonconformities.

121. As a direct and proximate result of Volkswagen's breach of the warranties of merchantability, Plaintiff and Class Members have been damaged in an amount to be proven at trial.

Wherefore, Plaintiff and the Class pray for relief of as set forth below.

VII. PRAYER FOR RELIEF

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

A. Certification of the proposed Class and Florida Subclass, including appointment of Plaintiff's counsel as Class Counsel;

- B. An order temporarily and permanently enjoining Volkswagen from continuing the unlawful, deceptive, fraudulent, and unfair business practices alleged in this Complaint;
- C. Injunctive relief in the form of a recall or free replacement program;
- D. Costs, restitution, damages, including punitive damages, and disgorgement in an amount to be determined at trial;
- E. An order requiring Volkswagen to pay both pre- and post-judgment interest on any amounts awarded;
- F. An award of costs and attorneys' fees;
- G. Damages and other monetary amounts stated in each count above; and
- H. Any other relief the Court may deem appropriate.

DEMAND FOR JURY TRIAL

Plaintiff, on behalf of himself, and all others similarly situated, hereby demands a jury trial for all claims so triable.

Dated 14 October 2015

/s/Charles PT Phoenix
Charles PT Phoenix, Trial Counsel
The Florida Bar No. 0535591
Jason T. File

The Florida Bar No.0023155

Anthony J. Dimora

The Florida Bar No.0092347

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/s/Thomas V. Girardi

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GIRARDI | KEESE

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Facsimile: (213) 481-1554

Email: tgirardi@girardikeese.com

RECEIVED
 1000 papers as required by
 for the use of the Clerk of C

I. (a) PLAINTIFFS
MICHAEL J. PETERSON, individually and on behalf of all others
similarly situated.

DEFENDANTS
VOLKSWAGEN GROUP OF AMERICA, INC. and VOLKSWAGEN
AG

County of Residence of First Listed Defendant _____

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

Attorneys *Of Known*

(c) Attorneys (Firm Name, Address, and Telephone Number)
Rhodes Tucker, 2407 Periwinkle Way, Suite 6, Sanibel, FL 33957
Girardi & Keese, 1126 Wilshire Blvd., Los Angeles, CA 90017

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

- | | |
|--|--|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input type="checkbox"/> 3 Federal Question
<i>(U.S. Government Not a Party)</i> |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input checked="" type="checkbox"/> 4 Diversity
<i>(Indicate Citizenship of Parties in Item 10)</i> |

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

CONTRACT		TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<ul style="list-style-type: none"> ☐ 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 	PERSONAL INJURY <ul style="list-style-type: none"> ☐ 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 <ul style="list-style-type: none"> ☐ 365 Personal Injury - Product Liability ☐ 367 Health Care' Pharmaceutical Personal Injury Product Liability ☐ 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <ul style="list-style-type: none"> ☐ 370 Other Fraud ☐ 371 Truth in Lending ☐ 380 Other Personal Property Damage ☐ 385 Property Damage Product Liability 	<ul style="list-style-type: none"> ☐ 625 Drug Related Seizure of Property 21 USC 881 ☐ 690 Other 	<ul style="list-style-type: none"> ☐ 422 Appeal 28 USC 158 ☐ 423 Withdrawal 28 USC 157 	<ul style="list-style-type: none"> ☐ 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 	
				PROPERTY RIGHTS <ul style="list-style-type: none"> ☐ 820 Copyrights ☐ 830 Patent ☐ 840 Trademark 		
				LABOR <ul style="list-style-type: none"> ☐ 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 	SOCIAL SECURITY <ul style="list-style-type: none"> ☐ 861 HIA (1595(f)) ☐ 862 Black Lung (923) ☐ 863 DIWC DIWW (405(g)) ☐ 864 SSID Title XVI ☐ 865 RSI (405(g)) 	
				IMMIGRATION <ul style="list-style-type: none"> ☐ 462 Naturalization Application ☐ 465 Other Immigration Actions 	FEDERAL TAX SUITS <ul style="list-style-type: none"> ☐ 870 Taxes (U.S. Plaintiff or Defendant) ☐ 871 IRS—Third Party 26 USC 7609 	
REAL PROPERTY <ul style="list-style-type: none"> ☐ 210 Land and Condemnation ☐ 220 Foreclosure ☐ 230 Rent Lease & Ejectment ☐ 240 Torts to Land ☐ 245 Tort Product Liability ☐ 290 All Other Real Property 	CIVIL RIGHTS <ul style="list-style-type: none"> ☐ 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 <ul style="list-style-type: none"> ☐ 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 				

☒ 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

Cite the U.S. Civil Statute under which you are filing (*Do not cite jurisdictional statutes unless diversity*)
15 U.S.C. §2301 and other claims under state law

Brief description of cause Defendants (Volkswagen entities) installed "defeat devices" on their vehicles and sold them to Plaintiff and the Class in violation of federal and state law

<input checked="" type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.	DEMAND \$	CHECK YES only if demanded in complaint JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
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(See instructions)

JUDGE

DOCKET NUMBER

DATE _____ SIGNATURE OF ATTORNEY OF RECORD _____

10/13/15 Charles PT Phoenix

FOR OFFICE USE ONLY

RECEIPT :

444

APPEALING 100

111367

MAG ELDON

2: 15-CV-642-FEM-29 MAR