

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

DOMINIC TROFFER, SHANICE
BOYETTE, GIANCARLO CECI, ISAAC
HOOVER, FORREST TINSLER, JOHN
MAZUR, JOSE CAVALIERE, AND
NICHOLAS ALLEN, on behalf of
themselves and all others similarly
situated,

Plaintiffs,

v.

VOLKSWAGEN GROUP OF
AMERICA, INC.,

Defendant.

Case No. 2:15-cv-13502

Honorable:

COMPLAINT CLASS ACTION

Jury Trial Demanded

Plaintiffs Dominic Troffer, Shanice Boyette, Giancarlo Ceci, Isaac Hoover, Forrest Tinsler, John Mazur, Jose Cavaliere, and Nicholas Allen (collectively, “Plaintiffs”), on behalf of themselves and all others similarly situated, allege the following against Volkswagen Group of America, Inc. (“Defendant,” “Volkswagen” or “VW”), based upon on personal knowledge where applicable, information and belief, and the investigation of counsel.

I. SUMMARY OF THE ACTION

1. On or about September 18, 2015, the United States Environmental Protection Agency (“EPA”) sent a Notice of Violation to Volkswagen revealing for the

first time that Volkswagen had misrepresented the benefits of the diesel vehicles it sold to thousands of U.S. customers, including those in the Class defined herein, regarding the vehicles' compliance with emissions tests. The EPA's Notice of Violation concluded:

The United States Environmental Protection Agency (EPA) has investigated and continues to investigate Volkswagen AG, Audi AG, and Volkswagen Group of America (collectively, VW) for compliance with the Clean Air Act (CAA), 42 U.S.C. §§ 740 1-767 1q, and its implementing regulations. As detailed in this Notice of Violation (NOV), the EPA has determined that VW manufactured and installed defeat devices in certain model year 2009 through 2015 diesel light-duty vehicles equipped with 2.0 liter engines. These defeat devices bypass, defeat, or render inoperative elements of the vehicles' emission control system that exists to comply with CAA emission standards. Therefore, VW violated section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B). Additionally, the EPA has determined that, due to the existence of the defeat devices in these vehicles, these vehicles do not conform in all material respects to the vehicle specifications described in the applications for the certificates of conformity that purportedly cover them. Therefore, VW also violated section 203(a)(1) of the CAA, 42 U.S.C. § 7522(a)(1), by selling, offering for sale, introducing into commerce, delivering for introduction into commerce, or importing these vehicles, or for causing any of the foregoing acts.

Copy attached as Exhibit A and incorporated by reference herein. That same day the California Air Resources Board ("CARB") also sent a letter to Volkswagen addressing the same issues. A copy of CARB letter is attached as Exhibit B and incorporated by reference herein.

2. As the Los Angeles Times reported that day:

Volkswagen called them “clean diesels,” branding them as the fun-to-drive alternatives to hybrids as it dominated the U.S. market for the engine technology.

Turns out the increasingly eco-conscious buyers of the sporty German cars have been unwittingly pumping smog into the air — because of software VW installed to cheat on U.S. emissions tests.

The world’s largest automaker has admitted selling 482,000 such diesels since 2009, California and U.S. regulators announced Friday...VW’s software trick allows the cars to emit up to 40 times the legally allowed amount of nitrogen oxide, environmental officials said.

* * *

Many owners of VW diesels — who tend to be enthusiasts — were enraged at being deceived. “It’s just a blatant disregard and intentional manipulation of the system,” said Priya Shah, a San Francisco owner of a 2012 VW diesel Jetta station wagon. “Not only lying to the government, but also lying to your consumer. People buy diesel cars from VW because they feel they are clean diesel cars.”

* * *

The affected diesel models include: Jetta (model years 2009-15), Beetle (model years 2009-15), Audi A3 (model years 2009-15), Golf (model years 2009-15), and Passat (model years 2012-15).

* * *

The EPA made its charges by sending Volkswagen a notice of violation of the Clean Air Act. ... Volkswagen and Audi vehicles from model years 2009 to 2015 have the software, which uses an algorithm that automatically detects when the vehicle is undergoing pollution tests and changes the way it performs. The EPA said the device senses the testing environment by analyzing a variety of data — steering position, speed, duration of engine operation and barometric pressure. “These inputs precisely track the parameters of the federal test procedure,” the agency wrote in its notice of violation to VW. The test manipulation “is illegal and a threat to public health,” said Cynthia Giles, assistant administrator for the Office of Enforcement and Compliance Assurance. “We expected better from VW.”

Volkswagen admitted that the cars contained “defeat devices,” after EPA and the state air regulator demanded an explanation for the emission problems.

* * *

It is also by far the industry leader in diesel car sales in the U.S. The German automaker last year sold 78,847 diesel passenger vehicles in the U.S., well ahead of its nearest competitor, according to online auto sales company TrueCar. Its corporate sibling Audi sold 15,732 vehicles during the same period.

VW cheated on U.S. pollution tests for 'clean diesels', Los Angeles Times, September 18, 2015 (available at <http://www.latimes.com/business/autos/la-fi-hy-volkswagen-probe-20150918-story.html>)

3. On September 22, 2015, it was reported that the scope of the problem was actually broader and that 11 million Volkswagen diesel cars worldwide were equipped with software that could be used to cheat on emissions tests. *See Volkswagen Says 11 Million Cars Worldwide Are Affected in Diesel Deception*, New York Times, September 22, 2015) (“ Volkswagen said on Tuesday there was a “noticeable deviation” in the emissions that diesels equipped with so-called Type EA 189 engines produced during road driving, as opposed to a controlled setting. There are 11 million vehicles with that engine on the road, Volkswagen said. The cars are known to include Volkswagen Passat, Jetta, Golf and Beetle cars, as well as the Audi A3”) (available at http://www.nytimes.com/2015/09/23/business/international/volkswagen-diesel-car-scandal.html?smprod=nytcore-ipad&smid=nytcore-ipad-share&_r=0).

4. In turn, this class action challenges Volkswagen’s conduct deceiving consumers and regulators by marketing its Jetta (model years 2009-15), Beetle (model years 2009-15), Audi A3 (model years 2009-15), Golf (model years 2009-15), and Passat

(model years 2012-15) diesel vehicles (hereinafter “Defeat Device Vehicles”) as environmentally-friendly cars that possessed superior automotive qualities, namely, extremely high fuel efficiency and performance, with very low emissions, when that was not true. Although Volkswagen successfully marketed these expensive cars as “green,” their environmentally-friendly representations were false: Volkswagen did not actually make cars with those desirable and advertised attributes.

5. Volkswagen accomplished its deception by installing a design device (hereinafter “defeat device”) in its diesel vehicles that made the cars it manufactured and sold appear to possess environmentally-friendly qualities – high fuel efficiency and performance – when they actually did not. *See* Exhibit A. The defeat devices Volkswagen designed and installed operate by switching on the full emissions control systems in Volkswagen’s cars *only* when the car is undergoing periodic emissions testing. The technology needed to control emissions from Volkswagen’s cars to meet state and federal emissions regulations reduces their performance, limiting acceleration, torque, and fuel efficiency. In order to hide this, the defeat device shuts off most of the emissions control systems in the car once the car has completed its emissions test. This resulted in Volkswagen’s cars sending up to 40 times as much pollution into the environment as is allowed under the Clean Air Act and applicable state regulations.

6. As Cynthia Giles, Assistant Administrator for the Office of Enforcement and Compliance Assurance at the EPA stated: “Using a defeat device in cars to evade clean

air standards is illegal and a threat to public health.” Yet that is exactly what Volkswagen did in its 2009-20015 Volkswagen and Audi diesel vehicles. *See* EPA News Release, *EPA, California Notify Volkswagen of Clean Air Act Violations*, September 18, 2015 (available at <http://yosemite.epa.gov/opa/admpress.nsf/0/DFC8E33B5AB162B985257EC40057813B>).

7. The Defeat Device Vehicles that consumers purchased sold at a premium price because of the environmentally-friendly attributes that they were represented to have. But for Volkswagens’ false representations and omissions, consumers in the Class would have paid less for the vehicles they purchased or not purchased the vehicles at all and instead purchased a less expensive alternative. As a result of Volkswagens’ conduct, consumers who purchased these cars were injured and damaged financially. All purchasers overpaid for their vehicles and did not receive the benefit of their contractual bargain. Current owners now own cars which are, *inter alia*, of diminished value. As a result, compensation and other relief are due.

II. PARTIES & STANDING

8. Plaintiff Dominic Troffer is a resident and citizen of Lake Havasu City, Arizona. At relative times, Dominic Troffer purchased and has owned a 2012 VW Jetta TDI Turbo, which is one of the Defeat Device Vehicles named in the EPA’s Notice of Violation that was sent to Volkswagen. See Exhibit A. Dominic Troffer purchased the

vehicle new at Ontario Volkswagen, 701 S. Kettering Drive, Ontario, CA 91761 in or about November 2011.

9. Plaintiff Shanice Boyette is a resident and citizen of Vicarville, California. At relative times, Shanice Boyette purchased and has owned a 2014 Passat TDI, which is one of the Defeat Device Vehicles named in the EPA's Notice of Violation that was sent to Volkswagen. *See* Exhibit A. Shanice Boyette purchased the vehicle new at Diritto Bros Walnut Creek Volkswagen, 2020 N. Main St., Walnut Creek, CA 94596 in or about December 2013.

10. Plaintiff Giancarlo Ceci is a resident and citizen of Norwalk, Connecticut. At relative times, Giancarlo Ceci purchased and has owned a 2010 Jetta Sportswagon TDI, which is one of the Defeat Device Vehicles named in the EPA's Notice of Violation that was sent to Volkswagen. *See* Exhibit A. Giancarlo Ceci purchased the vehicle new at Dansbury Volkswagen, 29 Sugar Hollow Road, Danbury, CT 06810, in or about November 2009.

11. Plaintiff Isaac Hoover is a resident and citizen of Otley, Iowa. At relative times, Isaac Hoover purchased and has owned a 2013 Jetta TDI, which is one of the Defeat Device Vehicles named in the EPA's Notice of Violation that was sent to Volkswagen. *See* Exhibit A. Isaac Hoover purchased the vehicle new at Lithia Volkswagen of Des Moines, 5200 Merle Hay Rd., Johnston, IA 50131, in or about September 2014.

12. Plaintiff Forrest Tinsler is a resident and citizen of Washington, D.C. At relative times, Forrest Tinsler purchased and has owned a 2014 Jetta TDI, which is one of the Defeat Device Vehicles named in the EPA's Notice of Violation that was sent to Volkswagen. *See* Exhibit A. Forrest Tinsler purchased the vehicle new at Ourisman Volkswagen, 7001 Arlington Rd, Bethesda, MD 20814, in or about July 2014.

13. Plaintiff John Mazur is a resident and citizen of Breckville, OH. At relative times, John Mazur purchased and has owned a 2011 VW Golf TDI, which is one of the Defeat Device Vehicles named in the EPA's Notice of Violation that was sent to Volkswagen. *See* Exhibit A. John Mazur purchased the vehicle new at Ganley Westside Volkswagen, 25580 Lorain Rd., North Olmsted, OH 44070, in or about January 2011.

14. Plaintiff Jose Cavaliere is a resident and citizen of Magnolia, Texas. At relative times, Jose Cavaliere purchased and has owned a 2014 Beetle TDI, which is one of the Defeat Device Vehicles named in the EPA's Notice of Violation that was sent to Volkswagen. *See* Exhibit A. Jose Cavaliere purchased the vehicle new at Momentum Volkswagen, 2405 Richmond Avenue, Houston, TX 77098, in or about February 2014.

15. Plaintiff Nicholas Allen is a resident and citizen of Walled Lake, MI. At relative times, Nicholas Allen purchased and has owned a 2015 Jetta TDI, which is one of the Defeat Device Vehicles named in the EPA's Notice of Violation that was sent to Volkswagen. *See* Exhibit A. Nicholas Allen purchased the vehicle new at Southern

Volkswagen Greenbrier, 1248 South Military Highway, Chesapeake, VA 23320, in or about July 2015.

16. Defendant Volkswagen Group of America, Inc. is a corporation doing business in every U.S. state and the District of Columbia, and is organized under the laws of New Jersey, with its principal place of business at 2200 Ferdinand Porsche Dr., Herndon, Virginia 20171. Volkswagen is therefore a citizen of New Jersey and Virginia. *See* 28 U.S.C. § 1332(d)(10). Volkswagen operates the Volkswagen Electronic Research Laboratory in Belmont, California.

17. At all relevant times, Volkswagen manufactured, distributed, sold, leased, and warranted the Defeat Device Vehicles under the Volkswagen and Audi brand names throughout the nation. Volkswagen and/or its agents designed the CleanDiesel engines and engine control systems in the Defeat Device Vehicles, including the “defeat device.” Volkswagen also developed and disseminated the owners’ manuals and warranty booklets, advertisements, and other promotional materials relating to the Defeat Device Vehicles.

III. JURISDICTION & VENUE

18. This Court has jurisdiction over this action pursuant to the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1332(d), because at least one Class member is of diverse citizenship from one defendant, there are more than 100 Class members, and the aggregate amount in controversy exceeds \$5 million, exclusive of interest and costs. This

Court has personal jurisdiction over Defendant because it conducts business in Michigan, and has sufficient minimum contacts with Michigan.

19. Venue is proper in this District under 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the claims occurred in this District, and because Defendant has caused harm to Class members residing in this District. Plaintiff Nicholas Allen resides in this District and Volkswagen has marketed, advertised, sold, and leased the Defeat Design Vehicles within this District.

IV. APPLICABLE STATUTES OF LIMITATION ARE TOLLED

A. Discovery Rule Tolling

20. Throughout the relevant time period, all applicable statutes of limitation have been tolled by the discovery rule with respect to all claims.

21. Through the exercise of reasonable diligence, and within any applicable statutes of limitation, Plaintiffs and members of the proposed Classes could not have discovered that Volkswagen was concealing and misrepresenting the true emissions levels of its vehicles, including but not limited to its use of defeat devices.

22. As reported in the *New York Times* on September 19, 2015, the International Council on Clean Transportation, a research group, first noticed the difference between Volkswagen's emissions in testing laboratories and in normal use on the road. The International Council on Clean Transportation brought the defeat device issue to the attention of the EPA. The EPA, in turn, conducted further tests on the vehicles, and

ultimately uncovered the unlawful use of the defeat device software. Thus, Volkswagen's deception with respect to its CleanDiesel engines, engine control systems, and "defeat devices" was painstakingly concealed from consumers and regulators alike.

23. Prior to September 18, 2015 Plaintiffs and the other Class members could not reasonably discover, and did not know of facts that would have caused a reasonable person to suspect, that Volkswagen intentionally failed to report information within its knowledge to federal and state authorities, its dealerships, or consumers.

24. Likewise, a reasonable and diligent investigation could not have disclosed that Volkswagen had information in its sole possession about the existence of its sophisticated emissions deception and that it concealed that information, which was discovered by Plaintiffs immediately before this action was filed. Plaintiffs and other Class members could not have previously learned that Volkswagen valued profits over compliance with applicable federal and state emissions and consumer law.

B. Fraudulent Concealment

25. Throughout the relevant time period, all applicable statutes of limitation have been tolled by Volkswagen's knowing and active fraudulent concealment and denial of the facts alleged in this Complaint.

26. Instead of disclosing its emissions deception, or that the emissions from the Defeat Device Vehicles were far worse than represented, Volkswagen falsely represented that its vehicles complied with federal and state emissions standards and that it was a

reputable manufacturer whose representations could be trusted.

C. Estoppel

27. Volkswagen was under a continuous duty to disclose to Plaintiffs and the other Class members the facts that it knew about the emissions from Defeat Device Vehicles, and of those vehicles' failure to comply with federal and state laws.

28. Although it had the duty throughout the relevant period to disclose to Plaintiffs and Class members that it had engaged in the deception described in this Complaint, Volkswagen chose to evade federal and state emissions and clean air standards with respect to the Defeat Device Vehicles, and it intentionally misrepresented its blatant and deceptive lack of compliance with state law regulating vehicle emissions and clean air.

29. Thus, Volkswagen is estopped from relying on any statutes of limitations in defense of this action.

V. FACTUAL ALLEGATIONS APPLICABLE TO ALL COUNTS

30. Volkswagen intentionally designed and sold cars that misled consumers and regulators about the amount of pollution those cars created and the fuel efficiency they produced. Despite touting themselves as an environmentally conscientious company that produced thoughtful cars for people who cared about the environment, Defendant sold expensive cars that produced pollution at levels well above federal and state regulations, and then intentionally and knowingly hid the truth from consumers in the Class about

those cars.

A. Defendant Touts their Diesel Vehicles as Being Fuel Efficient and Good for the Environment.

31. For years, Volkswagen has advertised its diesel vehicles as low-emission, fuel-efficient cars. Indeed, this marketing message is at the core of its image in the United States. It has been a successful advertising campaign; Volkswagen has become the largest seller of diesel passenger vehicles in the United States, selling approximately 482,000 diesels in the U.S. since 2009.

32. Volkswagen's success is based in large part on promoting their diesel cars as "clean" and "green" vehicles. Indeed, being both highly efficient and "clean" are the centerpieces of Defendant's "CleanDiesel" marketing campaign. "CleanDiesel" is in the very name of the vehicles about which Defendant lied.

33. Volkswagen's attempt to appeal to environmentally conscious customers is evident beyond just the model names and purported attributes of their vehicles. For example, on the "Environment" page of its website, Volkswagen Group of America states that it takes "environmental responsibility very seriously. When it comes to making our cars as green as possible, Volkswagen has an integrated strategy focused on reducing fuel consumption and emissions, building the world's cleanest diesel engines and developing totally new power systems, which utilize new fuel alternatives."

34. Volkswagen further bolsters its appeal to environmentally conscious customers by emphasizing the fact that the Audi A3 TDI and VW Jetta TDI were named

the 2010 Green Car of the Year and the 2009 Green Car of the Year, respectively.

35. Volkswagen also launched a “Think Blue” program, which they explained is part of their policy of being “more responsible on the road and more environmentally conscious—not just in our cars.”

36. Beyond merely advertising, Volkswagen supported and directed a website to promote its “clean” diesel technology, www.clearlybetterdiesel.org, which says the technology reduces smog and “meets the highest standards in all 50 states, thanks to ultra-low sulfur diesel (ULSD) fuel and innovative engine technology that burns cleaner.”

37. Volkswagen goes so far as to use the tagline “Truth in Engineering” to promote its Audi brand.

38. In reality, Volkswagen’s engineering, however, was far from “truthful.” In truth, Volkswagen designed and sold cars that emit pollutants at high levels, failing state and federal environmental regulations by significant margins.

B. Volkswagen Intentionally Hid the Excessive and Illegal Levels of Pollution Emitted from its Cars.

39. In contrast to Volkswagen’s marketing campaign touting the environmentally friendly attributes of its diesel cars, its diesel cars are unhealthy and unlawful.

40. In contrast to Volkswagen’s marketing campaign touting the environmentally friendly attributes of its diesel cars, its diesel cars are unhealthy and unlawful.

41. On September 18, 2015, the EPA issued a Notice of Violation (“NOV”). Exhibit A. The NOV states that Volkswagen has installed sophisticated software in the Volkswagen and Audi diesel vehicles sold by Volkswagen in the United States that detects when the vehicle is undergoing official emissions testing and turns full emissions controls on only during the test. At all other times that the vehicle is running, however, the emissions controls are deactivated, meaning that pollution is freely released into the environment at levels that exceed those allowed by federal and state clean air regulators. This software produced and used by Volkswagen is a “defeat device” as defined by the Clean Air Act. *See* Exhibit A.

42. Most modern engines, including Volkswagen’s “CleanDiesel” engines, use computerized engine control systems to monitor sensors throughout a car’s engine and exhaust systems and control operation of the car’s systems to ensure optimal performance and efficiency. These functions can include controlling fuel injection, valve and ignition timing, and, as in Volkswagen’s “CleanDiesel” engines, operating the engine’s turbocharger. The engine control computer can, for example, ensure that the air-to-fuel mixture is correct based on sensor readings such as throttle position, amount of air flowing into the engine, and engine temperature.

43. These engine control computers also receive data from sensors in the car’s exhaust system that measure the amounts of chemical substances included in the car’s exhaust. That data provides a measure of the engine’s operation and efficiency, and is

thus used by the engine control computer in operating the car's systems to ensure the desired performance and efficiency.

44. Because modern cars include these sophisticated computers and sensors throughout the car's systems, emissions testing sometimes uses a car's existing sensors to measure the presence of pollutants and track compliance with EPA and state emissions standards. Emissions testing stations plug a diagnostic device into the car's on-board diagnostics ("OBD II") port and use the car's exhaust sensors during the testing procedure to measure the substances emitted. Some states, instead of or in addition to an OBD II diagnostic device, use a measurement probe inserted into the car's exhaust pipe to measure the chemicals emitted.

45. Volkswagen programmed the engine control computers in the Defeat Device Vehicles with software that detects when the cars are undergoing emissions testing, and then operates the car's engine and exhaust systems to ensure that emissions comply with EPA pollutant standards. When the car is not being emissions tested—that is, under the vast majority of operating conditions—the engine control systems operate the vehicle in a manner that does not comply with EPA emissions requirements.

46. In short, this software allows Volkswagen's diesel vehicles to meet emissions standards in labs or state testing stations, while permitting the vehicles to emit nitrogen oxides (NO_x) at up to 40 times the standard allowed under United States laws and regulations during the normal operation of the vehicles.

47. NO_x pollution contributes to nitrogen dioxide, ground-level ozone, and fine particulate matter. Exposure to these pollutants has been linked with serious health dangers, including asthma attacks and other respiratory illness serious enough to send people to the hospital. Ozone and particulate matter exposure have been associated with premature death due to respiratory-related or cardiovascular-related effects. Children, the elderly, and people with pre-existing respiratory illness are at an acute risk of health effects from these pollutants.

48. The Clean Air Act has strict emissions standards for vehicles and it requires vehicle manufacturers to certify to the EPA that the vehicles sold in the United States meet applicable federal emissions standards to control air pollution. Every vehicle sold in the United States must be covered by an EPA-issued certificate of conformity. Under federal law, cars equipped with defeat devices, which reduce the effectiveness of emissions control systems during normal driving conditions, cannot be certified.

49. By manufacturing and selling cars with defeat devices that allowed for higher levels of emissions than were certified to the EPA, Volkswagen violated the Clean Air Act, defrauded its customers, and engaged in unfair competition and deceptive and misleading conduct under state and federal laws.

C. Defendant Has Reaped Significant Profits From Its Conduct Misrepresenting the Attributes of Its Diesel Vehicles.

50. Defendant charges substantial premiums for the Defeat Device Vehicles. For example, for the 2015 Volkswagen Jetta, the base S model with a gasoline engine has

a starting MSRP of \$18,780. The base TDI S CleanDiesel, however, has a starting MSRP of \$21,640, a price premium of \$2,860. The CleanDiesel premium for the highest trim Jetta models with a comparable gasoline engine is substantially higher: The Jetta SE has a starting MSRP of \$20,095, while the CleanDiesel TDI SEL MSRP is \$26,410, a \$6,315 (or 31%) premium.

51. These premiums occur across all of the vehicles in which Defendant installed its “defeat device” for emissions testing. The table below sets forth the price premium for each comparable base, mid-level, and top-line trim for each affected model:

CleanDiesel Price Premiums

Model	Base	Mid-level	Top-line
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

D. Volkswagen’s Illegal Actions Have Caused Class Members Significant Harm.

52. Although the EPA has ordered Defendant to recall the Defeat Device Vehicles and repair them so that they comply with EPA emissions requirements at all times during normal operation, purchasers of the Defeat Device Vehicles have and will continue to suffer significant harm for several reasons. First, Volkswagen will not be able to make the Defeat Device Vehicles comply with emissions standards without substantially degrading their performance characteristics, including their horsepower and

their efficiency. As a result, even if Volkswagen is able to make Class members' Defeat Device Vehicles EPA compliant, Class members will nonetheless suffer actual harm and damages because their vehicles will no longer perform as they did when purchased and as advertised. Second, this will necessarily result in a diminution in value of every Defeat Device Vehicle. Not only did Class members pay too much for cars now worth substantially less, but they will end up paying more to fuel their less efficient cars over the years they own their vehicles.

53. As a result of Volkswagen's unfair, deceptive, and/or misleading business practices, and its failure to disclose that under normal operating conditions the Defeat Device Vehicles emit 40 times the allowed levels, owners and/or lessees of the Defeat Device Vehicles have suffered losses in money and/or property.

54. The omitted facts were material to reasonable consumers, such as Plaintiffs and the Class. Had Plaintiffs and Class members known the truth regarding the "defeat device" at the time they purchased or leased their Defeat Device Vehicles, they would not have purchased or leased those vehicles, but instead obtained an alternative vehicle, or would have paid substantially less for the Defeat Device Vehicles than they did. Further, when and if Volkswagen recalls the Defeat Device Vehicles and degrades the CleanDiesel engine performance in order to make the Defeat Device Vehicles compliant with EPA standards, Plaintiffs and Class members will be required to spend more on fuel and will not benefit from the performance qualities of their vehicles as advertised.

55. In addition, Defeat Device Vehicles will necessarily be worth less in the used vehicle marketplace because of their decrease in performance and efficiency, which means that owners of Defeat Device Vehicles will not be able to recoup nearly as much value in the future.

56. Volkswagen's conduct has caused harm to consumers nationwide.

VI. PLAINTIFFS' FACTS

57. Dominic Troffer is a resident of Lake Havasu City, AZ, who purchased a 2012 VW Jetta TDI Turbo, which is one of the Defeat Device Vehicles named in the EPA's Notice of Violation. Troffer purchased the vehicle new at Ontario Volkswagen, 701 S. Kettering Drive, Ontario, CA 91761 in or about November 2011.

58. Troffer would not have paid as much for the 2012 VW Jetta TDI Turbo, or likely would not have purchased it at all, if he had known that the emissions were much higher than advertised

59. Shanice Boyette is a resident of Vicarville, CA, who purchased a 2014 Passat TDI, which is one of the Defeat Device Vehicles named in the EPA's Notice of Violation. Boyette purchased the vehicle new at Dirito Bros Walnut Creek Volkswagen, 2020 N. Main St., Walnut Creek, CA 94596 in or about December 2013.

60. Boyette would not have paid as much for the 2014 Passat TDI, or likely would not have purchased it at all, if she had known that the emissions were much higher than advertised.

61. Giancarlo Ceci is a resident of Norwalk, CT, who purchased a 2010 Jetta Sportswagon TDI, which is one of the Defeat Device Vehicles named in the EPA's Notice of Violation. Ceci purchased the vehicle new at Dansbury Volkswagen, 29 Sugar Hollow Road, Danbury, CT 06810, in or about November 2009.

62. Ceci would not have paid as much for the 2010 Jetta Sportswagon TDI, or likely would not have purchased it at all, if he had known that the emissions were much higher than advertised.

63. Isaac Hoover is a resident of Otley, Iowa, who purchased a 2013 Jetta TDI, which is one of the Defeat Device Vehicles named in the EPA's Notice of Violation. Hoover purchased the vehicle new at Lithia Volkswagen of Des Moines, 5200 Merle Hay Rd., Johnston, IA 50131, in or about September 2014.

64. Hoover would not have paid as much for the 2013 Jetta TDI, or likely would not have purchased it at all, if he had known that the emissions were much higher than advertised.

65. Forrest Tinsler is a resident of Washington, D.C., who purchased a 2014 Jetta TDI, which is one of the Defeat Device Vehicles named in the EPA's Notice of Violation. Tinsler purchased the vehicle new at Ourisman Volkswagen, 7001 Arlington Rd, Bethesda, MD 20814, in or about July 2014.

66. Tinsler would not have paid as much for the 2014 Jetta TDI, or likely would not have purchased it at all, if he had known that the emissions were much higher

than advertised.

67. John Mazur is a resident of Breckville, OH, who purchased a 2011 VW Golf TDI, which is one of the Defeat Device Vehicles named in the EPA's Notice of Violation. Mazur purchased the vehicle new at Ganley Westside Volkswagen, 25580 Lorain Rd., North Olmsted, OH 44070, in or about January 2011.

68. Mazur would not have paid as much for the 2011 VW Golf TDI, or likely would not have purchased it at all, if he had known that the emissions were much higher than advertised.

69. Jose Cavaliere, is a resident of Magnolia, TX, who purchased a 2014 Beetle TDI, which is one of the Defeat Device Vehicles named in the EPA's Notice of Violation. Cavaliere purchased the vehicle new at Momentum Volkswagen, 2405 Richmond Avenue, Houston, TX 77098, in or about February 2014.

70. Cavaliere would not have paid as much for the 2014 Beetle TDI, or likely would not have purchased it at all, if he had known that the emissions were much higher than advertised.

71. Nicholas Allen, is a resident of Walled Lake, MI, who purchased a 2015 Jetta TDI, which is one of the Defeat Device Vehicles named in the EPA's Notice of Violation. Allen purchased the vehicle new at Southern Volkswagen Greenbrier, 1248 South Military Highway, Chesapeake, VA 23320, in or about July 2015.

72. Plaintiff would not have paid as much for the 2015 Jetta TDI, or likely

would not have purchased it at all, if he had known that the emissions were much higher than advertised.

VII. CLASS ACTION ALLEGATIONS

73. Plaintiffs bring this action on behalf of themselves and as a class action, pursuant to the provisions of Rules 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure on behalf of the following class and subclasses (collectively, the “Classes”):

The Nationwide Class

All persons or entities who purchased or leased a “Defeat Device Vehicle” in the United States during the Relevant Time Period.

The California Subclass

All persons or entities who purchased or leased a “Defeat Device Vehicle” in California during the Relevant Time Period.

The Connecticut Subclass

All persons or entities who purchased or leased a “Defeat Device Vehicle” in Connecticut during the Relevant Time Period.

The Iowa Subclass

All persons or entities who purchased or leased a “Defeat Device Vehicle” in Iowa during the Relevant Time Period.

The Maryland Subclass

All persons or entities who purchased or leased a “Defeat Device Vehicle” in

Maryland during the Relevant Time Period.

The Ohio Subclass

All persons or entities who purchased or leased a “Defeat Device Vehicle” in Ohio during the Relevant Time Period.

The Texas Subclass

All persons or entities who purchased or leased a “Defeat Device Vehicle” in Texas during the Relevant Time Period.

The Virginia Subclass

All persons or entities who purchased or leased a “Defeat Device Vehicle” in Virginia during the Relevant Time Period.

74. Excluded from the Classes are individuals who have personal injury claims resulting from the “defeat device” in the CleanDiesel system. Also excluded from the Class are Volkswagen and its subsidiaries and affiliates; all employees of Volkswagen; all persons who make a timely election to be excluded from the Class; governmental entities; and the judge to whom this case is assigned and his/her immediate family and his/her court staff. Plaintiffs reserve the right to revise the Class definition based upon information learned through discovery.

75. Defeat Device Vehicles, as identified on the EPA’s September 18, 2015 Notice of Violation to Volkswagen, are Model Year (“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.

76. The “Relevant Time Period” is from the date any of the 2009 model year Defeat Device Vehicles were first sold in the United States and continues through the present. Alternatively, the Relevant Time Period is from the date this action was filed back through the length of the longest statute of limitation applicable for any claims asserted below and continues through the present.

77. Certification of Plaintiffs’ claims for class-wide treatment is appropriate because all elements of Fed. R. Civ. P. 23(a), 23(b)(2) and 23(b)(3) are satisfied. Plaintiffs can prove the elements of their claims on a class-wide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claim.

78. Numerosity: All requirements of Fed. R. Civ. P. 23(a)(1) are satisfied. The members of the Classes are so numerous and geographically dispersed that individual joinder of all Class members is impracticable. While Plaintiffs are informed and believe that there are not less than hundreds of thousands of members of the Classes, the precise number of Class members is unknown to Plaintiffs, but may be ascertained from Volkswagen’s records. Further, the class is ascertainable. Class members are able to be identified through objective means, including Defendants’ sales, warranty and repair records. 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.

79. Commonality and Predominance: All requirements of Fed. R. Civ. P. 23(a)(2) and 23(b)(3) are satisfied. This action involves common questions of law and fact, which predominate over any questions affecting individual Class members, including, without limitation:

- (a) Whether Volkswagen engaged in the conduct alleged herein;
- (b) Whether Volkswagen designed, advertised, marketed, distributed, leased, sold, or otherwise placed Defeat Device Vehicles into the stream of commerce in the United States;
- (c) Whether the statements in the EPA's Notice of Violation (Exhibit A) are true;
- (d) Whether the CleanDiesel engine system in the Defeat Device Vehicles contains a defect in that it does not comply with EPA requirements;
- (e) Whether the CleanDiesel engine system in the Defeat Device Vehicles contains a defect in that it does not comply with EPA requirements;
- (f) Whether the CleanDiesel engine systems in Defeat Device Vehicles can be made to comply with EPA standards without substantially degrading the performance and/or efficiency of the Defeat Device Vehicles;
- (g) Whether Volkswagen knew about the "defeat device" and, if so, how

long Volkswagen has known;

- (h) Whether Volkswagen designed, manufactured, marketed, and distributed Defeat Device Vehicles with a “defeat device”;
- (i) Whether Volkswagen’s conduct violates consumer protection statutes, warranty laws, and other laws as asserted herein;
- (j) Whether Plaintiffs and the other Class members overpaid for their Defeat Device Vehicles;
- (k) Whether Defendant’s conduct was intentional and willful;
- (l) Whether Plaintiffs and the other Class members are entitled to equitable relief, including, but not limited to, restitution or injunctive relief; and
- (m) Whether Plaintiffs and the other Class members are entitled to damages, restitution and/or other relief and, if so, in what amount.

80. **Typicality:** All requirements of Fed. R. Civ. P. 23(a)(3) are satisfied. Plaintiffs are member of the Class and Subclasses, having purchased and owned a Defeat Device Vehicle at relevant times. Plaintiffs’ claims are typical of the other Class members’ claims because, among other things, all Class members were comparably injured through Volkswagen’s wrongful conduct as described within.

81. **Adequacy of Representation:** All requirements of Fed. R. Civ. P. 23(a)(4) are satisfied. Plaintiffs are adequate Class representatives because they are members of

the Classes and their interests do not conflict with the interests of the other members of the Classes that they seek to represent. Plaintiffs are committed to pursuing this matter for the Classes with the Classes' collective best interests in mind. Plaintiffs have retained counsel competent and experienced in complex class action litigation; and Plaintiffs intend to prosecute this action vigorously. The Classes' interests will be fairly and adequately protected by Plaintiffs and the undersigned counsel.

82. Declaratory and Injunctive Relief: All requirements of Fed. R. Civ. P. 23(b)(2) are satisfied. Volkswagen has acted or refused to act on grounds generally applicable to Plaintiffs and the other members of the Classes, thereby making appropriate final injunctive relief and declaratory relief, as described below, with respect to the Classes as a whole.

83. Predominance and Superiority: All requirements of Fed. R. Civ. P. 23(b)(3) are satisfied. As described above, common issues of law or fact predominate over individual issues. Resolution of those common issues in Plaintiffs' individual cases will also resolve them for the Classes' claims. In addition, a class action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. The damages or other financial detriment suffered by Plaintiffs and the other Class members are relatively small compared to the burden and expense that would be required to individually litigate their claims against Volkswagen, so it would be

impracticable for members of the Classes to individually seek redress for Volkswagen's wrongful conduct. Even if Class members could afford individual litigation, the court system could not. Individualized litigation creates a potential for inconsistent or contradictory judgments, and increases the delay and expense to all parties and the court system. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

VIII. CAUSES OF ACTION

A. Claims on Behalf of the Nationwide Class

COUNT I MAGNUSON - MOSS ACT (15 U.S.C. §§ 2301, *et seq.*) Implied Warranty

84. Plaintiffs incorporate by reference each and every prior and subsequent allegation of this Complaint as if fully restated here.

85. Plaintiffs assert this cause of action on behalf of themselves and the other members of the Nationwide Class.

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

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

88. Plaintiffs and Class members are "consumers," as that term is defined in 15

U.S.C. § 2301(3).

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

90. 15 U.S.C. § 2310(d)(1) provides a cause of action for any consumer who is damaged by the failure of a warrantor to comply with an implied warranty.

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

92. Volkswagen has breached these implied warranties as described in more detail within. Without limitation, Volkswagen’s Defeat Device vehicles are defective, as described above, which resulted in the problems and failures also described within.

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

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

95. All jurisdictional prerequisites have been satisfied.

96. Plaintiffs and members of the Classes are in privity with Volkswagen in that they purchased the software and system from Volkswagen or its agents.

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

COUNT II
VIOLATIONS OF § 1962(c) OF THE RACKETEER INFLUENCED AND
CORRUPT ORGANIZATIONS ("RICO") ACT, 18 U.S.C. §§ 1961-1968

98. Plaintiffs allege all foregoing paragraphs as if fully stated herein.

99. Plaintiffs bring this Count on behalf of the Nationwide Class.

100. Section 1962(c) of the RICO Act makes it "unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt."

101. As described herein, Defendant (by and through its employees) have operated, managed, and used an enterprise to obtain money and property from each Plaintiff and the Class through a pattern of mail and wire fraud, and through financial institution fraud.

102. The enterprises through which Defendant deprived Plaintiffs and the Class of money and property are comprised of the independently-owned franchise dealerships

through which Defendant brought every Defeat Device Vehicles here at issue to market.

103. Plaintiffs and members of the Class purchased or leased Defeat Device Vehicles either new, directly from a Volkswagen franchised, independently-owned dealership, or used from another source after it was introduced to the market through a Volkswagen franchised, independently-owned dealership.

104. Each of the independently owned Volkswagen dealerships through which Defendant introduced every Defeat Device Vehicle, separately, are an “individual, partnership, corporation, association or other legal entity” and therefore each constitutes a cognizable enterprise under § 1961(4) of the RICO Act.

105. Each dealership through which Volkswagen brought the Defeat Device Vehicles to market are separately owned legal entities distinct from Defendant Volkswagen.

106. Throughout the relevant time period and pattern of racketeering described herein, Volkswagen utilized the enterprise dealerships for both the legal purpose of selling and leasing proper automobiles to consumers and for the illegal purpose of entering fraudulent Defeat Device Vehicles into the market.

107. Throughout the relevant time period and pattern of racketeering described herein, Volkswagen operated and managed all of the dealerships through which it entered the Defeat Device Vehicles to the market. Volkswagen operated and managed the dealerships through formal franchise or other contracts that allowed Volkswagen to

strictly control the messages and products the dealerships provided to consumers and the market. Through these contracts, Volkswagen exercised such control as designing and providing the specific automobiles to be sold (including the Defeat Device Vehicles), dictating minimum pricing, crafting and mandating advertising and marketing messages (including fraudulent marketing messages described in this complaint), and other standards.

108. As described in detail herein, throughout the relevant time period, Defendant Volkswagen issued, or caused to be issued, countless false statements, and statements containing material omissions, regarding the performance and emissions standards of its Defeat Device Vehicles. These messages were sent via the internet, by email, by broadcast and satellite television, and through the U.S. Mail. These false statements and omissions induced Plaintiffs and the Class to purchase the Defeat Device Vehicles at issue and induced financial institutions to distribute monies to finance the acquisition of Defeat Device Vehicles under false pretenses.

109. Defendants carried out their predicate activity of mail, wire, and financial institution fraud described herein unabated from at least 2009, when Defendant began causing misrepresentations and omissions regarding the emissions of its diesel engines to be disseminated to the public, until September 2015, when Defendants' fraud was first brought to light by U.S. regulators. Defendants' racketeering thus constituted a closed-ended pattern in violation of the RICO Act.

110. Throughout the relevant time period and pattern of racketeering described herein, Defendant also actively sought to hide its misdeeds from consumers and others. Defendant, in fact, hid its misdeeds from Plaintiffs and the Class until September 2015, when its scheme was exposed by government regulators. Due to the highly fraudulent and evasive nature of Defendant's fraud, and further actions in support thereof, Plaintiffs and the Class were unaware, until September 2015, that they had been defrauded and injured.

111. Plaintiff and members of the Class have suffered serious and substantial injury to their business and property as a direct and proximate result of Defendants' racketeering.

112. Through its pattern of racketeering, Defendant induced Plaintiffs and the Class to pay a premium of several thousand dollars more for vehicle attributes that the Defeat Device Vehicles never had and that Defendant never intended to deliver. As a result of Volkswagens' conduct, consumers who purchased these cars were injured and damaged financially. All purchasers overpaid for their vehicles and did not receive what they paid for.

**COUNT III
BREACH OF CONTRACT**

113. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

114. Plaintiffs bring this Count on behalf of the Nationwide Class.

115. 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 Plaintiffs and the other Class members to make their purchases or leases of their Defeat Device Vehicles. Absent those misrepresentations and omissions, Plaintiffs and the other Class members would not have purchased or leased these Defeat Device Vehicles, would not have purchased or leased these Defeat Device Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the CleanDiesel engine system and the "defeat device." Accordingly, Plaintiffs and the other Class members overpaid for their Defeat Device Vehicles and did not receive the benefit of their bargain.

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

117. Volkswagen failed to deliver to Plaintiffs and the Classes what it contractually promised to provide in exchange for the valid consideration they paid, breaching Class Members' contracts.

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 shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages and relief allowed by law.

**COUNT IV
FRAUD BY CONCEALMENT**

119. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

120. Plaintiffs bring this Count on behalf of the Nationwide Class.

121. Volkswagen intentionally concealed and suppressed material facts concerning the quality of the Defeat Device Vehicles. As alleged in this Complaint, notwithstanding references in the very model names of the subject vehicles as "Clean Diesel," or to their engines as "TDI Clean Diesel" engines, Volkswagen engaged in a secret scheme to evade federal and state vehicle emissions standards by installing software designed to conceal its vehicles' emissions of the pollutant nitrogen oxide, which contributes to the creation of ozone and smog. The software installed on the vehicles at issue was designed nefariously to kick-in during emissions certification testing, such that the vehicles would show far lower emissions than when actually operating on the road. The result was what Volkswagen intended: vehicles passed emissions certifications by way of deliberately induced false readings. Reportedly, Volkswagen's deliberate, secret scheme resulted in noxious emissions from these

vehicles at 40 times applicable standards.

122. Plaintiffs and Subclass members reasonably relied upon Volkswagen's false representations. They had no way of knowing that Volkswagen's representations were false and gravely misleading. As alleged herein, Volkswagen employed extremely sophisticated methods of deception. Plaintiffs and Subclass members did not, and could not, unravel Volkswagen's deception on their own.

123. Volkswagen concealed and suppressed material facts concerning what is evidently the true culture of Volkswagen – one characterized by an emphasis on profits and sales above compliance with federal and state clean air law, and emissions regulations that are meant to protect the public and consumers. It also emphasized profits and sales about the trust that Plaintiffs and Subclass members placed in its representations. As one customer, Priya Shah, put it in a quotation cited by the *Los Angeles Times* in a September 18, 2015 article, "It's just a blatant disregard and intentional manipulation of the system. That's just a whole other level of not only lying to the government, but also lying to your consumer. People buy diesel cars from Volkswagen because they feel they are clean diesel cars." In the words of Ms. Shah, which no doubt reflect the sentiments of all other "CleanDiesel" vehicle buyers, "I don't want to be spewing noxious gases into the environment."

124. Necessarily, Volkswagen also took steps to ensure that its employees did not reveal the details of its scheme to regulators or consumers, including Plaintiffs and Subclass members. Volkswagen did so in order to boost the reputations of its vehicles and to falsely assure purchasers and lessors of its vehicles, including certified previously owned vehicles, that Volkswagen is a reputable manufacturer that complies with applicable law, including federal and state clean air law and emissions regulations, and that its vehicles likewise comply with applicable law and regulations. Volkswagen's false representations were material to consumers, both because they concerned the quality of the Defeat Device Vehicles, including their compliance with applicable federal and state law and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As Volkswagen well knew, its customers, including Plaintiffs and Subclass members, highly valued that the vehicles they were purchasing or leasing were *clean* diesel cars, and they paid accordingly.

125. Volkswagen had a duty to disclose the emissions scheme it engaged in with respect to the vehicles at issue because knowledge of the scheme and its details were known and/or accessible only to Volkswagen, because Volkswagen had exclusive knowledge as to implementation and maintenance of its scheme, and because Volkswagen knew the facts were not known to or reasonably

discoverable by Plaintiffs or Subclass members. Volkswagen also had a duty to disclose because it made general affirmative representations about the qualities of its vehicles with respect to emissions standards, starting with references to them as *clean* diesel cars, or cars with *clean* diesel engines, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding its emissions scheme, the actual emissions of its vehicles, its actual philosophy with respect to compliance with federal and state clean air law and emissions regulations, and its actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs, Volkswagen had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Defeat Device Vehicles purchased or leased by Plaintiffs and Class members. Whether a manufacturer's products comply with federal and state clean air law and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. Volkswagen represented to Plaintiffs and Subclass members that they were purchasing *clean* diesel vehicles, and certification testing appeared to confirm this—except that, secretly, Volkswagen had subverted the testing process thoroughly.

126. Volkswagen actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect its profits and to avoid the perception that its vehicles did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost Volkswagen money, and it did so at the expense of Plaintiffs and Subclass members.

127. On information and belief, Volkswagen has still not made full and adequate disclosures, and continues to defraud Plaintiffs and Subclass members by concealing material information regarding the emission qualities of its referenced vehicles and its emissions scheme.

128. Plaintiffs and Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly "clean" diesel cars manufactured by Volkswagen, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiffs' and Subclass members' actions were justified. Volkswagen was in exclusive control of the material facts, and such facts were not known to the public, Plaintiffs, or Subclass members.

129. Because of the concealment and/or suppression of the facts, Plaintiffs and Subclass members have sustained damage because they own vehicles that are diminished in value as a result of Volkswagen's concealment of the true quality and quantity of those vehicles' emissions and Volkswagen's failure to timely disclose the actual emission qualities and quantities of hundreds of thousands of Volkswagen- and Audi-branded vehicles and the serious issues engendered by Volkswagen's corporate policies. Had Plaintiffs and Subclass members been aware of Volkswagen's emissions schemes with regard to the vehicles at issue, and the company's callous disregard for compliance with applicable federal and state law and regulations, Plaintiffs and Subclass members who purchased or leased new or certified previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

130. The value of Plaintiffs' and Subclass members' vehicles has diminished as a result of Volkswagen's fraudulent concealment of its emissions scheme, which has greatly tarnished the Volkswagen and Audi brand names attached to Plaintiffs' and Subclass members' vehicles and made any reasonable consumer reluctant to purchase any of the Defeat Device Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

131. Accordingly, Volkswagen is liable to Plaintiffs and Subclass members for damages in an amount to be proven at trial.

132. Volkswagen's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Subclass members' rights and the representations that Volkswagen made to them, in order to enrich Volkswagen. To the extent permitted under applicable law Volkswagen's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

B. Claims on Behalf of the California Subclass

**COUNT I
VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW
(CAL. BUS. & PROF. CODE §§ 17200, *et seq.*)**

133. Plaintiffs Dominic Troffer and Shanice Boyette ("Plaintiffs," for purposes of all California Class Counts) incorporate by reference all preceding allegations as though fully set forth herein.

134. Plaintiffs bring this Count on behalf of the California Subclass.

135. California's Unfair Competition Law ("UCL"), CAL. BUS. & PROF. CODE §§ 17200, *et seq.*, proscribes acts of unfair competition, including "any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising."

136. Volkswagen's conduct, as described herein, was and is in violation of the UCL. Volkswagen's conduct violates the UCL in at least the following ways:

- a. By knowingly and intentionally concealing from Plaintiffs and the other California Subclass members that the Defeat Device Vehicles suffer from a design defect while obtaining money from Plaintiffs and the Class;
- b. By marketing Defeat Device Vehicles as possessing functional and defect-free, EPA compliant CleanDiesel engine systems;
- c. By purposefully installing an illegal “defeat device” in the Defeat Device Vehicles to fraudulently obtain EPA certification and cause Defeat Device Vehicles to pass emissions tests when in truth and fact they did not pass such tests;
- d. By violating federal laws, including the Clean Air Act; and
- e. By violating other California laws, including California laws governing vehicle emissions and emission testing requirements.

137. Volkswagen’s misrepresentations and omissions alleged herein caused Plaintiffs and the other California Subclass members to make their purchases or leases of their Defeat Device Vehicles. Absent those misrepresentations and omissions, Plaintiffs and the other California Subclass members would not have purchased or leased these vehicles, would not have purchased or leased these Defeat Device Vehicles at the prices

they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain CleanDiesel engine systems that failed to comply with EPA and California emissions standards.

138. Accordingly, Plaintiffs and the other California Subclass members have suffered injury in fact including lost money or property as a result of Volkswagen's misrepresentations and omissions.

139. Plaintiffs seek to enjoin further unlawful, unfair, and/or fraudulent acts or practices by Volkswagen under CAL. BUS. & PROF. CODE § 17200.

140. Plaintiffs request that this Court enter such orders or judgments as may be necessary to enjoin Volkswagen from continuing its unfair, unlawful, and/or deceptive practices and to restore to Plaintiffs and members of the Class any money it acquired by unfair competition, including restitution and/or restitutionary disgorgement, as provided in CAL. BUS. & PROF. CODE § 17203 and CAL. BUS. & PROF. CODE § 3345; and for such other relief set forth below.

COUNT II
VIOLATION OF CALIFORNIA CONSUMERS LEGAL REMEDIES
ACT (CAL. CIV. CODE §§ 1750, *etseq.*)

141. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

142. Plaintiffs bring this Count on behalf of the California Subclass.

143. California's Consumers Legal Remedies Act ("CLRA"), CAL. CIV. CODE

§§ 1750, *et seq.*, proscribes “unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer.”

144. The Defeat Device Vehicles are “goods” as defined in CAL. CIV. CODE § 1761(a).

145. Plaintiffs and the other California Subclass members are “consumers” as defined in CAL. CIV. CODE § 1761(d), and Plaintiffs, the other California Subclass members, and Volkswagen are “persons” as defined in CAL. CIV. CODE § 1761(c).

146. As alleged above, Volkswagen made numerous representations concerning the benefits, efficiency, performance and safety features of CleanDiesel engine systems that were misleading.

147. In purchasing or leasing the Defeat Device Vehicles, Plaintiffs and the other California Subclass members were deceived by Volkswagen’s failure to disclose that the Defeat Device Vehicles were equipped with defective CleanDiesel engine systems that failed EPA and California emissions standards.

148. Volkswagen’s conduct, as described herein above, was and is in violation of the CLRA. Volkswagen’s conduct violates at least the following enumerated CLRA provisions:

- a. CAL. CIV. CODE § 1770(a)(5): Representing that goods have characteristics, uses, and benefits which they do not have;
- b. CAL. CIV. CODE § 1770(a)(7): Representing that goods are of a particular standard, quality, or grade, if they are of another;
- c. CAL. CIV. CODE § 1770(a)(9): Advertising goods with intent not to sell them as advertised; and
- d. CAL. CIV. CODE § 1770(a)(16): Representing that goods have been supplied in accordance with a previous representation when they have not.

149. Plaintiffs and the other California Subclass members have suffered injury in fact and actual damages resulting from Volkswagen's material omissions and misrepresentations because they paid an inflated purchase or lease price for the Defeat Device Vehicles and because they stand to pay additional fuel costs if and when their Defeat Device Vehicles are made to comply with emissions standards.

150. Volkswagen knew, should have known, or was reckless in not knowing of the defective design and/or manufacture of the CleanDiesel engine systems, and that the Defeat Device Vehicles were not suitable for their intended use.

151. The facts concealed and omitted by Volkswagen to Plaintiffs and the other

California Subclass members are material in that a reasonable consumer would have considered them to be important in deciding whether to purchase or lease the Defeat Device Vehicles or pay a lower price. Had Plaintiffs and the other California Subclass members known about the defective nature of the Defeat Device Vehicles, they would not have purchased or leased the Defeat Device Vehicles or would not have paid the prices they paid.

152. Plaintiffs, on behalf of themselves and all others similarly situated, seek equitable relief in the form of an order prohibiting Defendant from engaging in the alleged misconduct described herein. As present, Plaintiffs seek only equitable relief from Defendant under the CLRA and not actual or statutory damages.

153. Plaintiffs have already complied with California Civil Code section 1782(a) and served a preliminary notice letter on October 6, 2015, before seeking damages under the CLRA. If Defendant does not comply with the demands set forth in Plaintiff's notice, Plaintiff will amend this complaint to seek damages.

154. Attached hereto is an affidavit in compliance with CAL. CIV. CODE section 1780(d).

COUNT III
VIOLATION OF CALIFORNIA FALSE ADVERTISING LAW
(CAL. BUS. & PROF. CODE §§ 17500, *et seq.*)

155. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

156. Plaintiffs bring this Count on behalf of the California Subclass.

157. California Bus. & Prof. Code § 17500 states: “It is unlawful for any ... corporation ... with intent directly or indirectly to dispose of real or personal property ... to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated ... from this state before the public in any state, in any newspaper or other publication, or any advertising device, ... or in any other manner or means whatever, including over the Internet, any statement ... which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.”

158. Volkswagen caused to be made or disseminated through California and the United States, through advertising, marketing and other publications, statements that were untrue or misleading, and which were known, or which by the exercise of reasonable care should have been known to Volkswagen, to be untrue and misleading to consumers, including Plaintiffs and the other Class members.

159. Volkswagen has violated § 17500 because the misrepresentations and omissions regarding the safety, reliability, and functionality of Defeat Device Vehicles as set forth in this Complaint were material and likely to deceive a reasonable consumer.

160. Plaintiffs and the other Class members have suffered an injury in fact, including the loss of money or property, as a result of Volkswagen’s unfair, unlawful, and/or deceptive practices. In purchasing or leasing their Defeat Device Vehicles,

Plaintiffs and the other Class members relied on the misrepresentations and/or omissions of Volkswagen with respect to the safety, performance and reliability of the Defeat Device Vehicles. Volkswagen's representations turned out not to be true because the Defeat Device Vehicles are distributed with faulty and defective CleanDiesel engine systems, rendering certain safety and emissions functions inoperative. Had Plaintiffs and the other Class members known this, they would not have purchased or leased their Defeat Device Vehicles and/or paid as much for them. Accordingly, Plaintiffs and the other Class members overpaid for their Defeat Device Vehicles and did not receive the benefit of their bargain.

161. All of the wrongful conduct alleged herein occurred, and continues to occur, in the conduct of Volkswagen's business. Volkswagen's wrongful conduct is part of a pattern or generalized course of conduct that is still perpetuated and repeated, both in the State of California and nationwide.

162. Plaintiffs, individually and on behalf of the other Class members, requests that this Court enter such orders or judgments as may be necessary to enjoin Volkswagen from continuing their unfair, unlawful, and/or deceptive practices and to restore to Plaintiffs and the other Class members any money Volkswagen acquired by unfair competition, including restitution and/or restitutionary disgorgement, and for such other relief set forth below.

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**COUNT IV
BREACH OF CONTRACT
(Based on California Law)**

163. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

164. Plaintiffs bring this Count on behalf of the California Subclass.

165. 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 Plaintiffs and the other Subclass members to make their purchases or leases of their Defeat Device Vehicles. Absent those misrepresentations and omissions, Plaintiffs and the other Subclass members would not have purchased or leased these Defeat Device Vehicles, would not have purchased or leased these Defeat Device Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the CleanDiesel engine system and the "defeat device." Accordingly, Plaintiffs and the other Subclass members overpaid for their Defeat Device Vehicles and did not receive the benefit of their bargain.

166. Each and every sale or lease of a Defeat Device Vehicle constitutes a contract between Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing Plaintiffs and the other Subclass members defective Defeat Device Vehicles and by misrepresenting or failing to disclose the existence of the "defeat device" and/or defective design, including information known to Volkswagen rendering

each Defeat Device Vehicle less safe and emissions compliant, and thus less valuable, than vehicles not equipped with CleanDiesel engine systems and “defeat devices.”

167. Volkswagen failed to deliver to Plaintiffs and the Subclass what it contractually promised to provide in exchange for the valid consideration they paid, breaching Subclass Members’ contracts.

168. As a direct and proximate result of Volkswagen’s breach of contract, Plaintiffs and the Subclass 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 and relief allowed by law

COUNT V
FRAUD BY CONCEALMENT
(Based on California Law)

169. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

170. This claim is brought on behalf of plaintiffs and California Subclass members.

171. Volkswagen intentionally concealed and suppressed material facts concerning the quality of the Defeat Device Vehicles. As alleged in this Complaint, notwithstanding references in the very model names of the subject vehicles as “Clean Diesel,” or to their engines as “TDI Clean Diesel” engines, Volkswagen engaged in a secret scheme to evade federal and state vehicle emissions standards by installing

software designed to conceal its vehicles' emissions of the pollutant nitrogen oxide, which contributes to the creation of ozone and smog. The software installed on the vehicles at issue was designed nefariously to kick-in during emissions certification testing, such that the vehicles would show far lower emissions than when actually operating on the road. The result was what Volkswagen intended: vehicles passed emissions certifications by way of deliberately induced false readings. Reportedly, Volkswagen's deliberate, secret scheme resulted in noxious emissions from these vehicles at 40 times applicable standards.

172. Plaintiffs and Subclass members reasonably relied upon Volkswagen's false representations. They had no way of knowing that Volkswagen's representations were false and gravely misleading. As alleged herein, Volkswagen employed extremely sophisticated methods of deception. Plaintiffs and Subclass members did not, and could not, unravel Volkswagen's deception on their own.

173. Volkswagen concealed and suppressed material facts concerning what is evidently the true culture of Volkswagen – one characterized by an emphasis on profits and sales above compliance with federal and state clean air law, and emissions regulations that are meant to protect the public and consumers. It also emphasized profits and sales about the trust that Plaintiffs and Subclass members placed in its representations. As one customer, Priya Shah, put it in a quotation cited by the *Los Angeles Times* in a September 18, 2015 article, "It's just a blatant disregard and

intentional manipulation of the system. That's just a whole other level of not only lying to the government, but also lying to your consumer. People buy diesel cars from Volkswagen because they feel they are clean diesel cars." In the words of Ms. Shah, which no doubt reflect the sentiments of all other "CleanDiesel" vehicle buyers, "I don't want to be spewing noxious gases into the environment."

174. Necessarily, Volkswagen also took steps to ensure that its employees did not reveal the details of its scheme to regulators or consumers, including Plaintiffs and Subclass members. Volkswagen did so in order to boost the reputations of its vehicles and to falsely assure purchasers and lessors of its vehicles, including certified previously owned vehicles, that Volkswagen is a reputable manufacturer that complies with applicable law, including federal and state clean air law and emissions regulations, and that its vehicles likewise comply with applicable law and regulations. Volkswagen's false representations were material to consumers, both because they concerned the quality of the Defeat Device Vehicles, including their compliance with applicable federal and state law and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As Volkswagen well knew, its customers, including Plaintiffs and Subclass members, highly valued that the vehicles they were purchasing or leasing were *clean* diesel cars, and they paid accordingly.

175. Volkswagen had a duty to disclose the emissions scheme it engaged in with

respect to the vehicles at issue because knowledge of the scheme and its details were known and/or accessible only to Volkswagen, because Volkswagen had exclusive knowledge as to implementation and maintenance of its scheme, and because Volkswagen knew the facts were not known to or reasonably discoverable by Plaintiffs or Subclass members. Volkswagen also had a duty to disclose because it made general affirmative representations about the qualities of its vehicles with respect to emissions standards, starting with references to them as *clean* diesel cars, or cars with *clean* diesel engines, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding its emissions scheme, the actual emissions of its vehicles, its actual philosophy with respect to compliance with federal and state clean air law and emissions regulations, and its actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs, Volkswagen had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Defeat Device Vehicles purchased or leased by Plaintiffs and Class members. Whether a manufacturer's products comply with federal and state clean air law and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. Volkswagen represented to Plaintiffs and Subclass members that they were purchasing *clean* diesel vehicles, and certification testing

appeared to confirm this—except that, secretly, Volkswagen had subverted the testing process thoroughly.

176. Volkswagen actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect its profits and to avoid the perception that its vehicles did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost Volkswagen money, and it did so at the expense of Plaintiffs and Subclass members.

177. On information and belief, Volkswagen has still not made full and adequate disclosures, and continues to defraud Plaintiffs and Subclass members by concealing material information regarding the emission qualities of its referenced vehicles and its emissions scheme.

178. Plaintiffs and Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly “clean” diesel cars manufactured by Volkswagen, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiffs' and Subclass members' actions were justified. Volkswagen was in exclusive control of the material facts, and such facts were not known to the public, Plaintiffs, or Subclass members.

179. Because of the concealment and/or suppression of the facts, Plaintiffs and

Subclass members have sustained damage because they own vehicles that are diminished in value as a result of Volkswagen's concealment of the true quality and quantity of those vehicles' emissions and Volkswagen's failure to timely disclose the actual emission qualities and quantities of hundreds of thousands of Volkswagen- and Audi-branded vehicles and the serious issues engendered by Volkswagen's corporate policies. Had Plaintiffs and Subclass members been aware of Volkswagen's emissions schemes with regard to the vehicles at issue, and the company's callous disregard for compliance with applicable federal and state law and regulations, Plaintiffs and Subclass members who purchased or leased new or certified previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

180. The value of Plaintiffs' and Subclass members' vehicles has diminished as a result of Volkswagen's fraudulent concealment of its emissions scheme, which has greatly tarnished the Volkswagen and Audi brand names attached to Plaintiffs' and Subclass members' vehicles and made any reasonable consumer reluctant to purchase any of the Defeat Device Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

181. Accordingly, Volkswagen is liable to Plaintiffs and Subclass members for damages in an amount to be proven at trial.

182. Volkswagen's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Subclass

members' rights and the representations that Volkswagen made to them, in order to enrich Volkswagen. To the extent permitted under applicable law Volkswagen's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

C. Claims on Behalf of the Connecticut Subclass

**COUNT I
VIOLATIONS OF THE UNFAIR TRADE PRACTICES ACT
(CONN. GEN. STAT. ANN. §§ 42-110A, *et seq.*)**

183. Plaintiff Giancarlo Cici ("Plaintiff," for purposes of all Connecticut Subclass Counts) incorporates by reference all preceding allegations as though fully set forth herein.

184. Plaintiff brings this Count on behalf of the Connecticut Subclass.

185. Plaintiff and Volkswagen are each "persons" as defined by CONN. GEN. STAT. ANN. § 42-110a(3).

186. The Connecticut Unfair Trade Practices Act ("CUTPA") provides that "[n]o person shall engage in unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce." CONN. GEN. STAT. ANN. § 42-110b(a). The CUTPA further provides a private right of action under CONN. GEN. STAT. ANN. § 42-110g(a).

187. By failing to disclose and actively concealing that the CleanDiesel engine systems were not EPA-compliant and used a "defeat device" in the Defeat Device

Vehicles, Volkswagen engaged in deceptive business practices prohibited by the CUTPA, including (1) representing that Defeat Device Vehicles have characteristics, uses, benefits, and qualities which they do not have, (2) representing that Defeat Device Vehicles are of a particular standard, quality, and grade when they are not, (3) advertising Defeat Device Vehicles with the intent not to sell them as advertised, and (4) engaging in acts or practices which are otherwise unfair, misleading, false, or deceptive to the consumer.

188. As alleged above, Volkswagen made numerous material statements about the benefits and characteristics of the CleanDiesel engine system that were either false or misleading. Each of these statements contributed to the deceptive context of Volkswagen's unlawful advertising and representations as a whole.

189. Volkswagen knew that the CleanDiesel engine system in the Defeat Device Vehicles were defectively designed or manufactured, were not EPA-compliant, and were not suitable for their intended use. Volkswagen nevertheless failed to warn Plaintiff about these defects despite having a duty to do so.

190. Volkswagen owed Plaintiff a duty to disclose the defective nature of the CleanDiesel engine system in the Defeat Device Vehicles, because Volkswagen:

- a. Possessed exclusive knowledge of the defects rendering the Defeat Device Vehicles illegal under EPA standards;

- b. Intentionally concealed the defects associated with CleanDiesel through its deceptive marketing campaigns that it designed to hide the defects in the CleanDiesel engine system; and/or
- c. Made incomplete representations about the characteristics and performance of the CleanDiesel engine system generally, while purposefully withholding material facts from Plaintiff that contradicted these representations.

191. Volkswagen's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiff, about the true performance and characteristics of the CleanDiesel engine system.

192. As a result of its violations of the CUTPA detailed above, Volkswagen caused actual damage to Plaintiff and, if not stopped, will continue to harm Plaintiff. Plaintiff currently owns or leases, or within the class period has owned or leased, an Defeat Device Vehicle that is defective. Defects associated with the CleanDiesel engine system have caused the value of Defeat Device Vehicles to decrease.

193. Plaintiff and the Class sustained damages as a result of the Volkswagen's unlawful acts and are, therefore, entitled to damages and other relief as provided under the CUTPA.

194. Plaintiff also seeks court costs and attorneys' fees as a result of

Volkswagen's violation of the CUTPA as provided in CONN. GEN. STAT. ANN. § 42-110g(d). A copy of this Complaint has been mailed to the Attorney General and the Commissioner of Consumer Protection of the State of Connecticut in accordance with CONN. GEN. STAT. ANN. § 42-110g(c).

COUNT II
BREACH OF CONTRACT
(Based on Connecticut Law)

195. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

196. Plaintiff brings this Count on behalf of the Connecticut Subclass.

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

198. Each and every sale or lease of a Defeat Device Vehicle constitutes a

contract between Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the other Subclass members defective Defeat Device Vehicles and by misrepresenting or failing to disclose the existence of the “defeat device” and/or defective design, including information known to Volkswagen rendering each Defeat Device Vehicle less safe and emissions compliant, and thus less valuable, than vehicles not equipped with CleanDiesel engine systems and “defeat devices.”

199. Volkswagen failed to deliver to Plaintiff and the Subclass what it contractually promised to provide in exchange for the valid consideration they paid, breaching Subclass Members’ contracts.

200. As a direct and proximate result of Volkswagen’s breach of contract, Plaintiff and the Subclass 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 and relief allowed by law.

COUNT III
FRAUD BY CONCEALMENT
(Based on Connecticut Law)

201. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

202. Plaintiff brings this Count on behalf of the Connecticut Subclass.

203. Volkswagen intentionally concealed and suppressed material facts concerning the quality of the Defeat Device Vehicles. As alleged in this Complaint,

notwithstanding references in the very model names of the subject vehicles as “Clean Diesel,” or to their engines as “TDI Clean Diesel” engines, Volkswagen engaged in a secret scheme to evade federal and state vehicle emissions standards by installing software designed to conceal its vehicles’ emissions of the pollutant nitrogen oxide, which contributes to the creation of ozone and smog. The software installed on the vehicles at issue was designed nefariously to kick-in during emissions certification testing, such that the vehicles would show far lower emissions than when actually operating on the road. The result was what Volkswagen intended: vehicles passed emissions certifications by way of deliberately induced false readings. Reportedly, Volkswagen’s deliberate, secret scheme resulted in noxious emissions from these vehicles at 40 times applicable standards.

204. Plaintiff and Subclass members reasonably relied upon Volkswagen’s false representations. They had no way of knowing that Volkswagen’s representations were false and gravely misleading. As alleged herein, Volkswagen employed extremely sophisticated methods of deception. Plaintiff and Subclass members did not, and could not, unravel Volkswagen’s deception on their own.

205. Volkswagen concealed and suppressed material facts concerning what is evidently the true culture of Volkswagen – one characterized by an emphasis on profits and sales above compliance with federal and state clean air law, and emissions regulations that are meant to protect the public and consumers. It also emphasized profits

and sales about the trust that Plaintiff and Subclass members placed in its representations. As one customer, Priya Shah, put it in a quotation cited by the *Los Angeles Times* in a September 18, 2015 article, “It’s just a blatant disregard and intentional manipulation of the system. That’s just a whole other level of not only lying to the government, but also lying to your consumer. People buy diesel cars from Volkswagen because they feel they are clean diesel cars.” In the words of Ms. Shah, which no doubt reflect the sentiments of all other “CleanDiesel” vehicle buyers, “I don’t want to be spewing noxious gases into the environment.”

206. Necessarily, Volkswagen also took steps to ensure that its employees did not reveal the details of its scheme to regulators or consumers, including Plaintiff and Subclass members. Volkswagen did so in order to boost the reputations of its vehicles and to falsely assure purchasers and lessors of its vehicles, including certified previously owned vehicles, that Volkswagen is a reputable manufacturer that complies with applicable law, including federal and state clean air law and emissions regulations, and that its vehicles likewise comply with applicable law and regulations. Volkswagen’s false representations were material to consumers, both because they concerned the quality of the Defeat Device Vehicles, including their compliance with applicable federal and state law and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As Volkswagen well knew, its customers, including Plaintiff and Subclass members, highly valued that the

vehicles they were purchasing or leasing were *clean* diesel cars, and they paid accordingly.

207. Volkswagen had a duty to disclose the emissions scheme it engaged in with respect to the vehicles at issue because knowledge of the scheme and its details were known and/or accessible only to Volkswagen, because Volkswagen had exclusive knowledge as to implementation and maintenance of its scheme, and because Volkswagen knew the facts were not known to or reasonably discoverable by Plaintiff or Subclass members. Volkswagen also had a duty to disclose because it made general affirmative representations about the qualities of its vehicles with respect to emissions standards, starting with references to them as *clean* diesel cars, or cars with *clean* diesel engines, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding its emissions scheme, the actual emissions of its vehicles, its actual philosophy with respect to compliance with federal and state clean air law and emissions regulations, and its actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiff, Volkswagen had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Defeat Device Vehicles purchased or leased by Plaintiff and Class members. Whether a manufacturer's products comply with federal and state clean air law and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are

material concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. Volkswagen represented to Plaintiff and Subclass members that they were purchasing *clean* diesel vehicles, and certification testing appeared to confirm this—except that, secretly, Volkswagen had subverted the testing process thoroughly.

208. Volkswagen actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect its profits and to avoid the perception that its vehicles did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost Volkswagen money, and it did so at the expense of Plaintiff and Subclass members.

209. On information and belief, Volkswagen has still not made full and adequate disclosures, and continues to defraud Plaintiff and Subclass members by concealing material information regarding the emission qualities of its referenced vehicles and its emissions scheme.

210. Plaintiff and Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly “clean” diesel cars manufactured by Volkswagen, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiff's and Subclass members' actions were

justified. Volkswagen was in exclusive control of the material facts, and such facts were not known to the public, Plaintiff, or Subclass members.

211. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass members have sustained damage because they own vehicles that are diminished in value as a result of Volkswagen's concealment of the true quality and quantity of those vehicles' emissions and Volkswagen's failure to timely disclose the actual emission qualities and quantities of hundreds of thousands of Volkswagen- and Audi-branded vehicles and the serious issues engendered by Volkswagen's corporate policies. Had Plaintiff and Subclass members been aware of Volkswagen's emissions schemes with regard to the vehicles at issue, and the company's callous disregard for compliance with applicable federal and state law and regulations, Plaintiff and Subclass members who purchased or leased new or certified previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

212. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of Volkswagen's fraudulent concealment of its emissions scheme, which has greatly tarnished the Volkswagen and Audi brand names attached to Plaintiffs' and Subclass members' vehicles and made any reasonable consumer reluctant to purchase any of the Defeat Device Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

213. Accordingly, Volkswagen is liable to Plaintiff and Subclass members for

damages in an amount to be proven at trial.

214. Volkswagen's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiff's and Subclass members' rights and the representations that Volkswagen made to them, in order to enrich Volkswagen. To the extent permitted under applicable law Volkswagen's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

D. Claims on Behalf of the Iowa Subclass

**COUNT I
VIOLATION OF THE IOWA CONSUMER FRAUDS ACT (I.C.A. §§ 714.16, *et seq.*)**

215. Plaintiff Isaac Hoover ("Plaintiff," for purposes of all Iowa Subclass Counts) incorporates by reference all preceding allegations as though fully set forth herein.

216. Plaintiff brings this Count on behalf of the Iowa Subclass.

217. Plaintiff, members of the Iowa Subclass, and Volkswagen are all "person[s]" for purposes of the Iowa Consumer Fraud Act ("CFA"). Iowa Code Annotated §§ 714.16, *et seq.*

218. The Defeat Device Vehicles meet the definition of "merchandise" for purposes of the CFA. *See* I.C.A. §714.16(1)(i).

219. Named Plaintiff and members of the Subclass purchased the Defeat Device

Vehicles at issue for personal, family or household purposes.

220. Pursuant to the CFA, “deception” means “an act or practice which has the tendency or capacity to mislead a substantial number of consumers as to a material fact or facts. I.C.A. §714.16(1)(f).

221. Pursuant to the CFA, “use or employment by a person of an unfair practice, deception, fraud, false pretense, false promise, or misrepresentation, or the concealment, suppression, or omission of a material fact with intent that others rely on the concealment, suppression or omission, in connection with the lease, sale or advertisement of any merchandise or the solicitation of contributions for charitable purposes, whether or not a person has in fact been misled, deceived, or damaged, is an unlawful practice”. *See* I.C.A. §714.16(2)(a).

222. 47. In selling and leasing the Defeat Device Vehicles to Plaintiff and members of the Subclass, Volkswagen has misrepresented material facts in representing that the Defeat Device Vehicles met the standard for emissions under the Clean Air Act when the vehicles do not in fact meet the Clean Air Act, 42 U.S.C. §§ 7401, *et seq.*, emission standards when driven under normal driving conditions.

223. By selling vehicles represented to meet the Clean Air Act, 42 U.S.C. §§ 7401, *et seq.*, defendant Volkswagen violated the CFA, I.C.A. §§ 714.06 *et seq.*

224. By advertising and selling the Defeat Device Vehicles as being “clean diesel,” defendant Volkswagen violated the CFA, I.C.A. §§ 714.06 *et seq.*

225. The misrepresentation of Volkswagen to Plaintiff and members of the Subclass with material facts regarding the defective and/or fraudulent condition of the vehicles at issue have caused injury to Plaintiff and the Subclass in that the value of the Defeat Device Vehicles is substantially diminished and Plaintiff and members of the Subclass have suffered a loss equal to the diminished value of the vehicles and/or the cost of repairing and replacing the defective and/or non-conforming system within the Defeat Device Vehicles.

COUNT II
BREACH OF CONTRACT
(Based on Iowa Law)

226. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

227. Plaintiff brings this Count on behalf of the Iowa Subclass.

228. Volkswagen's misrepresentations and omissions alleged herein, including Volkswagen's failure to disclose the existence of the "defeat device" and/or defective design as alleged herein, caused Plaintiff and the other Subclass members to make their purchases or leases of their Defeat Device Vehicles. Absent those misrepresentations and omissions, Plaintiff and the other Subclass members would not have purchased or leased these Defeat Device Vehicles, would not have purchased or leased these Defeat Device Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the CleanDiesel engine system and the "defeat

device.” Accordingly, Plaintiff and the other Subclass members overpaid for their Defeat Device Vehicles and did not receive the benefit of their bargain.

229. Each and every sale or lease of a Defeat Device Vehicle constitutes a contract between Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the other Subclass members defective Defeat Device Vehicles and by misrepresenting or failing to disclose the existence of the “defeat device” and/or defective design, including information known to Volkswagen rendering each Defeat Device Vehicle less safe and emissions compliant, and thus less valuable, than vehicles not equipped with CleanDiesel engine systems and “defeat devices.”

230. Volkswagen failed to deliver to Plaintiff and the Subclass what it contractually promised to provide in exchange for the valid consideration they paid, breaching Subclass Members’ contracts.

231. As a direct and proximate result of Volkswagen’s breach of contract, Plaintiff and the Subclass 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 and relief allowed by law.

COUNT III
FRAUD BY CONCEALMENT
(Based on Iowa Law)

232. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

233. Plaintiff brings this Count on behalf of the Iowa Subclass.

234. Volkswagen intentionally concealed and suppressed material facts concerning the quality of the Defeat Device Vehicles. As alleged in this Complaint, notwithstanding references in the very model names of the subject vehicles as “Clean Diesel,” or to their engines as “TDI Clean Diesel” engines, Volkswagen engaged in a secret scheme to evade federal and state vehicle emissions standards by installing software designed to conceal its vehicles’ emissions of the pollutant nitrogen oxide, which contributes to the creation of ozone and smog. The software installed on the vehicles at issue was designed nefariously to kick-in during emissions certification testing, such that the vehicles would show far lower emissions than when actually operating on the road. The result was what Volkswagen intended: vehicles passed emissions certifications by way of deliberately induced false readings. Reportedly, Volkswagen’s deliberate, secret scheme resulted in noxious emissions from these vehicles at 40 times applicable standards.

235. Plaintiff and Subclass members reasonably relied upon Volkswagen’s false representations. They had no way of knowing that Volkswagen’s representations were false and gravely misleading. As alleged herein, Volkswagen employed extremely sophisticated methods of deception. Plaintiff and Subclass members did not, and could not, unravel Volkswagen’s deception on their own.

236. Volkswagen concealed and suppressed material facts concerning what is

evidently the true culture of Volkswagen – one characterized by an emphasis on profits and sales above compliance with federal and state clean air law, and emissions regulations that are meant to protect the public and consumers. It also emphasized profits and sales about the trust that Plaintiff and Subclass members placed in its representations. As one customer, Priya Shah, put it in a quotation cited by the *Los Angeles Times* in a September 18, 2015 article, “It’s just a blatant disregard and intentional manipulation of the system. That’s just a whole other level of not only lying to the government, but also lying to your consumer. People buy diesel cars from Volkswagen because they feel they are clean diesel cars.” In the words of Ms. Shah, which no doubt reflect the sentiments of all other “CleanDiesel” vehicle buyers, “I don’t want to be spewing noxious gases into the environment.”

237. Necessarily, Volkswagen also took steps to ensure that its employees did not reveal the details of its scheme to regulators or consumers, including Plaintiff and Subclass members. Volkswagen did so in order to boost the reputations of its vehicles and to falsely assure purchasers and lessors of its vehicles, including certified previously owned vehicles, that Volkswagen is a reputable manufacturer that complies with applicable law, including federal and state clean air law and emissions regulations, and that its vehicles likewise comply with applicable law and regulations. Volkswagen’s false representations were material to consumers, both because they concerned the quality of the Defeat Device Vehicles, including their compliance with applicable federal and state

law and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As Volkswagen well knew, its customers, including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or leasing were *clean* diesel cars, and they paid accordingly.

238. Volkswagen had a duty to disclose the emissions scheme it engaged in with respect to the vehicles at issue because knowledge of the scheme and its details were known and/or accessible only to Volkswagen, because Volkswagen had exclusive knowledge as to implementation and maintenance of its scheme, and because Volkswagen knew the facts were not known to or reasonably discoverable by Plaintiff or Subclass members. Volkswagen also had a duty to disclose because it made general affirmative representations about the qualities of its vehicles with respect to emissions standards, starting with references to them as *clean* diesel cars, or cars with *clean* diesel engines, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding its emissions scheme, the actual emissions of its vehicles, its actual philosophy with respect to compliance with federal and state clean air law and emissions regulations, and its actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiff, Volkswagen had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Defeat Device Vehicles

purchased or leased by Plaintiff and Class members. Whether a manufacturer's products comply with federal and state clean air law and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. Volkswagen represented to Plaintiff and Subclass members that they were purchasing *clean* diesel vehicles, and certification testing appeared to confirm this—except that, secretly, Volkswagen had subverted the testing process thoroughly.

239. Volkswagen actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect its profits and to avoid the perception that its vehicles did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost Volkswagen money, and it did so at the expense of Plaintiff and Subclass members.

240. On information and belief, Volkswagen has still not made full and adequate disclosures, and continues to defraud Plaintiff and Subclass members by concealing material information regarding the emission qualities of its referenced vehicles and its emissions scheme.

241. Plaintiff and Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly

“clean” diesel cars manufactured by Volkswagen, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiff’s and Subclass members’ actions were justified. Volkswagen was in exclusive control of the material facts, and such facts were not known to the public, Plaintiff, or Subclass members.

242. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass members have sustained damage because they own vehicles that are diminished in value as a result of Volkswagen’s concealment of the true quality and quantity of those vehicles’ emissions and Volkswagen’s failure to timely disclose the actual emission qualities and quantities of hundreds of thousands of Volkswagen- and Audi-branded vehicles and the serious issues engendered by Volkswagen’s corporate policies. Had Plaintiff and Subclass members been aware of Volkswagen’s emissions schemes with regard to the vehicles at issue, and the company’s callous disregard for compliance with applicable federal and state law and regulations, Plaintiff and Subclass members who purchased or leased new or certified previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

243. The value of Plaintiff’s and Subclass members’ vehicles has diminished as a result of Volkswagen’s fraudulent concealment of its emissions scheme, which has greatly tarnished the Volkswagen and Audi brand names attached to Plaintiff’s and Subclass members’ vehicles and made any reasonable consumer reluctant to purchase

any of the Defeat Device Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

244. Accordingly, Volkswagen is liable to Plaintiff and Subclass members for damages in an amount to be proven at trial.

245. Volkswagen's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiff's and Subclass members' rights and the representations that Volkswagen made to them, in order to enrich Volkswagen. To the extent permitted under applicable law Volkswagen's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

E. Claims on Behalf of the Maryland Subclass

**COUNT I
VIOLATION OF THE MARYLAND CONSUMER PROTECTION ACT
(MD. CODE COM. LAW §§ 13-101, *et seq.*)**

246. Plaintiff Forrest Tinsler ("Plaintiff," for purposes of all Maryland Subclass Counts) incorporates by reference all preceding allegations as though fully set forth herein.

247. Plaintiff brings this Count on behalf of the Maryland Subclass.

248. Volkswagen, Plaintiff, and the Maryland Subclass are "persons" within the meaning of MD. CODE COM. LAW § 13-101(h).

249. The Maryland Consumer Protection Act ("Maryland CPA") provides that a

person may not engage in any unfair or deceptive trade practice in the sale of any consumer good. MD. COM. LAW CODE § 13-303. Volkswagen participated in misleading, false, or deceptive acts that violated the Maryland CPA. By systematically devaluing safety and concealing a plethora of defects in VW-branded vehicles, Volkswagen engaged in deceptive business practices prohibited by the Maryland CPA.

250. Volkswagen engaged in unlawful trade practices, including:

- a. representing that the Defeat Device Vehicles have characteristics, uses, benefits, and qualities which they do not have;
- b. representing that the Defeat Device Vehicles are of a particular standard and quality when they are not;
- c. advertising the Defeat Device Vehicles with the intent not to sell them as advertised; and
- d. otherwise engaging in conduct that is unfair or deceptive and likely to deceive.

251. Volkswagen's actions, as set forth above, occurred in the conduct of trade or commerce.

252. In the course of Volkswagen's business, it willfully failed to disclose and actively concealed that the CleanDiesel Engine System was non-EPA compliant, and the use of the "defeat device" in Defeat Device Vehicles as described above. Accordingly,

Volkswagen engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices, including representing that Defeat Device Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Defeat Device Vehicles are of a particular standard and quality when they are not; advertising Defeat Device Vehicles with the intent not to sell them as advertised; and otherwise engaging in conduct likely to deceive.

253. As a direct and proximate result of Volkswagen's violations of the Maryland CPA, Plaintiff and the Maryland Subclass have suffered actual damage.

254. Plaintiff and the other Maryland Subclass members were injured as a result of Volkswagen's conduct in that Plaintiff and the other Maryland Subclass members overpaid for their Defeat Device Vehicles and did not receive the benefit of their bargain, and their Defeat Device Vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of Volkswagen's misrepresentations and omissions.

COUNT II
BREACH OF CONTRACT
(Based on Maryland Law)

255. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

256. Plaintiff brings this Count on behalf of the Maryland Subclass.

257. Volkswagen's misrepresentations and omissions alleged herein, including Volkswagen's failure to disclose the existence of the "defeat device" and/or defective

design as alleged herein, caused Plaintiff and the other Subclass members to make their purchases or leases of their Defeat Device Vehicles. Absent those misrepresentations and omissions, Plaintiff and the other Subclass members would not have purchased or leased these Defeat Device Vehicles, would not have purchased or leased these Defeat Device Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the CleanDiesel engine system and the “defeat device.” Accordingly, Plaintiff and the other Subclass members overpaid for their Defeat Device Vehicles and did not receive the benefit of their bargain.

258. Each and every sale or lease of a Defeat Device Vehicle constitutes a contract between Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the other Subclass members defective Defeat Device Vehicles and by misrepresenting or failing to disclose the existence of the “defeat device” and/or defective design, including information known to Volkswagen rendering each Defeat Device Vehicle less safe and emissions compliant, and thus less valuable, than vehicles not equipped with CleanDiesel engine systems and “defeat devices.”

259. Volkswagen failed to deliver to Plaintiff and the Subclass what it contractually promised to provide in exchange for the valid consideration they paid, breaching Subclass Members’ contracts.

260. As a direct and proximate result of Volkswagen’s breach of contract, Plaintiff and the Subclass 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 and relief allowed by law.

COUNT III
FRAUD BY CONCEALMENT
(Based on Maryland Law)

261. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

262. Plaintiff brings this Count on behalf of the Maryland Subclass.

263. Volkswagen intentionally concealed and suppressed material facts concerning the quality of the Defeat Device Vehicles. As alleged in this Complaint, notwithstanding references in the very model names of the subject vehicles as “Clean Diesel,” or to their engines as “TDI Clean Diesel” engines, Volkswagen engaged in a secret scheme to evade federal and state vehicle emissions standards by installing software designed to conceal its vehicles’ emissions of the pollutant nitrogen oxide, which contributes to the creation of ozone and smog. The software installed on the vehicles at issue was designed nefariously to kick-in during emissions certification testing, such that the vehicles would show far lower emissions than when actually operating on the road. The result was what Volkswagen intended: vehicles passed emissions certifications by way of deliberately induced false readings. Reportedly, Volkswagen’s deliberate, secret scheme resulted in noxious emissions from these vehicles at 40 times applicable standards.

264. Plaintiff and Subclass members reasonably relied upon Volkswagen's false representations. They had no way of knowing that Volkswagen's representations were false and gravely misleading. As alleged herein, Volkswagen employed extremely sophisticated methods of deception. Plaintiff and Subclass members did not, and could not, unravel Volkswagen's deception on their own.

265. Volkswagen concealed and suppressed material facts concerning what is evidently the true culture of Volkswagen – one characterized by an emphasis on profits and sales above compliance with federal and state clean air law, and emissions regulations that are meant to protect the public and consumers. It also emphasized profits and sales about the trust that Plaintiff and Subclass members placed in its representations. As one customer, Priya Shah, put it in a quotation cited by the *Los Angeles Times* in a September 18, 2015 article, “It’s just a blatant disregard and intentional manipulation of the system. That’s just a whole other level of not only lying to the government, but also lying to your consumer. People buy diesel cars from Volkswagen because they feel they are clean diesel cars.” In the words of Ms. Shah, which no doubt reflect the sentiments of all other “CleanDiesel” vehicle buyers, “I don’t want to be spewing noxious gases into the environment.”

266. Necessarily, Volkswagen also took steps to ensure that its employees did not reveal the details of its scheme to regulators or consumers, including Plaintiff and Subclass members. Volkswagen did so in order to boost the reputations of its vehicles

and to falsely assure purchasers and lessors of its vehicles, including certified previously owned vehicles, that Volkswagen is a reputable manufacturer that complies with applicable law, including federal and state clean air law and emissions regulations, and that its vehicles likewise comply with applicable law and regulations. Volkswagen's false representations were material to consumers, both because they concerned the quality of the Defeat Device Vehicles, including their compliance with applicable federal and state law and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As Volkswagen well knew, its customers, including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or leasing were *clean* diesel cars, and they paid accordingly.

267. Volkswagen had a duty to disclose the emissions scheme it engaged in with respect to the vehicles at issue because knowledge of the scheme and its details were known and/or accessible only to Volkswagen, because Volkswagen had exclusive knowledge as to implementation and maintenance of its scheme, and because Volkswagen knew the facts were not known to or reasonably discoverable by Plaintiff or Subclass members. Volkswagen also had a duty to disclose because it made general affirmative representations about the qualities of its vehicles with respect to emissions standards, starting with references to them as *clean* diesel cars, or cars with *clean* diesel engines, which were misleading, deceptive, and incomplete without the disclosure of the

additional facts set forth above regarding its emissions scheme, the actual emissions of its vehicles, its actual philosophy with respect to compliance with federal and state clean air law and emissions regulations, and its actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiff, Volkswagen had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Defeat Device Vehicles purchased or leased by Plaintiff and Class members. Whether a manufacturer's products comply with federal and state clean air law and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. Volkswagen represented to Plaintiff and Subclass members that they were purchasing *clean* diesel vehicles, and certification testing appeared to confirm this—except that, secretly, Volkswagen had subverted the testing process thoroughly.

268. Volkswagen actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect its profits and to avoid the perception that its vehicles did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost Volkswagen money, and it did so at the expense of Plaintiff and Subclass members.

269. On information and belief, Volkswagen has still not made full and adequate

disclosures, and continues to defraud Plaintiff and Subclass members by concealing material information regarding the emission qualities of its referenced vehicles and its emissions scheme.

270. Plaintiff and Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly “clean” diesel cars manufactured by Volkswagen, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiff’s and Subclass members’ actions were justified. Volkswagen was in exclusive control of the material facts, and such facts were not known to the public, Plaintiff, or Subclass members.

271. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass members have sustained damage because they own vehicles that are diminished in value as a result of Volkswagen’s concealment of the true quality and quantity of those vehicles’ emissions and Volkswagen’s failure to timely disclose the actual emission qualities and quantities of hundreds of thousands of Volkswagen- and Audi-branded vehicles and the serious issues engendered by Volkswagen’s corporate policies. Had Plaintiff and Subclass members been aware of Volkswagen’s emissions schemes with regard to the vehicles at issue, and the company’s callous disregard for compliance with applicable federal and state law and regulations, Plaintiff and Subclass members who

purchased or leased new or certified previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

272. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of Volkswagen's fraudulent concealment of its emissions scheme, which has greatly tarnished the Volkswagen and Audi brand names attached to Plaintiff's and Subclass members' vehicles and made any reasonable consumer reluctant to purchase any of the Defeat Device Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

273. Accordingly, Volkswagen is liable to Plaintiff and Subclass members for damages in an amount to be proven at trial.

274. Volkswagen's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiff's and Subclass members' rights and the representations that Volkswagen made to them, in order to enrich Volkswagen. To the extent permitted under applicable law Volkswagen's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

E. Claims on Behalf of the Ohio Subclass

**COUNT I
VIOLATIONS OF THE CONSUMER SALES
PRACTICES ACT (OHIO REV. CODE §§
1345.01, *et seq.*)**

275. Plaintiff John Mazur ("Plaintiff," for purposes of all Ohio Subclass Counts)

incorporates by reference all preceding allegations as though fully set forth herein.

276. Plaintiff brings this Count on behalf of the Ohio Subclass.

277. Plaintiff and the other Ohio Subclass members are “consumers” as defined by the Ohio Consumer Sales Practices Act, Ohio Rev. Code § 1345.01 (“OCSPA”). Volkswagen is a “supplier” as defined by the OCSPA. Plaintiff’s and the other Ohio Subclass members’ purchases or leases of Defeat Device Vehicles were “consumer transactions” as defined by the OCSPA.

278. By failing to disclose and actively concealing that the CleanDiesel engine systems were not EPA-compliant and used a “defeat device” in the Defeat Device Vehicles, Volkswagen engaged in deceptive business practices prohibited by the OCSPA, including (1) representing that Defeat Device Vehicles have characteristics, uses, benefits, and qualities which they do not have, (2) representing that Defeat Device Vehicles are of a particular standard, quality, and grade when they are not, (3) advertising Defeat Device Vehicles with the intent not to sell them as advertised, and (4) engaging in acts or practices which are otherwise unfair, misleading, false, or deceptive to the consumer.

279. As alleged above, Volkswagen made numerous material statements about the benefits and characteristics of the CleanDiesel engine system that were either false or misleading. Each of these statements contributed to the deceptive context of Volkswagen’s unlawful advertising and representations as a whole.

280. Volkswagen knew that the CleanDiesel engine system in the Defeat Device Vehicles were defectively designed or manufactured, did not comply with EPA regulations and the Clean Air Act, and were not suitable for their intended use. Volkswagen nevertheless failed to warn Plaintiff about these defects despite having a duty to do so.

281. Volkswagen owed Plaintiff a duty to disclose the defective nature of the CleanDiesel engine system in the Defeat Device Vehicles, because Volkswagen:

- a. Possessed exclusive knowledge of the defects rendering the Defeat Device Vehicles more unreliable than similar vehicles;
- b. Intentionally concealed the defects associated with MyVolkswagen Touch through its deceptive marketing campaign and recall program that it designed to hide the defects in the CleanDiesel engine system; and/or
- c. Made incomplete representations about the characteristics and performance of the CleanDiesel engine system generally, while purposefully withholding material facts from Plaintiff that contradicted these representations.

282. Volkswagen's unfair or deceptive acts or practices were likely to, and did in fact, deceive reasonable consumers, including Plaintiff, about the true performance and

characteristics of the CleanDiesel engine system.

283. The Ohio Attorney General has made available for public inspection prior state court decisions which have held that the acts and omissions of Volkswagen in this Complaint, including, but not limited to, the failure to honor both implied warranties and express warranties, the making and distribution of false, deceptive, and/or misleading representations, and the concealment and/or non-disclosure of a dangerous defect, constitute deceptive sales practices in violation of the OCSPA. These cases include, but are not limited to, the following:

- a. *Mason v. Mercedes Benz USA, LLC* (OPIF#10002382);
- b. *State ex rel. Betty D. Montgomery v. Volkswagen Motor Co.*
(OPIF #10002123);
- c. *State ex rel. Betty D. Montgomery v. Bridgestone/Firestone, Inc.* (OPIF#10002025);
- d. *Bellinger v. Hewlett-Packard Co.*, No. 20744, 2002 Ohio App. LEXIS 1573 (Ohio Ct. App. Apr. 10, 2002) (OPIF #10002077);
- e. *Borrer v. MarineMax of Ohio*, No. OT-06-010, 2007 Ohio App. LEXIS 525 (Ohio Ct. App. Feb. 9, 2007) (OPIF #10002388);

- f. *State ex rel. Jim Petro v. Craftmatic Organization, Inc.* (OPIF #10002347);
- g. *Mark J. Craw Volkswagen, et al. v. Joseph Airport Toyota, Inc.* (OPIF #10001586);
- h. *State ex rel. William J. Brown v. Harold Lyons, et al.* (OPIF #10000304);
- i. *Brinkman v. Mazda Motor of America, Inc.* (OPIF #10001427);
- j. *Khoury v. Don Lewis* (OPIF #100001995);
- k. *Mosley v. Performance Mitsubishi aka Automanage* (OPIF #10001326);
- l. *Walls v. Harry Williams dba Butch's Auto Sales* (OPIF #10001524); and
- m. *Brown v. Spears* (OPIF #10000403).

284. As a result of its violations of the OCSPA, as detailed above, Volkswagen caused actual damage to Plaintiff and, if not stopped, will continue to harm Plaintiff. Plaintiff currently owns or leases, or within the class period has owned or leased, an Defeat Device Vehicle that is defective. Defects associated with the CleanDiesel engine system have caused the value of Defeat Device Vehicles to decrease.

285. Plaintiff and the Class sustained damages as a result of Volkswagen's

unlawful acts and are, therefore, entitled to damages and other relief as provided under the OCSPA.

286. Plaintiff also seeks court costs and attorneys' fees as a result of Volkswagen's violations of the OCSPA as provided in Ohio Rev. Code § 1345.09.

COUNT II
BREACH OF CONTRACT
(Based on Ohio Law)

287. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

288. Plaintiff brings this Count on behalf of the Ohio Subclass.

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

290. Each and every sale or lease of a Defeat Device Vehicle constitutes a

contract between Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the other Subclass members defective Defeat Device Vehicles and by misrepresenting or failing to disclose the existence of the “defeat device” and/or defective design, including information known to Volkswagen rendering each Defeat Device Vehicle less safe and emissions compliant, and thus less valuable, than vehicles not equipped with CleanDiesel engine systems and “defeat devices.”

291. Volkswagen failed to deliver to Plaintiff and the Subclass what it contractually promised to provide in exchange for the valid consideration they paid, breaching Subclass Members’ contracts.

292. As a direct and proximate result of Volkswagen’s breach of contract, Plaintiff and the Subclass 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 and relief allowed by law.

COUNT III
FRAUDULENT CONCEALMENT
(Based on Ohio Law)

293. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

294. Plaintiff brings this Count on behalf of the Ohio Subclass.

295. Volkswagen intentionally concealed and suppressed material facts concerning the quality of the Defeat Device Vehicles. As alleged in this Complaint,

notwithstanding references in the very model names of the subject vehicles as “Clean Diesel,” or to their engines as “TDI Clean Diesel” engines, Volkswagen engaged in a secret scheme to evade federal and state vehicle emissions standards by installing software designed to conceal its vehicles’ emissions of the pollutant nitrogen oxide, which contributes to the creation of ozone and smog. The software installed on the vehicles at issue was designed nefariously to kick-in during emissions certification testing, such that the vehicles would show far lower emissions than when actually operating on the road. The result was what Volkswagen intended: vehicles passed emissions certifications by way of deliberately induced false readings. Reportedly, Volkswagen’s deliberate, secret scheme resulted in noxious emissions from these vehicles at 40 times applicable standards.

296. Plaintiff and Subclass members reasonably relied upon Volkswagen’s false representations. They had no way of knowing that Volkswagen’s representations were false and gravely misleading. As alleged herein, Volkswagen employed extremely sophisticated methods of deception. Plaintiff and Subclass members did not, and could not, unravel Volkswagen’s deception on their own.

297. Volkswagen concealed and suppressed material facts concerning what is evidently the true culture of Volkswagen – one characterized by an emphasis on profits and sales above compliance with federal and state clean air law, and emissions regulations that are meant to protect the public and consumers. It also emphasized profits

and sales about the trust that Plaintiff and Subclass members placed in its representations. As one customer, Priya Shah, put it in a quotation cited by the *Los Angeles Times* in a September 18, 2015 article, “It’s just a blatant disregard and intentional manipulation of the system. That’s just a whole other level of not only lying to the government, but also lying to your consumer. People buy diesel cars from Volkswagen because they feel they are clean diesel cars.” In the words of Ms. Shah, which no doubt reflect the sentiments of all other “CleanDiesel” vehicle buyers, “I don’t want to be spewing noxious gases into the environment.”

298. Necessarily, Volkswagen also took steps to ensure that its employees did not reveal the details of its scheme to regulators or consumers, including Plaintiff and Subclass members. Volkswagen did so in order to boost the reputations of its vehicles and to falsely assure purchasers and lessors of its vehicles, including certified previously owned vehicles, that Volkswagen is a reputable manufacturer that complies with applicable law, including federal and state clean air law and emissions regulations, and that its vehicles likewise comply with applicable law and regulations. Volkswagen’s false representations were material to consumers, both because they concerned the quality of the Defeat Device Vehicles, including their compliance with applicable federal and state law and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As Volkswagen well knew, its customers, including Plaintiff and Subclass members, highly valued that the

vehicles they were purchasing or leasing were *clean* diesel cars, and they paid accordingly.

299. Volkswagen had a duty to disclose the emissions scheme it engaged in with respect to the vehicles at issue because knowledge of the scheme and its details were known and/or accessible only to Volkswagen, because Volkswagen had exclusive knowledge as to implementation and maintenance of its scheme, and because Volkswagen knew the facts were not known to or reasonably discoverable by Plaintiff or Subclass members. Volkswagen also had a duty to disclose because it made general affirmative representations about the qualities of its vehicles with respect to emissions standards, starting with references to them as *clean* diesel cars, or cars with *clean* diesel engines, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding its emissions scheme, the actual emissions of its vehicles, its actual philosophy with respect to compliance with federal and state clean air law and emissions regulations, and its actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiff, Volkswagen had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Defeat Device Vehicles purchased or leased by Plaintiff and Class members. Whether a manufacturer's products comply with federal and state clean air law and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are

material concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. Volkswagen represented to Plaintiff and Subclass members that they were purchasing *clean* diesel vehicles, and certification testing appeared to confirm this—except that, secretly, Volkswagen had subverted the testing process thoroughly.

300. Volkswagen actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect its profits and to avoid the perception that its vehicles did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost Volkswagen money, and it did so at the expense of Plaintiff and Subclass members.

301. On information and belief, Volkswagen has still not made full and adequate disclosures, and continues to defraud Plaintiff and Subclass members by concealing material information regarding the emission qualities of its referenced vehicles and its emissions scheme.

302. Plaintiff and Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly “clean” diesel cars manufactured by Volkswagen, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiff's and Subclass members' actions were

justified. Volkswagen was in exclusive control of the material facts, and such facts were not known to the public, Plaintiff, or Subclass members.

303. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass members have sustained damage because they own vehicles that are diminished in value as a result of Volkswagen's concealment of the true quality and quantity of those vehicles' emissions and Volkswagen's failure to timely disclose the actual emission qualities and quantities of hundreds of thousands of Volkswagen- and Audi-branded vehicles and the serious issues engendered by Volkswagen's corporate policies. Had Plaintiff and Subclass members been aware of Volkswagen's emissions schemes with regard to the vehicles at issue, and the company's callous disregard for compliance with applicable federal and state law and regulations, Plaintiff and Subclass members who purchased or leased new or certified previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

304. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of Volkswagen's fraudulent concealment of its emissions scheme, which has greatly tarnished the Volkswagen and Audi brand names attached to Plaintiff's and Subclass members' vehicles and made any reasonable consumer reluctant to purchase any of the Defeat Device Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

305. Accordingly, Volkswagen is liable to Plaintiff and Subclass members for

damages in an amount to be proven at trial.

306. Volkswagen's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiff's and Subclass members' rights and the representations that Volkswagen made to them, in order to enrich Volkswagen. To the extent permitted under applicable law Volkswagen's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

F. Claims on Behalf of the Texas Subclass

COUNT I
VIOLATIONS OF THE DECEPTIVE TRADE PRACTICES ACT
(TEX. BUS. & COM. CODE §§ 17.41, *et seq.*)

307. Plaintiff Jose Cavaliere ("Plaintiff," for purposes of all Texas Subclass Counts) incorporates by reference all preceding allegations as though fully set forth herein.

308. Plaintiff brings this Count on behalf of the Texas Subclass.

309. Plaintiff intends to assert a claim under the Texas Deceptive Trade Practices Act ("TDTPA"), which makes it unlawful to commit "[f]alse, misleading, or deceptive acts or practices in the conduct of any trade or commerce." TEX. BUS. & COM. CODE § 17.46. Plaintiff will make a demand in satisfaction of TEX. BUS. & COM. CODE § 17.45(2), and may amend this Complaint to assert claims under the TDTPA once the required 60 days have elapsed. This paragraph is included for purposes

of notice only and is not intended to actually assert a claim under the TDTPA.

COUNT II
BREACH OF CONTRACT
(Based on Texas Law)

310. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

311. Plaintiff brings this Count on behalf of the Texas Subclass.

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

313. Each and every sale or lease of a Defeat Device Vehicle constitutes a contract between Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the other Subclass members defective Defeat Device Vehicles and by misrepresenting or failing to disclose the existence of the "defeat

device” and/or defective design, including information known to Volkswagen rendering each Defeat Device Vehicle less safe and emissions compliant, and thus less valuable, than vehicles not equipped with CleanDiesel engine systems and “defeat devices.”

314. Volkswagen failed to deliver to Plaintiff and the Subclass what it contractually promised to provide in exchange for the valid consideration they paid, breaching Subclass Members’ contracts.

315. As a direct and proximate result of Volkswagen’s breach of contract, Plaintiff and the Subclass 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 and relief allowed by law.

COUNT III
FRAUD BY CONCEALMENT
(Based on Texas Law)

316. Plaintiff realleges and incorporates by reference all paragraphs as though fully set forth herein.

317. This claim is brought on behalf of the Texas Subclass.

318. Volkswagen intentionally concealed and suppressed material facts concerning the quality of the Defeat Device Vehicles. As alleged in this Complaint, notwithstanding references in the very model names of the subject vehicles as “Clean Diesel,” or to their engines as “TDI Clean Diesel” engines, Volkswagen engaged in a secret scheme to evade federal and state vehicle emissions standards by installing

software designed to conceal its vehicles' emissions of the pollutant nitrogen oxide, which contributes to the creation of ozone and smog. The software installed on the vehicles at issue was designed nefariously to kick-in during emissions certification testing, such that the vehicles would show far lower emissions than when actually operating on the road. The result was what Volkswagen intended: vehicles passed emissions certifications by way of deliberately induced false readings. Reportedly, Volkswagen's deliberate, secret scheme resulted in noxious emissions from these vehicles at 40 times applicable standards.

319. Plaintiff and Subclass members reasonably relied upon Volkswagen's false representations. They had no way of knowing that Volkswagen's representations were false and gravely misleading. As alleged herein, Volkswagen employed extremely sophisticated methods of deception. Plaintiff and Subclass members did not, and could not, unravel Volkswagen's deception on their own.

320. Volkswagen concealed and suppressed material facts concerning what is evidently the true culture of Volkswagen – one characterized by an emphasis on profits and sales above compliance with federal and state clean air law, and emissions regulations that are meant to protect the public and consumers. It also emphasized profits and sales about the trust that Plaintiff and Subclass members placed in its representations. As one customer, Priya Shah, put it in a quotation cited by the *Los Angeles Times* in a September 18, 2015 article, "It's just a blatant disregard and intentional manipulation of

the system. That's just a whole other level of not only lying to the government, but also lying to your consumer. People buy diesel cars from Volkswagen because they feel they are clean diesel cars." In the words of Ms. Shah, which no doubt reflect the sentiments of all other "CleanDiesel" vehicle buyers, "I don't want to be spewing noxious gases into the environment."

321. Necessarily, Volkswagen also took steps to ensure that its employees did not reveal the details of its scheme to regulators or consumers, including Plaintiff and Subclass members. Volkswagen did so in order to boost the reputations of its vehicles and to falsely assure purchasers and lessors of its vehicles, including certified previously owned vehicles, that Volkswagen is a reputable manufacturer that complies with applicable law, including federal and state clean air law and emissions regulations, and that its vehicles likewise comply with applicable law and regulations. Volkswagen's false representations were material to consumers, both because they concerned the quality of the Defeat Device Vehicles, including their compliance with applicable federal and state law and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As Volkswagen well knew, its customers, including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or leasing were *clean* diesel cars, and they paid accordingly.

322. Volkswagen had a duty to disclose the emissions scheme it engaged in with

respect to the vehicles at issue because knowledge of the scheme and its details were known and/or accessible only to Volkswagen, because Volkswagen had exclusive knowledge as to implementation and maintenance of its scheme, and because Volkswagen knew the facts were not known to or reasonably discoverable by Plaintiff or Subclass members. Volkswagen also had a duty to disclose because it made general affirmative representations about the qualities of its vehicles with respect to emissions standards, starting with references to them as *clean* diesel cars, or cars with *clean* diesel engines, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding its emissions scheme, the actual emissions of its vehicles, its actual philosophy with respect to compliance with federal and state clean air law and emissions regulations, and its actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiff, Volkswagen had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Defeat Device Vehicles purchased or leased by Plaintiff and Class members. Whether a manufacturer's products comply with federal and state clean air law and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. Volkswagen represented to Plaintiff and Subclass members that they were purchasing *clean* diesel vehicles, and certification testing

appeared to confirm this—except that, secretly, Volkswagen had subverted the testing process thoroughly.

323. Volkswagen actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect its profits and to avoid the perception that its vehicles did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost Volkswagen money, and it did so at the expense of Plaintiff and Subclass members.

324. On information and belief, Volkswagen has still not made full and adequate disclosures, and continues to defraud Plaintiff and Subclass members by concealing material information regarding the emission qualities of its referenced vehicles and its emissions scheme.

325. Plaintiff and Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly “clean” diesel cars manufactured by Volkswagen, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiff's and Subclass members' actions were justified. Volkswagen was in exclusive control of the material facts, and such facts were not known to the public, Plaintiff, or Subclass members.

326. Because of the concealment and/or suppression of the facts, Plaintiff and

Subclass members have sustained damage because they own vehicles that are diminished in value as a result of Volkswagen's concealment of the true quality and quantity of those vehicles' emissions and Volkswagen's failure to timely disclose the actual emission qualities and quantities of hundreds of thousands of Volkswagen- and Audi-branded vehicles and the serious issues engendered by Volkswagen's corporate policies. Had Plaintiff and Subclass members been aware of Volkswagen's emissions schemes with regard to the vehicles at issue, and the company's callous disregard for compliance with applicable federal and state law and regulations, Plaintiff and Subclass members who purchased or leased new or certified previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

327. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of Volkswagen's fraudulent concealment of its emissions scheme, which has greatly tarnished the Volkswagen and Audi brand names attached to Plaintiff's and Subclass members' vehicles and made any reasonable consumer reluctant to purchase any of the Defeat Device Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

328. Accordingly, Volkswagen is liable to Plaintiff and Subclass members for damages in an amount to be proven at trial.

329. Volkswagen's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiff's and Subclass

members' rights and the representations that Volkswagen made to them, in order to enrich Volkswagen. To the extent permitted under applicable law Volkswagen's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

G. Claims on Behalf of the Virginia Subclass

**COUNT I
VIOLATION OF THE VIRGINIA CONSUMER PROTECTION ACT (VA.
CODE ANN §§ 59.1-196, *et seq.*)**

330. Plaintiff Nicholas Allen ("Plaintiff," for purposes of all Virginia Subclass Counts) incorporates by reference all preceding allegations as though fully set forth herein.

331. Plaintiff brings this Count on behalf of the Virginia Subclass.

332. Volkswagen, Plaintiff, and the Virginia Subclass are "persons" as defined by Va. Code Ann. § 59.1-198.

333. The transactions between Plaintiff and the other Class members on one hand and Volkswagen on the other, leading to the purchase or lease of the Defeat Device Vehicles by Plaintiff and the other Subclass members, are "consumer transactions" as defined by Va. Code Ann. § 59.1-198 because the Defeat Device Vehicles were purchased or leased primarily for personal, family or household purposes.

334. In the course of Volkswagen's business, it willfully failed to disclose and actively concealed the "defeat device" in Defeat Device Vehicles as described above.

Accordingly, Volkswagen engaged in acts and practices violating Va. Code Ann. § 59.1-200(A), including representing that Defeat Device Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Defeat Device Vehicles are of a particular standard and quality when they are not; advertising Defeat Device Vehicles with the intent not to sell them as advertised; and otherwise engaging in conduct likely to deceive.

335. Volkswagen's actions as set forth above occurred in the conduct of trade and commerce.

336. Volkswagen's conduct proximately caused injuries to Plaintiff and the other Class members.

337. Plaintiff and the other Subclass members were injured as a result of Volkswagen's conduct in that Plaintiff and the other Subclass members overpaid for their Defeat Device Vehicles and did not receive the benefit of their bargain, and their Defeat Device Vehicles have suffered a diminution in value. These injuries are the direct and natural consequences of Volkswagen's misrepresentations and omissions.

338. Volkswagen actively and willfully concealed and/or suppressed the material facts regarding the defective and non-EPA compliant CleanDiesel engine system, the "defeat device," and the Defeat Device Vehicles, in whole or in part, with the intent to deceive and mislead Plaintiff and the other Subclass members and to induce Plaintiff and the other Subclass members to purchase or lease Defeat Device Vehicles at a higher

price, which did not match the Defeat Device Vehicles' true value. Plaintiff and the other Subclass members therefore seek treble damages.

COUNT II
BREACH OF CONTRACT
(Based on Virginia Law)

339. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

340. Plaintiff brings this Count on behalf of the Virginia Subclass.

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

342. Each and every sale or lease of a Defeat Device Vehicle constitutes a contract between Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the other Subclass members defective Defeat

Device Vehicles and by misrepresenting or failing to disclose the existence of the “defeat device” and/or defective design, including information known to Volkswagen rendering each Defeat Device Vehicle less safe and emissions compliant, and thus less valuable, than vehicles not equipped with CleanDiesel engine systems and “defeat devices.”

343. Volkswagen failed to deliver to Plaintiff and the Subclass what it contractually promised to provide in exchange for the valid consideration they paid, breaching Subclass Members’ contracts.

344. As a direct and proximate result of Volkswagen’s breach of contract, Plaintiff and the Subclass 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 and relief allowed by law.

COUNT III
FRAUD BY CONCEALMENT
(Based on Virginia Law)

345. Plaintiff realleges and incorporates by reference all paragraphs as though fully set forth herein.

346. This claim is brought on behalf of the Virginia Subclass.

347. Volkswagen intentionally concealed and suppressed material facts concerning the quality of the Defeat Device Vehicles. As alleged in this Complaint, notwithstanding references in the very model names of the subject vehicles as “Clean Diesel,” or to their engines as “TDI Clean Diesel” engines, Volkswagen engaged in a

secret scheme to evade federal and state vehicle emissions standards by installing software designed to conceal its vehicles' emissions of the pollutant nitrogen oxide, which contributes to the creation of ozone and smog. The software installed on the vehicles at issue was designed nefariously to kick-in during emissions certification testing, such that the vehicles would show far lower emissions than when actually operating on the road. The result was what Volkswagen intended: vehicles passed emissions certifications by way of deliberately induced false readings. Reportedly, Volkswagen's deliberate, secret scheme resulted in noxious emissions from these vehicles at 40 times applicable standards.

348. Plaintiff and Subclass members reasonably relied upon Volkswagen's false representations. They had no way of knowing that Volkswagen's representations were false and gravely misleading. As alleged herein, Volkswagen employed extremely sophisticated methods of deception. Plaintiff and Subclass members did not, and could not, unravel Volkswagen's deception on their own.

349. Volkswagen concealed and suppressed material facts concerning what is evidently the true culture of Volkswagen – one characterized by an emphasis on profits and sales above compliance with federal and state clean air law, and emissions regulations that are meant to protect the public and consumers. It also emphasized profits and sales about the trust that Plaintiff and Subclass members placed in its representations. As one customer, Priya Shah, put it in a quotation cited by the *Los Angeles Times* in a

September 18, 2015 article, “It’s just a blatant disregard and intentional manipulation of the system. That’s just a whole other level of not only lying to the government, but also lying to your consumer. People buy diesel cars from Volkswagen because they feel they are clean diesel cars.” In the words of Ms. Shah, which no doubt reflect the sentiments of all other “CleanDiesel” vehicle buyers, “I don’t want to be spewing noxious gases into the environment.”

350. Necessarily, Volkswagen also took steps to ensure that its employees did not reveal the details of its scheme to regulators or consumers, including Plaintiff and Subclass members. Volkswagen did so in order to boost the reputations of its vehicles and to falsely assure purchasers and lessors of its vehicles, including certified previously owned vehicles, that Volkswagen is a reputable manufacturer that complies with applicable law, including federal and state clean air law and emissions regulations, and that its vehicles likewise comply with applicable law and regulations. Volkswagen’s false representations were material to consumers, both because they concerned the quality of the Defeat Device Vehicles, including their compliance with applicable federal and state law and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As Volkswagen well knew, its customers, including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or leasing were *clean* diesel cars, and they paid accordingly.

351. Volkswagen had a duty to disclose the emissions scheme it engaged in with respect to the vehicles at issue because knowledge of the scheme and its details were known and/or accessible only to Volkswagen, because Volkswagen had exclusive knowledge as to implementation and maintenance of its scheme, and because Volkswagen knew the facts were not known to or reasonably discoverable by Plaintiff or Subclass members. Volkswagen also had a duty to disclose because it made general affirmative representations about the qualities of its vehicles with respect to emissions standards, starting with references to them as *clean* diesel cars, or cars with *clean* diesel engines, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding its emissions scheme, the actual emissions of its vehicles, its actual philosophy with respect to compliance with federal and state clean air law and emissions regulations, and its actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiff, Volkswagen had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Defeat Device Vehicles purchased or leased by Plaintiff and Class members. Whether a manufacturer's products comply with federal and state clean air law and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. Volkswagen represented to Plaintiff and Subclass

members that they were purchasing *clean* diesel vehicles, and certification testing appeared to confirm this—except that, secretly, Volkswagen had subverted the testing process thoroughly.

352. Volkswagen actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect its profits and to avoid the perception that its vehicles did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand’s image and cost Volkswagen money, and it did so at the expense of Plaintiff and Subclass members.

353. On information and belief, Volkswagen has still not made full and adequate disclosures, and continues to defraud Plaintiff and Subclass members by concealing material information regarding the emission qualities of its referenced vehicles and its emissions scheme.

354. Plaintiff and Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly “clean” diesel cars manufactured by Volkswagen, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiff’s and Subclass members’ actions were justified. Volkswagen was in exclusive control of the material facts, and such facts were not known to the public, Plaintiff, or Subclass members.

355. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass members have sustained damage because they own vehicles that are diminished in value as a result of Volkswagen's concealment of the true quality and quantity of those vehicles' emissions and Volkswagen's failure to timely disclose the actual emission qualities and quantities of hundreds of thousands of Volkswagen- and Audi-branded vehicles and the serious issues engendered by Volkswagen's corporate policies. Had Plaintiff and Subclass members been aware of Volkswagen's emissions schemes with regard to the vehicles at issue, and the company's callous disregard for compliance with applicable federal and state law and regulations, Plaintiff and Subclass members who purchased or leased new or certified previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

356. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of Volkswagen's fraudulent concealment of its emissions scheme, which has greatly tarnished the Volkswagen and Audi brand names attached to Plaintiff's and Subclass members' vehicles and made any reasonable consumer reluctant to purchase any of the Defeat Device Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

357. Accordingly, Volkswagen is liable to Plaintiff and Subclass members for damages in an amount to be proven at trial.

358. Volkswagen's acts were done wantonly, maliciously, oppressively,

deliberately, with intent to defraud, and in reckless disregard of Plaintiff's and Subclass members' rights and the representations that Volkswagen made to them, in order to enrich Volkswagen. To the extent permitted under applicable law Volkswagen's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

IX. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and members of the Classes respectfully request that the Court enter judgment in their favor and against Volkswagen, as follows:

A. That the Court certify the proposed Classes and appoint Plaintiffs' counsel as Class Counsel;

B. That the Court temporarily and permanently enjoin Volkswagen from continuing the unlawful, deceptive, fraudulent, and unfair business practices alleged in this Complaint;

C. That the Court order injunctive relief in the form of a recall or free replacement program;

D. That the Court award restitution, damages, and disgorgement in an amount to be determined at trial;

E. That the court adjudge that acceptance has been revoked;

F. That the Court award treble and/or punitive damages as permitted by applicable laws;

G. That the Court order Volkswagen to pay both pre- and post-judgment interest on any amounts awarded;

H. That the Court award costs and attorneys' fees; and

I. That the Court order such other or further relief as may be appropriate.

X. DEMAND FOR JURY TRIAL

Plaintiffs demand a jury trial on all counts where jury trial is permitted.

Respectfully submitted,

Dated: October 6, 2015

/s/ Caleb Marker

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CIVIL COVER SHEET

County in which action arose OAKLAND

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.

I. (a) PLAINTIFFS
DOMINIC TROFFER, et al.
(b) County of Residence of First Listed Plaintiff out of state
(c) Attorneys (Firm Name, Address, and Telephone Number)
Caleb Marker, SBN P70963; Zimmerman Reed, LLP
555 E. Ocean Blvd., Ste. 500; Long Beach, CA 90802
Tel. 877-500-8780

DEFENDANTS
VOLKSWAGEN GROUP OF AMERICA, INC.
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)
PTF DEF
Citizen of This State 1 1
Citizen of Another State 2 2
Citizen or Subject of a Foreign Country 3 3
Incorporated or Principal Place of Business In This State 4 4
Incorporated and Principal Place of Business In Another State 5 5
Foreign Nation 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT: 110 Insurance, 120 Marine, 130 Miller Act, 140 Negotiable Instrument, 150 Recovery of Overpayment & Enforcement of Judgment, 151 Medicare Act, 152 Recovery of Defaulted Student Loans (Excludes Veterans), 153 Recovery of Overpayment of Veteran's Benefits, 160 Stockholders' Suits, 190 Other Contract, 195 Contract Product Liability, 196 Franchise.
REAL PROPERTY: 210 Land Condemnation, 220 Foreclosure, 230 Rent Lease & Ejectment, 240 Torts to Land, 245 Tort Product Liability, 290 All Other Real Property.
TORTS: PERSONAL INJURY: 310 Airplane, 315 Airplane Product Liability, 320 Assault, Libel & Slander, 330 Federal Employers' Liability, 340 Marine, 345 Marine Product Liability, 350 Motor Vehicle, 355 Motor Vehicle Product Liability, 360 Other Personal Injury, 362 Personal Injury - Medical Malpractice.
FORFEITURE/PENALTY: 625 Drug Related Seizure of Property 21 USC 881, 690 Other.
LABOR: 710 Fair Labor Standards Act, 720 Labor/Management Relations, 740 Railway Labor Act, 751 Family and Medical Leave Act, 790 Other Labor Litigation, 791 Employee Retirement Income Security Act.
IMMIGRATION: 462 Naturalization Application, 465 Other Immigration Actions.
BANKRUPTCY: 422 Appeal 28 USC 158, 423 Withdrawal 28 USC 157.
PROPERTY RIGHTS: 820 Copyrights, 830 Patent, 840 Trademark.
SOCIAL SECURITY: 861 HIA (1395ff), 862 Black Lung (923), 863 DIWC/DIWW (405(g)), 864 SSID Title XVI, 865 RSI (405(g)).
FEDERAL TAX SUITS: 870 Taxes (U.S. Plaintiff or Defendant), 871 IRS—Third Party 26 USC 7609.
OTHER STATUTES: 375 False Claims Act, 400 State Reapportionment, 410 Antitrust, 430 Banks and Banking, 450 Commerce, 460 Deportation, 470 Racketeer Influenced and Corrupt Organizations, 480 Consumer Credit, 490 Cable/Sat TV, 850 Securities/Commodities/Exchange, 890 Other Statutory Actions, 891 Agricultural Acts, 893 Environmental Matters, 895 Freedom of Information Act, 896 Arbitration, 899 Administrative Procedure Act/Review or Appeal of Agency Decision, 950 Constitutionality of State Statutes.

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. § 1332(d) and RICO 18 U.S.C. § 1961 et seq.
Brief description of cause:
Fraud and intentional deception on class regarding fuel economy and emissions of VW and Audi diesel autos

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

VIII. RELATED CASE(S) IF ANY
(See instructions): JUDGE CHIEF JUDGE GERALD E. ROSEN DOCKET NUMBER 2:15-cv-13360

DATE October 6, 2015 SIGNATURE OF ATTORNEY OF RECORD /s/ Caleb Marker

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

PURSUANT TO LOCAL RULE 83.11

1. Is this a case that has been previously dismissed?

Yes
 No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

2. Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion cases are matters in which it appears substantially similar evidence will be offered or the same or related parties are present and the cases arise out of the same transaction or occurrence.)

Yes
 No

If yes, give the following information:

Court: USDC EDMI

Case No.: 2:15-cv-13360

Judge: Chief Presiding Judge Gerald E. Rosen

Notes :

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:

* **Enter the county in which the action arose.**

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

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