

**UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF NEW JERSEY**

**JOHN PUGLISI, PAUL KRAWITZ, and
MELISSA WITTIG, on Behalf of
Themselves and All Others Similarly
Situated,**

Plaintiffs,

v.

**VOLKSWAGEN GROUP OF AMERICA,
INC.,**

Defendant.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiffs, John Puglisi, Paul Krawitz, and Melissa Wittig, by and through undersigned counsel, on behalf of himself and all persons similarly situated, complain and allege as follows:

NATURE OF THE CASE

1. This is a civil action seeking monetary damages and other relief from Volkswagen Group of America, Inc. (“Volkswagen”) arising out of Volkswagen’s deceptive scheme to violate U.S. law. Volkswagen duped consumers and federal regulators into believing that certain of Volkswagen’s vehicles complied with federal emissions rules and regulations promulgated by the United States Environmental Protection Agency (“EPA”) when, in reality, Volkswagen utilized sophisticated software to mask the vehicles’ true emissions.

2. From at least 2009 through the present, Volkswagen has marketed certain diesel vehicles as environmentally-friendly “CleanDiesels” (collectively, “the Affected Vehicles”). Volkswagen has touted its “CleanDiesel” vehicles as not only compliant with mandatory federal emissions standards under the Clean Air Act (“CAA”), 42 U.S.C. §§ 7401-7671q, but as

possessing a superior combination of low-environmental impact and performance, which Volkswagen used to justify a price premium.

3. Volkswagen's claims of low-environmental impact and performance, or even minimum compliance with federal emissions standards, were false. On September 18, 2015, the EPA issued a Notice of Violation ("NOV") to Volkswagen declaring that Volkswagen "manufactured and installed defeat devices in certain model year 2009 through 2015 diesel light-weight duty vehicles[.]" *See* Ex. A. "These defeat devices bypass, defeat, or render inoperative elements of the vehicles' emission control system that exist to comply with [Clean Air Act ("CAA"), 42 U.S.C. §§ 7401-7671q] emission standards. Therefore, [Volkswagen] violated section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B)." *Id.*

4. In other words, Volkswagen installed software "that sense when the vehicle was being tested for compliance with EPA emissions standards," and caused a fraudulent, compliant result to be registered. *Id.* In reality, the Affected Vehicles were not compliant with EPA emissions standards at all. For instance, the Affected Vehicles' emissions of nitrogen oxides ("NOx") are actually up to **40 times higher** than EPA-compliant levels. *Id.*

5. As a result of Volkswagen's unfair, deceptive, and/or fraudulent misrepresentations or omissions, hundreds of thousands of unsuspecting consumers purchased or leased – at a premium – an Affected Vehicle that did not comply with federal emissions requirements. Plaintiffs are such consumers. Had Plaintiffs and other Class members known that Volkswagen fraudulently employed a "defeat device" to fake EPA emissions test results at the time they purchased or leased an Affected Vehicle, they would not have purchased or leased those vehicles, or would have paid substantially less for the vehicles than they did. Even if Volkswagen initiates a recall (which it has not yet done), Plaintiffs and other Class members will be required to spend greater sums on fuel and will not obtain the represented efficiency or performance characteristics of their purchased or leased vehicles. Not only that, but the Affected

Vehicles certainly will be worth less in the aftermarket due to the decrease in efficiency and performance.

JURISDICTION AND VENUE

6. This Court has original jurisdiction of this action under the Class Action Fairness Act of 2005. Pursuant to 28 U.S.C. §§ 1332(d), this Court has original jurisdiction because the aggregate claims of the putative Class exceed \$5 million, exclusive of interest and costs, and at least one of the members of the proposed classes is a citizen of a different state than Volkswagen. This Court also has jurisdiction pursuant to 15 U.S.C. § 2301 by virtue of 28 U.S.C. § 2301(3).

7. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because Volkswagen is subject to personal jurisdiction here and regularly conducts business in the District of New Jersey, is incorporated under the laws of New Jersey, and because on information and belief a substantial part of the events or omissions giving rise to the claims asserted herein occurred in this district.

THE PARTIES

8. Plaintiff, John Puglisi, is a resident and citizen of Ocean County, New Jersey.

9. Plaintiff, Paul Krawitz, is a resident and citizen of Escambia County, Florida.

10. Plaintiff, Melissa Wittig, is a resident and citizen of Wharton County, Texas.

11. Defendant Volkswagen Group of America, Inc. (“Volkswagen”) is a New Jersey corporation, and maintains its principal place of business located at 2200 Ferdinand Porsche Dr., Herndon, Virginia. Volkswagen regularly conducts business in New Jersey and elsewhere. It has specific, as well as general and systematic, contacts in New Jersey.

12. Volkswagen manufactures, distributes, sells, leases, and warrants the Affected Vehicles (among others) under the Volkswagen and Audi brand names throughout the United States.

COMMON FACTUAL ALLEGATIONS

A. Overview of Federal Emissions Requirements

13. Among the emissions subjected to EPA requirements under the CAA are a vehicle's emission of nitrogen oxides (NO_x) during normal operation. NO_x can be dangerous to human health and have been linked with ozone depletion and other deleterious environmental effects. The CAA and the regulations promulgated thereunder aim to protect human health and the environment by reducing emissions of NO_x and other pollutants from motor vehicles.

14. To enforce the CAA, the EPA administers a certification program that requires every vehicle sold in the United States to receive a certificate of conformity, which attests that the vehicle's emissions meet federal emissions requirements.

15. Part of the application process to attain a certificate of conformity requires an applicant to identify and explain any system or device that may reduce the effectiveness of a vehicle's emission control system. 40 C.F.R. § 86.1844-01(d)(11).

16. A "defeat device" (as used herein, a "device" includes a "system") is an auxiliary emission control device "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[.]" 40 C.F.R. § 86.1803-01.

17. Because defeat devices circumvent the very purpose of the CAA and regulations promulgated thereunder, it is a violation of federal law to manufacture, sell, or install them in vehicles. *See* 42 U.S.C. § 7522(a)(3)(B); 40 C.F.R. § 86.1854-12(a)(3)(ii). Consequently, vehicles equipped with such devices cannot be certified under the EPA's regulations, and cannot be sold in the United States. *See* 42 U.S.C. §§ 7522(a); 40 C.F.R. § 86-1854-12(a).

B. Volkswagen's Deceptive Scheme To Flout Federal Emissions Requirements

18. Beginning at least as early as 2009, Volkswagen marketed a number of four-cylinder vehicles equipped with diesel engines as "eco-friendly and fuel-efficient vehicles"

(collectively, the “Affected Vehicles”). Volkswagen asserted that these vehicles were highly rated according to strict EPA emissions standards.

19. Because these “green” Affected Vehicles featured supposedly unique or superior efficiency and performance characteristics, Volkswagen charged a premium for these vehicles over comparable models that did not share these purported characteristics. And, of course, Volkswagen represented that all of the Affected Vehicles were certified in accordance with EPA emissions standards.

20. Volkswagen’s representations were false. Contrary to its clear and express representations, the Affected Vehicles did not possess superior eco-friendly or related performance characteristics. Volkswagen omitted the material fact that it developed and secretly installed software that masked the Affected Vehicles’ true emissions in normal operating conditions. Thus, the software constituted a defeat device under the CAA. In essence, Volkswagen faked the Affected Vehicles’ emissions results to obtain certificates of conformity and the right to sell the vehicles in the United States, and then went ahead and touted those faked emissions results as justification to charge a premium in the marketplace.

C. Plaintiffs Fall Victim to Volkswagen’s Scheme

21. Plaintiff, John Puglisi, purchased a 2012 Volkswagen Passat TDI, in or about 2012.

22. Plaintiff, Paul Krawitz, purchased a 2015 Volkswagen Passat TDI in or about 2015.

23. Plaintiff, Melissa Wittig, purchased a 2014 Volkswagen Passat TDI, in or about June 2014.

24. At the time of purchase, Volkswagen knew or had reason to know that the vehicles Plaintiffs were buying were equipped with defeat devices, but did not disclose this to Plaintiffs.

25. Plaintiffs purchased their vehicles on the reasonable yet mistaken belief that the vehicles complied with federal emissions requirements, were properly EPA certified, and would retain all of their represented operating characteristics, including efficiency and performance.

26. Plaintiffs purchased their vehicles, at least in part, because of the “CleanDiesel” system represented by Volkswagen. Shortly before their purchases, Plaintiffs had reviewed television and/or internet advertisements or related materials, which on information and belief Volkswagen caused to be made, that underscored the cleanliness, eco-friendliness, efficiency, and performance of the engine system in the vehicle he ultimately purchased. Nothing available to Plaintiffs suggested that Volkswagen had surreptitiously installed a defeat device to circumvent federal emissions requirements, or (for example) disclosed that the vehicles actually emitted up to 40 times the permitted levels of certain pollutants. Plaintiffs would not have purchased the vehicles, or would have paid less for them, had they known these facts. As a result of Volkswagen’s deceptive misrepresentations or omissions, Plaintiffs have suffered an ascertainable loss.

FRAUDULENT CONCEALMENT AND TOLLING

27. Upon information and belief, Volkswagen has affirmatively concealed from Plaintiffs and other Class members its unlawful conduct. Volkswagen planned and implemented its unlawful scheme in private, and affirmatively strove to avoid discussing or disclosing same, and took other actions to hide and conceal the unlawful conduct.

28. For instance, Volkswagen was under a duty imposed by federal law to disclose to Plaintiffs and other Class members the true nature, character, and quality of emissions from the Affected Vehicles, and compliance status with federal emissions requirements. Volkswagen did not disclose these true facts to Plaintiffs and other Class members, or the EPA. Indeed, Plaintiffs and other members of the Class did not know, nor had any way to know through the exercise of reasonable diligence, about Volkswagen’s wrongful conduct as alleged herein until the EPA

disclosed its investigation on or about September 18, 2015, which up until that point had been non-public.

29. Because of the above, Plaintiffs and other Class members did not discover, nor could they discover through reasonable diligence, Volkswagen's deceptive, fraudulent, and unlawful conduct alleged herein. Volkswagen's false and misleading explanations, or obfuscations, lulled Plaintiffs and Class members into believing that the prices paid for purchased or leased Affected Vehicles were consistent with Volkswagen's fraudulent misrepresentations and omissions.

30. As a result of Volkswagen's affirmative and other acts of concealment, any applicable statute of limitations affecting the rights of Plaintiffs and other Class members has been tolled. Plaintiffs and other Class members exercised reasonable diligence by among other things promptly investigating the allegations contained herein after sufficient information was discoverable. Despite other efforts, Plaintiffs were unable to discover, and could not have discovered, the unlawful conduct alleged herein at the time it occurred or at an earlier time so as to enable this complaint to be filed sooner.

31. Because Volkswagen was under an obligation to comply with federal emissions requirements, it is estopped from being able to assert any statute of limitations defense in this action.

32. Volkswagen's unlawful conduct alleged herein and the effects thereof are continuing and, as a direct and proximate result, Plaintiffs and Class members have and continue to suffer ascertainable losses.

CLASS ALLEGATIONS

33. Plaintiffs bring this action on behalf of themselves and all others similarly situated pursuant to Fed. R. Civ. P. 23(a), (b)(2), and (b)(3). This action satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of Rule 23.

34. The proposed classes are defined as:

National Class. All persons in the United States who, from at least 2009 through the present, purchased or leased an Affected Vehicle (as defined below).

New Jersey State Subclass. All persons in the State of New Jersey who, from at least 2009 through the present, purchased or leased an Affected Vehicle (as defined below).

Florida State Subclass. All persons in the State of Florida who, from at least 2009 through the present, purchased or leased an Affected Vehicle (as defined below).

Texas State Subclass. All persons in the State of Texas who, from at least 2009 through the present, purchased or leased an Affected Vehicle (as defined below).

The “Affected Vehicles” include:

Model Year(s)	Make and Model(s)
2009-2015	VW Jetta TDI
2009-2014	VW Jetta Sportwagen TDI
2010-2015	VW Golf TDI
2015	VW Golf Sportwagen TDI
2012-2015	VW Beetle TDI & VW Beetle Convertible TDI
2012-2015	VW Passat TDI
2010-2015	Audi A3 TDI

The National Class and the State Subclasses are collectively referred to as the “Classes.”

35. Plaintiffs reserve the right to modify or amend the definition of the proposed Classes before the Court determines whether certification is appropriate.

36. Excluded from the Classes are Volkswagen, its parents, subsidiaries, affiliates, officers and directors, any entity in which Volkswagen has a controlling interest, all customers

who make a timely election to be excluded, governmental entities, and all judges assigned to hear any aspect of this litigation, as well as their immediate family members.

37. The members of the Classes are so numerous that joinder is impractical. The Classes consist of many thousands of members, the identities of whom are within the knowledge of and can be ascertained only by resort to Volkswagen's records.

38. The claims of the representative Plaintiffs are typical of the claims of the Classes in that the representative Plaintiffs, like all Class members, purchased (or leased) an Affected Vehicle. The representative Plaintiffs, like all Class members, have been damaged by Volkswagen's misconduct in that they have been harmed by the same deceptive, misleading, and/or fraudulent pretenses and practices. Furthermore, the factual basis of Volkswagen's misconduct is common to all Class members, and represents a common thread of unfair and unconscionable conduct resulting in injury to all members of the Classes.

39. There are numerous questions of law and fact common to the Classes and those common questions predominate over any questions affecting only individual Class members.

40. Among the questions of law and fact common to the Classes are whether:

a. Volkswagen unlawfully, falsely, deceptively, or misleadingly represented that the Affected Vehicles complied with CAA and EPA emissions requirements;

b. Volkswagen installed defeat devices in the Affected Vehicles in violation of federal law;

c. The Affected Vehicles did not meet CAA and EPA emissions requirements;

d. Volkswagen unlawfully, falsely, deceptively, or misleadingly induced Class members into purchasing or leasing an Affected Vehicle based on misrepresentations and false promises;

e. Volkswagen wrongfully omitted its installation or use of a defeat device to

mask the Affected Vehicles' emissions;

f. To the extent applicable, whether and how long Volkswagen fraudulently concealed its past and ongoing wrongful conduct from Plaintiffs and other members of the Classes;

g. Volkswagen was unjustly enriched through the company's actions; and

h. Volkswagen violated consumer protection and other state law.

41. Other questions of law and fact common to the Classes include:

i. The proper method or methods by which to measure damages; and

j. The declaratory and injunctive relief to which the Classes are entitled.

42. Plaintiffs' claims are typical of the claims of other Class members, in that they arise out of the same or substantially similar wrongful conduct by Volkswagen. Plaintiffs have suffered the harm alleged and have no interests antagonistic to the interests of any other Class member.

43. Plaintiffs are committed to the vigorous prosecution of this action and have retained competent counsel experienced in the prosecution of class actions and, in particular, class actions on behalf of consumers. Accordingly, Plaintiffs are adequate representatives and will fairly and adequately protect the interests of the Classes.

44. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Since the amount of each individual Class member's claim is small relative to the complexity of the litigation, and due to the financial resources of Volkswagen, no Class member could afford to seek legal redress individually for the claims alleged herein. Therefore, absent a class action, the Class members will continue to suffer losses and Volkswagen's misconduct will proceed without remedy.

45. Even if Class members themselves could afford such individual litigation, the court system could not. Individualized litigation would significantly increase the delay and

expense to all parties and to the Court. Individualized litigation would also create the potential for inconsistent or contradictory rulings. By contrast, a class action presents far fewer management difficulties, allows claims to be heard which might otherwise go unheard because of the relative expense of bringing individual lawsuits, and provides the benefits of adjudication, economies of scale and comprehensive supervision by a single court.

COUNT ONE
Fraud and Fraudulent Inducement
(On Behalf of the National Class)

46. Plaintiffs repeat the preceding paragraphs as if set forth fully herein.

47. Volkswagen affirmatively misrepresented and/or did not disclose sufficient facts to render non-misleading its statements about the emissions certification, efficiency, and performance characteristics of the Affected Vehicles. These misrepresentations or omissions include, inter alia, whether the Affected Vehicles truly passed federal emissions requirements (they did not), or possessed the efficiency and performance characteristics advertised (they did not).

48. Volkswagen knew, or reasonably should have known, that its representations alleged herein were materially false or misleading, or that omission of material facts rendered such representations false or misleading. Volkswagen also knew, or had reason to know, that its misrepresentations and omissions would induce Class members (including Plaintiffs) to purchase or lease Affected Vehicles.

49. Volkswagen's misrepresentations or omissions were material and a substantial factor in Plaintiffs' and Class members' purchasing or leasing Affected Vehicles.

50. Volkswagen intended its misrepresentations or omissions to induce Plaintiffs and Class members to purchase or lease Affected Vehicles, or had reckless disregard for same.

51. But for these misrepresentations (or omissions), Plaintiffs and Class members would not have purchased or leased Affected Vehicles, and/or would have purchased or leased them at cheaper prices.

52. Plaintiffs and Class members were justified in relying on Volkswagen's misrepresentations. The same or substantively identical misrepresentations were communicated, and/or the same or substantively identical omissions were not communicated, to each Class member, including through promotional materials prepared and disseminated by Volkswagen. To the extent applicable, reliance can be presumed in these circumstances.

53. Plaintiffs and Class members were damaged by reason of Volkswagen's misrepresentations or omissions alleged herein.

COUNT TWO
Negligent Misrepresentation and Omission
(On Behalf of the National Class)

54. Plaintiffs repeat the preceding paragraphs as if set forth fully herein.

55. Volkswagen had or undertook a duty to accurately and truthfully represent to consumers the truth regarding Volkswagen's statements about the Affected Vehicles' emissions certifications, efficiency, and performance characteristics.

56. Volkswagen failed to exercise ordinary care in making representations concerning the Affected Vehicles' certifiability, efficiency, and performance characteristics.

57. Volkswagen negligently misrepresented or omitted the Affected Vehicle's true certifiability, efficiency, and performance characteristics.

58. Volkswagen's statements were false at the time the misrepresentations were made (or the omissions were not made).

59. Volkswagen knew, or reasonably should have known, that its representations alleged herein were materially false or misleading, or that omission of material facts rendered such representations false or misleading. Volkswagen also knew, or had reason to know, that its

misrepresentations and omissions would induce Class members (including Plaintiffs) to purchase or lease Affected Vehicles.

60. As a direct and proximate result of Volkswagen's acts and omissions described herein, Plaintiffs and other Class members have suffered harm, and will continue to do so.

61. Volkswagen's misrepresentations or omissions were material and a substantial factor in Plaintiffs' and Class members' purchasing or leasing Affected Vehicles.

62. But for these misrepresentations (or omissions), Plaintiffs and Class members would not have purchased or leased Affected Vehicles, and/or would have purchased or leased them at cheaper prices.

63. Plaintiffs and Class members were justified in relying on Volkswagen's misrepresentations. The same or substantively identical misrepresentations were communicated, and/or the same or substantively identical omissions were not communicated, to each Class member, including through promotional materials prepared and disseminated by Volkswagen. To the extent applicable, reliance can be presumed in these circumstances.

64. Plaintiffs and Class members were damaged by reason of Volkswagen's misrepresentations or omissions alleged herein.

COUNT THREE
Breach of Contract
(On Behalf of the National Class)

65. Plaintiffs repeat the preceding paragraphs as if set forth fully herein.

66. Each and every sale or lease of an Affected Vehicle constitutes a contract between Volkswagen and the purchaser or lessee. These sale or lease agreements are standardized forms prepared by Volkswagen, do not vary or do not substantially vary in pertinent materials respects, and are thrust upon the National Class by Volkswagen and thus constitute contracts of adhesion.

67. Upon information and belief, Volkswagen's sales and lease agreements provide that the Affected Vehicles being sold or leased comply with related warranties, including those concerning CAA and EPA regulatory compliance.

68. Volkswagen materially breached these contracts by, inter alia, selling or leasing Plaintiffs and the other members of the National Class defective or non-conforming Affected 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 Affected Vehicle less safe and emissions compliant, and thus less valuable, than vehicles not equipped with CleanDiesel engine systems and "defeat devices."

69. Plaintiffs and the National Class are entitled to recover all damages proximately caused by Volkswagen's breach, including compensatory, incidental, and consequential damages, and pre- and post-judgment interest. Damages may be quantified on a classwide basis. Also, or in the alternative, Plaintiffs and the National Class are entitled to restitution, disgorgement, rescission, and similar equitable relief. Any provisions in the sales and lease agreements to the contrary are unconscionable, severable, voidable, and/or void.

70. Further, by common law or statute, the sales and lease agreements impose upon each party a duty of good faith and fair dealing. Good faith and fair dealing, in connection with executing contracts and discharging performance and other duties according to their terms, means preserving the spirit – not merely the letter – of the bargain. Put differently, the parties to a contract are mutually obligated to comply with the substance of their contract in addition to its form. Evading the spirit of the bargain and abusing the power to specify terms constitute examples of bad faith in the performance of contracts.

71. Subterfuge and evasion violate the obligation of good faith in performance even when an actor believes their conduct to be justified. Bad faith may be overt or may consist of inaction, and fair dealing may require more than honesty. Examples of bad faith are evasion of

the spirit of the bargain, willful rendering of imperfect performance, abuse of a power to specify terms, and interference with or failure to cooperate in the other party's performance.

72. Volkswagen has breached not only the sales and lease agreements but the covenant of good faith and fair dealing in those agreements through its wrongful actions alleged herein.

73. Plaintiffs and the National Class have sustained damages as a result of Volkswagen's breach of the sales and lease agreements and the covenant of good faith and fair dealing under each sales and lease agreement.

74. Volkswagen's fraud as alleged herein amounts to an illusory promise rendering any agreement unenforceable, unconscionable, void, and/or voidable.

COUNT FOUR
Breach of Express Warranty
(On Behalf of the National Class)

75. Plaintiffs repeat the preceding paragraphs as if set forth fully herein.

76. Volkswagen made numerous representations, descriptions, and promises to Plaintiffs and Class members regarding the performance and emission controls of the Affected Vehicles.

77. Volkswagen, however, knew or should have known that its representations, descriptions, and promises were false. Volkswagen was aware that it had installed defeat devices in the vehicles it sold or leased to Plaintiffs and other Class members.

78. Plaintiffs and other Class members reasonably relied on Volkswagen's representations in purchasing or leasing "clean" diesel vehicles. Those vehicles, however, did not perform as was warranted. Unbeknownst to Plaintiffs and other Class members, those vehicles included devices that caused their emission reduction systems to perform at levels worse than advertised. Those devices are defects. Accordingly, Volkswagen breached its express warranty by providing a product containing defects that were never disclosed to Plaintiffs and Class

members, as well as warranting the certifiability of the Affected Vehicles under CAA and EPA emissions standards.

79. As a direct and proximate result of Volkswagen's false and misleading representations and warranties, Plaintiffs and other Class members suffered significant damages.

COUNT FIVE
Breach of Implied Warranty
(On Behalf of the National Class)

80. Plaintiffs repeat the preceding paragraphs as if set forth fully herein.

81. Volkswagen impliedly warranted that the Affected Vehicles were of merchantable quality, fit for their intended or ordinary purpose, and/or were compliant with CAA and EPA emissions standards.

82. The Affected Vehicles failed to conform to Volkswagen's implied warranty regarding their functionality as alleged herein, including but not limited to the vehicles' certifiability, efficiency, and performance.

83. As a direct and proximate result of Volkswagen's false and misleading representations and warranties, Plaintiffs and other Class members suffered significant injury when Volkswagen sold or leased them vehicles that, it is now clear, are worth far less than the price Plaintiffs and other Class members paid for them.

COUNT SIX
Breach of Magnuson-Moss Warranty Act
(On Behalf of the National Class)

84. Plaintiffs repeat the preceding paragraphs as if set forth fully herein.

85. This Court has jurisdiction to decide claims brought under 15 U.S.C. § 2301 by virtue of 28 U.S.C. § 2301(3).

86. Volkswagen's Affected Vehicles are a "consumer product," as that term is defined in 15 U.S.C. § 2301(1).

87. Plaintiffs and other Class members are “consumers,” as that term is defined in 15 U.S.C. § 2301(3).

88. Volkswagen is a “warrantor” and “supplier” as those terms are defined in 15 U.S.C. § 2301(4) and (5).

89. 15 U.S.C. § 2310(d)(1) provides a cause of action for any consumer who is damaged by the failure of a warrantor to comply with an implied warranty.

90. Volkswagen provided Plaintiffs and other Class members with “implied warranties,” as that term is defined in 15 U.S.C. § 2301(7).

91. Volkswagen has breached these implied warranties as described above. Without limitation, Volkswagen’s Affected Vehicles are defective as alleged herein, which resulted in the problems and failures also described above.

92. By Volkswagen’s conduct as described herein, including Volkswagen’s knowledge of the defects inherent in the vehicles and its action, and inaction, in the face of the knowledge, Volkswagen has failed to comply with its obligations under its written and implied promises, warranties, and representations.

93. In its capacity as a warrantor, and by the conduct described herein, any attempts by Volkswagen to limit the implied warranties in a manner that would exclude coverage of the defective software and systems is unconscionable and any such effort to disclaim, or otherwise limit, liability for the defective the software and supporting systems is null and void.

94. All jurisdictional prerequisites have been satisfied.

95. Plaintiffs and members of the National Class are in privity with Volkswagen in that they purchased the Affected Vehicles (including the software in question) from Volkswagen or its agents.

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

COUNT SEVEN
Unjust Enrichment
(On Behalf of the National Class)

97. Plaintiffs repeat the preceding paragraphs as if set forth fully herein.

98. By means of Volkswagen's wrongful conduct alleged herein, Volkswagen knowingly induced Plaintiffs and members of the National Class to purchase or lease Affected Vehicles.

99. Volkswagen knowingly received and retained wrongful benefits from Plaintiffs and members of the National Class. In so doing, Volkswagen acted intentionally or with conscious disregard for the rights of Plaintiffs and members of the National Class.

100. As a result of Volkswagen's wrongful conduct as alleged herein, Volkswagen has been unjustly enriched at the expense, and to the detriment, of Plaintiffs and members of the National Class.

101. Volkswagen's unjust enrichment is traceable to, and resulted directly and proximately from, the wrongful conduct alleged herein.

102. It is unfair and inequitable for Volkswagen to be permitted to retain the benefits it received, and is still receiving, without justification, from the wrongful conduct alleged herein. Volkswagen's retention of such benefits under the circumstances is inequitable.

103. The financial benefits derived by Volkswagen rightfully belong to Plaintiffs and members of the National Class, in whole or in part. Volkswagen should be compelled to account for and disgorge in a common fund for the benefit of Plaintiffs and members of the National Class all wrongful or inequitable proceeds received from them. A constructive trust should be

imposed upon all wrongful or inequitable sums received by Volkswagen traceable to Plaintiffs and the members of the National Class.

104. Plaintiffs and members of the National Class have no adequate remedy at law.

105. Volkswagen's fraud as alleged herein amounts to an illusory promise rendering any agreement unenforceable, unconscionable, void, or voidable.

COUNT EIGHT
Negligence Per Se
(On Behalf of the National Class)

106. Plaintiffs repeat the preceding paragraphs as if set forth fully herein.

107. Volkswagen owed a duty to Plaintiffs and the National Class to obtain proper emissions certifications under the CAA and EPA regulations promulgated thereunder.

108. Volkswagen breached that duty by failing to obtain the proper emissions certifications under the CAA and EPA regulations promulgated thereunder as a prerequisite to selling the Affected Vehicles in the United States.

109. As a direct and proximate result of Volkswagen's conduct as alleged herein, Plaintiffs and other members of the National Class have sustained damages.

COUNT NINE
New Jersey Consumer Protection Law
(On Behalf of the New Jersey State Subclass)

110. Plaintiffs repeat the preceding paragraphs as if set forth fully herein.

111. This claim is asserted on behalf of the members of the New Jersey State Subclass under the New Jersey Consumer Fraud Act ("NJCFRA"), N.J.S.A. 56:8-1, *et seq.*

112. Plaintiff and other New Jersey State Subclass members are "persons" within the meaning of N.J.S.A. 56:8-1(d).

113. Defendant's conduct alleged herein relating to the sale of the Affected Vehicles constitute a "sale" within the meaning of N.J.S.A. 56:8-1(e).

114. NJCFA declares unlawful “[t]he act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise or real estate, or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damaged thereby[.]” N.J.S.A. 56:8-2.

115. Volkswagen’s conduct as alleged herein constitutes unfair or deceptive practices in violation of the NJCFA. Volkswagen engaged in unlawful conduct, made affirmative misrepresentations or omissions, or otherwise violated the NJCFA by, *inter alia*, knowingly, intentionally, and recklessly misleading Plaintiffs and members of the New Jersey State Subclass about the certifiability, efficiency, and performance characteristics of the Affected Vehicles.

116. To the extent applicable, Volkswagen intended that Plaintiffs and New Jersey State Subclass members would rely on the company’s misrepresentations, or acts of concealment and omissions. Further, to the extent applicable, reliance can be presumed under the circumstances.

117. Volkswagen’s conduct caused Plaintiffs and members of the New Jersey State Subclass to suffer ascertainable losses in the form of sums paid for the purchase or lease of Affected Vehicles that would not otherwise have been incurred in whole or in part.

118. A causal relationship exists between Volkswagen’s unlawful conduct and the ascertainable losses suffered by Plaintiffs and the New Jersey State Subclass.

119. As redress for Volkswagen’s repeated and ongoing violations of the NJCFA, Plaintiffs and the New Jersey State Subclass are entitled to, *inter alia*, damages and declaratory relief, as well as attorney’s fees and costs pursuant to N.J.S.A. 56:8-19.

COUNT TEN
Florida Consumer Protection Law
(On Behalf of the Florida State Subclass)

120. Plaintiffs repeat the preceding paragraphs as if set forth fully herein.

121. This claim is asserted on behalf of the members of the Florida State Subclass under the Florida Deceptive and Unfair Trade Practices Act, (“FDUTPA”), Fla. Stat. § 501.201, *et seq.*

122. Plaintiffs and members of the Florida State Subclass are “consumers” within the meaning of Fla. Stat. § 501.203(7).

123. FDUTPA declares “unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce” to be unlawful. Fla. Stat. § 501.204(1).

124. FDUTPA defines “trade or commerce” as “the advertising, soliciting, providing, offering, or distributing, whether by sale, rental, or otherwise, of any good or service, or any property, whether tangible or intangible, or any other article, or thing of value, wherever situated.” Fla. Stat. § 501.203(8).

125. Volkswagen’s conduct alleged herein constitutes “trade or commerce” within the meaning of Fla. Stat. § 501.203(8), and “unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices” for purposes of Fla. Stat. § 501.204(1).

126. As a direct and proximate result of Volkswagen’s violations of FDUTPA, Plaintiff and putative Florida State Subclass members have suffered a loss of money and suffered actual damages.

127. In addition to actual damages, Plaintiff and the Florida State Subclass are entitled to declaratory and injunctive relief as well as reasonable attorney’s fees and costs pursuant to Fla. Stat. §§ 501.2105 and 501.211.

128. To the extent applicable, Volkswagen intended that Plaintiffs and Florida State Subclass members would rely on the company's misrepresentations, or acts of concealment and omissions. Further, to the extent applicable, reliance can be presumed under the circumstances.

COUNT ELEVEN
Texas Consumer Protection Law
(On Behalf of the Texas State Subclass)

129. Plaintiffs repeat the preceding paragraphs as if set forth fully herein.

130. This claim is asserted on behalf of the members of the Texas State Subclass under the Texas Deceptive Trade Practices Act ("TDTPA"), Tex. Bus. & Com. Code §§ 17.4 *et seq.*

131. The TDTPA prohibits "[f]alse, misleading, or deceptive acts or practices in the conduct of any trade or commerce." Tex. Bus. & Com. Code § 17.46. Plaintiffs will make a demand in satisfaction of Tex. Bus. & Com. Code § 17.45(2), and may amend this complaint to assert claims under the TDTPA once the required time has elapsed. This paragraph and the other paragraphs alleged under this Count are for notice purposes only and do not currently assert an actual claim under the TDTPA. Following satisfaction of any notice requirement, Plaintiffs intend to allege as follows.

132. Volkswagen's conduct as alleged herein violated the TDTPA. Plaintiffs and members of the Texas State Subclass purchased or leased Affected Vehicles primarily for personal, family or household purposes that did not comply with federal emissions requirements, or did not possess the advertised efficiency and performance characteristics.

133. Volkswagen engaged in unlawful conduct, made affirmative misrepresentations or omissions, or otherwise violated the TDTPA by, inter alia, knowingly, intentionally, and recklessly misleading Plaintiffs and members of the Texas State Subclass about the certifiability, efficiency, and performance characteristics of the Affected Vehicles.

134. To the extent applicable, Volkswagen intended that Plaintiffs and Texas State Subclass members would rely on the company's misrepresentations, or acts of concealment and omissions. Further, to the extent applicable, reliance can be presumed under the circumstances.

135. Volkswagen's conduct caused Plaintiffs and members of the Texas State Subclass to suffer ascertainable losses in the form of sums paid for the purchase or lease of Affected Vehicles that would not otherwise have been incurred in whole or in part.

136. A causal relationship exists between Volkswagen's unlawful conduct and the ascertainable losses suffered by Plaintiffs and the Texas State Subclass.

137. As redress for Volkswagen's repeated and ongoing violations of the TDTPA, Plaintiffs and the Texas State Subclass are entitled to, *inter alia*, damages and declaratory relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs and the Classes demand a jury trial on all claims so triable and judgment as follows:

1. A declaration that Volkswagen's conduct alleged herein is fraudulent, deceptive, wrongful, unfair, inequitable, and unconscionable;
2. Restitution owing to Plaintiffs and the Classes as a result of the wrongs alleged herein in an amount to be determined at trial;
3. An accounting and disgorgement of the ill-gotten gains derived by Volkswagen's misconduct;
4. Actual damages in an amount according to proof (doubled or trebled as permitted by law);
5. A temporary and permanent injunction enjoining Volkswagen from engaging in the same wrongful conduct going forward including requiring Volkswagen to adequately disclose facts to render truthful its representations;

6. Punitive and exemplary damages;
7. Pre-judgment and post-judgment interest at the maximum rate permitted by applicable law;
8. Costs and disbursements assessed by Plaintiffs in connection with this action, including reasonable attorneys' fees; and
9. Such other relief as this Court deems just and proper.

Dated: September 29, 2015

Respectfully submitted,

/s/ David J. Stanoch

Richard M. Golomb, Esquire

Ruben Honik, Esquire

Kenneth J. Grunfeld, Esquire

David J. Stanoch, Esquire

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Attorneys for Plaintiffs and the Proposed Classes

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 NO_x trap). As a result, emissions of NO_x 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 AECDS¹ 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,

A handwritten signature in black ink, appearing to read "Phillip A. Brooks". The signature is fluid and cursive, written over the printed name.

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

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

John Puglisi, Paul Krawitz and Melissa Wittig, on behalf of themselves and all other similarly situated,

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

(c) Attorneys (Firm Name, Address, Email and Telephone Number) David J. Stanoch, Esquire Golomb & Honik, P.C. 1515 Market Street, Suite 1100, Philadelphia, PA (215) 985-9177; Email: rhonik@golombhonik.com

DEFENDANTS

Volkswagen Group of America, Inc.

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

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

Attorneys (If Known)

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

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

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

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

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

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

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

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (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): This action is based on diversity under 28 U.S.C Section 1332(d)(2) Brief description of cause: Misrepresentation of vehicle emission testing results

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 5,000,000.00 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE Jose L. Linares DOCKET NUMBER 2:15-cv-6988

DATE 09/29/2015 SIGNATURE OF ATTORNEY OF RECORD /s/ David J. Stanoch

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.