IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

MARLENE TURVILL, individually and on behalf of all similarly situated persons,	)	
	)	No.:
Plaintiff,	)	
v.	)	**JURY TRIAL DEMANDED**
VOLKSWAGEN GROUP OF AMERICA, INC., and VOLKSWAGEN AG,	)	
Defendants.	)	

CLASS ACTION COMPLAINT

Plaintiff MARLENE TURVILL ("Mrs. Turvill" or "Plaintiff"), by the undersigned counsel, brings this action on behalf of herself and all similarly-situated persons who purchased or leased "Affected Vehicles" (*defined below*) manufactured, distributed, or sold by Defendants VOLKSWAGEN GROUP OF AMERICA, INC. and VOLKSWAGEN AG (collectively, "Volkswagen" or "Defendants") for claims under federal and state law, and states for her Complaint against Defendants as follows:

NATURE OF THE CLAIM

1. Since at least 2009, Volkswagen has intentionally and systematically cheated its customers, lied to the government, violated the Clean Air Act, and misled the public in connection with its marketing and sale of vehicles equipped with so-called "TDI® clean diesel engines." Volkswagen's deceptive acts duped eco-friendly consumers, including Mrs. Turvill, into purchasing cars with diesel engines that Volkswagen falsely claimed meet the U.S. emission standards without sacrificing efficiency, torque, and acceleration. The affected "clean diesel" cars include the Jetta, the Jetta Sportwagen, the Golf, the Audi A3, the Beetle, the Beetle Convertible, the Passat, and the Golf Sportwagen (the "Affected Vehicles"). Volkswagen's

"clean diesel" cars have now been determined to be anything but clean. Volkswagen has admitted that discrepancies related to the Affected Vehicles impact "some eleven million vehicles worldwide," and its officers have further admitted that the company was "dishonest," has "totally screwed up," and has engaged in "misconduct."

2. Volkswagen secretly inserted an intricate code in the software contained in the Affected Vehicles' electronic control module ("ECM"), which the Environmental Protection Agency ("EPA") calls a "defeat device," that tracked steering and pedal movements. When those movements suggested that the car was being tested for nitrous-oxide emissions in a lab, the car automatically turned its pollution controls on. The rest of the time, the pollution controls were switched off. As a result of Volkswagen's illegal practices, the Affected Vehicles were able to bypass EPA compliance testing, and spew as much as 40 times the pollution as was allowable by law.

3. Similar to at least 482,000 others who purchased or leased Affected Vehicles since 2009, Mrs. Turvill paid a premium to purchase a 2013 Jetta, with Clean Diesel TDI, precisely because Defendants touted it as an environmentally-friendly car, a cause that is of utmost importance to Plaintiff, with low emissions and an adequately-powerful engine. Individually and on behalf of all similarly-situated persons, Plaintiff seeks redress for Defendants' fraud and deception, breach of contract, and breach of warranties, among other claims set forth below.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(d) because the amount in controversy exceeds $5,000,000, exclusive of interest and costs, and

minimal diversity exists because Plaintiff and many Class Members are citizens of states different from Defendants' home states.

5. The Court has personal jurisdiction over all Defendants under Illinois law and the U.S. Constitution because they conduct regular and systematic business in the State of Illinois, have sufficient minimum contacts in the State of Illinois, and each Defendant otherwise intentionally avails itself of the benefits of the State of Illinois through the promotion, marketing, and sale of the Affected Vehicles. The Court also has personal jurisdiction over Defendants under 18 U.S.C. § 1965 because they are found or have agents or transact business in this District. Furthermore, a significant number of Defendants' vehicles, including the Affected Vehicles, are sold and leased in the State of Illinois, and, upon information and belief, the State of Illinois is participating in an investigation into Volkswagen's use of "defeat devices" in the Affected Vehicles through the State's consumer protection and environmental protection divisions.

6. Venue is proper in this District under 28 U.S.C. § 1391(a) because a substantial part of the events or omissions giving rise to these claims occurred in this District. Plaintiff resides in this District and Volkswagen has advertised, marketed, sold, and leased the Affected Vehicles within this District. The wrongful acts alleged herein have affected members of the putative class who live within this District.

PARTIES

7. Plaintiff Marlene Turvill is an individual residing in the City of Evanston, located in Cook County, Illinois. In November 2012, she purchased a new 2013 Volkswagen Jetta with a "TDI® clean diesel engine" from the Autobarn, an authorized Volkswagen dealer in Evanston, Illinois. Plaintiff is a physician who treats patients with head trauma and other

injuries. In addition, she operates an online store called HealthyGreenGoods.com, which specializes in organic and allergen-free products, including air and water filters. Prior to the events herein alleged, Plaintiff was a devoted customer of Volkswagen, and anticipated driving the vehicle for professional and personal reasons, including taking her two children to school. Plaintiff still owns this vehicle.

8. Defendant Volkswagen Group of America, Inc. is a New Jersey corporation, with its principal place of business located in Herndon, Virginia. It does business in all 50 states and in the District of Columbia. At all relevant times, it designed, manufactured, imported, distributed, sold, warranted, advertised, and marketed the Affected Vehicles with the "TDI® clean diesel engine" that contained a secret "defeat device" in the vehicles' ECM software. Volkswagen also developed and disseminated the owner's manuals and warranty booklets, advertisements, and other promotional materials relating to the Affected Vehicles.

9. Defendant Volkswagen AG is a foreign, for-profit corporation. Its principal place of business is at 38436 Wolfsburg, Germany. Volkswagen AG is one of the world's largest car manufacturers. It owns and controls the brand names Volkswagen, Rolls-Royce, Bentley, Audi, Lamborghini, Skoda, and Seat. At all relevant times, it designed, manufactured, imported, distributed, sold, warranted, advertised, and marketed the Affected Vehicles with the "TDI® clean diesel engine" that contained a secret "defeat device" in the ECM software. Volkswagen AG delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the United States and the State of Illinois.

FACTUAL ALLEGATIONS

A. The Clean Air Act Prohibits "Defeat Devices."

10. The Clean Air Act and its implementing regulations were created to reduce nitrous oxides and other pollutants emitted by automobiles and require automobile manufacturers to install emission control devices to ensure that each diesel vehicle sold in the U.S. complies with Clean Air Act emission standards during operation, as well as to certify that such devices have been installed, are operative, and that they meet the standards.

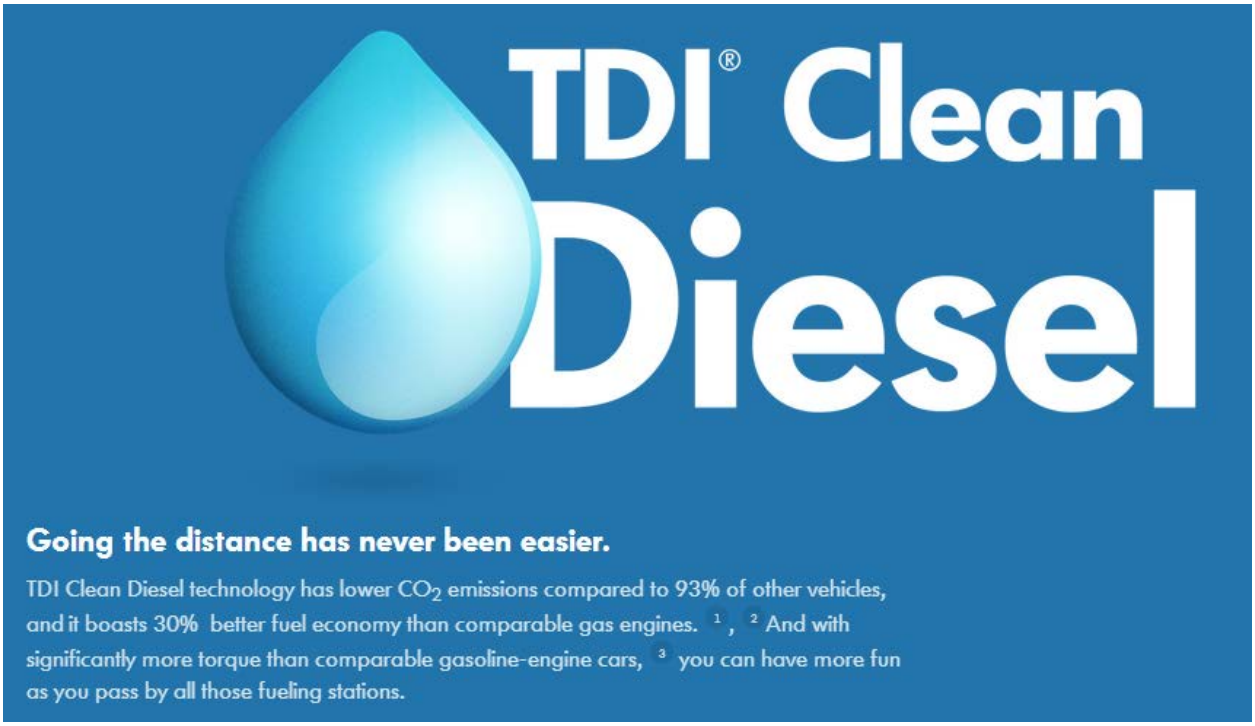
11. To accomplish this, the EPA administers a certification program and issues certificates of conformity ("COC") to compliant vehicles. 40 C.F.R. § 86.1811-04. Automobile manufacturers must first submit an application to obtain a COC, and must justify each auxiliary emission control device ("AECD"), which are design elements that can modulate, delay, or deactivate the operation of any part of the emission control system that reduces emission effectiveness, and explain why that AECD is not a "defeat device." 40 C.F.R. § 86.1844-01(d)(11). Cars with "defeat devices" cannot be certified because they are unlawful under the Clean Air Act and illegal to sell in the U.S. *See* 42 U.S.C. § 7522(a)(3)(B); 40 C.F.R. § 86.1854-12(a)(3)(ii).

B. The Affected Vehicles Were Manufactured With Illegal "Defeat Devices."

12. Volkswagen's advertisements assure consumers that its vehicles are equipped with the cleanest diesel engines in the market that are environmentally friendly and meet federal and state emission standards.

13. Beginning in model year 2009, Volkswagen implemented its "clean diesel" campaign and marketed a technology called TDI – short for turbocharged direct injection – as

delivering more torque, better fuel economy, and reduced CO2 emissions, as reflected in this Volkswagen web advertisement:



14. Some advertisements specifically emphasized the low emissions and eco-friendliness of the vehicles:

15. Other advertisements addressed the full package, implying that in contrast to the "stinky, smoky, and sluggish" diesel vehicles of old, Volkswagen's new diesel vehicles were clean, efficient, and powerful all at once:

16. Volkswagen's "clean diesel" representations, although false, matched others concerning Volkswagen's alleged environmental conscience:

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

17. Similarly, Volkswagen's marketing for its Audi line of vehicles represented that "Audi pioneered TDI® clean diesel engines to deliver more torque, lower fuel consumption and

[1] http://www.volkswagengroupamerica.com/environment.html (last visited Sept. 25, 2015).

reduce CO2 emissions, compared to equivalent gasoline engines. The result of this revolutionary engineering delivers remarkable performance, while achieving increased fuel economy."[2]

18. Thus, Volkswagen sought to create an image of its diesel vehicles as having the cleanest diesel engines, being environmentally friendly, and meeting federal and state emission regulations.

19. To date, Volkswagen has sold at least 482,000 Affected Vehicles in the U.S. In 2013 alone, having exploited the environmental-sustainability theme, Volkswagen sold more than 100,000 "clean diesel" cars in the U.S., including Illinois.

20. Volkswagen's claims regarding environmental sustainability, however, cannot be reconciled with recent testing that shows the Affected Vehicles were freely spewing hazardous, smog-forming compounds in amounts up to 40 times the amount of emissions permitted by EPA standards. These were false representations on which the public, including Mrs. Turvill, relied, in deciding whether to purchase a diesel-engine vehicle.

21. A May 15, 2014 report issued by West Virginia University's Center for Alternative Fuels, Engines & Emissions found significantly elevated nitrous oxide emissions when the Affected Vehicles were driven in day-to-day, real-world conditions. That report triggered an enormous investigation by state and federal regulators, including the EPA and the California Air Resources Board ("CARB").

22. These investigations confirmed that Volkswagen intentionally evaded the EPA's test standards by manufacturing and installing software in the Affected Vehicles that sensed when the vehicle was being tested for compliance with EPA emission standards. According to the EPA Notice of Violation dated September 18, 2015 (attached hereto as Exhibit A),

[2] http://www.audiusa.com/technology/efficiency/tdi (last visited Sept. 27, 2015).

Volkswagen created a "switch" that "senses whether the vehicle is being tested" based on various inputs that "precisely track the parameters of" the EPA emission standards test procedure. When tested, the ECM software activated the pollution-control devices and produced compliant emission results under a "dyno calibration." During normal vehicle operation, however, the "switch" activated and ran a separate "road calibration," which reduced the effectiveness of the emission control system, resulting in increased fuel mileage, and increased emissions of nitrous oxides 10 to 40 times above the permissible EPA levels, depending on the type of drive cycle (*i.e.*, city or highway driving). (*See* Ex. A at 4.)

23. Nitrous oxide is a gas that reacts with volatile organic compounds in the atmosphere, and its emission is regulated by the EPA. It is a highly toxic emission. Nitrous oxide emissions not only contribute to nitrogen dioxide, ground-level ozone, and fine particulate pollution, but also carry serious health risks and are linked with asthma attacks, respiratory illness, and other ailments. Given the toxic nature of nitrous oxide, the emission of the pollutant from vehicles, including the Affected Vehicles, is regulated and subject to specific limitations. *See* 40 C.F.R. § 86.1811-04.

24. Volkswagen's "road calibration" and "switch" are illegal "defeat devices," which "bypass, defeat, or render inoperative elements of the vehicles' emission control system that exist to comply with [Clean Air Act] emission standards," and which Volkswagen did not reveal to the EPA in the COC applications it submitted. (*See* Ex. A at 4.) Volkswagen, therefore, violated Section 203(a)(3)(B) of the Clean Air Act, as well as Section 203(a)(1), each time it sold, offered for sale, or introduced an Affected Vehicle into commerce. (*Id.*) In short, Volkswagen cheated to get the results it desired.

25. This is not the first time either. Volkswagen had a previous run-in with the EPA for selling vehicles that used "defeat devices" to disable pollution-control systems in four models of its vehicles produced in 1973. It ultimately paid a $120,000 fine in March 1974 to settle a complaint filed by the EPA.[3]

C. Volkswagen Admitted It Sold Vehicles Containing "Defeat Devices."

26. The EPA and CARB presented emission reports to Volkswagen, and the EPA ordered Volkswagen to recall the Affected Vehicles and repair them so that they comply with emission requirements during normal operation. This culminated in a voluntary software recall in December 2014, however, the recall failed to remediate the pollution problem. Nitrous oxide emissions were still "significantly higher" than expected during CARB's testing, and Volkswagen failed to adequately explain the higher test results. (*See* CARB letter dated 9/18/15 at 2, attached hereto as Exhibit B.) Indeed, Volkswagen will not be able to make the Affected Vehicles comply with emission standards without substantially degrading their horsepower and efficiency.

27. In a meeting with EPA and CARB lab staff on September 3, 2015, and only after it became clear that CARB and the EPA would not approve the COCs for Volkswagen's 2016 model year diesel vehicles, Volkswagen admitted "it had designed and installed a defeat device in these vehicles in the form of a sophisticated software algorithm that detected when a vehicle was undergoing emissions testing." (Ex. A at 4; *see also* Ex. B at 2-3.)

28. On September 20, 2015, Dr. Martin Winterkorn, then-CEO of Volkswagen AG, who has since resigned, stated, "I personally am deeply sorry that we have broken the trust of our

[3] http://www.cnbc.com/2015/09/23/vw-had-previous-run-in-over-defeat-devices.html (last visited Sept. 24, 2015).

customers and the public . . . Volkswagen has ordered an external investigation of this matter." (*See* Exhibit C, attached hereto.)

29. The next day, during his address at the launch of the 2016 VW Passat on September 21, 2015, Michael Horn, the North America CEO of Volkswagen, admitted: "Our company was dishonest with the EPA and the California Air Resources board, and with all of you and in my German words, we have totally screwed up . . . We have to make things right, with the government, the public, our customers, our employees and also very important our dealers . . . ."[4]

30. The following day, on September 22, 2015, Volkswagen issued an ad-hoc release, stating that it was "working at full speed to clarify irregularities concerning a particular software used in diesel engines . . . Discrepancies relate to vehicles with Type EA 189 engines, involving some eleven million vehicles worldwide. A noticeable deviation between bench test results and actual road use was established solely for this type of engine. Volkswagen is working intensely to eliminate these deviations through technical measures." (*See* 9/22/15 Ad-Hoc Release, attached hereto as Exhibit D.) In conjunction with the ad-hoc release, Dr. Winterkorn issued another statement via video posted on Volkswagen's website that "[t]he irregularities in our Group's diesel engines go against everything Volkswagen stands for . . . Manipulation and Volkswagen – that must never be allowed to happen again . . . Millions of people all over the world trust our brands, our cars and our technologies. I am deeply sorry that we have broken this trust. I would like to make a formal apology to our customers, to the authorities and to the general public for this misconduct. We will do everything necessary to reverse the damage."[5]

[4] http://www.cnbc.com/2015/09/21/volkswagen-us-ceo-screwed-up-on-eca-emissions-diesel-test-rigging.html (last visited Sept. 24, 2015).
[5] http://www.carscoops.com/2015/09/watch-vw-group-ceos-video-apology-to.html (last visited Sept. 28, 2015).

31. Then, on September 23, 2015, Dr. Winterkorn resigned as CEO, calling this a "grave crisis" and stating that "I am shocked by the events of the past few days. Above all, I am stunned that misconduct on such a scale was possible in the Volkswagen Group. As CEO I accept responsibility for the irregularities that have been found in diesel engines and have therefore requested the Supervisory Board to agree on terminating my function as CEO of the Volkswagen Group." (*See* Exhibit E, attached hereto.)

D. Plaintiff And Class Members Have Suffered Actual Harm and Damages.

32. The vehicle purchased by Plaintiff, unknown to her at the time of purchase, was equipped with the above-mentioned "defeat device." Neither Volkswagen nor any of its agents, dealers, or other representatives informed Plaintiff of the existence of the "defeat device" or defective design of the "TDI® clean diesel engine" prior to purchase.

33. The use of the "defeat device" by Volkswagen has caused Plaintiff out-of-pocket loss, future attempted repairs, future additional fuel costs, and diminished value of her vehicle. Volkswagen knew about and purposefully used the "defeat device," but did not disclose the device or its effects to Plaintiff, so Plaintiff purchased her vehicle on the reasonable, but mistaken, belief that it complied with U.S. emission standards, was properly certified by the EPA, and would retain all of its operating characteristics throughout its useful life. Volkswagen compounded the deception by charging Plaintiff and the Class Members a significant premium.

34. Further, Plaintiff and Class Members did not receive the "TDI® clean diesel engine" they bargained for due to Volkswagen's false statements and fraudulent misrepresentations. Plaintiff selected and ultimately purchased her vehicle, in part, because of the "TDI® clean diesel engine," as represented through Volkswagen's advertisements and representations. None of the advertisements reviewed or representations that Plaintiff received

contained any disclosure relating to the "defeat device" or that Volkswagen had purposefully falsified its certification of EPA compliance. Had Volkswagen disclosed that the "TDI® clean diesel engine" in Plaintiff's vehicle actually emitted up to 40 times the permitted levels of pollutants, including nitrous oxide, Plaintiff would never have purchased her Affected Vehicle, or would have paid significantly less than the premium she did pay for the vehicle, if it could even have been legally marketed and sold.

35. Even if Volkswagen is able to recall and make the roughly 482,000 Affected Vehicles sold in the U.S. since 2009 compliant with EPA emission requirements at all times during normal operation, it will require substantially reducing the power and efficiency of the vehicles, causing Plaintiff and Class Members to suffer actual harm and damages because their vehicles will no longer perform as they did when purchased and as advertised. This will result in a diminution in value of every Affected Vehicle and it will cause owners to pay more for fuel while using their vehicles.

36. As a result of Volkswagen's unfair, deceptive, and fraudulent business practices, and its failure to disclose that its diesel engines emitted up to 40 times the allowable limits of pollutants under normal operating conditions, owners and lessees of the above-mentioned model cars have suffered losses in money and property and will continue to do so.

TOLLING OF THE STATUTE OF LIMITATIONS

Fraudulent Concealment

37. Upon information and belief, Defendants have known of the defects described above since at least 2009. Defendants intentionally installed the "defeat device" in the ECM software of the Affected Vehicles. Defendants knew of the defects long before Plaintiff and

Class Members purchased the Affected Vehicles, and have concealed from or failed to notify Plaintiff, Class Members, and the public of the full and complete nature of the defects.

38. Defendants intentionally concealed the defect from the public, the Plaintiff, and Class Members until September 2015. Plaintiff and the Class Members could not have discovered that Volkswagen was concealing its deception or fraud through the exercise of reasonable diligence within any applicable period of limitation. Nor could they know or have learned through the exercise of reasonable diligence that Volkswagen had misled the EPA by falsely certifying the required COC for each model of the Affected Vehicles, and that Volkswagen had falsely advertised, marketed, and warranted the engine system in the vehicles as a "TDI® clean diesel engine," when, in fact, it was an illegally dirty engine.

39. Any applicable statute of limitation has therefore been tolled by Defendants' knowledge and active concealment.

Estoppel

40. Defendants were under a continuous duty to disclose to Plaintiff and Class Members the true character, quality, and nature of the Affected Vehicles, but instead, actively concealed such information and knowingly made misrepresentations about the quality, reliability, characteristics, and performance of the vehicles. Plaintiff and Class Members reasonably relied upon Defendants' knowing and affirmative misrepresentations and active concealment of these facts. Based on the foregoing, Defendants are estopped from relying on any statutes of limitation in defense of this action.

Discovery Rule

41. The causes of action alleged herein did not accrue until Plaintiff and Class Members discovered that their vehicles had an illegal "defeat device." Plaintiff and Class

Members had no realistic ability to discern that the vehicles were defective until – at the earliest – September 18, 2015, when the EPA Notice of Violation became public.

CLASS ACTION ALLEGATIONS

42. Pursuant to Federal Rule of Civil Procedure 23, Plaintiff brings this class action on her own behalf and on behalf of all persons similarly situated as members of the proposed Class, subject to amendment and additional discovery as follows:

a. **Nationwide Class**: All persons or entities in the United States and District of Columbia who purchased or leased the following Affected Vehicles: 2009 model year VW Jetta and VW Jetta Sportwagen; 2010 model year VW Golf, VW Jetta, VW Jetta Sportwagen, and Audi A3; 2011 model year VW Golf, VW Jetta, VW Jetta Sportwagen, and Audi A3; 2012 model year VW Beetle, VW Beetle Convertible, VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3 and VW Passat; 2013 model year VW Beetle, VW Beetle Convertible, VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3 and VW Passat; 2014 model year VW Beetle, VW Beetle Convertible, VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3 and VW Passat; and 2015 model year VW Beetle, VW Beetle Convertible, VW Golf, VW Jetta, Audi A3, and VW Passat.

b. **Illinois Class:** All persons in the State of Illinois who purchased or leased the following Affected Vehicles: 2009 model year VW Jetta and VW Jetta Sportwagen; 2010 model year VW Golf, VW Jetta, VW Jetta Sportwagen, and Audi A3; 2011 model year VW Golf, VW Jetta, VW Jetta Sportwagen, and Audi A3; 2012 model year VW Beetle, VW Beetle Convertible, VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3 and VW Passat; 2013 model year VW Beetle, VW Beetle Convertible, VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3 and VW Passat; 2014 model year VW Beetle, VW Beetle Convertible, VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3 and VW Passat; and 2015 model year VW Beetle, VW Beetle Convertible, VW Golf, VW Jetta, Audi A3, and VW Passat.

43. Excluded from the Class are governmental entities, Defendants, including any entity in which Defendants have a controlling interest, along with their officers, directors, legal representatives, employees, assigns, heirs, successors, and wholly or partly owned subsidiaries or affiliates. Also excluded from the Class is any judge, magistrate, or judicial

officer presiding over this matter, and the members of their immediate families and judicial staff.

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

Numerosity and Ascertainability

45. This action satisfies the requirements of Federal Rule of Civil Procedure 23(a)(1). The nationwide and statewide classes or subclasses are each too numerous for individual joinder of all their members to be practicable as there are nearly 500,000 Affected Vehicles nationwide. Although the exact number of Class Members is uncertain and can only be ascertained through appropriate discovery, the number is great enough that such joinder is impracticable. The disposition of the claims of these Class Members in a single action will provide substantial benefits to all parties and to the Court. Class Members are readily identifiable from information, books, and records in Defendants' possession, custody, or control. Finally, Class Members can be notified of the pendency of this action by Court-approved notice methods.

Typicality

46. Plaintiff's claims are typical of the claims of the Class Members and arise from the same course of conduct by Defendants. The representative Plaintiff, like all Class Members, purchased or leased an Affected Vehicle designed, manufactured, marketed, and distributed by Defendants, and has been damaged by Defendants' misconduct in that she will incur costs and loss of value relating to the "defeat devices" and Defendants' related misrepresentations and concealments. Furthermore, the factual bases of Defendants' misconduct are common to all Class Members and represent a common thread of misconduct resulting in injury to all Class

Members. The relief Plaintiff seeks is typical of the relief sought for the absent Class Members.

Adequate Representation

47. Plaintiff will fairly and adequately represent and protect the interests of the Class. Plaintiff has retained counsel with substantial experience in prosecuting consumer class actions, including actions involving engineering and automobile issues and defective automotive products.

48. Plaintiff and her counsel are committed to vigorously prosecuting this action on behalf of the Class, and have the financial resources to do so. Neither Plaintiff nor counsel has interests adverse to those of the Class.

Predominance of Common Issues

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

a. Whether Defendants engaged in the conduct alleged herein;

b. Whether Defendants designed, advertised, marketed, distributed, leased, sold, or otherwise placed Affected Vehicles into the stream of commerce in the United States;

c. Whether the Affected Vehicles contained illegal "defeat devices" designed to allow the vehicles to pass emission tests but to violate emission standards at other times;

d. Whether the "defeat devices" cause excessive and illegal emissions;

e. Whether Defendants sold the Affected Vehicles with a "defeat device" in order to circumvent federal and state clean air statutes and emission regulations;

f. Whether Defendants concealed the "defeat devices";

g. The extent to which Defendants knew about the "defeat devices" from 2009 to the present;

h. Whether the "TDI® clean diesel engine" contains a defect that does not comply with U.S. regulatory requirements;

i. Whether Defendants' use of the "defeat device" manipulated the performance and fuel efficiency of the Affected Vehicles;

j. Whether Defendants falsely marketed the Affected Vehicles as environmentally friendly and "clean," and failed to disclose that the Affected Vehicles fail to meet federal and state emission standards;

k. Whether Defendants' marketing campaign was likely to deceive a reasonable person;

l. Whether any recall fix will result in reduced value of the Affected Vehicles;

m. Whether any recall fix will result in higher fuel consumption;

n. Whether any recall fix will reduce the horsepower of the Affected Vehicles;

o. Whether Defendants made unlawful and misleading representations, or material omissions about the Affected Vehicles;

p. Whether Defendants represented that the Affected Vehicles have characteristics, uses, benefits, or qualities that they do not have;

q. Whether Defendants' concealment of the true defective nature of the Affected Vehicles induced Plaintiff and Class Members to act to their detriment by purchasing or leasing the Affected Vehicles;

r. Whether Defendants' misrepresentations and omissions concerning the use of a "defeat device" were likely to deceive a reasonable person;

s. Whether Plaintiff and the other Class Members overpaid for their Affected Vehicles;

t. Whether a reasonable customer would pay less for an Affected Vehicle if the use of a "defeat device" was disclosed at the time of purchase or lease;

u. Whether a reasonable customer would pay less for an Affected Vehicle that did not comply with federal and state clean air statutes and emission regulations;

v. Whether Defendants engaged in unlawful, unfair, or deceptive business practices, as alleged herein;

w. Whether Defendants' unlawful, unfair, and deceptive practices harmed Plaintiff and Class Members;

x. Whether the Affected Vehicles suffered a diminution of value as a result of Defendants' deceptive business practices:

y. Whether Defendants' conduct violates consumer protection statutes, warranty laws, and other laws as set forth herein, including, but not limited to, the Illinois Consumer Fraud Act, 815 ILCS § 505/1, *et seq.;*

z. Whether the Affected Vehicles were unfit for the ordinary purposes for which they were used, in violation of the implied warranty of merchantability;

aa. Whether Defendants have been unjustly enriched by their conduct;

bb. Whether Plaintiff and Class Members are entitled to equitable relief, including, but not limited to, restitution or injunctive relief;

cc. Whether Plaintiffs and Class Members are entitled to damages, compulsory, and other monetary relief and, if so, in what amount;

dd. Whether injunctive relief enjoining the re-occurrence of Defendants' conduct, or declaratory relief that such conduct is unlawful, is warranted;

ee. Whether punitive damages should be awarded; and

ff. What aggregate amount of statutory penalties is sufficient to punish and deter Defendants and to vindicate statutory and public policy.

50. Defendants have acted in a uniform manner with respect to Plaintiff and Class Members. Each Affected Vehicle is defective in the same way, Defendants misrepresented each Affected Vehicle in the ways described herein, and Plaintiff and Class Members are and will be damaged in similar ways.

51. The Class is manageable because Defendants keep records on sale for purposes of issuing recall notices. Identifying Class Members and resolving common liability questions will therefore be manageable. There are no individual questions of liability.

52. Allowing the prosecution of these claims as separate actions would create the risk of the establishment of incompatible standards of conduct being imposed on Defendants; would risk needlessly duplicative results and protracted proceedings; and is inappropriate because common questions of law and fact predominate over questions affecting only individual members of the Class.

Superiority

53. Plaintiff and Class Members have all suffered and will continue to suffer harm and damages as a result of Defendants' unlawful and wrongful conduct. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. The common questions of law and fact regarding Defendants' conduct and responsibility predominate over any questions affecting only individual Class Members.

54. The prosecution of separate actions by the individual Class Members on the claims asserted herein would create a risk of inconsistent or varying adjudications for individual Class Members, which would establish incompatible standards of conduct for Defendants; and because adjudication with respect to individual Class Members would, as a practical matter, be dispositive of the interests of other Class Members, or it would substantially impair or impede their ability to protect their interests. Class-wide relief assures fair, consistent, and equitable treatment of all Class Members, and uniformity and consistency in Defendants' discharge of their duties to perform corrective action regarding the Affected Vehicles.

55. Absent a class action, most Class Members would likely find the cost of litigating their individual claims prohibitively high and would therefore have no effective remedy at law. Because the damages suffered by each individual Class member may be relatively small, the expense and burden of individual litigation would make it very difficult or impossible for individual Class Members to redress the wrongs done to each of them individually, such that most or all Class Members would have no rational economic interest in judicially controlling the prosecution of specific actions, and the burden imposed on the judicial system by individual litigation by even a small fraction of the Class would be enormous, making class adjudication the superior alternative under Federal Rule of Civil Procedure 23(b)(3)(A).

56. The conduct of this lawsuit as a class action presents far fewer management difficulties, it better conserves judicial resources and the parties' resources, and it more effectively protects the rights of each Class Member than would piecemeal litigation. Compared to the expense, burdens, inconsistencies, economic infeasibility, and inefficiencies of piecemeal litigation, the challenges of managing this action as a class action are substantially outweighed by the benefits to the legitimate interests of the parties, the Court, and the public of class treatment in this Court, making class adjudication superior to other alternatives under Federal Rule of Civil Procedure 23(b)(3)(D).

CLAIMS FOR RELIEF

COUNT I – VIOLATION OF THE MAGNUSON-MOSS WARRANTY ACT, 15 U.S.C. § 2301, *et seq.*
(Nationwide and Illinois Class)

57. Plaintiff incorporates the allegations set forth in paragraphs 1 through 56 above as paragraphs 1 through 56 of Count I as if fully set forth herein.

58. This Court has jurisdiction to decide claims brought under 15 U.S.C. § 2301 by virtue of 28 U.S.C. § 1332(a)-(d).

59. The Affected Vehicles are "consumer products" within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(1).

60. Plaintiff and Class Members are "consumers" within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(3), because they are persons entitled under applicable state law to enforce against the warrantor the obligations of its express and implied warranties.

61. Defendants are "supplier[s]" and "warrantor[s]" within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(4)-(5).

62. The Magnuson-Moss Warranty Act, 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 express or implied warranty.

63. Defendants provided Plaintiff and Class Members with implied warranties of merchantability in connection with the purchase or lease of their vehicles that are warranties within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(7). As a part of the implied warranty of merchantability, Defendants warranted that the Affected Vehicles would pass without objection in the trade as designed, manufactured, marketed, and labeled. Specifically, Defendants warranted that the Affected Vehicles were eco-friendly, "clean," and fit for their ordinary purpose as passenger motor vehicles, would pass without objection in the trade as designed, manufactured, and marketed, and were adequately contained, packed, and labeled.

64. Defendants also provided Plaintiff and Class Members who purchased or leased a new Affected Vehicle with a Manufacturer's Warranty, which provides "bumper-to-bumper"

limited express warranty coverage for a minimum of 3 years or 36,000 miles, whichever comes first. This warranty covers emission-related repairs and is applicable to the Affected Vehicles.

65. Consistent with federal law, Defendants further provided Plaintiff and Class Members with a "performance warranty" and a "design and defect warranty" that are directly applicable to the Affected Vehicles. In the event that a vehicle fails an emissions test, these warranties cover all emissions-related parts for 2 years or 24,000 miles, whichever comes first, with the catalytic converter, engine control unit, and onboard diagnostic device covered for 8 years or 80,000 miles, whichever comes first.

66. Defendants breached these warranties, as described in more detail above, and are therefore liable to Plaintiff and Class Members pursuant to 15 U.S.C. § 2310(d)(1). Without limitation, the Affected Vehicles share common defects in that they are equipped with "defeat devices." Defendants have admitted that the Affected Vehicles are defective in issuing its recalls, but the recalls are insufficient to address each of the defects.

67. In their capacity as warrantors, as Defendants had knowledge of the inherent defects in the Affected Vehicles, any efforts to limit the warranties in a manner that would exclude coverage of the Affected Vehicles is unconscionable, and any such effort to disclaim, or otherwise limit, liability for the Affected Vehicles is null and void.

68. The limitations on the warranties are procedurally unconscionable. There was unequal bargaining power between Defendants and Plaintiff and other Class Members, as, at the time of purchase or lease, Plaintiff and Class Members had no other options for purchasing warranty coverage other than directly from Defendants.

69. The limitations on the warranties are substantively unconscionable as well. Defendants knew that the Affected Vehicles were defective and failed to disclose these defects to Plaintiff and Class Members.

70. Plaintiff and Class Members have had sufficient direct dealings with Defendants or their agents to establish privity of contract in that Plaintiff and Class Members purchased the Affected Vehicles with software containing the "defeat devices" from Defendants' dealerships. Nonetheless, privity is not required here because Plaintiff and Class Members are intended third-party beneficiaries of contracts between Defendants and their dealers, and specifically, of the implied warranties. The dealers were not intended to be the ultimate consumers of the Affected Vehicles and have no rights under the warranty agreements provided with the Affected Vehicles; the warranty agreements were designed for and intended to benefit consumers.

71. Pursuant to 15 U.S.C. § 2310(e), Plaintiff is entitled to bring this class action and is not required to give Defendants notice and an opportunity to cure until such time as the Court determines the representative capacity of Plaintiff pursuant to Federal Rule of Civil Procedure 23.

72. Moreover, affording Defendants an opportunity to cure their breach of written warranties would be unnecessary and futile here. At the time of sale or lease of each Affected Vehicle, Defendants knew, or should have known, or were reckless in not knowing, of their misrepresentations concerning the Affected Vehicles' inability to perform as warranted, but nonetheless failed to rectify the situation or disclose the defective design. Under the circumstances, the remedies available under any informal settlement procedure would be inadequate and any requirement that Plaintiff resort to an informal dispute resolution procedure

or afford Defendants a reasonable opportunity to cure their breach of warranties is excused and thereby deemed satisfied.

73. Plaintiff and Class Members would suffer economic hardship if they returned their Affected Vehicles but did not receive the return of all payments made by them. Because Defendants have no available cure, Plaintiff and Class Members have not re-accepted their Affected Vehicles by retaining them.

74. All jurisdictional prerequisites have been satisfied. The amount in controversy of Plaintiff's individual claims meets or exceeds the sum of $25. The amount in controversy of this action exceeds the sum of $50,000, exclusive of interest and costs, computed on the basis of all claims to be determined in this lawsuit.

75. As a result of Defendants' breach of warranties, Plaintiff and Class Members are entitled to revoke their acceptance of the Affected Vehicles, obtain all damages and equitable relief, including diminution in value of their vehicles, and obtain costs and expenses (including attorneys' fees based on actual time expended) determined by the Court to have been reasonably incurred by Plaintiff and Class Members in connection with the commencement and prosecution of this action, pursuant to 15 U.S.C. § 2310, in an amount to be proven at trial.

76. Further, based on Defendants' continuing failures to fix the known defects, Plaintiff also seeks a declaration that Defendants have not adequately implemented their recall commitments and requirements and general commitments to fix their failed processes, and injunctive relief in the form of judicial supervision over the recall process is warranted. Plaintiff also seeks the establishment of a Defendants-funded program for Plaintiff and Class Members to recover out-of-pocket costs incurred.

77. Plaintiff also requests, as a form of monetary relief, re-payment of out-of-pocket expenses and costs that she and the other Class Members have incurred in attempting to rectify the defects. Such expenses and losses will continue as Plaintiff and Class Members must take time off from work and pay for rental cars or other transportation arrangements and expenses involved in going through the recall process.

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

COUNT II – COMMON LAW FRAUDULENT CONCEALMENT
(Nationwide and Illinois Class)

79. Plaintiff incorporates the allegations set forth in paragraphs 1 through 78 above as paragraphs 1 through 78 of Count II as if fully set forth herein.

80. Defendants intentionally designed the "defeat device" described above to circumvent the requirement of the Clean Air Act, and falsely certified to the EPA that the Affected Vehicles use the "clean diesel" technology described above in a manner that complies with those requirements.

81. At the same time, between 2009 and the present, Defendants intentionally marketed and advertised the Affected Vehicles as "clean" and described the engine as a "clean diesel."

82. Defendants knowingly made false representations and material omissions regarding the true nature of the Affected Vehicles. Defendants knew that the Affected Vehicles were designed and manufactured with illegal "defeat devices," but Defendants

concealed and suppressed those material facts. Defendants recklessly manufactured and distributed the Affected Vehicles to U.S. consumers even though Defendants knew, or should have known, at the time of distribution, that the Affected Vehicles contained such defects. Plaintiff and Class Members had no knowledge of these defects at the time they purchased or leased the Affected Vehicles.

83. Plaintiff and Class Members' Affected Vehicles were, in fact, defective at the time of purchase or lease.

84. Defendants had a duty to disclose the true facts about the Affected Vehicles to potential and actual customers, the public, and the EPA, but failed to do so. Defendants had superior knowledge and access to those facts, and the facts were not known to or reasonably discoverable by Plaintiff and Class Members. Defendants knew that Plaintiff and Class Members had no knowledge of the illegal "defeat devices" in the Affected Vehicles, and that neither Plaintiff nor other Class Members had an equal opportunity to discovery the facts.

85. Plaintiff and Class Members trusted Defendants not to sell or lease vehicles to them that were defective or that violated the Clean Air Act, and reasonably relied on the representations made by Defendants, in believing that they were paying a premium for a fuel-efficient "clean" automobile with a "TDI® clean diesel engine," and that the vehicles were free from defects and complied with Defendants' representations and warranties.

86. Plaintiff and Class Members did not know, and had no way of knowing, that Defendants' representations were false.

87. Defendants breached their duties in order to profit at the expense of Plaintiff, the Class, and the public, who were all put at risk from illegally-elevated nitrous oxide emissions.

88. The aforementioned concealment was material because had the Plaintiff and the Class known the true facts regarding the Affected Vehicles, they would not have purchased or leased the vehicles. In fact, had Defendants disclosed the true facts to the EPA, the Affected Vehicles that Plaintiff and Class Members own could not have been sold to them. Moreover, Defendants' misrepresentations concerned facts that would typically be relied upon by a person purchasing or leasing a new or used vehicle.

89. As a direct and proximate result of Defendants' fraudulent concealment and suppression of the true facts regarding the Affected Vehicles, Plaintiff and Class Members have sustained and will continue to sustain damages in many ways, all arising from the difference between the actual value of that which Plaintiff and Class Members paid and the actual value of that which they received. Plaintiff and Class Members were fraudulently induced to purchase vehicles they would otherwise not have, and were charged a premium by Defendants for a fuel-efficient and "clean" automobile. The end result is that Plaintiff and Class Members now own vehicles that have lost value, will cost money to fix, and which may not even be re-sellable.

90. Defendants' acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiff's and Class Members' rights and well-being to enrich Defendants. Defendants' conduct also warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, as determined according to proof at trial.

COUNT III – VIOLATION OF THE ILLINOIS CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES ACT, 815 ILCS § 505/1, *et seq.*
(Illinois Class)

91. Plaintiff incorporates the allegations set forth in paragraphs 1 through 90 above as paragraphs 1 through 90 of Count III as if fully set forth herein.

92. This Count is brought on behalf of Plaintiff and the Illinois Class.

93. Defendants, Plaintiff, and the Illinois Class are "persons" as that term is defined in the Illinois Consumer Fraud and Deceptive Business Practices Act ("ICFDBPA"), 815 ILCS § 505/1(c).

94. Plaintiff and the Illinois Class are "consumers" as that term is defined in 815 ILCS § 505/1(e).

95. Defendants engaged in "trade" or "commerce" within the meaning of 815 ILCS § 505/1(f) by manufacturing, selling, distributing and introducing the Affected Vehicles in interstate commerce.

96. Section 2 of the ICFDBPA, 815 ILCS § 505/2, provides in pertinent part:

> Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practice described in Section 2 of the "Uniform Deceptive Trade Practices Act", approved August 5, 1965, in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby.

97. Defendants sold Affected Vehicles in Illinois and throughout the United States during the Class Period.

98. Defendants' sales of Affected Vehicles within Illinois and throughout the United States meet the definition of "sale" as that term is defined in 815 ILCS § 505/1(d).

99. The Affected Vehicles constitute "merchandise" as that term is defined in 815 ILCS § 505/1(b).

100. Defendants' advertisements and inducements made within Illinois and throughout the United States come within the definition of "advertisements" as contained in 815 ILCS § 505/1(a).

101. Defendants have violated the ICFDBPA by engaging in unfair and deceptive practices, which offend public policies and are immoral, unethical, unscrupulous, and substantially injurious to consumers. Defendants' unfair and deceptive practices are likely to mislead – and have misled – reasonable consumers like Plaintiff and Illinois Class Members.

102. Defendants violated the ICFDBPA when they represented, through advertising, warranties, and other express representations, that the Affected Vehicles had characteristics and benefits that they did not actually have.

103. Defendants violated the ICFDBPA when they falsely represented, through advertising, warranties, and other express representations, that the Affected Vehicles were of a certain quality or standard when they were not.

104. Defendants violated the ICFDBPA by fraudulently concealing from or failing to disclose to Plaintiff and the Illinois Class the defects associated with the Affected Vehicles.

105. Defendants violated the ICFDBPA by actively misrepresenting in, or concealing and omitting from, their advertising, marketing, and other communications, material information regarding the Affected Vehicles, and leading Plaintiff and the Illinois Class to believe the Affected Vehicles were "clean," eco-friendly, had "TDI® clean diesel engines," and complied with the Clean Air Act and EPA regulations, when in fact the Affected Vehicles were engineered to "switch" off the pollution-compliant technology due to illegal "defeat devices."

106. Defendants intentionally and knowingly misrepresented or concealed these material facts regarding the Affected Vehicles with intent to mislead Plaintiff and the Illinois Class.

107. The deception, fraud, false pretense, false promise, misrepresentation, concealment, suppression, or omission of material facts alleged in the preceding paragraphs occurred in connection with Defendants' conduct of trade or commerce in Illinois and throughout the United States.

108. Defendants' deception, fraud, false pretense, false promise, misrepresentation, concealment, suppression, or omission caused Plaintiff and the Illinois Class to purchase or lease said vehicles that they would otherwise not have had they known the true nature of these products, or they would have purchased or leased the vehicles for less than they did.

109. As a result of Defendants' unlawful business practices, Plaintiff and the Illinois Class, pursuant to 815 ILCS § 505/10(a), are entitled to an order enjoining such future conduct and such other orders and monetary judgments that may be necessary to disgorge Defendants' ill-gotten gains, and to restore to Plaintiff and any Class Member any money paid for said vehicles, as well as punitive damages because Defendants acted with fraud, malice, or were grossly negligent, attorneys' fees, and any other just and proper relief available under 815 ILCS § 505/1, *et seq.*

COUNT IV – BREACH OF CONTRACT
(Nationwide and Illinois Class)

110. Plaintiff incorporates the allegations set forth in paragraphs 1 through 109 above as paragraphs 1 through 109 of Count IV as if fully set forth herein.

111. Defendants' misrepresentations and omissions alleged herein, including Defendants' failure to disclose the existence of the "defeat devices," caused Plaintiff and Class Members to purchase or lease their Affected Vehicles.

112. Absent those misrepresentations and omissions, Plaintiff and Class Members would not have purchased or leased those Affected Vehicles, would not have purchased or leased those Affected Vehicles at the prices they paid, or would have purchased or leased less-expensive alternate vehicles that did not contain the "clean diesel" engine system and "defeat devices." As such, Plaintiff and Class Members overpaid for their Affected Vehicles and did not receive the benefit of the bargain.

113. Each and every sale or lease of the Affected Vehicles constitutes a valid, enforceable contract between Defendants and the purchaser or lessee. Defendants breached these contracts by selling or leasing to Plaintiff and Class Members the Affected Vehicles and by misrepresenting or failing to disclose the existence of the "defeat devices," including information known to Defendants, which rendered each Affected Vehicle less safe and unable to comply with emission standards, and thus less valuable, than vehicles not equipped with "TDI® clean diesel engines" and "defeat devices."

114. As a direct and proximate result of Defendants' breach of contract, Plaintiff and Class Members have been damaged in an amount to be proven at trial, including, but not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

COUNT V – UNJUST ENRICHMENT
(Nationwide and Illinois Class)

115. Plaintiff incorporates the allegations set forth in paragraphs 1 through 114 above as paragraphs 1 through 114 of Count V as if fully set forth herein.

116. Plaintiff and Class Members paid the value of vehicles that: (a) have fully operational emission control systems that comply with federal and state emission standards, (b) are not compromised by the need for repairs, and (c) can be legally operated, but instead were provided with vehicles that are defective, need repairs, and cannot be legally operated.

117. As a result of Defendants' unlawful and deceptive actions alleged herein, Defendants were enriched at the expense of and to the detriment of Plaintiff and Class Members.

118. Defendants were aware of the unlawful and deceptive actions alleged herein.

119. Under the circumstances, it would be against equity and good conscience to permit Defendants to retain the ill-gotten benefits they received from Plaintiff and Class Members. Thus, it would be unjust and inequitable for Defendants to retain the benefit without restitution to Plaintiff and Class Members for the monies paid to Defendants for the Affected Vehicles.

120. Therefore, Defendants are required to disgorge profits that flowed to them as a direct result of their unlawful and deceptive conduct.

COUNT VI – BREACH OF EXPRESS WARRANTY
(Nationwide and Illinois Class)

121. Plaintiff incorporates the allegations set forth in paragraphs 1 through 120 above as paragraphs 1 through 120 of Count VI as if fully set forth herein.

122. Defendants made numerous representations, descriptions, and promises to Plaintiff and Class Members regarding the performance and emission controls of the Affected Vehicles.

123. By advertising the "clean" qualities of its diesel engines, Defendants expressly warranted to Plaintiff and Class Members that the Affected Vehicles at least complied with all applicable laws and regulations relating to exhaust emissions, as it would be impossible for an

automobile to be "clean" if it emitted more pollutants than were allowed by applicable environmental laws and regulations.

124. Moreover, by advertising the low emissions in conjunction with statements regarding the performance, torque, and fuel efficiency, Defendants warranted to purchasers and lessees of Affected Vehicles that the vehicles would demonstrate this combination of characteristics. Such statements became the basis of the bargain for Plaintiff and Class Members because such statements are among the facts a reasonable consumer would consider material in the purchase or lease of a vehicle.

125. In fact, in ordinary driving conditions, the Affected Vehicles did not comply with applicable environmental regulations and instead emitted up to 40 times the amount of pollutants allowed during normal operation. As such, it was unlawful for Defendants to sell the Affected Vehicles to the public.

126. In addition, Defendants stated that the Affected Vehicles achieved certain fuel economy when tested in accordance with applicable EPA regulations. Those statements created an express warranty that the vehicle achieved the stated fuel efficiency, allowing customers to make appropriate comparisons with other vehicles.

127. Plaintiff and Class Members reasonably relied on Defendants' representations in purchasing the Affected Vehicles, which did not perform as warranted. Unbeknownst to Plaintiff and Class Members, their vehicles included "defeat devices" that caused their emission reduction systems to perform at levels worse than advertised. Those devices are defects, and, accordingly, Defendants breached their express warranty.

128. As a result of the foregoing breaches of express warranty, Plaintiff and Class Members have been damaged in that they purchased vehicles that were unlawfully sold, did not

comply with government regulations, did not perform as promised, and were less valuable than the purchase price. Even if they are repaired to conform to applicable environmental regulations, they will be less efficient to operate and incur higher fuel costs.

COUNT VII – BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY
(Nationwide and Illinois Class)

129. Plaintiff incorporates the allegations set forth in paragraphs 1 through 128 above as paragraphs 1 through 128 of Count VII as if fully set forth herein.

130. Defendants made implied warranties concerning the Affected Vehicles, including, but not limited to, the implied warranty of merchantability. Indeed, Defendants made numerous representations, descriptions, and promises to Plaintiff and Class Members regarding the functionality of Volkswagen's "clean diesel" technology. Defendants impliedly warranted that the Affected Vehicles were of merchantable quality.

131. Plaintiff and Class Members were intended third-party beneficiaries of the implied warranty of merchantability and reasonably relied on Defendants' representations in purchasing the Affected Vehicles. Plaintiff and Class Members also relied on the skill and judgment of Defendants in the selection, purchase, and use of the Affected Vehicles as a safe and reliable means for transportation.

132. At the time the Affected Vehicles were purchased or leased, Defendants knew or had reason to know that the Affected Vehicles would be used for a particular purpose and that Plaintiff and Class Members would justifiably rely on Defendants' skill and judgment in selecting, providing, and furnishing vehicles suitable for that particular purpose.

133. At the time the Affected Vehicles were purchased or leased, Defendants also knew or had reason to know that Plaintiff and Class Members would justifiably believe that they were of the same quality as those generally acceptable in the trade, were fit for the ordinary

purposes for which such goods are used, were adequately contained, packaged, and labeled, had adequate instructions, and measured up to the promises or facts stated about the product.

134. Defendants knew or had reason to know that their representations, descriptions, and promises regarding the "clean diesel" engines were false.

135. When Plaintiff and Class Members purchased Defendants' diesel vehicles, they did not conform to the promises or affirmations of fact made in Defendants' promotional materials, including that the vehicles were designed to meet the most demanding environmental standards. Instead, as alleged herein, the Affected Vehicles were designed to cheat those standards and emitted far higher levels of pollution than promised.

136. As such, the Affected Vehicles were not of merchantable quality as warranted by Defendants, and failed to conform to Defendants' implied warranty regarding their functionality.

137. Defendants breached their implied warranty of merchantability concerning the Affected Vehicles.

138. As a direct and proximate result of Defendants' false and misleading representations and warranties, Plaintiff and Class Members suffered significant injury when Defendants sold or leased them cars that are now worth far less than the purchase or lease price.

COUNT VIII – BREACH OF IMPLIED WARRANTY OF FITNESS
(Nationwide and Illinois Class)

139. Plaintiff incorporates the allegations set forth in paragraphs 1 through 138 above as paragraphs 1 through 138 of Count VIII as if fully set forth herein.

140. Defendants made express warranties concerning the Affected Vehicles, including, but not limited to, warranties in their sales materials and website regarding that Defendants' products are warranted to be free of defects in material, manufacturing and design, and that

Affected Vehicles are "clean diesel" automobiles that are fuel-efficient and environmentally friendly.

141. Defendants intended that their express warranties were extended to and would benefit Plaintiff and Class Members.

142. At the time the Affected Vehicles were purchased or leased, Defendants knew or had reason to know that the Affected Vehicles would be used for a particular purpose and that Plaintiff and Class Members would justifiably rely on Defendants' skill and judgment in selecting, providing, and furnishing vehicles for that particular purpose.

143. The Affected Vehicles were not suitable for the particular purpose.

144. Defendants breached their implied warranty of fitness concerning the Affected Vehicles.

145. As a direct and proximate result of Defendants' false and misleading representations and warranties, Plaintiff and Class Members suffered significant injury when Defendants sold or leased them cars that are now worth far less than the purchase or lease price.

COUNT IX – NEGLIGENT MISREPRESENTATION
(Nationwide and Illinois Class)

146. Plaintiff incorporates the allegations set forth in paragraphs 1 through 145 above as paragraphs 1 through 145 of Count IX as if fully set forth herein.

147. Plaintiff and Class Members purchased their Affected Vehicles based upon representations and advertisements wherein Defendants stated that their "clean diesel" vehicles were "clean," fuel efficient, and compliant with federal and state emission guidelines.

148. Defendants knew or should have known that the Affected Vehicles were not compliant with federal and state emission guidelines.

149. Defendants had a duty to provide honest and accurate information to their customers so they could make informed decisions regarding the purchase or lease of automobiles.

150. Defendants negligently failed to disclose material facts concerning the quality, performance, and emissions compliance of the Affected Vehicles. As alleged herein, Defendants misled consumers, including Plaintiff and Class Members, regarding the performance of the Affected Vehicles and their compliance with federal and state emission standards. Defendants failed to disclose the vehicle deficiencies by installing "defeat devices" designed to permit the emission control systems to engage only during emissions tests, and negligently programmed the vehicle so that at all times of normal operation, it would not operate within compliance of the emission standards.

151. By misrepresenting the true nature of the Affected Vehicles, Defendants misrepresented to Plaintiff, Class Members, the public, and governmental agencies the actual amount of harmful emissions being placed into the environment. Additionally, Plaintiff and Class Members paid more for their vehicles than they otherwise would have paid for similar-modeled vehicles that did not purport to be "clean" or fuel efficient.

152. These misrepresentations were made with the intention to induce Plaintiff and Class Members to rely upon them and purchase the Affected Vehicles.

153. Plaintiff and Class Members reasonably relied upon Defendants' misrepresentations that the Affected Vehicles were compliant with U.S. laws. Plaintiff and Class Members did not know and had no way of knowing that Defendants' negligent representations were false and misleading. In reliance on those representations, Plaintiff and Class Members were induced and did purchase the Affected Vehicles.

154. As a direct and proximate result of Defendants' wrongful acts and omissions as alleged herein, Plaintiff and Class Members have been damaged in an amount to be determined at trial, including, but not limited to, compensatory damages for the loss in fair market value that each Affected Vehicle will suffer, as well as increased costs that may result due to decreases in vehicle performance if and when the Affected Vehicles are "fixed" and brought into environmental compliance.

COUNT X – INTENTIONAL MISREPRESENTATION
(Nationwide and Illinois Class)

155. Plaintiff incorporates the allegations set forth in paragraphs 1 through 154 above as paragraphs 1 through 154 of Count X as if fully set forth herein.

156. Plaintiff and Class Members purchased their Affected Vehicles based upon representations and advertisements wherein Defendants stated that their "clean diesel" vehicles were "clean," fuel efficient, and compliant with federal and state emission guidelines.

157. Defendants knew or should have known that the Affected Vehicles were not compliant with federal and state emission guidelines.

158. Defendants had a duty to provide honest and accurate information to its customers so they could make informed decisions regarding the purchase or lease of automobiles.

159. Defendants intentionally failed to disclose material facts concerning the quality, performance, and emissions compliance of the Affected Vehicles. As alleged herein, Defendants misled consumers, including Plaintiff and Class Members, regarding the performance of the Affected Vehicles and their compliance with federal and state emission standards. Defendants failed to disclose the vehicle deficiencies by installing "defeat devices" designed to permit the emission control systems to engage only during emissions tests, and intentionally programmed

the vehicles so that at all times of normal operation, they would not operate within compliance of the emission standards.

160. By misrepresenting the true nature of the Affected Vehicles, Defendants misrepresented to Plaintiff, Class Members, the public, and governmental agencies the actual amount of harmful emissions being placed into the environment. Additionally, Plaintiff and Class Members paid more for their vehicles than they otherwise would have paid for similar-modeled vehicles that did not purport to be "clean" or fuel efficient.

161. These misrepresentations were made with the intention to induce Plaintiff and Class Members to rely upon them and purchase the Affected Vehicles.

162. Plaintiff and Class Members reasonably relied upon Defendants' misrepresentations that the Affected Vehicles were compliant with U.S. laws. Plaintiff and Class Members did not know and had no way of knowing that Defendants' negligent representations were false and misleading. In reliance on those representations, Plaintiff and Class Members were induced and did purchase the Affected Vehicles.

163. As a direct and proximate result of Defendants' wrongful acts and omissions as alleged herein, Plaintiff and Class Members have been damaged in an amount to be determined at trial, including, but not limited to, compensatory damages for the loss in fair market value that each Affected Vehicle will suffer, as well as increased costs that may result due to decreases in vehicle performance if and when the Affected Vehicles are "fixed" and brought into environmental compliance.

164. In addition, Defendants' wrongful acts and omissions was gross, reckless, and in bad faith, which subjected and continues to subject Plaintiff and Class Members to monetary loss

and unjust hardship in willful and conscious disregard of their rights so as to justify an award of punitive damages against Defendants.

COUNT XI – VIOLATIONS OF STATE CONSUMER PROTECTION AND UNFAIR COMPETITION STATUTES
(Nationwide Class)

165. Plaintiff incorporates the allegations set forth in paragraphs 1 through 164 above as paragraphs 1 through 164 of Count XI as if fully set forth herein.

166. Defendants engaged in unfair competition or unfair, unconscionable, deceptive, or fraudulent acts or practices with respect to the sale or lease of the Affected Vehicles in violation of consumer protection and unfair competition statutes in every (or nearly every) state, including: Alaska Stat. § 45-50-471, *et seq.*; Ariz. Rev. Stat. § 44-1521, *et seq.*; Ark. Code § 4-88-101, *et seq.*; Cal. Civ. Code § 1770, *et seq.*; Cal. Bus & Prof. Code § 17200, *et seq.* and Cal. Bus. & Prof. Code § 17070, *et seq.*; Colo. Rev. Stat. § 6-1-101, *et seq.*; Conn. Gen. Stat. § 42-110A, *et seq.*; 6 Del. Code § 2513, *et seq.* and 6 Del. Code § 2532, *et seq.*; D.C. Code Ann. § 28-3901, *et seq.*; Fla. Stat. § 501.201, *et seq.*; Ga. Code Ann. § 10-1-370, *et seq.*; Haw. Rev. Stat. Ann. § 481A-3, *et seq.*; Idaho Code § 48-601, *et seq.*; 815 ILCS § 505/1, *et seq.* and 815 ILCS §510/1, *et seq.*; Ind. Code § 24-5-0.5-3, *et seq.*; Iowa Code § 714H.1, *et seq.*; Kan. Stat. Ann. § 50-623, *et seq.*; Ky. Rev. Stat. § 367.110, *et seq.*; Me. Rev. Stat. Ann. Tit. 5 § 205-A, *et seq.*; Md. Code Com. Law § 13-101, *et seq.*; Mass. Gen. Laws chapter 93A § 1, *et seq.*; Mich. Comp. Laws § 445.901, *et seq.*; Minn. Stat. § 325F.69, *et seq.* and Minn. Stat. § 325D.43, *et seq.*; Mo. Ann. Stat. § 407.020, *et seq.*; Neb. Rev. Stat. § 87-302 and Neb. Rev. Stat. § 59-1601, *et seq.*; Nev. Rev. Stat. § 598.0903, *et seq.*; N.H. Rev. Stat. § 358-A:1, *et seq.*; N.J. Stat. Ann. § 56:8-1, *et seq.*; N.M. Stat. Ann. § 57-12-1, *et seq.*; N.Y. Gen. Bus. Law § 349, *et seq.*; N.C. Gen. Stat. § 75-1.1, *et seq.*; N.D. Cent. Code § 51-15-02, *et seq.*; Ohio Rev. Code Ann. § 1345.01, *et seq.* and

Ohio Rev. Code Ann. § 4165.01, *et seq.*; Okla. Stat. Tit. 15 § 751, *et seq.* and Okla. Stat. Ann. § 51, *et seq.*; Or. Rev. Stat. § 646.605, *et seq.*; 73 Pa. Stat. § 201-1, *et seq.*; R.I. Gen. Laws § 6-13.1-1, *et seq.*; S.D. Codified Laws § 37-24-6, *et seq.*; Tex. Bus. & Com. Code § 17.41, *et seq.*; Utah Code Ann. § 13-11-1, *et seq.*; Vt. Stat. Ann. Tit. 9, § 2451, *et seq.*; Va. Code Ann. § 59.1-200, *et seq.*; Rev. Code Wash. Ann. § 19.86.010, *et seq.*; W. Va. Code § 46A-1-101, *et seq.*; Wis. Stat. § 100.18, et *seq.*; and Wyo. Stat. § 45-12-105, *et seq.*

167. Defendants' misrepresentations and omissions regarding the emission compliance of its Affected Vehicles as detailed above were likely to deceive a reasonable consumer, and the information would be material to a reasonable consumer.

168. Defendants' intentional and purposeful acts, described above, were intended and did cause Plaintiff and Class Members to pay artificially-inflated prices for Affected Vehicles purchased or leased in the states (and the District of Columbia) listed above.

169. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff and Class Members have been injured in their business and property in that they paid more for the Affected Vehicles than they otherwise would have paid in the absence of Defendants' unlawful conduct.

170. All of the wrongful conduct herein alleged occurred in the course of Defendants' business. Defendants' wrongful conduct is part of a pattern of a generalized course of conduct that was perpetrated nationwide.

171. Plaintiff and Class Members are therefore entitled to all appropriate relief as provided for by the laws of the states above, including but not limited to, actual damages, injunctive relief, attorneys' fees and equitable relief, such as restitution or disgorgement of all

revenues, earnings, profits, compensation, and benefits that may have been obtained by Defendants as a result of their unlawful conduct.

COUNT XII – FALSE ADVERTISING UNDER 15 U.S.C. § 1125(a)
(Nationwide Class)

172. Plaintiff incorporates the allegations set forth in paragraphs 1 through 171 above as paragraphs 1 through 171 of Count XII as if fully set forth herein.

173. Defendants' statements, advertisements, and promotional activities, as described above, were false and misleading in material respects, including, but not limited to, with respect to the suitability of operation of the Affected Vehicles in the ordinary course in compliance with applicable state and federal emission standards, and in an environmentally-friendly and fuel-efficient manner.

174. Defendants' statements and omissions deceived a substantial segment of potential consumers, including Plaintiff and Class Members.

175. This deception is material because it influenced Plaintiff and Class Members' decision when deciding what car to purchase or lease.

176. Defendants' false and misleading advertising statements and omissions violate Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

177. The Affected Vehicles are in interstate commerce, as that term is defined in the Lanham Act, because Defendants do business in all 50 states (and the District of Columbia).

178. Plaintiff and Class Members were injured and continue to be injured as a result of the false and misleading statements and omissions.

179. Pursuant to 15 U.S.C. § 1117, Plaintiff and Class Members are entitled to recover from Defendants the damages sustained by them as a result of Defendants' violations, as well as the gains, profits, and advantages that Defendants have obtained, and the costs of this action.

Moreover, Defendants' conduct was undertaken willfully and with the intention of causing confusion, mistake, and deception, making this an exceptional case entitling Plaintiff and Class Members to recover additional damages and reasonable attorneys' fees.

COUNT XIII – VIOLATION OF THE RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT ("RICO")
(Nationwide and Illinois Class)

180. Plaintiff incorporates the allegations set forth in paragraphs 1 through 179 above as paragraphs 1 through 179 of Count XIII as if fully set forth herein.

181. Defendants are all "persons" under 18 U.S.C. § 1961(3).

182. Defendants violated 18 U.S.C. 1962(c) by participating in or conducting the affairs of the Volkswagen RICO Enterprise (*defined below*) through a pattern of racketeering activity.

183. Plaintiff and Class Members are "person[s] injured in his or her business or property" by reason of Defendants' violation of RICO within the meaning of 18 U.S.C. § 1964(c).

The Volkswagen RICO Enterprise

184. The following persons, and others presently unknown, have been members of and constitute an "association-in-fact enterprise" within the meaning of RICO, and will be referred to herein collectively as the "Volkswagen RICO Enterprise":

a. Defendants, who designed, manufactured, and sold over 482,000 Affected Vehicles knowing that they contained illegal "defeat devices," the scope and nature of which they concealed from and misrepresented to the public and regulators for more than a decade.

b. Defendants' officers, executives and engineers, who have collaborated and colluded with each other and with other associates-in-fact in the Volkswagen RICO Enterprise to deceive Plaintiff and Class Members into purchasing defective vehicles, and actively concealing the illegal "defeat devices" from Plaintiff, Class Members, the public, and governmental entities.

c. Dealerships that sell vehicles manufactured by Volkswagen, which sold or leased the Affected Vehicles containing illegal "defeat devices" to Plaintiff and Class Members.

185. The Volkswagen RICO Enterprise, which engaged in, and whose activities affected interstate and foreign commerce, is an association-in-fact of individuals and corporate entities within the meaning of 18 U.S.C. § 1961(4) and consists of "persons" associated together for a common purpose. The Volkswagen RICO Enterprise had an ongoing organization with an ascertainable structure, and functioned as a continuing unit with separate roles and responsibilities.

186. While Defendants participated in the conduct of the Volkswagen RICO Enterprise, they had an existence separate and distinct from the Volkswagen RICO Enterprise. Further, the Volkswagen RICO Enterprise was separate and distinct from the pattern of racketeering in which Defendants have engaged.

187. At all relevant times, Defendants operated, controlled, or managed the Volkswagen RICO Enterprise, through a variety of actions. Defendants' participation in the Volkswagen RICO Enterprise was necessary for the successful operation of its scheme to defraud because Defendants manufactured the Affected Vehicles, concealed the nature and scope of the illegal "defeat devices," and profited from such concealment.

188. The members of the Volkswagen RICO Enterprise all served a common purpose: to sell as many Affected Vehicles containing such "defeat devices" as possible, and thereby maximize the revenue and profitability of the Volkswagen RICO Enterprise's members. The members of the Volkswagen RICO Enterprise shared the bounty generated by the enterprise, *i.e.*, by sharing the benefit derived from increased sales revenue generated by the scheme to defraud. Each member of the Volkswagen RICO Enterprise benefited from the common purpose:

Defendants sold or leased more Affected Vehicles than they would have otherwise had the scope and nature of the "defeat devices" not been concealed; and the dealerships sold and serviced more Affected Vehicles, and sold or leased those vehicles at a much higher price, as a result of the concealment of the scope and nature of the "defeat devices" from Plaintiff and Class Members.

Pattern of Racketeering Activity

189. Defendants conducted and participated in the conduct of the affairs of the Volkswagen RICO Enterprise through a pattern of racketeering activity, beginning no later than 2009 and continuing to this day, that consists of numerous and repeated violations of the federal mail and wire fraud statutes. These statutes prohibit the use of any interstate or foreign mail or wire facility for the purpose of executing a scheme to defraud, in violation of 18 U.S.C. §§ 1341 and 1343.

190. For Defendants, the purpose of the scheme to defraud was to conceal the scope and nature of the illegal "defeat devices" found in over 482,000 Affected Vehicles in the U.S., and over 11 million Affected Vehicles worldwide, in order to sell or lease more vehicles, to sell or lease them at a higher price or for a higher profit, and to avoid incurring the expenses associated with repairing the defects. By concealing the scope and nature of the illegal "defeat devices" in the Affected Vehicles, Defendants also maintained and boosted consumer confidence in the "clean diesel" campaign, and avoided remediation costs and negative publicity, all of which furthered the scheme to defraud and helped Defendants sell or lease more vehicles than they would have otherwise, and to sell or lease them at a much higher price or for a much higher profit.

191. As detailed above, Defendants were aware of the "defeat devices," but intentionally concealed those defects from Plaintiff and Class Members in order to maximize their profits. Moreover, once the defect became known, Defendants failed to adequately remedy it because pollution emissions were still too high.

192. To further the scheme to defraud, Defendants repeatedly misrepresented and concealed the nature and scope of the illegal "defeat devices," all while promoting and touting the reliability and quality of the Affected Vehicles. Defendants passed off a sub-standard recall but failed to adequately remedy the nature of the defect. Defendants also concealed the true nature and scope of the "defeat devices" from federal regulators, enabling them to escape investigation and the costs associated with recalls and corrective action. Furthermore, Defendants permitted or caused their dealerships to promote the reliability and quality of the purportedly eco-friendly nature of the Affected Vehicles while simultaneously concealing the nature and scope of the "defeat devices."

193. To carry out, or attempt to carry out the scheme to defraud, Defendants have conducted or participated in the conduct of the affairs of the Volkswagen RICO Enterprise through the following pattern of racketeering activity that employed the use of mail and wire facilities, in violation of 18 U.S.C. § 1341 (mail fraud) and § 1343 (wire fraud):

a. Defendants devised and furthered the scheme to defraud by use of the mail, telephone, and internet, and transmitted, or caused to be transmitted, by means of mail and wire communication, travelling in interstate or foreign commerce, writing(s) and signal(s), including the Volkswagen website, communications with the EPA and CARB, statements to the press, and communications with other members of the Volkswagen RICO Enterprise, as well as advertisements and other communications to Defendants' customers, including Plaintiff and Class Members. Given that each Affected Vehicle required a COC application, Defendants used the mail and wire 30 times, at minimum, to submit the fraudulent COC applications; and

b. Defendants utilized the interstate and international mail and wire facilities for the purpose of obtaining money or property by means of the omissions, false pretenses, and misrepresentations described herein.

194. Defendants' pattern of racketeering activity in violation of the mail and wire fraud statutes included transmitting or causing to be transmitted, by means of mail and wire communication traveling in interstate or foreign commerce, between its offices in Germany, Virginia, Michigan, or among the other 20-plus offices in the U.S.: (i) communications concerning the illegal "defeat devices"; and (ii) submissions to the EPA regarding COC applications for each model and year of the Affected Vehicles that failed to adequately disclose or address all auxiliary emission control devices that were installed in the Affected Vehicles.

195. Defendants' conduct in furtherance of this scheme was intentional. Plaintiff and Class Members were directly harmed as a result of Defendants' intentional conduct. Plaintiff, Class Members, and federal regulators, among others, relied on Defendants' material misrepresentations and omissions.

196. Defendants engaged in a pattern of related and continuous predicate acts beginning at least in 2009. The predicate acts constituted a variety of unlawful activities, each conducted with the common purpose of defrauding Plaintiff and Class Members and obtaining significant monies and revenues from them while providing Affected Vehicles worth significantly less than the purchase price paid. The predicate acts also had the same or similar results, participants, victims, and methods of commission. The predicate acts were related and not isolated events.

197. The predicate acts also had the purpose of generating significant revenue and profits for Defendants at the expense of Plaintiff and Class Members. The predicate acts were committed or caused to be committed by Defendants through their participation in the

Volkswagen RICO Enterprise and in furtherance of its fraudulent scheme, and were interrelated in that they involved obtaining Plaintiff and Class Members' funds and avoiding the expenses associated with fixing the defect.

198. By reason of and as a result of Defendants' conduct, and their pattern of racketeering activity, Plaintiff and Class members have been injured in their business or property in multiple ways, including but not limited to:

a. purchasing or leasing Affected Vehicles that Plaintiff and Class Members would not have otherwise purchased or leased;

b. overpaying for leased or purchased Affected Vehicles in that Plaintiff and Class Members believed that they were paying for "clean" eco-friendly vehicles but obtained vehicles that were neither "clean" nor eco-friendly; and

c. purchasing Affected Vehicles of diminished values, thus reducing their resale value.

199. Defendants' violations of 18 U.S.C. § 1962(c) have directly and proximately caused injuries and damages to Plaintiff and Class Members, and Plaintiff and Class Members are entitled to bring this action for three times their actual damages, as well as injunctive/equitable relief, and costs and reasonable attorneys' fees pursuant to 18 U.S.C. § 1964(c).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself and all other Class Members similarly situated, respectfully prays that the Court enter judgment against Defendants and award the following relief:

A. An order certifying the proposed Classes and this action as a Class Action under Federal Rule of Civil Procedure 23(b)(3), and designating Plaintiff as the named representative of the Classes and the undersigned as Class Counsel;

B. A declaration that the Affected Vehicles are defective;

C. A declaration that Defendants are financially responsible for notifying all Class Members about the defective nature of the Affected Vehicles;

D. An order enjoining Defendants to desist from further distribution, sales, and lease practices with respect to the Affected Vehicles, and directing Defendants to permanently, expeditiously, and completely repair the Affected Vehicles to eliminate the illegal "defeat devices";

E. An award to Plaintiff and Class Members of compensatory damages for the value of the property or property rights that they were wrongfully deprived of and all related emotional distress caused by Defendants' conduct, as well as exemplary damages and statutory penalties, including interest, in an amount to be proven at trial;

F. An award to Plaintiff and Class Members for the return of the purchase or lease price of the Affected Vehicles, with interest from the time it was paid, for the reimbursement of the reasonable expenses occasioned by the sale or lease, for damages, and for reasonable attorneys' fees;

G. A declaration that Defendants must disgorge, for the benefit of Plaintiff and Class Members, all or part of the ill-gotten profits they received from the sale or lease of the Affected Vehicles, or make full restitution to Plaintiff and Class Members;

H. An award of damages under the Magnuson-Moss Warranty Act;

I. An award to Plaintiff and Class Members of punitive damages;

J. An award of reasonable attorneys' fees and costs, as allowed by law;

K. An award of pre-judgment and post-judgment interest, as provided by law;

L. Leave to amend this Complaint to conform to the evidence produced at trial; and

M. Such other and further relief as the Court deems just and appropriate under the circumstances.

JURY TRIAL DEMAND

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

Dated: October 1, 2015

Respectfully submitted,

/s/ John C. Hammerle

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Attorneys for Plaintiff and the Class

EXHIBIT A

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 18 2015

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Volkswagen AG
Audi AG
Volkswagen Group of America, Inc.
Thru:

David Geanacopoulos
Executive Vice President Public Affairs and General Counsel
Volkswagen Group of America, Inc.
2200 Ferdinand Porsche Drive
Herndon, VA 20171

Stuart Johnson
General Manager
Engineering and Environmental Office
Volkswagen Group of America, Inc.
3800 Hamlin Road
Auburn Hills, MI 48326

Re: Notice of Violation

Dear Mr. Geanacopoulos and Mr. Johnson:

The United States Environmental Protection Agency (EPA) has investigated and continues to investigate Volkswagen AG, Audi AG, and Volkswagen Group of America (collectively, VW) for compliance with the Clean Air Act (CAA), 42 U.S.C. §§ 7401–7671q, and its implementing regulations. As detailed in this Notice of Violation (NOV), the EPA has determined that VW manufactured and installed defeat devices in certain model year 2009 through 2015 diesel light-duty vehicles equipped with 2.0 liter engines. These defeat devices bypass, defeat, or render inoperative elements of the vehicles' emission control system that exist to comply with CAA emission standards. Therefore, VW violated section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B). Additionally, the EPA has determined that, due to the existence of the defeat

devices in these vehicles, these vehicles do not conform in all material respects to the vehicle specifications described in the applications for the certificates of conformity that purportedly cover them. Therefore, VW also violated section 203(a)(1) of the CAA, 42 U.S.C. § 7522(a)(1), by selling, offering for sale, introducing into commerce, delivering for introduction into commerce, or importing these vehicles, or for causing any of the foregoing acts.

Law Governing Alleged Violations

This NOV arises under Part A of Title II of the CAA, 42 U.S.C. §§ 7521–7554, and the regulations promulgated thereunder. In creating the CAA, Congress found, in part, that "the increasing use of motor vehicles . . . has resulted in mounting dangers to the public health and welfare." CAA § 101(a)(2), 42 U.S.C. § 7401(a)(2). Congress' purpose in creating the CAA, in part, was "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population," and "to initiate and accelerate a national research and development program to achieve the prevention and control of air pollution." CAA § 101(b)(1)–(2), 42 U.S.C. § 7401(b)(1)–(2). The CAA and the regulations promulgated thereunder aim to protect human health and the environment by reducing emissions of nitrogen oxides (NOx) and other pollutants from mobile sources of air pollution. Nitrogen oxides are a family of highly reactive gases that play a major role in the atmospheric reactions with volatile organic compounds (VOCs) that produce ozone (smog) on hot summer days. Breathing ozone can trigger a variety of health problems including chest pain, coughing, throat irritation, and congestion. Breathing ozone can also worsen bronchitis, emphysema, and asthma. Children are at greatest risk of experiencing negative health impacts from exposure to ozone.

The EPA's allegations here concern light-duty motor vehicles for which 40 C.F.R. Part 86 sets emission standards and test procedures and section 203 of the CAA, 42 U.S.C. § 7522, sets compliance provisions. Light-duty vehicles must satisfy emission standards for certain air pollutants, including NOx. 40 C.F.R. § 86.1811-04. The EPA administers a certification program to ensure that every vehicle introduced into United States commerce satisfies applicable emission standards. Under this program, the EPA issues certificates of conformity (COCs), and thereby approves the introduction of vehicles into United States commerce.

To obtain a COC, a light-duty vehicle manufacturer must submit a COC application to the EPA for each test group of vehicles that it intends to enter into United States commerce. 40 C.F.R. § 86.1843-01. The COC application must include, among other things, a list of all auxiliary emission control devices (AECDs) installed on the vehicles. 40 C.F.R. § 86.1844-01(d)(11). An AECD is "any element of design which senses temperature, vehicle speed, engine RPM, transmission gear, manifold vacuum, or any other parameter for the purpose of activating, modulating, delaying, or deactivating the operation of any part of the emission control system." 40 C.F.R. § 86.1803-01. The COC application must also include "a justification for each AECD, the parameters they sense and control, a detailed justification of each AECD that results in a reduction in effectiveness of the emission control system, and [a] rationale for why it is not a defeat device." 40 C.F.R. § 86.1844-01(d)(11).

A defeat device is an AECD "that reduces the effectiveness of the emission control system under conditions which may reasonably be expected to be encountered in normal vehicle operation and

use, unless: (1) Such conditions are substantially included in the Federal emission test procedure; (2) The need for the AECD is justified in terms of protecting the vehicle against damage or accident; (3) The AECD does not go beyond the requirements of engine starting; or (4) The AECD applies only for emergency vehicles . . . ." 40 C.F.R. § 86.1803-01.

Motor vehicles equipped with defeat devices, such as those at issue here, cannot be certified. EPA, *Advisory Circular Number 24: Prohibition on use of Emission Control Defeat Device* (Dec. 11, 1972); *see also* 40 C.F.R. §§ 86-1809-01, 86-1809-10, 86-1809-12. Electronic control systems which may receive inputs from multiple sensors and control multiple actuators that affect the emission control system's performance are AECDs. EPA, *Advisory Circular Number 24-2: Prohibition of Emission Control Defeat Devices – Optional Objective Criteria* (Dec. 6, 1978). "Such elements of design could be control system logic (i.e., computer software), and/or calibrations, and/or hardware items." *Id.*

"Vehicles are covered by a certificate of conformity only if they are in all material respects as described in the manufacturer's application for certification . . . ." 40 C.F.R. § 86.1848-10(c)(6). Similarly, a COC issued by EPA, including those issued to VW, state expressly, "[t]his certificate covers only those new motor vehicles or vehicle engines which conform, in all material respects, to the design specifications" described in the application for that COC. *See also* 40 C.F.R. §§ 86.1844-01 (listing required content for COC applications), 86.1848-01(b) (authorizing the EPA to issue COCs on any terms that are necessary or appropriate to assure that new motor vehicles satisfy the requirements of the CAA and its regulations).

The CAA makes it a violation "for any person to manufacture or sell, or offer to sell, or install, any part or component intended for use with, or as part of, any motor vehicle or motor vehicle engine, where a principal effect of the part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this subchapter, and where the person knows or should know that such part or component is being offered for sale or installed for such use or put to such use." CAA § 203(a)(3)(B), 42 U.S.C. § 7522(a)(3)(B); 40 C.F.R. § 86.1854-12(a)(3)(ii). Additionally, manufacturers are prohibited from selling, offering for sale, introducing into commerce, delivering for introduction into commerce, or importing, any new motor vehicle unless that vehicle is covered by an EPA-issued COC. CAA § 203(a)(1), 42 U.S.C. § 7522(a)(1); 40 C.F.R. § 86.1854-12(a)(1). It is also a violation to cause any of the foregoing acts. CAA § 203(a), 42 U.S.C. § 7522(a); 40 C.F.R. § 86-1854-12(a).

Alleged Violations

Each VW vehicle identified by the table below has AECDs that were not described in the application for the COC that purportedly covers the vehicle. Specifically, VW manufactured and installed software in the electronic control module (ECM) of these vehicles that sensed when the vehicle was being tested for compliance with EPA emission standards. For ease of reference, the EPA is calling this the "switch." The "switch" senses whether the vehicle is being tested or not based on various inputs including the position of the steering wheel, vehicle speed, the duration of the engine's operation, and barometric pressure. These inputs precisely track the parameters of the federal test procedure used for emission testing for EPA certification purposes. During EPA

emission testing, the vehicles' ECM ran software which produced compliant emission results under an ECM calibration that VW referred to as the "dyno calibration" (referring to the equipment used in emissions testing, called a dynamometer). At all other times during normal vehicle operation, the "switch" was activated and the vehicle ECM software ran a separate "road calibration" which reduced the effectiveness of the emission control system (specifically the selective catalytic reduction or the lean NOx trap). As a result, emissions of NOx increased by a factor of 10 to 40 times above the EPA compliant levels, depending on the type of drive cycle (e.g., city, highway).

The California Air Resources Board (CARB) and the EPA were alerted to emissions problems with these vehicles in May 2014 when the West Virginia University's (WVU) Center for Alternative Fuels, Engines & Emissions published results of a study commissioned by the International Council on Clean Transportation that found significantly higher in-use emissions from two light duty diesel vehicles (a 2012 Jetta and a 2013 Passat). Over the course of the year following the publication of the WVU study, VW continued to assert to CARB and the EPA that the increased emissions from these vehicles could be attributed to various technical issues and unexpected in-use conditions. VW issued a voluntary recall in December 2014 to address the issue. CARB, in coordination with the EPA, conducted follow up testing of these vehicles both in the laboratory and during normal road operation to confirm the efficacy of the recall. When the testing showed only a limited benefit to the recall, CARB broadened the testing to pinpoint the exact technical nature of the vehicles' poor performance, and to investigate why the vehicles' onboard diagnostic system was not detecting the increased emissions. None of the potential technical issues suggested by VW explained the higher test results consistently confirmed during CARB's testing. It became clear that CARB and the EPA would not approve certificates of conformity for VW's 2016 model year diesel vehicles until VW could adequately explain the anomalous emissions and ensure the agencies that the 2016 model year vehicles would not have similar issues. Only then did VW admit it had designed and installed a defeat device in these vehicles in the form of a sophisticated software algorithm that detected when a vehicle was undergoing emissions testing.

VW knew or should have known that its "road calibration" and "switch" together bypass, defeat, or render inoperative elements of the vehicle design related to compliance with the CAA emission standards. This is apparent given the design of these defeat devices. As described above, the software was designed to track the parameters of the federal test procedure and cause emission control systems to underperform when the software determined that the vehicle was not undergoing the federal test procedure.

VW's "road calibration" and "switch" are AECDs[1] that were neither described nor justified in the applicable COC applications, and are illegal defeat devices. Therefore each vehicle identified by the table below does not conform in a material respect to the vehicle specifications described in the COC application. As such, VW violated section 203(a)(1) of the CAA, 42 U.S.C. § 7522(a)(1), each time it sold, offered for sale, introduced into commerce, delivered for introduction into commerce, or imported (or caused any of the foregoing with respect to) one of the hundreds of thousands of new motor vehicles within these test groups. Additionally, VW

[1] There may be numerous engine maps associated with VW's "road calibration" that are AECDs, and that may also be defeat devices. For ease of description, the EPA is referring to these maps collectively as the "road calibration."

violated section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), each time it manufactured and installed into these vehicles an ECM equipped with the "switch" and "road calibration."

The vehicles are identified by the table below. All vehicles are equipped with 2.0 liter diesel engines.

Model Year	EPA Test Group	Make and Model(s)
2009	9VWXV02.035N	VW Jetta, VW Jetta Sportwagen
2009	9VWXV02.0U5N	VW Jetta, VW Jetta Sportwagen
2010	AVWXV02.0U5N	VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3
2011	BVWXV02.0U5N	VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3
2012	CVWXV02.0U5N	VW Beetle, VW Beetle Convertible, VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3
2012	CVWXV02.0U4S	VW Passat
2013	DVWXV02.0U5N	VW Beetle, VW Beetle Convertible, VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3
2013	DVWXV02.0U4S	VW Passat
2014	EVWXV02.0U5N	VW Beetle, VW Beetle Convertible, VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3
2014	EVWXV02.0U4S	VW Passat
2015	FVGAV02.0VAL	VW Beetle, VW Beetle Convertible, VW Golf, VW Golf Sportwagen, VW Jetta, VW Passat, Audi A3

Enforcement

The EPA's investigation into this matter is continuing. The above table represents specific violations that the EPA believes, at this point, are sufficiently supported by evidence to warrant the allegations in this NOV. The EPA may find additional violations as the investigation continues.

The EPA is authorized to refer this matter to the United States Department of Justice for initiation of appropriate enforcement action. Among other things, persons who violate section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), are subject to a civil penalty of up to $3,750 for each violation that occurred on or after January 13, 2009;[1] CAA § 205(a), 42 U.S.C. § 7524(a); 40 C.F.R. § 19.4. In addition, any manufacturer who, on or after January 13, 2009, sold, offered for sale, introduced into commerce, delivered for introduction into commerce, imported, or caused any of the foregoing acts with respect to any new motor vehicle that was not covered by an EPA-issued COC is subject, among other things, to a civil penalty of up to $37,500 for each violation.[2] CAA § 205(a), 42 U.S.C. § 7524(a); 40 C.F.R. § 19.4. The EPA may seek, and district courts may order, equitable remedies to further address these alleged violations. CAA § 204(a), 42 U.S.C. § 7523(a).

[1] $2,750 for violations occurring prior to January 13, 2009.
[2] $32,500 for violations occurring prior to January 13, 2009.

The EPA is available to discuss this matter with you. Please contact Meetu Kaul, the EPA attorney assigned to this matter, to discuss this NOV. Ms. Kaul can be reached as follows:

Meetu Kaul
U.S. EPA, Air Enforcement Division
1200 Pennsylvania Avenue, NW
William Jefferson Clinton Federal Building
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kaul.meetu@epa.gov

Sincerely,

Phillip A. Brooks
Director
Air Enforcement Division
Office of Civil Enforcement

Copy:
Todd Sax, California Air Resources Board
Walter Benjamin Fisherow, United States Department of Justice
Stuart Drake, Kirkland & Ellis LLP

EXHIBIT B

Matthew Rodriquez
Secretary for
Environmental Protection

Air Resources Board

Mary D. Nichols, Chair
9480 Telstar Avenue, Suite 4
El Monte, California 91731 • www.arb.ca.gov

Edmund G. Brown Jr.
Governor

Reference No. IUC-2015-007

September 18, 2015

Volkswagen AG
Audi AG
Volkswagen Group of America, Inc.
Through:

David Geanacopoulos
Executive Vice President and General Counsel, Government Affairs
Volkswagen Group of America
2200 Ferdinand Porsche Drive
Herndon, VA 20171

Stuart Johnson
General Manager
Engineering and Environmental Office
Volkswagen Group of America
3800 Hamlin Road
Auburn Hills, MI 48326

Re: Admission of Defeat Device and California Air Resources Board's Requests

Dear Mr. Geanacopoulos and Mr. Johnson:

In order to protect public health and the environment from harmful pollutants, the California Air Resources Board (CARB) rigorously implements its vehicle regulations through its certification, in use compliance, and enforcement programs. In addition to the new vehicle certification process, CARB regularly tests automobiles to ensure their emissions performance is as expected throughout their useful life, and performs investigative testing if warranted. CARB was engaged in dialogue with our European counterparts concerning high in use emissions from light duty diesels. CARB deployed a number of efforts using portable measurement systems and other approaches to increase our understanding for the California fleet. In 2014, the International Council for Clean Transportation (ICCT) and West Virginia University (WVU) identified through their test program, and brought to the CARB's and the United States Environmental Protection Agency's (EPA) attention, concerns of elevated oxides of nitrogen (NOx) emissions over real world driving. The ICCT actions were consistent and

complementary to our activities. This prompted CARB to start an investigation and discussions with the Volkswagen Group of America (VW) on the reasons behind these high NOx emissions observed on their 2.0 liter diesel vehicles over real world driving conditions. As you know, these discussions over several months culminated in VW's admission in early September 2015 that it has, since model year 2009, employed a defeat device to circumvent CARB and the EPA emission test procedures.

VW initiated testing to replicate the ICCT/WVU testing and identify the technical reasons for the high on-road emissions. VW shared the results of this testing and a proposed recalibration fix for the Gen1 (Lean NOx Trap technology) and Gen2 (Selective Catalytic Reduction (SCR) technology) with CARB staff on December 2, 2014. Based on this meeting, CARB and EPA at that time agreed that VW could implement the software recall; however, CARB cautioned VW that if our confirmatory testing showed that the fix did not address the on-road NOx issues, they would have to conduct another recall. Based on this meeting, VW initiated a voluntary recall in December 2014 which, according to VW, affected approximately 500,000 vehicles in the United States (~50,000 in California). The recall affected all 2009 to 2014 model-year diesel fueled vehicles equipped with Gen1 and Gen2 technology. This recall was claimed to have fixed among other things, the increased real world driving NOx issue.

CARB commenced confirmatory testing on May 6, 2015 to determine the efficacy of the recall on both the Gen1 and Gen2 vehicles. CARB confirmatory testing was completed on a 2012 model-year Gen2 VW, test group CVWX02.0U4S, to be followed with Gen1 testing. CARB staff tested this vehicle on required certification cycles (FTP, US06 and HWFET) and over-the-road using a Portable Emission Measurement Systems (PEMS). On some certification cycles, the recall calibration resulted in the vehicle failing the NOx standard. Over-the-road PEMS testing showed that the recall calibration did reduce the emissions to some degree but NOx emissions were still significantly higher than expected.

To have a more controlled evaluation of the high NOx observed over the road, CARB developed a special dynamometer cycle which consisted of driving the Phase 2 portion of the FTP repeatedly. This special cycle revealed that VW's recall calibration did increase Diesel Exhaust Fluid (DEF) dosing upon initial startup; however, dosing was not sufficient to keep NOx emission levels from rising throughout the cycle. This resulted in uncontrolled NOx emissions despite the SCR reaching sufficient operating temperatures.

CARB shared its test results with VW on July 8, 2015. CARB also shared its results with the EPA. Several technical meetings with VW followed where VW disclosed that Gen1, Gen2 and the 2015 model-year improved SCR vehicle (known as the Gen3) had a second calibration intended to run only during certification testing. During a meeting on September 3, 2015, VW admitted to CARB and EPA staff that these vehicles were

designed and manufactured with a defeat device to bypass, defeat, or render inoperative elements of the vehicles' emission control system. This defeat device was neither described nor justified in the certification applications submitted to EPA and CARB. Therefore, each vehicle so equipped would not be covered by a valid federal Certificate of Conformity (COC) or CARB Executive Order (EO) and would be in violation of federal and state law.

Based upon our testing and discussions with VW, CARB has determined that the previous recall did not address the high on-road NOx emissions, and also resulted in the vehicle failing certification standards. Therefore, the recall is deemed ineffective and is deemed unapproved. VW must immediately initiate discussions with CARB to determine the appropriate corrective action to rectify the emission non-compliance and return these vehicles to the claimed certified configuration. CARB program and enforcement staff is prepared to work closely with VW to find corrective actions to bring these vehicles into compliance.

CARB has also initiated an enforcement investigation of VW regarding all model-year 2009 through 2015 light-duty diesel vehicles equipped with 2.0 liter engines. We expect VW's full cooperation in this investigation so this issue can be addressed expeditiously and appropriately.

Sincerely,

Annette Hebert, Chief
Emissions Compliance, Automotive Regulations and Science Division

cc: Mr. Byron Bunker, Director
Compliance Division
Office of Transportation and Air Quality
Office of Air and Radiation
U.S. Environmental Protection Agency

Mr. Linc Wehrly, Director
Environmental Protection Agency
Light-Duty Vehicle Center
2000 Traverwood Drive
Ann Arbor, MI 48105

Dr. Todd P. Sax, Chief
Enforcement Division
California Air Resources Board

EXHIBIT C

VOLKSWAGEN

AKTIENGESELLSCHAFT

News

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Wolfsburg, 2015-09-20

Statement of Prof. Dr. Martin Winterkorn, CEO of Volkswagen AG:

The U.S. Environmental Protection Agency and the California Air Resources Board (EPA and CARB) revealed their findings that while testing diesel cars of the Volkswagen Group they have detected manipulations that violate American environmental standards.

The Board of Management at Volkswagen AG takes these findings very seriously. I personally am deeply sorry that we have broken the trust of our customers and the public. We will cooperate fully with the responsible agencies, with transparency and urgency, to clearly, openly, and completely establish all of the facts of this case. Volkswagen has ordered an external investigation of this matter.

We do not and will not tolerate violations of any kind of our internal rules or of the law.

The trust of our customers and the public is and continues to be our most important asset. We at Volkswagen will do everything that must be done in order to re-establish the trust that so many people have placed in us, and we will do everything necessary in order to reverse the damage this has caused. This matter has first priority for me, personally, and for our entire Board of Management.

to overview

EXHIBIT D

VOLKSWAGEN

AKTIENGESELLSCHAFT

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Ad hoc

2015-09-22

Dissemination of an Ad hoc announcement according to § 15 WpHG:
Volkswagen AG has issued the following information:

Volkswagen is working at full speed to clarify irregularities concerning a particular software used in diesel engines. New vehicles from the Volkswagen Group with EU 6 diesel engines currently available in the European Union comply with legal requirements and environmental standards. The software in question does not affect handling, consumption or emissions. This gives clarity to customers and dealers.

Further internal investigations conducted to date have established that the relevant engine management software is also installed in other Volkswagen Group vehicles with diesel engines. For the majority of these engines the software does not have any effect.

Discrepancies relate to vehicles with Type EA 189 engines, involving some eleven million vehicles worldwide. A noticeable deviation between bench test results and actual road use was established solely for this type of engine. Volkswagen is working intensely to eliminate these deviations through technical measures. The company is therefore in contact with the relevant authorities and the German Federal Motor Transport Authority (KBA – Kraftfahrtbundesamt).

To cover the necessary service measures and other efforts to win back the trust of our customers, Volkswagen plans to set aside a provision of some 6.5 billion EUR recognized in the profit and loss statement in the third quarter of the current fiscal year. Due to the ongoing investigations the amounts estimated may be subject to revaluation.
Earnings targets for the Group for 2015 will be adjusted accordingly.

Volkswagen does not tolerate any kind of violation of laws whatsoever. It is and remains the top priority of the Board of Management to win back lost trust and to avert damage to our customers. The Group will inform the public on the further progress of the investigations constantly and transparently.

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Ad-hoc Release
PDF, 1 Pages, 9 KB

to overview

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EXHIBIT E

VOLKSWAGEN

AKTIENGESELLSCHAFT

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Wolfsburg, 2015-09-23

Statement by Prof. Dr. Winterkorn

""I am shocked by the events of the past few days. Above all, I am stunned that misconduct on such a scale was possible in the Volkswagen Group.

As CEO I accept responsibility for the irregularities that have been found in diesel engines and have therefore requested the Supervisory Board to agree on terminating my function as CEO of the Volkswagen Group. I am doing this in the interests of the company even though I am not aware of any wrong doing on my part.

Volkswagen needs a fresh start – also in terms of personnel. I am clearing the way for this fresh start with my resignation.

I have always been driven by my desire to serve this company, especially our customers and employees. Volkswagen has been, is and will always be my life.

The process of clarification and transparency must continue. This is the only way to win back trust. I am convinced that the Volkswagen Group and its team will overcome this grave crisis."

to overview