

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN**

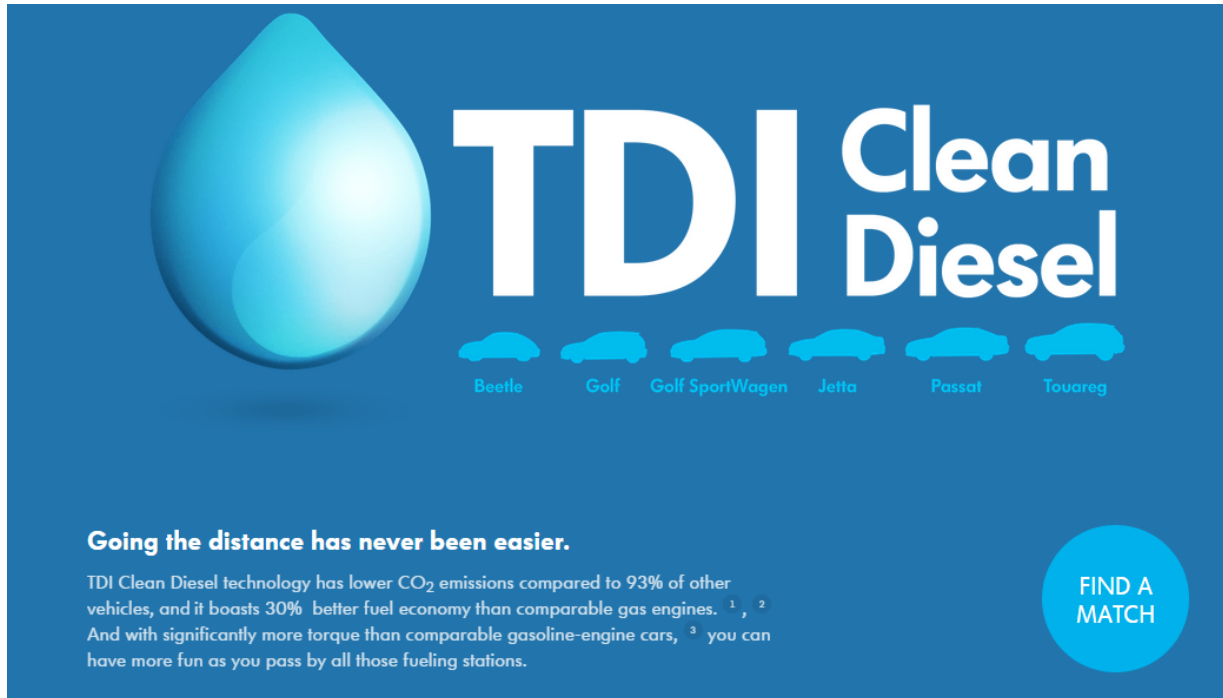
LINDA R. SANDERS, individually, and)	
on behalf of all others similarly situated,)	
)	
Plaintiffs,)	No. 15-cv-636
)	<u>JURY TRIAL DEMANDED</u>
vs.)	
)	CLASS ACTION
VOLKSWAGEN GROUP OF)	
AMERICA, INC., and VOLKSWAGEN)	
AG.,)	
)	
Defendants.)	

CLASS ACTION COMPLAINT

Plaintiff, Linda R. Sanders, for herself and all similarly situated people, alleges the following:

1. Since 2009, Volkswagen Group of America, Inc. and Volkswagen AG (hereinafter collectively, “Volkswagen”) manufactured and sold cars in the United States and throughout the world with diesel engines that Volkswagen widely marketed as the “TDI® Clean Diesel engine,” which came installed in various Volkswagen and Audi models, including the Jetta, the Jetta Sportswagen, the Golf, the Audi A3, the Beetle, the Beetle convertible, the Passat, and the Golf Sportswagen (“Affected Vehicles”). Volkswagen advertised, marketed, promoted and sold these vehicles as powerful,

efficient, and clean with low emissions as a result of the “Clean Diesel” engine system as reflected in this Volkswagen web advertisement:¹



2. Under the Clean Air Act, 42 U.S.C. §§ 7401-7671q, and its implementing regulations both administered and enforced by the Environmental Protection Agency (“EPA”), manufacturers of diesel-powered cars, like Volkswagen, were required to install emission control devices so that each diesel vehicle sold in the US complies with Clean Air Act emission standards, as well as to certify that such devices are installed, operative, and meet applicable standards.

3. As discussed below, consumers, including Plaintiff and members of both Classes defined below paid an increased amount and spent a premium to purchase a

¹ <http://www.vw.com/features/clean-diesel/>.

Volkswagen or Audi with a “TDI® Clean Diesel” engine, since doing so ensured the engine was eco-friendly as well as powerful and fuel efficient.

4. It was only after an enormous investigation by state and federal regulators that anyone outside of Volkswagen learned that these “Clean Diesel” engines actually spewed 40 times the amount of emissions permitted by EPA standards. Thus, such engines were hardly the clean-operating, eco-friendly power plant that offered increased efficiency, torque, and acceleration.

5. On September 18, 2015, Phillip A. Brooks, Director, Air Enforcement Division, Office of Civil Enforcement, with the United States Environmental Protection Agency, issued a Notice of Violation, stating:

[T]he 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 [Clean Air Act] 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.**²

Director Brooks continued by explaining Volkswagen’s method of deceiving regulators, and, necessarily, consumers, which stands at the center and is at the heart of this case:

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 emissions standards. For ease of

² See Sept. 18, 2015 Notice of Violation (emphasis added).

reference, the EPA is calling this the “switch.” The “switch” senses whether the vehicle is being tested or not based on various inputs including the position of the steering wheel, vehicle speed, the duration of the engine’s operation, and barometric pressure. These inputs precisely track the parameters of the federal test procedure used for emission testing for EPA certification purposes. During EPA emission testing, the vehicles’ ECM ran software which produced compliant emission results under an ECM calibration that VW referred to as the “dyno calibration” (referring to the equipment used in emissions testing, called a dynamometer). At all other times during normal vehicle operation, the “switch” was activated and the vehicle ECM software ran a separate “road calibration” which reduced the effectiveness of the emission control system (specifically the selective catalytic reduction or the lean NOx trap). **As a result, emissions of NOx increased by a factor of 10 to 40 times above the EPA compliant levels, depending on the type of drive cycle (e.g., city, highway).**³

As Cynthia Giles, Assistant Administrator for the Office of Enforcement and Compliance Assurance at the EPA summed up: “[u]sing a defeat device in cars to evade clean air standards is illegal and a threat to public health.”

6. As described above, Volkswagen employed sophisticated software in Affected Vehicles that detected when the vehicle was undergoing official emissions tests before turning on full emissions controls to ensure the vehicle would pass emission scrutiny. After the test and at all other times, the software would revert to limited emission control, allowing NOx emissions to reach as much as 40 times the amount permitted by EPA standards. In short, Volkswagen cheated to get the results from its product that it desired.

7. NOx emissions not only contribute to nitrogen dioxide, ground-level ozone and fine particulate pollution, NOx also carries serious health risks and are linked with asthma attacks, respiratory illness, and other maladies.

³ *Id.* (emphasis added).

8. If concealing the true emissions profile of the Affected Vehicles were not enough, Volkswagen compounded the deception by charging Plaintiff and members of both Classes a significant premium and an increased amount for the Affected Vehicles. For example, the highest level gas Jetta SE has a base MSRP of \$20,095, while the Clean Diesel TDI SEL carries an MSRP of \$26,410, representing a \$6,315 premium. Volkswagen collected such premiums across its entire affected vehicle fleet, as represented by the following chart:

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

9. Now, with the truth about Volkswagen's deception in the open and as a result of Volkswagen's conduct, the value of Affected Vehicles will drop significantly. Already, the EPA has initiated a recall covering roughly 482,000 Affected Vehicles sold in the United States since 2009 that will require Volkswagen to make the vehicles compliant with EPA emissions requirements at all times during normal operation. To do so, however, will require substantially reducing the power and efficiency of the vehicle, causing Plaintiff and members of both Classes to suffer actual harm and damages as the Affected Vehicles will no longer perform as they did when purchased and as advertised, which, in turn, will both diminish the value of every affected vehicle, including reducing the residual value of leased vehicles, thereby causing lessees to incur additional damages, not to mention causing owners and lessees of Affected Vehicles to pay more for fuel.

10. As recent as September 20, 2015, Volkswagen conceded the truth of the EPA allegations to U.S. regulators, admitting that it programmed its cars to detect when the vehicles were tested and adjust the running of the diesel engines to hide the true emissions. More recently, on September 23, 2015, Volkswagen Chief Executive Martin Winterkorn resigned his position over the matter, after apologizing for breaking the trust of Volkswagen customers and the public.

11. Accordingly, Volkswagen intentionally breached federal and state law as well as EPA rules and regulations by selling in the United States its vehicles containing devices that purposefully evaded federal and state laws, concealing from plaintiff and members of both Classes that its Affected Vehicles emit in excess of the allowable limits of pollutants under normal operating conditions, in some cases over 40 times the allowable limits, causing Plaintiff and members of both Classes to suffer damages. Had Plaintiff and members of both Classes been apprised of the “defeat device” at the time of purchase or lease of the Affected Vehicles, they would not have purchased or leased the vehicle or paid significantly less than the premium they did pay.

JURISDICTION AND VENUE

12. Jurisdiction is proper in this Court pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d), since the proposed Classes consists of 100 or more members; the aggregate amount in controversy exceeds \$5,000,000, exclusive of interest and costs; and minimal diversity exists.

13. Venue is proper in the Western District of Wisconsin under 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to these claims

occurred in this district. Plaintiff resides in this District and Volkswagen has marketed, advertised, sold, and leased Affected Vehicles within this district.

PARTIES

14. Plaintiff Linda R. Sanders resides in Madison, Wisconsin. In June 2011, she purchased a brand new 2011 Golf TDI, from Zimbrick Volkswagen of Madison Wisconsin, an authorized Volkswagen dealer located at 1430 N. Stoughton Rd. also in Madison.

15. At the time she purchased the vehicle, she relied upon the representations of Volkswagen that its product was compliant with EPA requirements and was completely unaware that Volkswagen intentionally equipped her Golf TDI with an emissions control “defeat device” in order to ensure the vehicle received EPA certification and passed emissions tests, despite at all other times emitting 40 times the amount of pollutants allowed by law. Volkswagen’s use of the “defeat device” has caused Plaintiff out-of-pocket loss, future attempted repairs, and has diminished the value of her vehicle.

16. Similarly, Volkswagen knew about and intentionally installed the “defeat device” without disclosing the presence and effect of the device to Plaintiff. Thus, Plaintiff purchased her vehicle on the reasonable, mistaken belief in reliance upon Volkswagen that her vehicle not only complied with United States emissions standards and was properly EPA certified, but would have retained all of its operating characteristics throughout its useful life.

17. Moreover, Plaintiff selected and ultimately purchased her Golf TDI based on what she learned of the “Clean Diesel” system through Volkswagens advertisements and representations, including those representations made on Volkswagen’s behalf by the sales staff at Zimbrick Volkswagen of Madison. More specifically, the reason that she purchased her Golf TDI and not another vehicle, was her understanding, informed by Volkswagen’s marketing, that Volkswagen’s “Clean Diesel” system had a lessened impact on the environment when compared with other similar vehicles due to lower emissions. When deciding to purchase the vehicle, she further relied on Volkswagen’s representations that her Golf TDI was compliant with EPA and California emissions standards, which appeared within Volkswagen’s print and web-based marketing and as well as conveyed through the sales staff at its authorized dealer, Zimbrick Volkswagen of Madison, as well as on Volkswagen’s website.

18. She also learned about the purported benefits of Volkswagen’s “Clean Diesel” system from Volkswagen television and radio advertisements, which characterized Volkswagen’s “Clean Diesel” system as environmentally safe, powerful, and fuel efficient, which was consistent with all other representations made by Volkswagen to Plaintiff.

19. Collectively, Plaintiff recalls Volkswagen’s “Clean Diesel” marketing touted the engine system as environmentally friendly given that it was clean-running with low emissions, but also efficient and powerful. She never saw any advertisements or representations containing disclosure of Volkswagen’s use of a “defeat device” or that Volkswagen cheated its certification of EPA compliance. Indeed, if Volkswagen had

disclosed that the “Clean Diesel” system actually emitted 40 times the allowable levels of pollutants, such as NO_x, she would not have purchased the Golf TDI.

20. Accordingly, Plaintiff and members of each class have suffered an ascertainable loss as a result of Volkswagen’s misrepresentations and omissions pertaining to the “Clean Diesel” system, including, out-of-pocket losses and future attempted repairs, future additional fuel costs, as well as reduced performance and diminished value of the vehicle as well as other damages to be quantified and determined.

21. At no point did Volkswagen or any of its agents, dealers or representatives disclose to Plaintiff and members of both Classes of the existence of the “defeat device” prior to purchase.

22. Volkswagen Group of America, Inc. is a corporation conducting business in all 50 states and is organized under the laws of New Jersey, maintaining its principal place of business in Herndon, Virginia. At all times relevant to this case, Volkswagen marketed, manufactured, sold, distributed, leased, and warranted the affected vehicle under the Volkswagen and Audi brands throughout the United States. Volkswagen and/or its agents designed, engineered, manufactured, installed, and serviced the Clean Diesel engine systems in the Affected Vehicles, which included the “defeat device.”

23. Volkswagen AG is a foreign for-profit corporation with its principal place of business at 38436 Wolfsburg, Germany. Volkswagen AG is among the world’s largest manufacturers, owning and controlling Volkswagen and Audi brands among others. Volkswagen AG designs, manufactures, tests, markets, distributes, and sells the Affected Vehicles. Volkswagen AG delivers its products into the stream of commerce and does so

with the expectation that its products will be purchased by consumers in the United States.

TOLLING OF THE STATUTE OF LIMITATIONS

24. As described herein, Plaintiff and members of both Classes were prevented by Volkswagen from learning about Volkswagen's deception over its Clean Diesel engine system and its use of the "defeat device" in the Affected Vehicles. Volkswagen's deception was only brought to light through EPA and California Air Resources Board investigations. Volkswagen hid its tracks by manipulating complex software. Indeed the very function of the "defeat device" prevented members of both Classes from learning of the deception, not to mention regulators. Accordingly, Plaintiff and members of both Classes were unable to learn, through the exercise of reasonable diligence, that Volkswagen was hiding the conduct complained of herein.

25. Indeed, neither Plaintiff nor members of both Classes discovered or knew of Volkswagen's concealment of the true emissions profile for the "Clean Diesel" engine system, which contradicted Volkswagen's marketing and representations of the system as environmentally sound, efficient, and powerful.

26. Volkswagen is estopped from relying on any statutes of limitations in light of its continuous obligation to apprise Plaintiff and members of both Classes of Volkswagen's conscious, affirmative concealment of the true emissions profile of its "Clean Diesel" engine system.

CLASS ACTION ALLEGATIONS

27. Plaintiff brings this action and seeks to certify and maintain it as a class action under Rules 23(a); (b)(1) and/or (b)(2); and (b)(3) of the Federal Rules of Civil Procedure on behalf of herself and a Nationwide Class (the “Nationwide Class”) defined as follows:

“All persons or entities in the United States who are current or former owners and/or lessees of one or more Defective Vehicles in the United States, which include, but are not limited to, 2009-2015 VW Jetta, 2009-2015 VW Beetle, 2009-2015 VW Golf, 2014-2015 VW Passat, and 2009-2015 Audi A3.”

28. Plaintiff seeks to represent the following statewide class or subclass (the “Wisconsin Class”) defined as follows:

“All persons in the State of Wisconsin who are current or former owners and/or lessees of one or more Defective Vehicles in the United States, which include, but are not limited to, 2009-2015 VW Jetta, 2009-2015 VW Beetle, 2009-2015 VW Golf, 2014-2015 VW Passat, and 2009-2015 Audi A3.”

29. Excluded from the Classes are:

- a. Defendants, including any entity or division in which Defendants have a controlling interest, along with their legal representatives, employees, officers, directors, assigns, heirs, successors, and wholly or partly owned subsidiaries or affiliates;
- b. the Judge to whom this case is assigned, the Judge’s staff, and the Judge’s immediate family;
- c. all governmental entities; and

- d. those persons who have suffered personal injuries as a result of the facts alleged herein.

30. Plaintiff reserves the right to amend the definitions of classes if discovery and further investigation reveal that any Class should be expanded, divided into additional subclasses, or modified in any other way.

NUMEROSITY AND ASCERTAINABILITY

31. This action meets the numerosity requirement of Fed. R. Civ. P. 23(a)(1), given that the amount of Affected Vehicles and owners, upon information and belief, in excess of hundreds of thousands and are geographically dispersed, making individual joinder of members of both Classes' respective claims impracticable. While the precise number of members of both Classes is not yet known, the precise number can be ascertained from Volkswagen's books and records and through discovery. Finally, members of both Classes can be notified of the pendency of this action by Court-approved notice methods.

TYPICALITY

32. Pursuant to Federal Rules of Civil Procedure 23 (a)(3), Plaintiff's claims are typical of the claims of members of both Classes, and arise from the same course of conduct by Volkswagen. Plaintiff, like all members of both Classes, has been damaged by Volkswagen's misconduct in that they have incurred losses relating to the "defeat devices" and Volkswagen's related misrepresentations and concealments. Furthermore, the factual bases of Volkswagen's misconduct are common to all members of both Classes and represent a common thread of misconduct resulting in injury to all members

of both Classes. The relief Plaintiff seeks is typical of the relief sought for absent members of both Classes.

ADEQUACY OF REPRESENTATION

33. Plaintiff will serve as a fair and adequate class representative as her interests, as well as the interests of her counsel, do not conflict with the interest of other members of the class he seeks to represent. Further, Plaintiff has retained counsel who are competent and experienced in class action litigation.

34. Plaintiff and his counsel are committed to vigorously prosecuting this action on behalf of the Classes.

PREDOMINANCE OF COMMON ISSUES

35. There are numerous questions of law and fact common to Plaintiff and members of both Classes that predominate over any question affecting only individual members of both Classes, the answers to which will advance resolution of the litigation as to all members of both Classes. These common legal and factual issues include the following:

- a. Whether Volkswagen engaged in the conducted alleged herein;
- b. Whether Affected Vehicles contained the illegal “defeat devices;”
- c. Whether Volkswagen designed, manufactured, advertised, marketed, distributed, leased, sold or otherwise placed Affected Vehicles into the United States stream of commerce;
- d. Whether the Clean Diesel engine system contains a defect that does not comply with U.S. regulatory requirements;

- e. Whether Clean Diesel engine systems can be made to comply with U.S. regulatory requirements without substantially reducing the performance and efficiency of the Affected Vehicles;
- f. The extent to which Volkswagen knew about the “defeat device” between 2009 to the present;
- g. Whether Volkswagen’s conduct violates consumer protection statutes, warranty laws, and other laws as set forth herein;
- h. Whether Plaintiff and members of both Classes overpaid for their Affected Vehicles;
- i. Whether Affected Vehicles suffered a diminution of value as a result of Volkswagen’s deceptive business practices;
- j. Whether Volkswagen made unlawful and misleading representations or material omissions with respect to the Affected Vehicles;
- k. Whether Plaintiff and other members of both Classes are entitled to equitable relief, including, but not limited to, restitution or injunctive relief; and
- l. Whether Plaintiff and other members of both Classes are entitled to damages and other monetary relief, and if so, in what amount.

SUPERIORITY

36. The class action mechanism is superior to any other available means of the fair and efficient adjudication of this case. Further, no unusual difficulties are likely to be encountered in the management of this class action. The damages suffered by Plaintiff

and members of both Classes are relatively small when compared to the burden and expense required to individually litigate each claim against Volkswagen. Therefore, it is impracticable for Plaintiff and members of both Classes to individually litigate their respective claims for Volkswagen's complained-of conduct. To do so would risk inconsistent or contradictory judgments and increase delays and expense to both parties and the court system. Therefore, the class action mechanism presents considerably less management challenges and provides the efficiency of a single adjudication and comprehensive oversight by a single court.

DECLARATORY AND INJUNCTIVE RELIEF

37. Since Volkswagen has acted or refused to act on grounds generally applicable to Plaintiff and members of both Classes, final injunctive and declaratory relief is appropriate with respect to the Class as a whole.

CLAIMS FOR RELIEF

COUNT 1

**VIOLATION OF WISCONSIN'S UNFAIR & DECEPTIVE
TRADE PRACTICES ACT**

Wis. Stat. § 100.18, *et seq.*

(Brought on behalf of the Wisconsin Class)

38. Plaintiff and members of both Classes incorporate by reference the all other allegations above as if fully set forth herein, and further states:

39. This is an action to recover damages caused by Volkswagen's unfair and deceptive trade practices in violation of Wis. Stat. § 100.18.

40. Deceptive Trade Practices Act (“DTPA”), Wis. Stat. § 100.18, declares as unlawful unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce.

41. Selling, distributing, marketing, or introducing Affected Vehicles into interstate commerce are “consumer transaction[s]” within the meaning of DTPA.

42. Moreover, the Affected Vehicles are goods within the meaning of DTPA, and Volkswagen is engaged in trade or commerce within the meaning of DTPA.

43. Plaintiff and the members of both Classes are “consumers” as defined by DTPA.

44. Volkswagen participated in misleading, false, or deceptive acts that violated DTPA. By deceptively installing the “defeat device” to create the appearance that Volkswagen’s “Clean Diesel” engine systems complied with EPA regulations, Volkswagen engaged in deceptive business practices prohibited by DTPA.

45. In the course of its business, Volkswagen installed the “defeat device” and concealed that its “Clean Diesel” systems failed EPA regulations as described herein and otherwise engaged in activities with a tendency to deceive.

46. Volkswagen also engaged in unlawful trade practice by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Affected Vehicles.

47. Volkswagen was aware of its use of the “defeat device” and the true nature of its “Clean Diesel” engine system for no less than six years, but concealed all of

that information until federal and state regulators brought the practice to light in September 2015.

48. Volkswagen is further aware that it placed profits ahead of the environment and the law, and that it was manufacturing, selling, and distributing vehicles throughout the United States that did not comply with EPA regulations. Volkswagen concealed this information from the public as well.

49. Volkswagen engaged in unfair and deceptive business practices in violation of DTPA by failing to disclose and activity concealing the “defeat device” and the true emissions profile and performance of the “Clean Diesel” engine system as well as marketing the Affected Vehicles as safe, efficient, environmentally sound, and of high quality, and by presenting itself as a reputable manufacturer that valued the environment, efficiency, and safety.

50. Further, Volkswagen willfully failed to disclose and actively concealed the “defeat device” and the true emissions profile and performance of the “Clean Diesel” engine system and serious defects as discussed above. Volkswagen aggravated this deception by repeatedly asserting that the Affected Vehicles were safe, reliable, environmentally sound, efficient, and of high quality, and by claiming to be in compliance with EPA standards, rules, and regulations and by claiming to be a reputable manufacturer that valued the environment, efficiency and safety and stood behind its vehicles once they were on the road.

51. Volkswagen’s unfair and deceptive acts were likely to and did in fact deceive reasonable consumers, including Plaintiff and members of both Classes upon

which they relied, about the true emission profile, efficiency, and performance of the “Clean Diesel” engine system, the quality of Volkswagen and Audi brands, as well as the disregard of the environment and integrity at Volkswagen, and the true value of the Affected Vehicles.

52. Volkswagen intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with the intent to mislead Plaintiff and members of both Classes.

53. Volkswagen made, published, or placed before the Plaintiff and members of both Classes (members of the public) oral and/or written advertisement, announcement, statement, or representation concerning the sale, use, lease and/or distribution of the Affected Vehicles.

54. The advertisement or announcement contained an assertion, representation, and/or statement that were untrue, deceptive, or misleading. The assertion, representation, and/or statement were untrue because it was false, erroneous, and did not state or represent things as they are. The assertion, representation, and/or statement was deceptive and misleading because it caused the Plaintiff and members of both Classes to believe something other than what is in fact true and/or lead to a wrong belief.

55. Volkswagen knew or should have known that the complained-of conduct violated DTPA.

56. As described above, Volkswagen made material statements about the emission profile, safety, efficiency, and reliability of the Affected Vehicles upon which

Plaintiff and members of both Classes relied on the Volkswagen and Audi brands that were either false or misleading.

57. Volkswagen owed Plaintiff and members of both Classes a duty to disclose the true emission profile, safety, efficiency, performance, and reliability of the Affected Vehicles and the disregard of the environment and integrity at Volkswagen, since Volkswagen:

- a. Had exclusive knowledge that it placed profits ahead of the environment and the law, and that it was manufacturing, selling, and distributing vehicles throughout the United States that did not comply with EPA regulations;
- b. Volkswagen knowingly and intentionally concealed this information from the Plaintiff and members of both Classes; and/or
- c. Made incomplete representations about the emissions profile, safety, efficiency, reliability, and performance of the Affected Vehicles generally, and the use of the “defeat device” and true nature of the “Clean Diesel” engine system in particular, while purposefully withholding material facts from Plaintiff and members of both Classes that contradicted those representations.

58. Volkswagen deceptively and intentionally concealed the “defeat device” and the true emissions profile and performance of the “Clean Diesel” engine system, which resulted in negative publicity once these facts began to become disclosed by investigators. Now, as Volkswagen’s use of the “defeat device” and the true

characteristics of the “Clean Diesel” engine have been disclosed, revealed and are now seeing the light of day, the value of the Affected Vehicles has greatly diminished and will continue to do so. In light of the resulting stigma attached to those vehicles by Volkswagen’s conduct, the Affected Vehicles are now worth significantly less than they otherwise would be.

59. Volkswagen’s deceptive use of the “defeat device” and its concealment of the true characteristics of the “Clean Diesel” engine system were material to Plaintiff and members of both Classes. Indeed, a vehicle produced by a reputable manufacturer conscientious of the environment is worth more than an otherwise comparable vehicle made by disreputable manufacturer of environmentally unsound vehicles that conceal the pollution emitted by its engines rather than promptly remedying them.

60. Plaintiff and members of both Classes sustained ascertainable monetary loss caused by Volkswagen’s misrepresentations and its concealment of and failure to disclose material information.

61. Volkswagen had a continuing obligation to all Volkswagen and Audi customers to refrain from unfair and deceptive acts under DTPA. All owners of Affected Vehicles suffered ascertainable monetary loss in the form of diminished value of their vehicles as a result of Volkswagen’s deceptive and unfair acts and practices made in the course of Volkswagen’s business.

62. Indeed, had the defects been properly disclosed Plaintiff and members of both Classes would not have bought, leased, or retained their vehicles, or they would have purchased or leased the vehicles for less than they did.

63. Volkswagen's misrepresentations were a significant factor in the Plaintiff's and members of Both Classes' decision to purchase, lease or retain the Affected Vehicles, and such reliance by the Plaintiff and members of Both Classes was reasonable.

64. Further, Volkswagen's violations present an ongoing risk to Plaintiff and members of both Classes and therefore affect the public interest.

65. As a direct and proximate result of Volkswagen's violations of DTPA, Plaintiff and members of both Classes have suffered injury-in-fact and/or actual damage.

66. Pursuant to Wis. Stat. §100.18, Plaintiff and members of both Classes make claims for damages, attorney's fees and costs. The damages suffered by the Plaintiff and members of both Classes were directly and proximately caused by the deceptive, misleading and unfair practices of Volkswagen.

**COUNT 2
BREACH OF CONTRACT**

67. Plaintiff and members of both Classes incorporate by reference all preceding allegations as though fully set forth herein.

68. 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 members of both Classes to purchase or lease their Affected Vehicles.

69. Absent those misrepresentations and omissions, Plaintiff and members of both Classes would not have purchased or leased those Affected Vehicles, would not have purchased or leased those Affected 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 members of both Classes overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

70. Each and every sale or lease of the Affected Vehicles constitutes a contract between Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and members of both Classes defective Affected Vehicles and by misrepresenting or failing to disclose the existence of the “defeat device,” including information known to Volkswagen rendering each Affected Vehicle less safe and non-compliant with EPA rules, standards and regulations, and thus less valuable than vehicles not equipped with “Clean Diesel” engine systems and “defeat devices.”

71. As a direct and proximate result of Volkswagen’s breach of contract, Plaintiff and members of both Classes have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

**COUNT 3
UNJUST ENRICHMENT**

72. Plaintiff and members of both Classes incorporate by reference all preceding allegations as though fully set forth herein.

73. As a result of Volkswagen’s unlawful and deceptive acts described herein, Volkswagen was enriched at the expense of Plaintiff and members of both Classes.

74. Given the circumstances, it would contravene principles of equity to permit Volkswagen to retain the ill-gotten benefits it received from Plaintiff and members of both Classes. Accordingly, it would be unjust and inequitable for Volkswagen to retain the benefit without restitution to Plaintiff and members of both Classes for the monies paid to Volkswagen for the Affected Vehicles.

PRAYER FOR RELIEF

Plaintiff, on behalf of herself and all others similarly situated, requests the Court to enter judgment against Defendants, as follows:

- a. Declaring that this action is properly maintainable under Rule 23 and appointing Plaintiff to represent the Classes defined herein;
- b. Appointing Plaintiff's law firm as class counsel in this action;
- c. Declaring that Volkswagen is financially responsible for providing notice to all Class Members about the defective nature of the Affected Vehicles;
- d. Awarding Plaintiff and members of both Classes appropriate equitable relief, including an order enjoining Volkswagen from further deceptive distribution, sales, and lease practices with respect to the Affected Vehicles, and directing Volkswagen to permanently, expeditiously, and completely repair the Affected Vehicles to eliminate the illegal "defeat device;"
- e. Awarding Plaintiff and members of both Classes compensatory, exemplary, and statutory damages, including interest, in an amount to be proven at trial;
- f. Declaring that Volkswagen must disgorge, for the benefit of Plaintiff and members of both Classes, all or part of the ill-gotten profits it received from the

- sale or lease of the Affected Vehicles, or make full restitution to Plaintiff and members of both Classes;
- g. Awarding Plaintiff and the Classes for the return of the purchase price of the Affected Vehicles, with interest from the time it was paid, for reimbursement of the reasonable expenses occasioned by the sale, for damages, and for reasonable attorney fees;
 - h. Awarding attorneys' fees and costs, as allowed by law;
 - i. Awarding prejudgment and post judgment interest, as provided by law;
 - j. Leave to amend this Complaint to conform to the evidence produced at trial; and
 - k. Such other and further relief as the Court deems appropriate under the circumstances.

JURY TRIAL DEMAND

Plaintiff hereby demands a jury trial on all issues so triable.

Dated: October 2, 2015

/s/ James P. Scoptur _____
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*Attorneys for Plaintiff and members of both
Classes (Motions for Pro Hac Vice to be
filed)*

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
(b) County of Residence of First Listed Plaintiff
(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS
County of Residence of First Listed Defendant
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)
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
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)
CONTRACT
REAL PROPERTY
PERSONAL INJURY
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):
Brief description of cause:

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMAND \$
CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY
(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

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.C.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; 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 clerks 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 seven 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.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

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 dollar amount (in thousands of dollars) 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.

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Western District of Wisconsin

LINDA R. SANDERS, individually, and on behalf of all others similarly situated

Plaintiff

v.

VOLKSWAGEN GROUP OF AMERICA, INC., and VOLKSWAGEN AG.

Defendant

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)
)
)
)
)
)

Civil Action No. 15-cv-636

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Volkswagen AG
D-38436 Wolfsburg
Germany

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Neil D. Overholtz, Esq.
Aylstock, Witkin, Kreis & Overholtz, PLLC
17 East Main Street, Suite 200
Pensacola, FL 32502

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Western District of Wisconsin

LINDA R. SANDERS, individually, and on behalf of
all others similarly situated

Plaintiff

v.

VOLKSWAGEN GROUP OF AMERICA, INC., and
VOLKSWAGEN AG.

Defendant

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Civil Action No. 15-cv-636

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Volkswagen Group of America, Inc.
c/o CORPORATION SERVICE COMPANY
1201 HAYS STREET
TALLAHASSEE, FL 32301-2525

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Neil D. Overholtz, Esq.
Aylstock, Witkin, Kreis & Overholtz, PLLC
17 East Main Street, Suite 200
Pensacola, FL 32502

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk