

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION**

2015 OCT 14 AM 11:27  
U.S. DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO

FILED

SCOTT SIEWERT and GREG SIEWERT )  
on behalf of themselves and all others )  
similarly situated. )

Plaintiffs. )

v. )

VOLKSWAGEN GROUP OF )  
AMERICA, INC., a New Jersey Corporation; )  
VOLKSWAGEN AKTIENGESELLSCHAFT; )  
and RVWVT MOTORS LLC, a Delaware )  
Limited Liability Company, *doing business as* )  
David Maus Volkswagen North; )  
MICHAEL HORN, individually; )  
ULRICH HACKENBERG, individually; )  
HEINZ-JAKOB NEUSSER, individually; )  
WOLFGANG HATZ, individually; )  
and JOHN DOE, individually )

Defendants. )  
/

Civil Action No.: 6:15-cv-1728-Orl-37-GJK

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

**CLASS ACTION COMPLAINT**

Plaintiffs, SCOTT SIEWERT and GREG SIEWERT, individually and on behalf of all others similarly situated ("Class"), by and through undersigned counsel, allege as follows:

**I. FACTUAL ALLEGATIONS**

1. Beginning with the 2009 model year, Defendants, VOLKSWAGEN GROUP OF AMERICA INC. ("Volkswagen"), VOLKSWAGEN AKTIENGESELLSCHAFT ("Volkswagen AG") (Volkswagen Group of America, Inc. and Volkswagen AG are collectively referred to as "Volkswagen" or "the Volkswagen Defendants"), AND RVWVT MOTORS LLC ("RVWVT Motors"), (collectively "Defendants"), manufactured, marketed, distributed, leased and/or sold vehicles installed with "defeat device" components whose principle effect is to bypass, defeat, or render inoperative elements of the vehicle's emission control system that exist to comply with emission standards. Defeat devices were designed, manufactured and installed within the following diesel model vehicles: 2009 to 2015 Volkswagen Jetta, 2012 to 2015 Volkswagen

Beetle and Beetle Convertible, 2012 to 2015 Volkswagen Passat, 2010 to 2015 Audi A3, 2009 to 2014 Volkswagen Jetta Sportswagen, 2010 to 2015 Volkswagen Golf, and 2015 Golf Sportswagen ("Affected Vehicles").

2. Volkswagen manufactured and installed software in the electronic control module (ECM) of Affected Vehicles that sensed when the vehicle was being tested for EPA emission standards compliance and then ran software that was designed to track the parameters of federal test procedures such that the software produced compliant emission results per calibration at those times when the vehicle was undergoing federal emissions testing, whereas at all other times during normal vehicle operation, the same software ran a separate calibration which reduced effectiveness of the emission control system. The result of this was emissions that under ordinary conditions, the vehicles' emissions of nitrogen oxides (NOx) increased by a factor of 10 to 40 times above EPA compliant level. September 18, 2015, the United States Environmental Protection Agency (EPA) issued its Notice of Violation (NOV) to Volkswagen stating that the manufacture and installation of defeat devices in these vehicles violated section 203(a)(3)(B) of the Clean Air Act (CAA), 42 U.S.C. §§7401-7671q and its implementing regulations. The NOV further stated Volkswagen violated section 203(a)(1) of the CAA, 42 U.S.C. §7522(a)(1) and its implementing regulations 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.
3. The EPA requires automobile manufacturers to install emissions control devices to ensure that each diesel vehicle sold in the U.S. complies with Clean Air Act emissions standards during operation, and to certify that such devices have been installed and are operative and that they meet the standards. These regulations serve to protect and enhance our Nation's air resources, promote public health and welfare, and the productive capacity of its population. The EPA acts to protect human health and the environment, in part, by reducing emissions of NOx and other pollutants from mobile sources such as motor vehicles. Motor vehicles equipped with defeat devices cannot be certified.
4. Finding that air pollution was being caused, in part, by the increased use of cars and that this pollution was endangering the public, Congress passed the Clean Air Act ("CAA"). The purpose of the CAA was to "protect and enhance the quality of the Nation's air resources so as to promote public health and welfare" and to "prevent and control air pollution." CAA § 101(b)(1)(2).

5. The CAA and its attendant regulations, in part, aim to reduce nitrogen oxides and other pollutants emitted by automobiles to improve air quality from the deleterious effects caused by pollution.
6. Light-duty motor vehicles, commonly known as passenger cars, are regulated by the CAA, which sets compliance provisions, and the Code of Federal Regulations, which sets emission standards and test procedures. These cars must satisfy emission standards for certain air pollutants such as nitrogen oxides.
7. Every vehicle introduced into interstate commerce in the United States must satisfy applicable emission standards. To accomplish this, the Environmental Protection Agency ("EPA") administers a certification program and issues certificates of conformity ("COCs") to compliant vehicles. 40 C.F.R. § 86.1811-04.
8. Auto manufacturers must submit a COC application to obtain a COC. That application must include a list of all auxiliary emission control devices ("AECDs"), which are design elements that can modulate, delay, or deactivate the operation of any part of the emission control system. Essentially, AECDs can influence or obstruct emission controls. 40 C.F.R. § 86.1803-01.
9. Some AECDs are considered "defeat devices." Defeat devices reduce the effectiveness of the emission control system. 40 C.F.R. § 86.1803-01. A COC applicant must justify each AECD that reduces emission effectiveness and explain why that AECD is not a defeat device. 40 C.F.R. § 86.1844-01(d)(II).
10. Cars with defeat devices cannot be certified because they fail to comply with all applicable government regulations, and a COC only covers cars that conform to what was described in the manufacturer's application for the COC. 40 C.F.R. § 86.1848-10(c)(6).
11. The CAA makes it unlawful 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 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), 40 C.F.R. § 86.1854-12(a)(3)(ii).

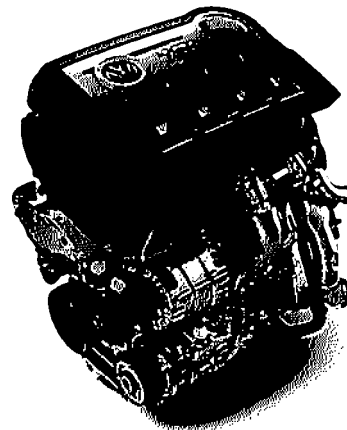
12. The Affected Vehicles were equipped with "turbocharged direct injection diesel engines" ("TDI") and aggressively marketed as "TDI® clean diesel engine" vehicles; eco-friendly, cleaner and more efficient in terms of emissions, fuel economy and certified EPA test figures. The Affected Vehicles low emissions results enabled Defendants to benefit from "green car" subsidies, tax exemptions, reputable ratings and reviews, and substantial sales increases despite substantially-higher manufacturer's suggested retail price (MSRP) that accompanied Defendant's TDI manufacture, marketing and sales. An example of the promotional material for TDI clean diesel is below:

### **This ain't your daddy's diesel.**

Stinky, smoky, and sluggish. Those old diesel realities no longer apply. Enter TDI Clean Diesel. Ultra-low-sulfur fuel, direct injection technology, and extreme efficiency. We've ushered in a new era of diesel.

- Engineered to burn low-sulfur diesel fuel
- "Common Rail" direct injection system

View key fuel efficiency info \*

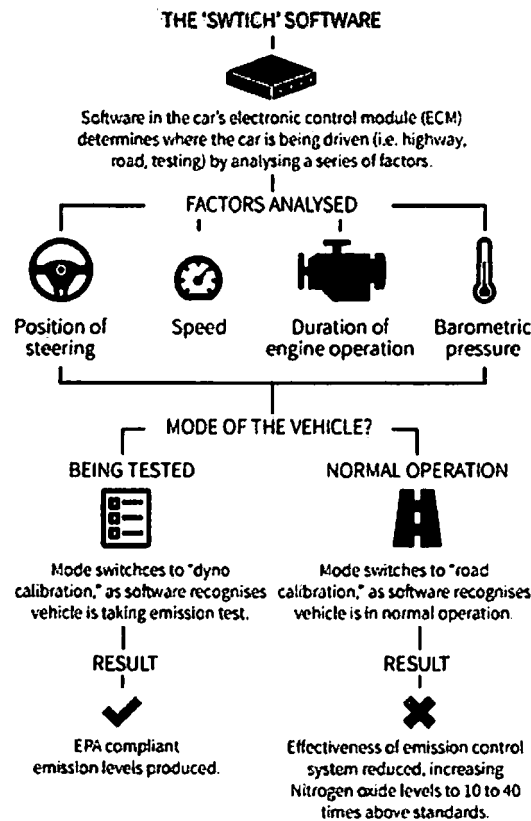


Source: <http://www.businessinsider.com.au/if-vw-deceived-consumers-about-its-diesel-cars-then-it-has-a-huge-problem-2015-9>

13. Since the 2009 model year, more than 482,000 TDI clean diesel vehicles, that is, Affected Vehicles installed with the defeat device, have been sold in the United States.
14. To evade the EPA's test standards, Volkswagen manufactured and installed software in its Defective Vehicles that sensed when the vehicle was being tested for compliance with EPA emission standards. According to the EPA, Volkswagen created a "switch" that senses whether the vehicle is being tested based on various inputs that precisely track the EPA's emission test procedure. Thus, when tested, Volkswagen's software produced compliant emission results. During normal vehicle operation, however, the "switch" activated and ran a separate calibration, called "road calibration." "Road calibration" mode reduced effectiveness of the emission control system and increased emissions of nitrogen oxides 10-40 times above EPA compliant levels.

15. Volkswagen's "road calibration" and "switch" are illegal "defeat" devices. According to the EPA, the Defective Vehicles do not conform to the specifications described in Volkswagen's COC application. Volkswagen, therefore, violated the CAA each time it introduced a Defective Vehicle into commerce.

## How Volkswagen's defeat device works



Source: U.S. Environmental Protection Agency

J. Wang, 22/09/2015

REUTERS

Source: <http://www.scoopnest.com/user/Breakingviews/646299939073560577>

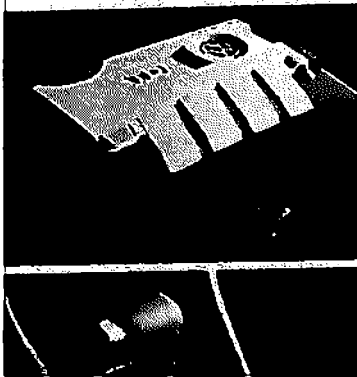
16. Defendants manufactured, marketed, distributed, leased and/or sold of Affected Vehicles with the defeat device, purposefully and intentionally breached and evaded state laws, the laws of the United States, as well as EPA rules and regulations. Defendants defrauded customers, engaged in unfair competition, false advertising and/or fraudulent business practices. As a result of Defendant's unlawful actions, Plaintiffs suffered property loss, monetary loss, and other injury.

17. Volkswagen expressly marketed and advertised its CleanDiesel models as extraordinarily clean, EPA certified in all 50 states, and powerful. For example, the following promotional material was used in 2010, and similar materials have been used across the spectrum of models using the CleanDiesel engine system:

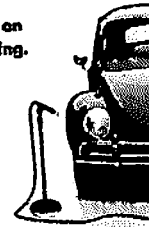
### **Burn rubber, not money.**

The all-new 2010 Golf TDI Clean Diesel offers fuel efficiency,\* power, and performance. Or, in other words, it's a lean, mean, cleaner-burning machine. The Volkswagen TDI engine is cleaner than conventional diesels, emitting as much as 95% fewer sooty emissions than previous diesel engines, as well as a reduction in oxides of nitrogen and sulfur. It's powerful, with the kind of street-savvy torque that brings a smile to every stoplight. It's efficient, using a turbocharger and smart exhaust design to use fuel more effectively. So much so, in fact, that Volkswagen was the first automaker to make clean diesel cars that are certified in all 50 states. And best of all, it will help save you money, with an out-of-this-world EPA-estimated mileage of 30 city/42 highway mpg (automatic)\* and over 594 miles on a single tank of fuel.\*\*

If efficiency and savings weren't enough, the Golf TDI model also gives you premium features like the multi-function leather steering wheel, the touchscreen Premium VIII radio with a Media Device Interface (MDI) and iPod® cable, SIRIUS® Satellite Radio, a 6-speed manual transmission, fog lights, and the optional navigation package with touchscreen navigation to efficiently find your way to the bank.



"Good, clean fun" takes on a whole new meaning.



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A whole family of front-runners.


TDI engines offer up to 40% more torque than standard engines. And to help you drive with more freedom, the TDI engines offer a 10% increase in torque.

**Efficiency. Now available without compromise.**

Hybrids aren't the only game in town. TDI® Clean Diesel engines offer up impressive efficiency numbers too. Take the Passat TDI for example. It can go up to 814 miles uninterrupted. Now that's a game changer.

- Seven efficient models to choose from
- Efficiency from up to 29 mpg to 46 mpg
- Engines from up to 394 to 814 mpg miles on a single tank of fuel

You too, can experience the power of TDI.



Source: <http://www.car-revs-daily.com/2015/09/18/vw-tdi-epa-violation-volkswagen-tdi-clean-diesel-epa-violation-9/>

18. Volkswagen also touted a technology called TDI -short for turbocharged direct injection -which purportedly "delivers more torque, lower fuel consumption, and reduces CO2 emissions." One of Volkswagen's chief selling points for these cars was that Volkswagen "has been at the forefront of clean diesel since the introduction of the Audi TDI technology in 2009."<sup>4</sup> An example of an advertisement for this technology follows:



A little fuel goes a long way.

Combining legendary performance and fuel economy, the TDI Clean Diesel is our least thirsty engine yet, delivering up to 1,235 kilometres (highway) per tank on models like the Touareg and Passat.<sup>1</sup>

Come test drive one today.

TDI Clean Diesel

Das Auto.

The advertisement features a black and white photograph of five Volkswagen cars (three SUVs and two sedans) parked in a row. Below the cars is a detailed image of a TDI Clean Diesel engine. The Volkswagen logo and the slogan 'Das Auto.' are positioned in the bottom right corner of the advertisement.

Source: <http://www.leblogducommunicant2-0.com> 2015 09 22 volkswagen-fraude-aux-emissions-diesel-une-communication-de-crise-totalement-kaputt

19. Volkswagen's "clean diesel" representations, albeit false, neatly matched others concerning Volkswagen's alleged environmental conscience:

At home in America and around the world, Volkswagen Group places environmental sustainability at the core of our operating philosophy. We don't just talk about it, we take action, finding inventive ways to be responsible in everything we do -and everyone, including our employees, suppliers and sales partners, is equally committed to ongoing improvements and innovations. As a result, we are on our way toward our goal of becoming the world's most environmentally sustainable automaker by 2018.<sup>1</sup>

20. Volkswagen further represents:

[W]e are committed to driving progress through better-engineered, efficient vehicles that don't sacrifice performance. But it all starts with our vision for

<sup>1</sup> <http://www.volkswagengroupamerica.com/environment.html> (last visited Sep. 20, 2015).

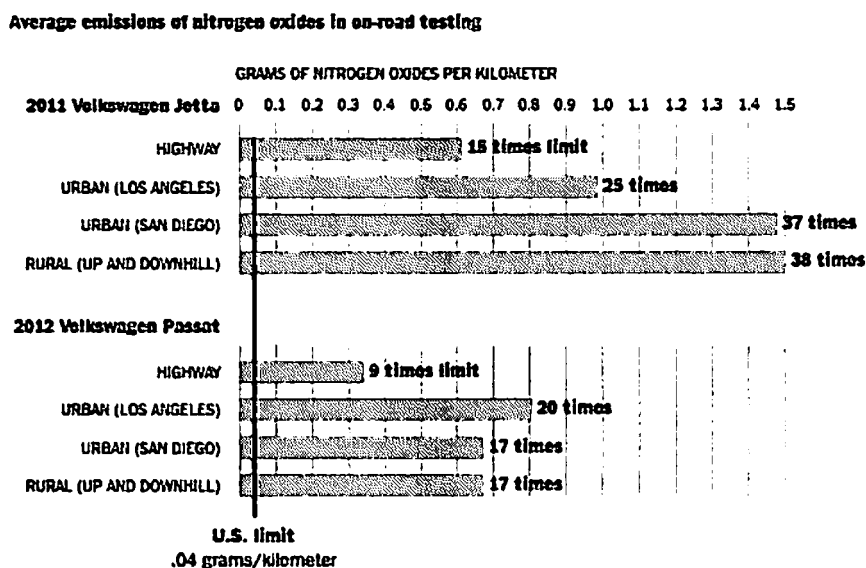


making cars greener than ever. We take steps to ensure that every vehicle we manufacture is the best it can be in terms of its environmental properties. We constantly strive to improve the efficiency and economy of our engines, minimize the power consumption of electrical components and reduce the weight of our cars.<sup>2</sup>

We used to think of diesel as black clouds of smoke and noxious fumes. But that was then. Now we have Clean Diesel that meets the highest standards in all 50 states, thanks to ultra-low sulfur diesel (ULSD) fuel and innovative engine technology that bums cleaner.<sup>3</sup>

With Clean Diesel Technology and ultra-low sulfur diesel fuel, we'll generate a lot less smog in the air. "Thanks," in advance, from the environment.<sup>4</sup>

21. A May 15, 2014 report issued by West Virginia University's *Center for Alternative Fuels, Engines & Emissions* found significantly elevated nitrogen oxides emissions when the Defective Vehicles were driven in real world conditions.



Source: Arvind Thiruvengadam, Center for Alternative Fuels, Engines and Emissions at West Virginia University

22. Volkswagen has charged a substantial premium for the Affected Vehicles, ironically marketed by Volkswagen as "CleanDiesel." For example, for the 2015 Volkswagen Jetta, the base S model has a starting MSRP of \$18,780. The base TDI S CleanDiesel, however, has a starting MSRP of

<sup>2</sup> <http://www.volkswagen-group-america.com/fuel-efficiency.html> (last visited Sep. 20, 2015).

<sup>3</sup> <http://www.clearlybetterdiesel.org/index.html#environment> (last visited Sep. 21, 2015).

<sup>4</sup> <http://www.clearlybetterdiesel.org/index.html#environment-right> (last visited Sep. 21, 2015).

\$21,640, a price premium of \$2,860. The CleanDiesel premium for the highest trim Jetta model is substantially higher: The highest level gas Jetta SE has a starting MSRP of \$20,095, while the CleanDiesel TDI SEL MSRP is \$26,410, a staggering \$6,315 premium.

23. These price premiums occurred for all of the vehicles in which Volkswagen installed its defeat device for emissions testing. The table below sets forth the price premium for each base, mid-level and top-line trim for each affected model:

**CleanDiesel Price Premiums**

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

**Passat TDI® Clean Diesel**

**2.0L** **150** **30** **44**  
ENGINE HP CITY HWY

Model	MSRP	City	Highway
TDI SE	\$27,095	30	44
TDI SE w/ Sun.	\$29,125	30	42
TDI SE w/ Sun. and Nav.	\$30,850	30	42

Source: <https://consumermediallc.files.wordpress.com/2015/09/passatdieselgrab.png>

24. The EPA and the California Air Resources Board ("CARB") presented emission reports to Volkswagen, which culminated in a voluntary software recall in December 2014. Yet this recall failed to remediate the pollution problem. Indeed, nitrogen oxides emissions were still "significantly higher" than expected during CARB's testing. <sup>14</sup>

25. Moreover, Volkswagen failed to adequately explain the poor performance under the CARB testing.
26. Only when it became clear that the EPA and CARB would not approve certificates of conformity for Volkswagen's 2016 model year diesel cars, did Volkswagen "admit that it designed and installed a defeat devices in these vehicles in the form of a sophisticated software algorithm that detected when a vehicle was undergoing emissions testing...15
27. Volkswagen's Chief Executive Officer (CEO) and Chairman of the Management Board since January 1, 2007, Martin Winterkorn, admitted the EPA defeat device allegations were true, stated "I personally am deeply sorry that we have broken the trust of our customers and the public" before resigning September 23, 2015. Current Volkswagen President and CEO issued public statements September 2015 via the Volkswagen website, also admitting that Volkswagen must restore consumer trust, "make this right, and prevent it from ever happening again"; beginning with bringing the TDI vehicles into compliance with state and federal emissions regulations. Following the NOV, Volkswagen stopped advertising its latest TDI models. Volkswagen admitted it did not have a remedy, but was "committed to finding a remedy as soon as possible" and stated it would notify consumers while asking for patience. Affected Vehicles are not within emissions standards and are either worth substantially less in value if not unsalable.
28. Affected Vehicles pollute, harm the environment and endanger human health.
29. Any repair or remedy to the Affected Vehicles would negatively impact fuel cost, performance and efficiency.
30. As a result of Volkswagen's unfair, deceptive, and/or fraudulent business practices, and its failure to disclose that under normal operating conditions the Affected Vehicles emit 40 times the allowed levels, owners and/or lessees of the Affected Vehicles have suffered losses in money and/or property. Had Plaintiffs and Class members known of the "defeat device" at the time they purchased or leased their Affected Vehicles, they would not have purchased or leased those vehicles, or would have paid substantially less for the vehicles than they did. Volkswagen has been ordered by the EPA to recall the Affected Vehicles and repair them so that they comply with EPA emissions requirements at all times during normal operation. Volkswagen will not be able to make the Affected Vehicles comply with emissions standards without substantially degrading

their performance characteristics, including their horsepower and their efficiency. Moreover, when and if Volkswagen recalls the Affected Vehicles and degrades the CleanDiesel engine performance in order to make the Affected Vehicles compliant with EPA standards, Plaintiffs and Class members will be required to spend additional sums on fuel and will not obtain the performance characteristics of their vehicles when purchased. Class members will suffer actual harm and damages because their vehicles will no longer perform as they did when purchased and as advertised and will be burdened by increased fuel costs. This will necessarily result in a diminution in value of every Affected Vehicle, directly related to decrease in performance and efficiency.

## **II. JURISDICTION**

31. This Court has jurisdiction pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d), because the proposed Class consists of 100 or more members; the amount in controversy exceeds \$5,000,000, exclusive of costs and interest; and minimal diversity exists. This Court also has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.
32. The Court has personal jurisdiction over all Defendants because they are authorized to do business and in fact do business in Florida; they have sufficient minimum contacts with this District; and each Defendant otherwise intentionally avails itself of the markets in this State through the promotion, marketing and sale of the Affected Vehicles thus rendering the exercise of jurisdiction by this Court permissible under Florida law and the U.S. Constitution.

## **III. VENUE**

33. Venue is proper in this District under 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this District. Plaintiff Scott Siewert, purchased his Affected Vehicle in this District, and Defendant's marketed, advertised, sold, and/or leased the Affected Vehicles within this District.

## **IV. PARTIES**

34. Plaintiff Scott Siewert is an individual residing in Waynesville, North Carolina, Plaintiff purchased a new 2011 Volkswagen Jetta TDI Clean Diesel from David Maus Volkswagen North at 1050 Lee Road, Orlando, FL 32810. Plaintiff still owns this vehicle.

35. Plaintiff, Greg Siewert, resides in Hatfield, PA. Plaintiff purchased a new 2012 Volkswagen Jetta TDI Clean Diesel, VIN #: 3VWLL7AJ2CM368148, from North Penn Volkswagen, an authorized Volkswagen dealer, at 165 Bethlehem Pike, Colmar, PA 18915. Plaintiff still owns this vehicle.

**Defendants**

36. Defendant, Volkswagen Group of America, Inc., (“VOLKSWAGEN”) is a corporation doing business in all 50 states (including the District of Columbia) and is organized under the laws of the State of New Jersey, with its principal place of business located at 2200 Ferdinand Porsche Dr., Herndon, Virginia 20171. At all times relevant to this action, Volkswagen manufactured, distributed, sold, leased, and warranted the Affected Vehicles under the Volkswagen and Audi brand names throughout the United States. Volkswagen and/or its agents designed, manufactured, and installed the TDI clean diesel engine systems in the Affected Vehicles, which included the “defeat device.” Volkswagen also developed and disseminated the owner’s manuals and warranty booklets, advertisements, and other promotional materials relating to the Affected Vehicles. Volkswagen knew about and purposefully used the defeat devices, with the principal purpose of evading emissions standards while promoting its vehicles falsely, failing to disclose the defeat devices and its effects to Plaintiff, and acting for more sales and profitability at the expense of Plaintiff and Class members.
37. Defendant, VOLKSWAGEN AG.(“VOLKSWAGEN”) is a German multinational automotive manufacturing company headquartered in Wolfsburg, Lower Saxony, Germany. It designs, manufactures and distributes passenger and commercial vehicles, motorcycles, engines, and turbomachinery and offers related services including financing, leasing and fleet management. The company has operations in approximately 150 countries and operates 100 production facilities across 27 countries.
38. Defendant, RVWVT MOTORS LLC, (“DEALER”) is a Delaware Company doing business as David Maus Volkswagen North at 1050 Lee Rd., Orlando, FL 32810. RVWVT Motors Inc. markets, advertises, sales and/or leases Affected Vehicles in the Middle District of Florida. Agents of RVWVT Motors LLC at their David Maus Volkswagen North dealership, made material misrepresentations and omissions to Plaintiff when he purchased his defective vehicle in this District. Defendant’s produced written statements and provided written statements to Plaintiff, including owner’s manuals, sales materials and other documents that included material misrepresentations and omissions regarding Plaintiff’s vehicle and Affected Vehicles.

39. Defendant, Michael Horn is the president and CEO of Volkswagen Group of America (VWGOA) as well as president for the Volkswagen of America brand. Horn assumed this position in January 2014. Horn served as the Global Head of After Sales at Volkswagen AG (VW). Horn joined Volkswagen in 1990 and has held many roles within the Volkswagen Brand, including Head of Volkswagen sales North West Europe, Head of sales and marketing luxury class vehicles, and Head of sales for Europe since 2004.
40. Defendant, Dr. Ulrick Hackenberg is a Member of the Board of Management with responsibility for Development for the Volkswagen brand with effect from January 2, 2007. Hackenberg was previously Head of Concept Development, Body Development, Electronics and Electrical Systems. Ulrich Hackenberg, is Volkswagen Director of Product Development for Power Trains, stands next to the Volkswagen CrossBlue SUV concept vehicle in Detroit since Jan. 14, 2013.
41. Defendant, Dr. Heinz-Jakob Neußer, Head of Powertrain Development at the Volkswagen Group. Neußer assumed responsibility for powertrain development at the Volkswagen Passenger Cars brand in 2011.
42. Defendant, Wolfgang Hatz is a member of Porsche AG Board of Management in charge of Research and Development, and is additionally Head of Engines and Transmissions Development for the Volkswagen Group since February 1, 2011.

#### **TOLLING OF THE STATUE OF LIMITATIONS**

43. Within the time period of any applicable statutes of limitation, Plaintiffs and members of the proposed classes could not have discovered through the exercise of reasonable diligence that Volkswagen was concealing the conduct complained of herein and misrepresenting the Company's true position with respect to the emission qualities of its vehicles.

#### **Fraudulent Concealment**

44. Statutes of Limitations are tolled by Defendant's knowledge and fraudulent concealment of the defeat device and emissions standards evasion described above since at least the 2009 model year. Defendants knew of the defects well before Plaintiff and Class Members purchased the

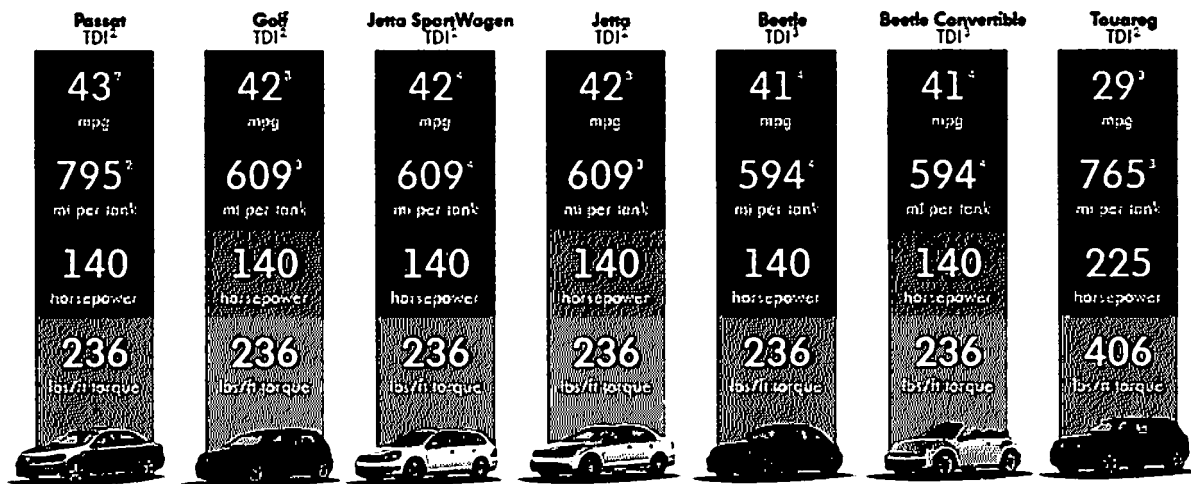
Affected Vehicles, and fraudulently concealed, denied facts and failed to notify Plaintiff, Class Members, and/or emissions authorities or the public of the full and complete nature of the Affected Vehicles, falsely representing emissions standards compliance with both federal and state emissions standards, denial of defeat defect manufacture or installation, clean and efficient diesel engines, and that it was a reputable manufacturer whose representations could be trusted.

45. As a result of Defendants' intentional concealment, Defendants, all applicable statutes of limitation have been tolled in this case.

#### **Estoppel**

46. Statutes of Limitations are tolled by Defendant's continuous duty to disclose to Plaintiff and Class Members the true character, quality, and nature of the vehicles, including the defect device, the emissions systems and functions, and compliance or noncompliance with state and federal emissions standards. Defendants knowingly and actively concealed the true character, quality, and nature of the vehicles. Defendants knowingly made misrepresentations about the quality, reliability, characteristics, and performance of the vehicles. Plaintiff and Class Members reasonably relied upon Defendants' knowing and affirmative misrepresentations and/or active concealment of these facts. Volkswagen also developed and disseminated the owner's manuals and warranty booklets, advertisements, and other promotional materials relating to the Affected Vehicles.
47. Volkswagen was also under a continuous duty to disclose to Plaintiffs and Class members that it had engaged in the scheme complained of herein to evade federal and state emissions and clean air standards, and that it systematically devalued compliance with, and deliberately flouted, federal and state law regulating vehicle emissions and clean air.
48. Based on the foregoing, Defendants are estopped from relying on any statutes of limitation in defense of this action.

Volkswagen offers the most clean diesel vehicles of any manufacturer. With seven models, there's a TDI option for every driver.



#### Discovery Rule

49. The causes of action alleged herein did not accrue until Plaintiff and Class Members discovered in September 2015 that their vehicles were defective; Plaintiff and Class Members had no way of knowing about the defeat devices, the emissions issues and/or the fraud or deception of Defendants in this case where even the EPA and emissions testing processes had not uncovered the software programming and equipment used in Affected Vehicles until they had been uncovered after many years, at least 2009 through 2015, of illegal manufacture, installation and distribution. Further, Defendants hid the fraud from regulatory authorities, government entities, and consumers alike. Plaintiffs and Class Members could not have discovered through reasonable diligence the truth of Affected Vehicles, their defeat device and/or emissions standards evasion or fraudulent conduct of Defendants. It took federal EPA, the West Virginia University *Center for Alternative Fuels, Engines & Emissions*, and state agencies such as the California Air Resources Board investigations to uncover Volkswagen's deception, which involved sophisticated software manipulation on Volkswagen's part. The New York Times reported on a May 15, 2014 report issued by West Virginia University's *Center for Alternative Fuels, Engines & Emissions*, found significantly elevated nitrogen oxides emissions when the Defective Vehicles were driven in real world conditions.
50. The *Los Angeles Times* on September 18, 2015, reported that the California Air Resources Board performed testing on a special dynamometer in a laboratory, open road testing using portable equipment, and the use of special testing devised by the Board to confirm Volkswagen's scheme



and to detect how software on the engine's electronic control module was deceiving emissions certifications tests. Plainly, Volkswagen was intent on expressly hiding its behavior from regulators and consumers.

51. Plaintiffs and the other Class Members did not discover, and did not know of facts that would have caused a reasonable person to suspect, that Volkswagen did not report information within its knowledge to federal and state authorities, its dealerships, or consumers; nor would a reasonable and diligent investigation have disclosed that Volkswagen had information in its possession about the existence of its sophisticated emissions scheme and that it opted to conceal that information, which was discovered by Plaintiffs only shortly before this action was filed. Nor in any event would such an investigation on the part of Plaintiffs and other Class members have disclosed that Volkswagen valued profits over compliance with federal and state law, or the trust that Plaintiffs and other Class members had placed in its representations, or that, necessarily, Volkswagen actively discouraged its personnel from raising or disclosing issues with regard to the true quality and quantity of the emissions, and the emissions software, of its vehicles, or of Volkswagen's emissions scheme.
52. For these reasons, all applicable statutes of limitation have been tolled per the discovery rule in this case.

#### **V. CLASS ALLEGATIONS**

53. Plaintiff brings this lawsuit as a class action individually and on behalf of all other persons similarly situated as members of the proposed Class, pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3) and/or (b)(2) and/or (c)(4). This action satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of those provisions. This action has been brought and may be properly maintained on behalf of each of the Classes proposed herein under Federal Rule of Civil Procedure 23.
54. 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 himself and Classes defined as follows:
  - a. "Nationwide Class" defined as all persons or entities in the United States who owned, purchased and/or leased one or more Affected Vehicles, as defined by this complaint, in the United States. Affected Vehicles include, without limitation: MY 2009-2015

VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2014-2015 VW Passat; and MY 2009-2015 Audi A3.

- b. "Florida Subclass" defined as all owners of one or more Affected Vehicle, who purchased and/or lease one or more Affected Vehicles in the State of Florida. Affected Vehicles include, without limitation: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2014-2015 VW Passat; and MY 2009-2015 Audi A3.
- c. Collectively known as "Class" and/or "Classes."

- 55. Excluded from the Classes are: (1) Defendants, any entity or division in which Defendants have a controlling interest, and their legal representatives, employees, officers, directors, assigns, heirs, successors, and wholly or partly owned subsidiaries or affiliates; (2) the Judge to whom this case is assigned and the Judge's staff; (3) governmental entities; and (4) those persons who have suffered personal injuries as a result of the facts alleged herein. Plaintiff reserves the right to amend the Class definitions if discovery and further investigation reveal that any Class should be expanded, divided into additional subclasses, or modified in any other way.
- 56. Class claims all derive directly from a single course of conduct by Defendants. This case is about the responsibility of Defendants, at law and in equity, for their knowledge, their conduct, and their products. Defendants have engaged in uniform and standardized conduct toward the Classes. Defendants did not differentiate, in degree of care or candor, their actions or inactions, or in the content of their statements or omissions, among individual Class Members. The objective facts on these subjects are the same for all Class Members. Within each Claim for Relief asserted by the respective Classes, the same legal standards govern. Additionally, many states share the same legal standards and elements of proof, facilitating the certification of multistate classes for some or all claims.
- 57. Plaintiff is not aware of any obstacles likely to be encountered in the management of this action that would preclude its maintenance as a class action. Rule 23 of the Federal Rules of Civil Procedure provides the Court with authority and flexibility to maximize the efficiencies and benefits of the class mechanism and reduce management challenges. The Court may, on motion of Plaintiff or on its own determination, certify nationwide, statewide and/or multistate classes for claims sharing common legal questions; utilize the provisions of Rule 23(c)(4) to certify any particular claims, issues, or common questions of fact or law for class-wide adjudication; certify

and adjudicate bellwether class claims; and utilize Rule 23(c)(5) to divide any Class into subclasses.

#### **NUMEROSITY AND ASCERTAINABILITY**

58. This action satisfies the requirements of Fed. R. Civ. P. 23(a)(1). Plaintiff is informed and believe that there are nearly 500,000 Affected Vehicles nationwide, and thousands of Affected Vehicles in each of the States. Individual joinder of all Class members is impracticable.
59. Although the exact number of Class Members is uncertain and can only be ascertained through appropriate discovery, the number is great enough that joinder is impracticable. The disposition of the claims of these Class Members in a single action will provide substantial benefits to all parties and to the Court.
60. Each of the Classes is ascertainable because its members can be readily identified using registration records, Volkswagens' books and records, sales records, production records, and other information kept by Defendants and/or third parties in the usual course of business, and within their control. Class members may be notified of the pendency of this action by recognized, Court-approved notice dissemination methods, which may include U.S. mail, electronic mail, Internet postings, and/or published notice.

#### **TYPICALITY**

61. Plaintiff's claims are typical of the claims of the Class members, and arise from the same course of conduct by Defendants. The representative Plaintiffs, like all Class Members, has been damaged by Defendants' misconduct in that they have incurred losses relating to the defeat devices and Defendants' misrepresentations and concealments. Furthermore, the factual bases of Defendants' misconduct are common to all Class Members and represent a common thread of misconduct resulting in injury to all Class Members. The relief Plaintiff seeks is typical of the relief sought for the absent Class members.

#### **Adequacy of Representation**

62. Plaintiff will fairly and adequately represent and protect the interests of the Classes. Plaintiff has retained counsel with substantial experience in prosecuting consumer class actions, including actions involving defective products.

63. Plaintiff and Plaintiff's counsel are committed to vigorously prosecuting this action on behalf of the Classes, and have the financial resources to do so. Neither Plaintiff nor counsel have interests adverse to those of the Classes.

**Predominance of Common Issues**

64. There are numerous questions of law and fact common to Plaintiff and Class Members that predominate over any question affecting only individual Class Members, the answers to which will advance resolution of the litigation as to all Class Members. These common legal and factual issues include the following:
- a. Whether Defendants engaged in the conduct alleged herein;
  - b. Whether Volkswagen Defendants, Dealer Defendant and/or individual Defendants designed, advertised, marketed, distributed, leased, sold, or otherwise placed Affected Vehicles into the stream of commerce in the United States;
  - c. Whether Defendants made unlawful and misleading representations or material omissions with respect to the Affected Vehicles;
  - d. Whether Defendants represented that the Affected Vehicles have characteristics, uses, benefits or qualities that they do not have;
  - e. Whether Volkswagen Defendants, Dealer Defendant, and/or individual Defendants designed, manufactured, marketed, and distributed Affected Vehicles with a "defeat device";
  - f. Whether the CleanDiesel engine system in the Affected Vehicles contains a defect in that it does not comply with U.S. EPA requirements;
  - g. Whether the CleanDiesel engine systems in Affected Vehicles can be made to comply with EPA standards without substantially degrading the performance and/or efficiency of the Affected Vehicles;
  - h. Whether Volkswagen Defendants, Dealer Defendant and/or individual Defendants knew about the "defeat device" and, if so, how long Volkswagen Defendants, Dealer Defendant, and/or individual Defendants have known;
  - i. Whether the defeat devices cause excessive and illegal emissions;
  - j. Whether Volkswagen Defendants, and Dealer Defendant violated the Magnuson- Moss Warranty Act;
  - k. Whether Volkswagen Defendants violate the applicable Federal RICO statutes;
  - l. Whether Volkswagen Defendants and Dealer Defendant's conduct amounted to a breach of contract and implied covenant of good faith and fair dealing;

- m. Whether the conduct of Volkswagen Defendants, Dealer Defendant, and/or individual Defendants amounts to unlawful, unfair or deceptive business practices in violation of Florida Deceptive and Unfair Trade Practices Act (FDUPTA);
- n. Whether the conduct of Volkswagen Defendants, Dealer Defendant, and/or individual Defendants warrant recovery under Florida law pertaining to Unjust Enrichment;
- o. Whether Plaintiffs and the other Class members overpaid for their Affected Vehicles;
- p. Whether Plaintiffs and the other Class members are entitled to equitable relief, including, but not limited to, restitution or injunctive relief; and
- q. Whether Plaintiffs and the other Class members are entitled to damages and other monetary relief and, if so, in what amount.
- r. Whether Defendants' unlawful, unfair and deceptive practices harmed Plaintiff and Class Members;
- s. Whether Plaintiffs and the Class Members have been damaged by the unlawful actions of Defendants and the amount of damages to the Class;
- t. Whether Defendants have been unjustly enriched by their conduct;
- u. Whether Plaintiff and the Class Members are entitled to equitable relief;
- v. Whether punitive damages should be awarded; and
- w. What aggregate amounts of statutory penalties are sufficient to punish and deter Defendants and to vindicate statutory and public policy;

### **Superiority**

- 65. Plaintiff and Class Members have all suffered and will continue to suffer harm and damages as a result of Defendants' unlawful and wrongful conduct. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.
- 66. The prosecution of separate actions by the individual Class Members on the claims asserted herein would create a risk of inconsistent or varying adjudications for individual Class members, which would establish incompatible standards of conduct for Defendants; and because adjudication with respect to individual Class Members would, as a practical matter, be dispositive of the interests of other Class Members, or impair substantially or impede their ability to protect their interests.
- 67. Absent a class action, most Class Members would likely find the cost of litigating their individual claims prohibitively high and would therefore have no effective remedy at law. Because the

damages suffered by each individual Class member may be relatively small, the expense and burden of individual litigation would make it very difficult or impossible for individual Class members to redress the wrongs done to each of them individually, such that most or all class members would have no rational economic interest in individually controlling the prosecution of specific actions, and the burden imposed on the judicial system by individual litigation by even a small fraction of the Class would be enormous, making class adjudication the superior alternative under Fed. R. Civ. P. 23(b)(3)(A). Absent a class action, Class Members will continue to incur damages, and Defendants' misconduct will continue without remedy.

68. Classwide declaratory, equitable, and injunctive relief is appropriate under Rule 23(b)(1) and/or (b)(2) because Defendants have acted on grounds that apply generally to the Class, and inconsistent adjudications with respect to the Defendants' liability would establish incompatible standards and substantially impair or impede the ability of Class Members to protect their interests. Classwide relief assures fair, consistent, and equitable treatment and protection of all Class Members, and uniformity and consistency in Defendants' discharge of their duties to perform corrective action regarding the Affected Vehicles.
69. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. The common questions of law and of fact regarding Defendants' conduct and responsibility predominate over any questions affecting only individual Class members.
70. The conduct of this action as a class action presents far fewer management difficulties, far better conserves judicial resources and the parties' resources, and far more effectively protects the rights of each Class member than would piecemeal litigation. Compared to the expense, burdens, inconsistencies, economic infeasibility, and inefficiencies of individualized litigation, the challenges of managing this action as a class action are substantially outweighed by the benefits to the legitimate interests of the parties, the court, and the public of class treatment in this court, making class adjudication superior to other alternatives, under Fed. R. Civ. P. 23(b)(3)(D).

## **CAUSES OF ACTION**

### **COUNT I**

**Violation of the Magnuson-Moss Warranty Act  
15 U.S.C. §§ 2301 et seq.  
(Brought on behalf of Nationwide and Florida Classes)  
(As to Volkswagen and Dealer Defendants)**

71. Plaintiffs brings this Claim for Relief on behalf of members of the Nationwide and Florida Classes.
72. Plaintiffs incorporate by reference paragraphs 1-70 above as if fully set forth in this Count.
73. This Court has jurisdiction to decide claims brought under 15 U.S.C. § 2301 by virtue of 28 U.S.C. § 1332 (a)-(d).
74. The Affected Vehicles are “consumer products” within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(1).
75. Plaintiff and Class Members are “consumers” within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(3). They are consumers because they are persons entitled under applicable state law to enforce against the warrantor the obligations of its express and implied warranties.
76. Defendants are “supplier[s]” and “warrantor[s]” within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(4)-(5).
77. The Magnuson-Moss Warranty Act, 15 U.S.C. § 2310(d)(1) provides a claim for relief for any consumer who is damaged by the failure of a warrantor to comply with an expressed or implied warranty.
78. Defendants, VOLKSWAGEN GROUP OF AMERICA, INC., VOLKSWAGEN AG, and RVWVT MOTORS LLC, provided Plaintiff and Class Members with expressed and implied warranties of merchantability in connection with the purchase or lease of their vehicles that are warranties within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(7). Defendants warranted that the Affected Vehicles were eco-friendly and fit for their ordinary purpose as passenger motor vehicles, would pass without objection in the trade as designed, manufactured, and marketed, and were adequately contained, packaged, and labeled.
79. Defendants breached these warranties, as described in more detail above, and are therefore liable to Plaintiff and the Class pursuant to 15 U.S.C. § 2310(d)(1). Without limitation, the Affected Vehicles share common defects in that they are equipped with defeat devices. Defendants have

admitted that the Affected Vehicles are defective, and agreed to recalls, but the recalls are woefully insufficient to address each of the defects.

80. In their capacity as warrantors, as Defendants had knowledge of the inherent defects in the Affected Vehicles, any efforts to limit the implied warranties in a manner that would exclude coverage of the Affected Vehicles is unconscionable, and any such effort to disclaim, or otherwise limit, liability for the Affected Vehicles is null and void.
81. The limitations on the warranties are procedurally unconscionable. There was unequal bargaining power between Defendants and Plaintiff and the other Class Members, as, at the time of purchase and lease, Plaintiff and the other Class Members had no other options for purchasing warranty coverage other than directly from Defendants.
82. The limitations on the warranties are substantively unconscionable. Defendants knew that the Affected Vehicles were defective. Defendants failed to disclose these defects to Plaintiff and Class Members. Thus, Defendants' enforcement of the durational limitations on those warranties is harsh and shocks the conscience.
83. Plaintiff Class Members have had sufficient direct dealings with Defendants or their agents (dealerships) to establish privity of contract. Nonetheless, privity is not required here because Plaintiff and Class Members are intended third-party beneficiaries of contracts between Defendants and their dealers, and specifically, of the implied warranties. The dealers were not intended to be the ultimate consumers of the Affected Vehicles and have no rights under the warranty agreements provided with the Affected Vehicles; the warranty agreements were designed for and intended to benefit consumers.
84. Pursuant to 15 U.S.C. § 2310(e), Plaintiff is entitled to bring this class action and are not required to give Defendants notice and an opportunity to cure until such time as the Court determines the representative capacity of Plaintiff pursuant to Rule 23 of the Federal Rules of Civil Procedure.
85. Furthermore, affording Defendants an opportunity to cure their breach of written warranties would be unnecessary and futile here. At the time of sale or lease of each Affected Vehicle, Defendants knew, should have known, or were reckless in not knowing of their misrepresentations concerning the Affected Vehicles' inability to perform as warranted, but nonetheless failed to rectify the situation and/or disclose the defective design. Under the



circumstances, the remedies available under any informal settlement procedure would be inadequate and any requirement that Plaintiff resorts to an informal dispute resolution procedure and/or afford Defendants a reasonable opportunity to cure their breach of warranties is excused and thereby deemed satisfied.

86. Plaintiff and Class Members would suffer economic hardship if they returned their Affected Vehicles but did not receive the return of all payments made by them. Because Defendants have no available cure, Plaintiff and Class Members have not re-accepted their Affected Vehicles by retaining them.
87. Pursuant to 15 U.S.C. §2310(d)(3), the amount in controversy of Plaintiff's and each Class member's individual claim exceeds the sum of \$25. The total amount in controversy in this Class action exceeds the sum of \$50,000, exclusive of interest and costs, computed on the basis of all claims to be determined in this lawsuit. The size of each plaintiff class or subclass far exceeds 100 members but the precise number of class members is entirely within the defendants' knowledge and control. Plaintiff, individually and on behalf of the other Class Members, seeks all damages permitted by law, including diminution in value of their vehicles, in an amount to be proven at trial. In addition, pursuant to 15 U.S.C. § 2310(d)(2), Plaintiff and Class Members are entitled to recover a sum equal to the aggregate amount of costs and expenses (including attorneys' fees based on actual time expended) determined by the Court to have reasonably been incurred by Plaintiff and Class Members in connection with the commencement and prosecution of this action.
88. Further, Plaintiff and the Class are also entitled to equitable relief under 15 U.S.C. § 2310(d)(1). Based on Defendants' continuing failures to fix the known defects, Plaintiff seeks a declaration that Defendants have not adequately implemented their recall commitments and requirements and general commitments to fix its failed processes, and injunctive relief in the form of judicial supervision over the recall process is warranted. Plaintiff also seeks the establishment of a Defendant-funded program for Plaintiff and Class Members to recover out-of-pocket costs incurred.
89. Plaintiff also requests, as a form of equitable monetary relief, re-payment of the out-of-pocket expenses and costs they have incurred in attempting to rectify the defects. Such expenses and losses will continue as Plaintiff and Class members must take time off from work, pay for rental

vehicles or other transportation arrangements and expenses involved in going through the recall process.

90. The right of Class Members to recover these expenses as an equitable matter to put them in the place they would have been but for Defendants' conduct presents common questions of law. Equity and fairness requires the establishment by Court decree and administration under Court supervision of a program funded by Defendants, using transparent, consistent, and reasonable protocols, under which such claims can be made and paid.

**COUNT II**  
**Violation of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), against the**  
**Volkswagen Defendants**  
**18 U.S.C. § 1962(c)**  
**(Brought on behalf of the Nationwide and Florida Classes)**

91. Plaintiffs incorporate by reference each allegation contained in paragraphs, 1-70 above as if fully set forth in this Count.
92. The Volkswagen Defendants, VOLKSWAGEN GROUP OF AMERICA, INC., and VOLKSWAGEN AG, are all "persons" under 18 U.S.C. § 1961(3).
93. The Volkswagen Defendants violated 18 U.S.C. § 1962(c) by participating in or conducting the affairs of the Volkswagen RICO Enterprise through a pattern of racketeering activity.
94. Plaintiff and Class members are "person[s] injured in his or her business or property" by reason of the Volkswagen Defendants' violation of RICO within the meaning of 18 U.S.C. § 1964(c). The Volkswagen RICO Enterprise.
95. The following persons, and others presently unknown, have been members of and constitute an "association-in-fact enterprise" within the meaning of RICO, and will be referred to herein collectively as the Volkswagen RICO Enterprise:
  - a. The Volkswagen Defendants, who designed, manufactured, and sold hundreds of thousands of Affected Vehicles knowing that they contained the illegal defeat devices, the scope and nature of which they concealed from and misrepresented to the public and regulators for more than a decade and still refuse to entirely acknowledge.

- b. The Volkswagen Defendants' Officers, Executives, and Engineers, who have collaborated and colluded with each other and with other associates in fact in the Volkswagen RICO Enterprise to deceive Plaintiff and Class members into purchasing defective vehicles, and actively concealing the illegal defeat devices from Plaintiff and Class members.
- 96. The Volkswagen RICO Enterprise, which comprise VOLKSWAGEN GROUP OF AMERICA, INC., VOLKSWAGEN AG, engaged in, and whose activities affected interstate and foreign commerce, is an association-in-fact of individuals and corporate entities within the meaning of 18 U.S.C. § 1961(4) and consists of "persons" associated together for a common purpose. The Volkswagen RICO Enterprise had an ongoing organization with an ascertainable structure, and functioned as a continuing unit with separate roles and responsibilities.
- 97. While the Volkswagen Defendants participated in the conduct of the Volkswagen RICO Enterprise, they had an existence separate and distinct from the Volkswagen RICO Enterprise. Further, the Volkswagen RICO Enterprise was separate and distinct from the pattern of racketeering in which the Volkswagen Defendants have engaged.
- 98. At all relevant times, the Volkswagen Defendants operated, controlled or managed the Volkswagen RICO Enterprise, through a variety of actions. The Volkswagen Defendants' participation in the Volkswagen RICO Enterprise was necessary for the successful operation of its scheme to defraud because the Volkswagen Defendants manufactured the Affected Vehicles, concealed the nature and scope of the defeat devices, and profited from such concealment.
- 99. The members of the Volkswagen RICO Enterprise all served a common purpose: to sell as many vehicles containing such defeat devices, as possible, and thereby maximize the revenue and profitability of the Volkswagen RICO Enterprise's members. The members of the Volkswagen RICO Enterprise shared the bounty generated by the enterprise, i.e., by sharing the benefit derived from increased sales revenue generated by the scheme to defraud. Each member of the Volkswagen RICO Enterprise benefited from the common purpose: the Volkswagen Defendants sold more Affected Vehicles than they would have otherwise had the scope and nature of the defeat devices not been concealed; and sold or leased those vehicles at a much higher price, as a result of the concealment of the scope and nature of the defeat devices from Plaintiffs and Class members.

100. The Volkswagen Defendants, VOLKSWAGEN GROUP OF AMERICA, INC., VOLKSWAGEN AG, conducted and participated in the conduct of the affairs of the Volkswagen RICO Enterprise through a pattern of racketeering activity, beginning no later than the 2009 model year and continuing to this day, that consists of numerous and repeated violations of the federal mail and wire fraud statutes. These statutes prohibit the use of any interstate or foreign mail or wire facility for the purpose of executing a scheme to defraud, in violation of 18 U.S.C. §§ 1341 and 1343.
101. For the Volkswagen Defendants, the purpose of the scheme to defraud was to conceal the scope and nature of the illegal defeat devices found in hundreds of thousands of Affected Vehicles worldwide in order to sell more vehicles, to sell them at a higher price or for a higher profit, and to avoid incurring the expenses associated with repairing the defects. By concealing the scope and nature of the illegal defeat devices in the Affected Vehicles, the Volkswagen Defendants also maintained and boosted consumer confidence in the “clean diesel” campaign, and avoided remediation costs and negative publicity, all of which furthered the scheme to defraud and helped the Volkswagen Defendants sell more vehicles than they would otherwise have sold, and to sell them at a much higher price or for a higher profit.
102. As detailed in the General Factual Allegations, the Volkswagen Defendants were well aware of the defeat devices, but intentionally subjected Plaintiff and Class Members to those defects in order to maximize their profits. Moreover, once the defect became known, the Volkswagen Defendants failed to adequately remedy the defect: pollution emissions were still too high.
103. To further the scheme to defraud, the Volkswagen Defendants repeatedly misrepresented and concealed the nature and scope of the defeat devices defect. The Volkswagen Defendants passed off a substandard recall but failed to adequately remedy the nature of the defect.
104. To further the scheme to defraud, the Volkswagen Defendants concealed the nature and scope of the defeat devices defect from federal regulators, enabling it to escape investigation and costs associated with recalls and corrective action.
105. To further the scheme to defraud, the Volkswagen Defendants would promote and tout the reliability, and quality of the vehicles while simultaneously concealing the nature and scope of the defeat devices defect.

106. To further the scheme to defraud, the Volkswagen Defendants permitted or caused the Dealerships to promote the reliability, and quality of the purported eco-friendly nature of the Affected Vehicles while simultaneously concealing the nature and scope of the defeat devices defect.
107. To carry out, or attempt to carry out the scheme to defraud, the Volkswagen Defendants have conducted or participated in the conduct of the affairs of the Volkswagen RICO Enterprise through the following pattern of racketeering activity that employed the use of the mail and wire facilities, in violation of 18 U.S.C. § 1341 (mail fraud) and § 1343 (wire fraud):
  - a. The Volkswagen Defendants devised and furthered the scheme to defraud by use of the mail, telephone, and internet, and transmitted, or caused to be transmitted, by means of mail and wire communication travelling in interstate or foreign commerce, writing(s) and/or signal(s), including the Volkswagen website, communications with the EPA and/or CARB statements to the press, and communications with other members of the Volkswagen RICO Enterprise, as well as advertisements and other communications to the Volkswagen Defendants' customers, including Plaintiff and Class members. Given that each Affected Vehicle required a COC application, the Volkswagen Defendants used the mail and wires 30 times, at minimum, to submit the fraudulent COC applications; and
  - b. The Volkswagen Defendants utilized the interstate and international mail and wires for the purpose of obtaining money or property by means of the omissions, false pretense, and misrepresentations described herein.
108. The Volkswagen Defendants' pattern of racketeering activity in violation of the mail and wire fraud statutes included transmitting or causing to be transmitted, by means of mail and wire communication traveling in interstate or foreign commerce, between its offices in Germany, Virginia, Michigan or among the other 20-plus offices in the United States: communications concerning the illegal defeat devices; and submissions to the EPA regarding COC applications for each model and year of the Affected Vehicles that failed to adequately disclose or address all auxiliary emission control devices that were installed in the Affected Vehicles.
109. The Volkswagen Defendants' conduct in furtherance of this scheme was intentional. Plaintiff and Class Members were directly harmed as a result of the Volkswagen Defendants' intentional conduct. Plaintiff, Class Members, and federal regulators, among others, relied on the Volkswagen Defendants' material misrepresentations and omissions.

110. The Volkswagen Defendants engaged in a pattern of related and continuous predicate acts beginning at least in the 2009 model year. The predicate acts constituted a variety of unlawful activities, each conducted with the common purpose of defrauding Plaintiff and Class Members and obtaining significant monies and revenues from them while providing Affected Vehicles worth significantly less than the purchase price paid. The predicate acts also had the same or similar results, participants, victims, and methods of commission. The predicate acts were related and not isolated events.
111. The predicate acts all had the purpose of generating significant revenue and profits for the Volkswagen Defendants at the expense of Plaintiff and Class Members. The predicate acts were committed or caused to be committed by the Volkswagen Defendants through their participation in the Volkswagen RICO Enterprise and in furtherance of its fraudulent scheme, and were interrelated in that they involved obtaining Plaintiff's and Class Members' funds and avoiding the expenses associated with remediating the defect.
112. By reason of and as a result of the conduct of the Volkswagen Defendants, and in particular its pattern of racketeering activity, Plaintiff and Class Members have been injured in their business and/or property in multiple ways, including but not limited to:
  - a. purchasing or leasing Affected Vehicles that Plaintiff and Class Members would not otherwise have purchased or leased;
  - b. overpaying for leased or purchased Affected Vehicles, in that Plaintiff and Class Members believed they were paying for "green" eco-friendly vehicles but obtaining vehicles that were neither "green" nor eco-friendly; and
  - c. purchasing Affected Vehicles of diminished values, thus reducing their resale value.
113. The Volkswagen Defendants' violations of 18 U.S.C. § 1962(c) have directly and proximately caused injuries and damages to Plaintiff and Class Members, and Plaintiffs and Class Members are entitled to bring this action for three times their actual damages, as well as injunctive/equitable relief and costs and reasonable attorneys' fees pursuant to 18 U.S.C. § 1964(c).

**COUNT III**  
**(Breach of Contract and Implied Covenant of Good Faith and Fair Dealing)**  
**(Brought on behalf of the National Class)**

- 114. Plaintiffs incorporate by reference each allegation contained in paragraphs, 1-70 above as if fully set forth in this Count.
- 115. Each and every sale or lease of an Affected Vehicle constitutes a contract between Volkswagen and the purchase or lessee. Volkswagen breached these contracts by selling or leasing Plaintiffs and the Class defective Affected Vehicles that did not comply with EPA and Florida emission standards, were unfit for driving, and did not comport with the agreed upon emissions output. Contrary to the bargained-for-exchange, Plaintiffs and the Class paid a premium for cleaner diesel engines, but received vehicles with emissions higher than any approved vehicles on the roads.
- 116. Additionally, Volkswagen breached its implied covenant of good faith and fair dealing. Volkswagen's failure to produce an approved vehicle unlawfully emitting up to 40 times the federal standard, and in excess of the Florida standard - despite clear representations of a "cleaner" vehicle - falls well below Plaintiffs' and the Class's reasonable expectations under their respective contracts.
- 117. Volkswagen's failure to produce an EPA-compliant vehicle, despite its misrepresentations, caused the Affected Vehicles to be less valuable than vehicles not equipped with a CleanDiesel engine system.
- 118. As a direct and proximate result of Volkswagen's breach of contract, Plaintiffs and the Class have been damaged in an amount to be proven at trial, which includes, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

**COUNT IV**  
**Unjust Enrichment**  
**(Brought on behalf of the Florida Class)**

- 119. Plaintiffs incorporate by reference the allegations in paragraphs 1-70 above as if fully set forth in this Count.
- 120. As a result of Defendants', VOLKSWAGEN GROUP OF AMERICA, INC., VOLKSWAGEN AG, unlawful and deceptive actions described above, Defendants including RVWVT MOTORS LLC received a substantial benefit conferred upon them, and were enriched at the expense of Plaintiff and the Class.

121. Under the circumstances, it would be against equity and good conscience to permit Defendants, VOLKSWAGEN GROUP OF AMERICA, INC., VOLKSWAGEN AG, and RVWVT MOTORS LLC to retain the ill-gotten benefits it received from Plaintiffs and Class Members. Thus, it would be unjust and inequitable for Defendants to retain the benefit without restitution to Plaintiffs and the Class for the monies paid to Defendants for the Affected Vehicle.

**COUNT V**  
**Violation of Florida's Unfair & Deceptive Trade Practices Act**  
**Fla. Stat. § 501.201, et seq.**  
**(Brought on behalf of the Florida Class)**  
**(As to All Defendants)**

122. Plaintiff, Scott Siewert incorporates by reference the allegations in paragraphs 1-70 above as if fully set forth in this Count.
123. This is an action for damages for violation of the Florida Deceptive and Unfair Trade Practices Act (Fla. Stat. §§501.201 to 501.213) ("FDUTPA").
124. The express purpose of FDUTPA is to "protect the consuming public...from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce." § 501.202(2).
125. FDUTPA §501.204(1) 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."
126. Manufacturing, selling, distributing, or introducing the Affected Vehicles in interstate commerce are "consumer transaction[s]" in the scope of FDUTPA.
127. Plaintiff is a "consumer" as defined by FDUTPA §501.203.
128. The Affected Vehicles are goods within the meaning of FDUTPA and Defendants, VOLKSWAGEN GROUP OF AMERICA, INC., VOLKSWAGEN AG, RVWVT MOTORS LLC, MICHAEL HORN, ULRICH HACKENBERG, HEINZ-JAKOB NEUSSER, WOLFGANG HATZ, and JOHN DOE are engaged in trade or commerce within the meaning of FDUTPA.



129. Defendants', VOLKSWAGEN GROUP OF AMERICA, INC., VOLKSWAGEN AG, RVWVT MOTORS LLC, MICHAEL HORN, ULRICH HACKENBERG, HEINZ-JAKOB NEUSSER, WOLFGANG HATZ, and JOHN DOE, unfair and deceptive practices are likely to mislead—and have misled—reasonable consumers, such as Plaintiff and members of the Class, and therefore, violate Section 500.04, Florida Statutes.
130. Defendants, VOLKSWAGEN GROUP OF AMERICA, INC., VOLKSWAGEN AG, RVWVT MOTORS LLC, MICHAEL HORN, ULRICH HACKENBERG, HEINZ-JAKOB NEUSSER, WOLFGANG HATZ, and JOHN DOE have violated FDUTPA by engaging in the unfair and deceptive practices described above, which offend public policies and are immoral, unethical, unscrupulous and substantially injurious to consumers.
131. Specifically, VOLKSWAGEN GROUP OF AMERICA, INC., VOLKSWAGEN AG, RVWVT MOTORS LLC, MICHAEL HORN, ULRICH HACKENBERG, HEINZ-JAKOB NEUSSER, WOLFGANG HATZ, and JOHN DOE has by affirmative misrepresentations and omissions of material fact represented and led Plaintiff and the Class Members to believe that the Affected Vehicles are eco-friendly and comply with federal emission standards, when in fact the Vehicles are engineered to “switch” off the pollution compliant technology, as Affected Vehicles contain illegal defeat devices.
132. Plaintiff and the Class have been aggrieved by Defendants' VOLKSWAGEN GROUP OF AMERICA, INC., VOLKSWAGEN AG, RVWVT MOTORS LLC, MICHAEL HORN, ULRICH HACKENBERG, HEINZ-JAKOB NEUSSER, WOLFGANG HATZ, and JOHN DOE unfair and deceptive practices in violation of FDUPTA, in that they purchased or leased Defendants' Affected Vehicles.
133. Reasonable consumers rely on Defendants, VOLKSWAGEN GROUP OF AMERICA, INC., VOLKSWAGEN AG, RVWVT MOTORS LLC, MICHAEL HORN, ULRICH HACKENBERG, HEINZ-JAKOB NEUSSER, WOLFGANG HATZ, and JOHN DOE to honestly represent and not conceal the true nature of their vehicles.
134. Defendants, VOLKSWAGEN GROUP OF AMERICA, INC., VOLKSWAGEN AG, RVWVT MOTORS LLC, MICHAEL HORN, ULRICH HACKENBERG, HEINZ-JAKOB NEUSSER, WOLFGANG HATZ, and JOHN DOE have deceived reasonable consumers, like Plaintiff and the Class, into believing the vehicles were eco-friendly when they were not.

135. The knowledge required to discern the true nature of the defect is beyond that of the reasonable consumer.
136. Plaintiff and the Class have sustained damages as a direct and proximate result of Defendants' VOLKSWAGEN GROUP OF AMERICA, INC., VOLKSWAGEN AG, RVWVT MOTORS LLC, MICHAEL HORN, ULRICH HACKENBERG, HEINZ-JAKOB NEUSSER, WOLFGANG HATZ, and JOHN DOE tortious conduct. Had the defects been properly disclosed the Florida Class would not have bought, leased or retained their vehicles, or they would have purchased or leased the vehicles for less than they did.
137. Pursuant to FDUPTA §§501.211(2) and 501.2105, Plaintiff and the Class make claims for damages, attorney's fees and costs. The damages suffered by the Plaintiff and the Class were directly and proximately caused by the deceptive, misleading and unfair practices of Defendants, VOLKSWAGEN GROUP OF AMERICA, INC., VOLKSWAGEN AG, RVWVT MOTORS LLC, MICHAEL HORN, ULRICH HACKENBERG, HEINZ-JAKOB NEUSSER, WOLFGANG HATZ, and JOHN DOE.

#### **REQUEST FOR RELIEF**

WHEREFORE, Plaintiffs, individually and on behalf of members of the class, respectfully request that the Court enter judgment in Plaintiff's favor against VOLKSWAGEN GROUP OF AMERICA, INC., VOLKSWAGEN AG, RVWVT MOTORS LLC, MICHAEL HORN, ULRICH HACKENBERG, HEINZ-JAKOB NEUSSER, WOLFGANG HATZ, and JOHN DOE:

- A. Certification of the proposed Nationwide Class against VOLKSWAGEN GROUP OF AMERICA, INC., VOLKSWAGEN AG, including designation of Plaintiffs as Lead Plaintiffs, certifying Plaintiffs as Class representatives under Rule 23 of the Federal Rules of Civil Procedure, and appointment of Plaintiff's counsel as Lead Class Counsel;
- B. Certification of the proposed Florida Subclass against VOLKSWAGEN GROUP OF AMERICA, INC., VOLKSWAGEN AG, RVWVT MOTORS LLC, MICHAEL HORN, ULRICH HACKENBERG, HEINZ-JAKOB NEUSSER, WOLFGANG HATZ, and JOHN, including designation of Plaintiff, SCOTT SIEWART as Lead Plaintiff, certifying Plaintiff as Class representative under Rule 23 of the Federal Rules of Civil Procedure, and appointment of Plaintiff's counsel as Lead Class Counsel;

- C. Temporarily and permanently enjoining Volkswagen and Volkswagen Aktiengesellschaft from these unlawful, deceptive, fraudulent, and unfair business practices described within this Complaint;
- D. Awarding equitable and/or injunctive relief in the form of a recall and/or free replacement program to remedy defeat device and emissions issues from Affected Vehicles and removal of all deceptive marketing and advertisement, sales, lease and/or distribution of Affected Vehicles;
- E. Awarding costs, restitution, punitive damages, and disgorgement, including return of purchase price of the Affected Vehicles and/or other damages amount(s) to be determined at trial, including pre- and post-judgment interest on amount(s) awarded;
- F. Declaration that the Affected Vehicles are defective, that Defendants, VOLKSWAGEN GROUP OF AMERICA, INC., VOLKSWAGEN AG, are financially responsible for notification to all Class Members concerning Affected Vehicles, the nature of the defects;
- G. Awarding costs and attorneys' fees as allowed by law;
- H. Leave to amend this Class Action Complaint to conform to the evidence produced; and
- I. Awarding any and all further relief as the Court may deem just and proper.

#### **DEMAND FOR JURY TRIAL**

Plaintiff demands a trial by jury.

DATED: October 13, 2015.

/s/ Paul S. Rothstein

Paul S. Rothstein  
Attorney for Plaintiff and the Proposed Class  
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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. *USE INSTEAD OF A NEW COPY OF THIS FORM.*

## REVISED 8 FEBRUARY 1979

~~352-376-7650~~

01/08/2012 15:00

NOFF - INFLAMMATION CASES USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

ATTORNEYS AT LAW, P.C.

### III. CITIZENSHIP OF PRINCIPAL PARTIES *of Use in All Cases for Trial and Verdict*

*et* = *Not a member of Set of Authors*

*elasticity depends on factors in the life*

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CONTRACT		TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<ul style="list-style-type: none"> <li>110 Insurance</li> <li>120 Marine</li> <li>130 Miller Act</li> <li>140 Negotiable Instrument</li> <li>150 Recovery of Overpayment &amp; Enforcement of Judgment</li> <li>151 Medicare Act</li> <li>152 Recovery of Defaulted Student Loans (Excludes Veterans)</li> <li>153 Recovery of Overpayment of Veteran's Benefits</li> <li>160 Stockholders' Suits</li> <li>190 Other Contract</li> <li>195 Contract Product Liability</li> <li>196 Franchise</li> </ul>	<b>PERSONAL INJURY</b> <ul style="list-style-type: none"> <li>310 Airplane</li> <li>315 Airplane Product Liability</li> <li>320 Assault, Libel &amp; Slander</li> <li>330 Federal Employers' Liability</li> <li>340 Marine</li> <li>345 Marine Product Liability</li> <li>350 Motor Vehicle</li> <li>355 Motor Vehicle Product Liability</li> <li>360 Other Personal Injury</li> <li>362 Personal Injury - Medical Malpractice</li> </ul>	<b>PERSONAL INJURY</b> <ul style="list-style-type: none"> <li>365 Personal Injury - Product Liability</li> <li>367 Health Care</li> <li>368 Pharmaceutical Personal Injury</li> <li>369 Product Liability</li> <li>368 Asbestos Personal Injury Product Liability</li> </ul> <b>PERSONAL PROPERTY</b> <ul style="list-style-type: none"> <li>370 Other Fraud</li> <li>371 Truth in Lending</li> <li>380 Other Personal Property Damage</li> <li>385 Property Damage Product Liability</li> </ul>	<ul style="list-style-type: none"> <li>625 Drug Related Seizure of Property 21 USC 881</li> <li>690 Other</li> </ul>	<ul style="list-style-type: none"> <li>422 Appeal 28 USC 158</li> <li>423 Withdrawal 28 USC 157</li> </ul>	<ul style="list-style-type: none"> <li>375 False Claims Act</li> <li>400 State Reapportionment</li> <li>410 Antitrust</li> <li>430 Banks and Banking</li> <li>450 Commerce</li> <li>460 Deportation</li> <li>470 Racketeer Influenced and Corrupt Organizations</li> <li>480 Consumer Credit</li> <li>490 Cable Sat TV</li> <li>850 Securities Commodities Exchange</li> <li>899 Other Statutory Actions</li> <li>891 Agricultural Acts</li> <li>893 Environmental Matters</li> <li>895 Freedom of Information Act</li> <li>899 Arbitration</li> <li>899 Administrative Procedure Act Review or Appeal of Agency Decision</li> <li>950 Constitutional or State Statutes</li> </ul>	
					<b>PROPERTY RIGHTS</b> <ul style="list-style-type: none"> <li>820 Copyrights</li> <li>830 Patent</li> <li>840 Trademark</li> </ul>	
				<b>LABOR</b> <ul style="list-style-type: none"> <li>710 Fair Labor Standards Act</li> <li>720 Labor Management Relations</li> <li>740 Railway Labor Act</li> <li>751 Family and Medical Leave Act</li> <li>790 Other Labor Litigation</li> <li>791 Employee Retirement Income Security Act</li> </ul>	<b>SOCIAL SECURITY</b> <ul style="list-style-type: none"> <li>861 BLA (139510)</li> <li>862 Black Lung (923)</li> <li>863 DIW (DIWW (40510))</li> <li>864 SSDI Title XVI</li> <li>865 RSI (40510)</li> </ul>	
<b>REAL PROPERTY</b> <ul style="list-style-type: none"> <li>210 Land Condemnation</li> <li>220 Eminent Domain</li> <li>230 Rent Lease &amp; Ejectment</li> <li>240 Torts to Land</li> <li>245 Tort Product Liability</li> <li>290 All Other Real Property</li> </ul>	<b>CIVIL RIGHTS</b> <ul style="list-style-type: none"> <li>410 Other Civil Rights</li> <li>441 Voteme</li> <li>442 Employment</li> <li>443 Housing Accommodations</li> <li>445 Amer. w/ Disabilities - Employment</li> <li>446 Amer. w/ Disabilities - Other</li> <li>448 Education</li> </ul>	<b>PRISONER PETITIONS</b> <ul style="list-style-type: none"> <li><b>Habeas Corpus:</b> <ul style="list-style-type: none"> <li>463 Alien Detainee</li> <li>480 Motions to Vacate Sentence</li> <li>530 General</li> <li>535 Death Penalty</li> </ul> </li> <li><b>Other:</b> <ul style="list-style-type: none"> <li>540 Mandamus &amp; Other</li> <li>550 Civil Rights</li> <li>555 Prison Condition</li> <li>560 Civil Detainee - Conditions of Confinement</li> </ul> </li> </ul>			<b>FEDERAL TAX SUITS</b> <ul style="list-style-type: none"> <li>870 Taxes of U.S. Plaintiff or Defendant</li> <li>871 IRS - Third Party 26 USC 7609</li> </ul>	
				<b>IMMIGRATION</b> <ul style="list-style-type: none"> <li>462 Naturalization Application</li> <li>465 Other Immigration Actions</li> </ul>		

Original Proceeding	Removed from State Court	Remanded from Appellate Court	Reinstated or Reopened	Transferred from Another District	Multidistrict Litigation
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Violation of the Racketeer... ("RICO") 18 U.S.C. 1962(c)

Brief description of cause:

Brief description of cause	Number of cases
Defendants leased/sold vehicles installed with defeat devices	1

**JURY DEMAND:**      ☒ Yes      ☐ No

## (See Appendix B)

INDEX.

DOCKET NUMBER

DATE: 10/14/14  
FOR OFFICE USE ONLY

SIGNATURE OF ATTORNEY (PRINT NAME)

**BRIEF COMMUNICATIONS**

## ACKNOWLEDGMENTS

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INDEX

MAGNETIC