

1 BOIES, SCHILLER & FLEXNER LLP

2 David Boies

3 dboies@bsfllp.com

4 333 Main Street

5 Armonk, NY 10504

6 Tel: 914-749-8200

7 Fax: 914-749-8300

8 David L. Zifkin (SBN 232845)

9 dzifkin@bsfllp.com

10 Edward H. Takashima (SBN 270945)

11 etakashima@bsfllp.com

12 401 Wilshire Blvd., Suite 850

13 Santa Monica, CA 90401

14 Tel: 310-752-2400

15 Fax: 310-752-2490

16 *Attorneys for Plaintiff*

17 UNITED STATES DISTRICT COURT
18 CENTRAL DISTRICT OF CALIFORNIA

19 SCOTT WEISS, individually and on
20 behalf of all others similarly situated,

21 Plaintiff,

22 v.

23 VOLKSWAGEN GROUP OF
24 AMERICA, INC., VOLKSWAGEN
25 AG, AUDI AG, and AUDI OF
26 AMERICA, INC.

27 Defendants.

Case No.: 2:15-cv-8126

CLASS ACTION

**CLASS ACTION COMPLAINT
FOR: (1) Fraud/Fraudulent
Concealment; (2) Violations of the
Consumers Legal Remedies Act; (3)
Violations of California's False
Advertising Law; (4) Violations of the
Song-Beverly Warranty Act; (5)
Breach of Implied Warranty; (6)
Breach of Express Warranty; (7)
Violations of the Magnuson-Moss
Warranty Act; (8) Violations of
California's Unfair Competition Law;
(9) Unjust Enrichment**

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Scott Weiss (“Plaintiff”), individually and on behalf of all others similarly situated, based on personal knowledge as to himself, and upon information and belief as to all other matters, alleges as follows:

I. NATURE OF CLAIMS

1. Defendants Volkswagen AG, Volkswagen Group of America, Inc., Audi AG, and Audi of America, Inc. (collectively “Volkswagen” or “Defendants”) have aggressively claimed since 2008 that their cars containing TDI Clean Diesel engines (“Clean Diesel cars”) are environmentally friendly, “clean,” EPA certified, powerful, and fuel efficient.

2. However, Defendants’ oft repeated claims regarding their Clean Diesel cars were fraudulent. The Clean Diesel cars were anything but “clean.” Rather, Defendants utilized a sophisticated software program to deceive purchasers, as well as the Environmental Protection Agency (“EPA”) and state regulators, about the true nature of the emissions from these Clean Diesel cars.

3. Defendants installed a software program in all Clean Diesel cars that detected when the cars were undergoing emissions testing. When the software detected emissions testing, it turned on full emissions control during the test. However, when the Clean Diesel cars were not undergoing testing, these emissions controls were not activated. As a result, during normal operations, these allegedly “clean” cars engines emitted pollutants, such as nitrogen oxides (NOx), at up to 40 times the amounts allowed under the laws of the United States and various states.

4. On September 18, 2015, the EPA issued a Notice of Violation (“NOV”) finding that this sophisticated software constituted a “defeat device” under the Clean Air Act (“CAA”).¹ A “defeat device” is anything that reduces the

¹ Letter from United States Environmental Protection Agency, Office of Enforcement and Compliance Assurance to Volkswagen AG, Audi AG, and Volkswagen Group of America, Inc. (September 18, 2015), *available at* <http://www3.epa.gov/otaq/cert/documents/vw-nov-caa-09-18-15.pdf>.

1 effectiveness of the vehicle's emissions control system during normal vehicle
2 operations. The EPA found that because of these "defeat devices," the Clean Diesel
3 cars did not meet federal emissions standards or comply with the certificates of
4 conformity that Defendants—like all vehicle manufacturers—were required to
5 secure for each car that they intended to sell in the United States.

6 5. By installing these "defeat devices" and failing to disclose the true
7 level of emissions from the Clean Diesel cars, Defendants purposefully violated the
8 CAA and its regulations, as well as state law, lied to and defrauded their customers,
9 and engaged in deceptive trade practices and unfair competition.

10 6. As a result of Defendants' fraudulent, deceptive, and unfair conduct,
11 owners and lessees of the Class Vehicles (defined below), such as Plaintiff and the
12 Class, have suffered losses.

13 7. According to the NOV, absent Defendants' deception, Defendants'
14 nonconforming vehicles could not have been approved by the EPA for introduction
15 into United States commerce.²

16 8. Defendants charged a premium for these Clean Diesel cars compared
17 to cars that contained gasoline engines.

18 9. Although the EPA has ordered Defendants to recall the Class Vehicles
19 and repair them so that they comply with EPA emissions requirements, the
20 necessary modifications will substantially degrade the Class Vehicles' performance.
21 Accordingly, regardless of whatever repairs Defendants might implement, the Class
22 Vehicles will not perform as advertised, causing harm to Plaintiff and the Class.
23 For example, the Class Vehicles will depreciate in value, and Plaintiff and the Class
24 will incur more expenses for fuel because the Class Vehicles will no longer be as
25 fuel efficient. Further, the Class Vehicles are likely to experience diminution in
26

27
28 ² *Id.*

1 power and performance once they are retrofitted to comply with EPA emissions
2 requirements.

3 10. As a result, Plaintiff and the Class seek damages, injunctive relief,
4 declaratory relief, and equitable relief for Defendants' misconduct, as alleged in this
5 Complaint, including but not limited to, the return of the purchase price of their
6 cars, return of the premium they paid for the Clean Diesel cars, compensation for
7 the diminution in value of their cars, compensation for the additional expenses
8 (such as additional fuel costs) they incur as a result of Defendants' yet-to-be made
9 modifications to the Class Vehicles, disgorgement of ill-gotten profits, punitive
10 damages, pre- and post-judgment interest, and attorneys' fees and costs, as allowed
11 by law.

12 **II. JURISDICTION AND VENUE**

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

18 12. This Court has personal jurisdiction over Defendant Volkswagen
19 Group of America, Inc., because it conducts business in California and has
20 sufficient minimum contacts with California.

21 13. This Court has personal jurisdiction over Defendant Audi AG because
22 it conducts business in California and has sufficient minimum contacts with
23 California.

24 14. This Court has personal jurisdiction over Defendant Audi of America,
25 Inc., because it conducts business in California and has sufficient minimum contacts
26 with California.

27 15. Volkswagen AG has purposefully availed itself of this forum by
28 directing its agents and distributor—Volkswagen Group of America, Inc., Audi AG,

1 and Audi of America, Inc. — to take action here, and accordingly this Court has
2 specific jurisdiction over Volkswagen AG.

3 16. Volkswagen AG is the sole owner of Volkswagen Group of America,
4 Inc. Volkswagen AG directs the actions of its agent, Volkswagen Group of
5 America, Inc., in selling and leasing its cars in the United States, and in performing
6 related activities such as marketing and advertising to effectuate those sales.

7 17. Defendants, including Volkswagen AG and Audi AG, and/or their
8 agents designed the Clean Diesel engines and cars, as well as the “defeat device,”
9 for distribution in the United States and in this judicial district. These same
10 Defendants and/or their agents developed and disseminated the (fraudulent)
11 advertisements, warranties, and promotional materials related to the Clean Diesel
12 cars throughout the United States, as well as in this judicial district.

13 18. Volkswagen AG closely controls and directs Volkswagen Group of
14 America, Inc., and therefore any marketing statements made by Volkswagen Group
15 of America, Inc., as well as other statements identified throughout this Complaint
16 that were made by Volkswagen Group of America, Inc., were made at the behest
17 and direction of Volkswagen AG.

18 19. Audi of America, Inc. is a business unit of Volkswagen Group of
19 America, Inc. Therefore, any marketing statements made by Audi of America, Inc.,
20 as well as other statements identified throughout this Complaint that were made by
21 Audi of America, Inc., were made at the behest and direction of Volkswagen
22 Group of America, Inc. and Volkswagen AG.

23 20. Venue is proper in this District under 28 U.S.C. § 1391(b) because a
24 substantial part of the events or omissions giving rise to the claims occurred and/or
25 emanated from this District and because Defendants have caused harm to Class
26 members residing in this District.

1 **III. THE PARTIES**

2 21. Defendant Volkswagen Aktiengesellschaft (“Volkswagen AG”) is a
3 German corporation with its principal place of business in Wolfsburg, Germany.
4 Volkswagen AG is the parent company of Volkswagen Group of America, Inc.

5 22. Defendant Volkswagen Group of America, Inc., is a New Jersey
6 corporation with its principal place of business in Herndon, Virginia.

7 23. Defendant Audi Aktiengesellschaft (“Audi AG”) is a German
8 corporation with its principal place of business located at Ingolstadt, Germany;
9 Volkswagen AG owns 99.55 percent of Audi AG’s shares.

10 24. Defendant Audi of America, Inc. is a business unit of Volkswagen
11 Group of America, Inc. with its principal place of business in Herndon, Virginia.

12 25. Plaintiff Scott Weiss is a citizen of California.

13 **IV. GENERAL FACTUAL ALLEGATIONS**

14 **A. Defendants Fraudulently Represented That Their Clean Diesel**
15 **Cars Were Environmentally Friendly, Clean, Fuel Efficient, and**
16 **Powerful**

17 26. From the time the Clean Diesel cars were introduced in 2008,
18 Defendants repeatedly bragged that these cars were environmentally friendly, EPA
19 Certified, clean, fuel efficient, and powerful. Although diesel engines are often
20 more fuel efficient than gasoline engines, they generally emit higher levels of
21 pollutants.³ Defendants claimed that their Clean Diesel cars solved this problem;
22 Defendants claimed their Clean Diesel cars reduced emissions by up to 90 percent
23 in these TDI engines through modifications to the engines and a unique exhaust
24 treatment system. For example, an October 2008 press release stated:

25
26 The Jetta TDI is amongst the ten most fuel efficient vehicles on the
27 US market. In the recently published “Fuel Economy Guide 2009”

28 ³ Andreas Cremer, *Volkswagen Boss Quits Over Diesel Scandal*, REUTERS, September 23, 2015, available at <http://www.reuters.com/article/2015/09/23/usa-volkswagen-idUSL1N11T18L20150923>.

1 the EPA (Environmental Protection Agency) listed the Jetta TDI in
 2 the top ten low consumption and low emissions vehicles. In the
 3 current edition of the publication, the Jetta 2.0.1 Clean TDI,
 4 introduced to the market two months ago, is praised particularly for its
 5 excellent consumption figures; it has a fuel consumption of 5.7 litre
 6 per 100 kilometre. Moreover, the Jetta Clean TDI also fulfills
 7 stringent Californian emissions standards. This was achieved through
 8 modifications within the engine and by implementing an exhaust
 9 treatment system developed especially by Volkswagen and which
 10 reduces nitrogen oxide emissions (NOx) by up to 90 percent. The
 11 central element of the exhaust treatment system is the NOx storage
 12 catalytic converter.⁴

13 27. Until Defendants' fraud was exposed, Defendants continued to falsely
 14 represent that Clean Diesel cars were clean and fuel efficient. For example, in
 15 2009, Volkswagen stated "Volkswagen builds the cleanest, most efficient cars in
 16 the world, across the board."⁵

17 28. Also in 2009, Mark Barnes, then Volkswagen's Chief Operating
 18 Officer, stated that the TDI engine is "good for the environment because it puts out
 19 25% less greenhouse gas emissions than what a gasoline engine would. And thanks
 20 to the uniqueness of the TDI motor, it cuts out the particulate emissions by 90% and
 21 the emissions of nitrous oxide are cut by 95%. So, a very very clean running
 22 engine. Clean enough to be certified in all 50 states. It's just like driving a high-
 23 powered gasoline engine so you are not giving up one bit of the driving experience
 24 that you'd expect from a regular gasoline engine."⁶

25 ⁴ Press Release, Volkswagen AG, Volkswagen in Fuel Economy Guide 2009 (October 29, 2008), *available at*
 26 http://www.volkswagenag.com/content/vwcorp/info_center/en/news/2008/10/vw_in_fuel_economy_guide.html (last
 27 visited October 4, 2015).

28 ⁵ Press Release, The Second BlueMotion Generation Puts Highly Innovative Efficiency Technology on the Road (June
 3, 2009), *available at* http://www.volkswagenag.com/content/vwcorp/info_center/en/themes/2009/06/bluemotion.html
 (last visited October 4, 2015).

⁶ Gayathri Vaidyanathan, *Volkswagen Preps for a Diesel Revolution*, THE BUSINESS INSIDER Oct. 2009, *available at*
<http://www.businessinsider.com/volkswagen-preps-for-a-diesel-revolution-2009-10>.

29. That same year, the Volkswagen Jetta TDI was named the “Green Car of the Year.”⁷ The next year, in 2010, the Audi A3 TDI was named as the “Green Car of the Year.”⁸ Similarly, in 2014, one of Defendants’ websites stated that the “TDIs offered by Audi today are highly efficient and clean, cultivated, comfortable, and powerful.”⁹ Consistent with these misrepresentations, Volkswagen Group’s “Group Strategy 2018,” published in 2014, stated that its “Strategy 2018 focuses on positioning the Volkswagen Group as a global economic and environmental leader among automobile manufacturers. We have defined four goals that are intended to make Volkswagen the most successful, fascinating and sustainable automobile automaker in the world by 2018.”¹⁰

30. Defendants’ advertisement campaigns were replete with similar (mis)representations about their high performing Clean Diesel cars. One of the brochures for Volkswagen cars stated that its TDI Clean Diesel engines were “not that kind of diesel. These are not the kind of diesel engines that you find spewing sooty exhaust like an old 18-wheeler. Clean diesel vehicles meet the strictest EPA standards in the U.S. Plus, TDI technology helps reduce sooty emissions by up to 90%, giving you a fuel-efficient and eco-conscious vehicle.”¹¹

⁷ John Voelcker, *Green Car of the Year: 2010 Audi A3 TDI*, GREEN CAR REPORTS, December 3, 2009, available at http://www.greencarreports.com/news/1039566_green-car-of-the-year-2010-audi-a3-tdi.

⁸ *Id.*

⁹ Volkswagen AG, *Light My Fire* (August 25, 2014), available at http://www.volkswagenag.com/content/vwcorp/info_center/en/themes/2014/08/Light_my_fire.html (last visited October 4, 2015).

¹⁰ Volkswagen AG, *Group Strategy 2018*, available at http://www.volkswagenag.com/content/vwcorp/content/en/the_group/strategy.html (last visited October 4, 2015).

¹¹ Volkswagen of America, Inc., *Volkswagen TDI Clean Diesel* (2012), available at <http://www.galpinvolkswagen.com/Media/Default/Page/brochures/pdf/tdi.pdf>

A

Get from A to B. But don't forget to stop at points C, M, and Z. And of course Toledo.

It's not that you drive a long way should still make you want to, well, drive it a long way. Volkswagen TDI Clean Diesel is the line of high-mileage vehicles that lets you stop at the filling station less often, so you can spend more time enjoying all the points you like. And with its models in the TDI family, there's an enjoyable high-mileage vehicle for everyone.

Joyride further.

TDI vehicles use clever diesel fuel and advanced engineering to achieve up to 43 miles per gallon with a range of up to 700 miles. That's up to 30% better fuel economy than a comparable gas engine. You'll probably notice it when you take up to 30% fewer trips to the pump. Volkswagen's engineering team is also on driving tips that can help you save even more fuel.

Not that kind of diesel.

There are out the best of diesel engines that you find operating easily without like an old Volkswagen. Clean-diesel vehicles meet the strictest EPA standards in the U.S. Plus, TDI technology helps reduce costly emissions by up to 90%, giving you a fuel-efficient and low-emissions vehicle.

High mileage doesn't mean low fun.

Get better fuel economy without sacrificing the joy of driving. With a Volkswagen TDI vehicle, you'll get the performance, style, safety and quality of a technologically advanced German vehicle. It's just that you'll get those qualities in a high-mileage vehicle.

Think Blue.

Think beyond green. TDI represents one part of the Volkswagen Think Blue initiative, our goal of creating and encouraging more sustainable products and behaviors. Help us in being more responsible on the road and on the planet.

Volkswagen TDI Clean Diesel

That's the Power of German Engineering.

Des Auto

31. Other advertisements made similar misrepresentations about the benefits of the Volkswagen Clean Diesel cars.

TDI Clean Diesel

View key fuel efficiency, comparison and range info ?

A whole family of front-runners.

Long range without sacrifice is the promise of TDI Clean Diesel. ¹ And Volkswagen has sold more diesel cars in the U.S. than every other brand combined. ² Promise kept.

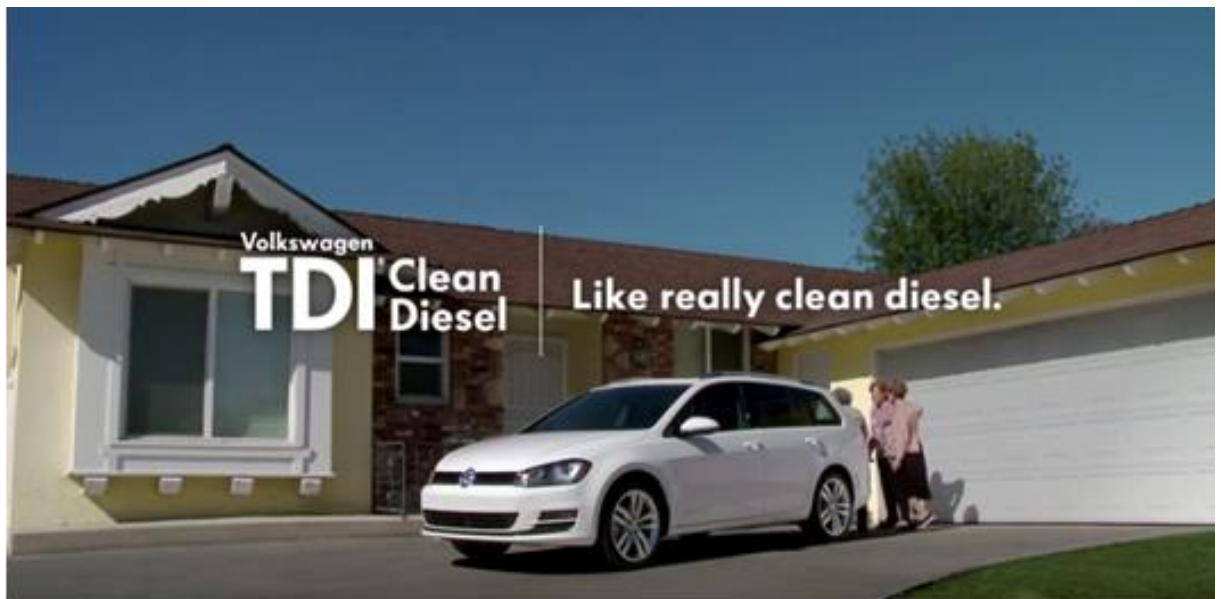
VIEW INVENTORY

This ain't your daddy's diesel.

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

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

[View key fuel efficiency info](#)



32. Advertisements for Audi Clean Diesel cars included similar representations. One ad stated that Audi “pioneered TDI clean diesel engines to deliver more torque, lower fuel consumption, and reduce CO2 emissions, compared to equivalent gasoline engines. The result of this revolutionary engineering delivers remarkable performance, while achieving increased fuel economy.”¹²

¹² Audi TDI Clean Diesel, available at <http://www.audiusa.com/technology/efficiency/tdi> (last visited October 4, 2015).

33. Other advertisements for Audi Clean Diesel cars included similar claims.



34. Defendants repeated these representations, in writing, to the purchaser of each vehicle sold. Each Class Vehicle included an EPA “fuel economy” label that made specific representations regarding the performance of that vehicle in terms of miles per gallon, yearly fuel cost, fuel cost savings over five years, horsepower, and torque. This label was intended to give consumers a means of comparing the Class Vehicles to other vehicles they may be considering purchasing,

and misled consumers with specific, material misrepresentations regarding the Class Vehicles' performance.¹³

LOC: H4 090 Dealer Stock Status: SOLD VIN: 3VWML7AJ7DM600913 MODEL: AJ548L-2013 Jetta SportWagen TDI
Exterior: Platinum Gray Metallic Exterior Interior: Titan Black Leatherette Interior 201207-ORIGINAL

2013 Jetta SportWagen TDI

Exterior: Platinum Gray Metallic Exterior Interior: Titan Black Leatherette Interior

Manufacturer's Suggested Retail Price: \$25,540.00

STANDARD FEATURES (unless replaced by options)

PERFORMANCE/HANDLING

- 2.5L 180-horsepower, 258-hp torque inline 4-cyl 1200-dead diesel engine
- Front-Drive Drive
- Electromechanical power steering
- Independent front & rear suspension
- Automatic braking system (ABS)
- Anti-Lock Braking System (ABS)
- Electronic Stability Control (ESC)
- Electronic differential lock (EDL)
- 18" alloy wheels w/ all-season tires

SAFETY/DURABILITY

- Driver & front passenger airbag supplemental restraint system
- Driver & front passenger side airbag supplemental restraint system
- Side Curtain Protection head impact airbags, front & rear
- Seat belt safety belts, all seating positions
- Head restraints for all seating positions
- Lower Anchors & Tethers for Children (LATCH)
- Child safety rear door locks
- Daytime Running Lights (DRL)
- Height adjustable front safety belts
- Side protection door beams
- Front & rear power windowed door locks
- Tire Pressure Monitoring System (TPMS)

COMFORT/CONVENIENCE

- Bluetooth® mobile telephone connectivity
- Premium 160-watt stereo radio w/ 6 CD changer
- SRU-160 Satellite Radio (limited time subscription included)
- Media Device Interface (MDI) w/ iPod® cable
- Multi-function trip computer
- Air conditioning
- Leather leatherette seats
- 8-way adjustable front seats w/ lumbar adjustment
- Heatable front seats
- 60/40 split folding rear seat
- Rear seat armrest w/ pass-through
- Leather-wrapped multifunction steering wheel
- Cruise control
- Height adjustable, telescoping steering column
- Burmester® audio system
- Remote keyless locking system
- Power windows w/ pinch protection
- Power, heated side mirrors
- Adjustable intermittent front wipers w/ heated washer nozzles
- Front & rear carpeted floor mats
- Immobilizer
- 115V power outlet

DRIVER CARE PACKAGE

WARRANTY INFORMATION

- Volkswagen New Vehicle Limited Warranty
- 3 years/36,000 miles (whichever occurs first)
- Powertrain Limited Warranty
- 5 years/60,000 miles (whichever occurs first)
- Unlimited Mileage Powertrain Protection
- 12 years/unlimited mileage
- 24-HOUR ROADSIDE ASSISTANCE
- 3 years/36,000 miles (whichever occurs first)
- Towing, Jump Starts, Tire Changes, Out of Fuel, and LockOut
- Provided by a third party supplier

VOLKSWAGEN CAREFREE MAINTENANCE

Scheduled maintenance services described in the Volkswagen Maintenance booklet are covered at no charge for 3 years/36,000 miles (whichever occurs first)

PACKAGES/OPTIONS

Platinum Gray Metallic Exterior
Titan Black Leatherette Interior
Rear Edge Spoiler
6-Speed Manual Transmission

No Charge
No Charge
\$202.50
No Charge

Destination Charge: \$795.00

Total Price: \$26,335.00

Fuel, license, title fees, taxes and dealer-installed accessories are not included.

FOR VEHICLES IN THIS CARLINE:
U.S./CANADIAN
PARTS CONTENT: 9%
MAJOR SOURCES OF FOREIGN
PARTS CONTENT:
MEXICO: 30%
GERMANY: 25%

FOR THIS VEHICLE:
FINAL ASSEMBLY POINT:
PUEBLA, MEXICO
COUNTRY OF ORIGIN:
ENGINE: GERMANY
TRANSMISSION:
GERMANY

NOTE: PARTS CONTENT DOES NOT INCLUDE FINAL ASSEMBLY, DISTRIBUTION OR OTHER NON-PARTS COSTS.

Fuel Economy and Environment

Fuel Economy

34 MPG
combined city/hwy

Small Station Wagons range from 14 to 34 MPG. The best vehicle rates 112 MPG.

You Save \$3,100
in fuel costs over 5 years compared to the average new vehicle.

Annual fuel cost \$1,700

Fuel Economy & Greenhouse Gas Rating (tailpipe only)

MPG 9
CO₂ 8

Smog Rating (tailpipe only)

5

Actual results will vary for many reasons, including driving conditions and how you drive and maintain your vehicle. The average new vehicle gets 23 MPG and costs \$11,900 to fuel over 5 years. Cost estimates are based on 15,000 miles per year at \$2.80 per gallon. EPA's is miles per gallon equivalent. Vehicle emissions are a significant cause of climate change and smog.

fuel economy.gov
Calculate personalized estimates and compare vehicles

GOVERNMENT 5-STAR SAFETY RATINGS

Overall Vehicle Score Not Rated

Based on the combined ratings of frontal, side and rollover. Should ONLY be compared to other vehicles of similar size and weight.

Frontal Crash	Driver Passenger	Not Rated
Side Crash <td>Front Seat <td>Not Rated</td> </td>	Front Seat <td>Not Rated</td>	Not Rated
	Rear Seat	Not Rated

Based on the risk of injury in a side impact.

Rollover ★★★★★

Based on the risk of rollover in a single-vehicle crash.

Star ratings range from 1 to 5 stars (★★★★★) with 5 being the highest.

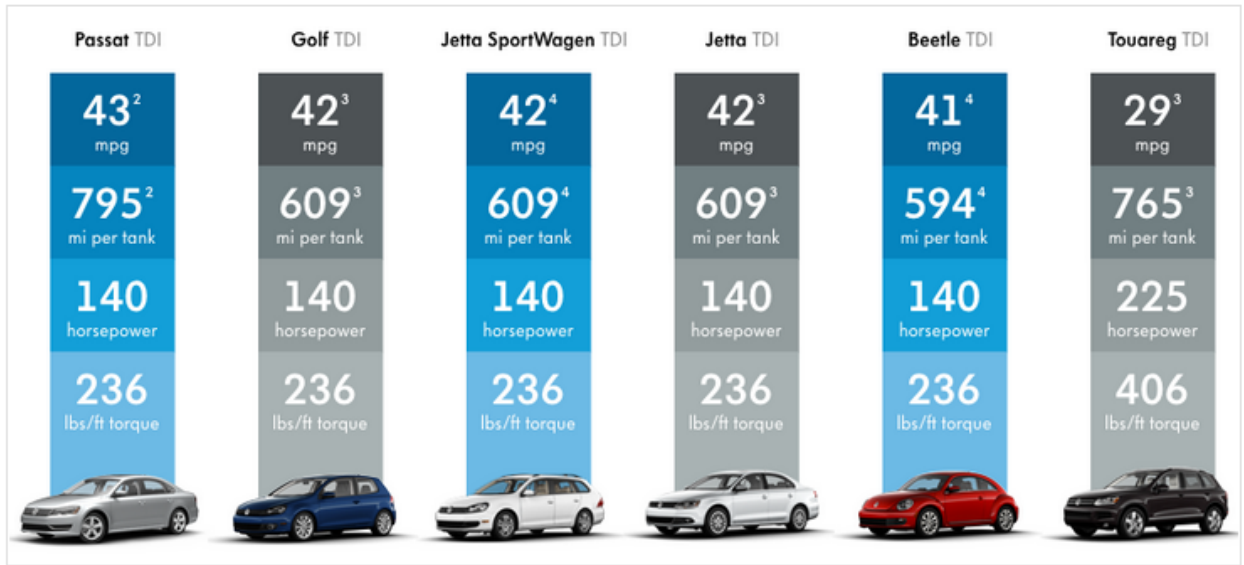
Source: National Highway Traffic Safety Administration (NHTSA).
www.safercar.gov or 1-888-327-4235

Who better to get you into a Volkswagen than us? Volkswagen Credit

35. These misrepresentations were made nationwide, including in California, and they were directed to residents of California.¹⁴

¹³ Window Sticker, 2013 Jetta SportWagen TDI, available at <http://forums.vwvortex.com/showthread.php?p=75661369-New-to-This-JSW-Thing...&p=78348222>.

¹⁴ Volkswagen of LA, *See How Far TDI Can Take You*, VOLKSWAGEN OF LA BLOG, available at <http://www.volkswagenofdowntownla.com/blog-home/see-how-far-tdi-can-take-you>.



- **Call:** 1-888-647-7576
- **Click:** www.vwdowntownla.com
- **Visit:** 1900 S. Figueroa Street, Los Angeles, CA 90007

36. The above comprises just a small sampling of the misrepresentations made throughout the United States about the performance of Clean Diesel cars.

37. Defendants benefitted from additional attention to their allegedly “clean” diesel engines when the 2009 Jetta TDI and the 2010 Audi A3 TDI were “crowned” by the Green Car Journal as “Green Car of the Year” at the LA Auto Show in Los Angeles.¹⁵ The cars have since been stripped of those titles.¹⁶

¹⁵ Tori Ellem, *LA Auto Show: VW Jetta TDI Voted Green Car of the Year*, NY TIMES, November 20, 2008, available at <http://wheels.blogs.nytimes.com/2008/11/20/la-auto-show-vw-jetta-tdi-voted-green-car-of-the-year/>.

¹⁶ Sebastian Blanco, *VW Stripped of Green Car of the Year Awards for Jetta, A3 Diesels*, AUTOBLOG, September 30, 2015, available at <http://www.autoblog.com/2015/09/30/vw-stripped-of-green-car-of-the-year-awards-for-jetta-a3-diesel/#slide-119898/>.



B. Defendants’ Representations Regarding Clean Diesel Cars Were False

38. The Clean Air Act (CAA) was enacted in 1970, and regulates air emissions from various sources, including vehicles. 42 U.S.C. § 7401, et seq. (1970). The CAA and regulations promulgated thereunder, including emissions standards for cars, exist to “protect human health and the environment by reducing emissions of nitrogen oxides (NO_x) and other pollutants from mobile sources of air pollution.”¹⁷ NO_x plays a major role in the creation of ozone (smog) on hot summer days.¹⁸ The EPA has found that “[b]reathing 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.”¹⁹

¹⁷ Letter from United States Environmental Protection Agency, Office of Enforcement and Compliance Assurance to Volkswagen AG, Audi AG, and Volkswagen Group of America, Inc. (September 18, 2015), *available at* <http://www3.epa.gov/otaq/cert/documents/vw-nov-caa-09-18-15.pdf>.

¹⁸ *Id.*

¹⁹ *Id.*

1 39. The CAA requires car manufacturers, such as Defendants, to certify
2 that their vehicles sold in the United States meet emissions standards promulgated
3 by the EPA. A vehicle cannot be sold in the United States unless the EPA certifies
4 that the vehicle complies with its emissions standards (i.e. the vehicles must receive
5 a “certificate of conformity”).²⁰

6 40. Under the CAA, it is illegal for car manufacturers, such as Defendants,
7 to install “defeat devices” in vehicles. “Defeat devices” are devices that reduce the
8 effectiveness of the emission control system under conditions which may
9 reasonably be expected to be encountered in normal vehicle operation.

10 41. On September 18, 2015, the EPA issued an NOV to Defendants
11 Volkswagen AG, Volkswagen Group of America, and Audi AG, stating that
12 Defendants had purposefully installed illegal “defeat devices” in their Clean Diesel
13 cars.

14 42. According to the EPA, Defendants had “designed and installed a defeat
15 device in these vehicles in the form of a sophisticated software algorithm that
16 detected when a vehicle was undergoing emissions testing.”²¹ When the software
17 sensed that the car was being tested for emission compliance, the software produced
18 compliant emissions results. At all other times, the software ran a separate “road
19 calibration,” which reduced the effectiveness of the emission control system.

20 43. The EPA found that, as a result, **“emissions of NOx increased by a**
21 **factor of 10 to 40 times above the EPA compliant levels, depending on the type**
22 **of drive cycle (e.g., city, highway).”**²² The EPA further found that these
23 Defendants had violated the CAA by falsely certifying that their Clean Diesel cars
24 met applicable federal emissions standards.

25
26 ²⁰ *Id.*

27 ²¹ *Id.*

28 ²² *Id.*

1 44. California's emission standards are even more stringent than EPA
2 standards. Several states have adopted California's standards and also demand even
3 more from car makers than the EPA. The California emissions regulator is called
4 the California Air Resources Board ("CARB.")

5 45. If it had not been for a study conducted by West Virginia University's
6 Center for Alternative Fuels, Engines & Emissions, Defendants' fraud may have
7 gone undetected. In 2014, that Center published results of a study commissioned by
8 the International Council on Clean Transportation, which found significantly higher
9 in-use emissions from two diesel cars manufactured by Defendants. As a result of
10 this study, the EPA CARB began investigating Defendants' diesel engines.
11 Initially, when confronted with this study, Defendants did not disclose the defeat
12 devices. Instead, they repeatedly represented to the EPA and CARB that these
13 higher in-use emissions were the result of "various technical issues and unexpected
14 in-use conditions."²³

15 46. According to the NOV, it was not until CARB and the EPA would not
16 approve certificates of conformity for Defendants' 2016 model year vehicles that
17 Defendants admitted to CARB and the EPA they had designed and installed these
18 defeat devices. Defendants' admissions were made public in news reports on or
19 around September 18, 2015.

20 47. Through its manipulation of the emissions testing process, Defendants
21 perpetrated a huge fraud on the EPA and state regulators, as well as on their
22 customers. Volkswagen AG's CEO, Prof. Dr. Martin Winterkorn, issued a public
23 apology on September 20, 2015 stating he was "personally [and] deeply sorry that
24
25
26
27

28 ²³ *Id.*

we have broken the trust of our customers and the public.”²⁴ He resigned on September 23, 2015.²⁵

48. The NOV identified defeat devices in at least the following makes and models of vehicles (“Class Vehicles”): (i) 2009-2015 Volkswagen Jetta TDI; (ii) 2009-2014 Volkswagen Jetta SportWagen TDI; (iii) 2012-2015 Volkswagen Beetle TDI; (iv) 2012-2015 Volkswagen Beetle Convertible TDI; (v) 2010-2015 Volkswagen Golf TDI; (vi) 2015 Volkswagen Golf SportWagen TDI; (vii) 2012-2015 Volkswagen Passat TDI; and (viii) 2010-2015 Audi 3 TDI. Discovery may reveal that additional cars, makes, or models are properly considered as “Class Vehicles.”

49. There are at least 482,000 cars in the United States sold by defendants with these “defeat” devices.²⁶

50. These “Class Vehicles” share common harmful traits: (1) they are all equipped with “defeat devices,” and (2) they have diesel engines that emit high levels of pollutants.

C. Defendants’ Misrepresentations Significantly Harmed Plaintiff and Class Members

51. As a result of Defendants’ misrepresentations, Plaintiff and the Class substantially overpaid for the Class Vehicles in the first place and face inevitable future costs. Moreover, Plaintiff and the Class never received the products they believed they purchased or leased.

²⁴ Press Release, Volkswagen AG, Statement of Prof. Dr. Martin Winterkorn, CEO of Volkswagen AG (September 20, 2015), *available at* http://www.volkswagenag.com/content/vwcorp/info_center/en/news/2015/09/statement_ceo_of_volkswagen_ag.html.

²⁵ William Boston, Volkswagen CEO Resigns as Car Maker Races to Stem Emissions Scandal, THE WALL STREET JOURNAL, September 23, 2015, *available at* <http://www.wsj.com/articles/volkswagen-ceo-winterkorn-resigns-1443007423>.

²⁶ William Boston, Amy Harder, and Mike Spector, Volkswagen Halts U.S. Sales of Certain Diesel Cars, THE WALL STREET JOURNAL, September 20, 2015, *available at* <http://www.wsj.com/articles/volkswagen-ceo-apologizes-after-epa-accusations-1442754877>.

52. Defendants charged a substantial premium for their Clean Diesel cars, as opposed to cars equipped with gasoline engines.²⁷ Plaintiff and the Class paid these premiums to gain the supposed benefits of these Clean Diesel cars, but these benefits were illusory.

53. For example, the below chart, based on Defendants' historical published price listings from archived web pages, illustrates the premiums charged for several Clean Diesel models in 2014 and 2015 as compared to the base gasoline models.²⁸

Model	TDI Clean Diesel Price	Base Price	TDI Clean Diesel Price Premium
2014 VW Jetta SportWagen	\$26,565	\$20,995	\$5,570
2015 Audi A3	\$34,125	\$31,825	\$2,300
2015 VW Beetle	\$25,330	\$20,695	\$4,635
2015 VW Beetle Convertible	\$29,675	\$25,595	\$4,080
2015 VW Golf	\$22,345	\$20,995	\$1,350
2015 VW Golf SportWagen	\$24,595	\$21,395	\$3,200
2015 VW Jetta	\$21,640	\$17,325	\$4,315
2015 VW Passat	\$27,095	\$21,340	\$5,755

54. As a result, Plaintiff and the Class overpaid for their Class Vehicles by at least the amount of these premiums.

55. Moreover, as a result of Defendants' fraudulent conduct, Plaintiff and the Class have suffered a substantial diminution in the re-sale value of their cars. The Class Vehicles are of diminished value because they do not comply with applicable federal and state emissions standards, cost more to operate, are less

²⁷ Kyle Stock, Volkswagen's Other Ruse: Premium Pricing, BLOOMBERG BUSINESS, September 23, 2015, *available at* <http://www.bloomberg.com/news/articles/2015-09-23/volkswagen-s-other-diesel-ruse-premium-pricing>.

²⁸ Information is derived from archived versions of Volkswagen and Audi's websites, such as <https://web.archive.org/web/20150316205038/http://www.vw.com/models/jetta-sportwagen/> (last accessed on October 3, 2015); <https://web.archive.org/web/20150322233515/http://www.audiusa.com/models/compare> (last accessed on October 3, 2015); <https://web.archive.org/web/20150906033420/http://www.vw.com/models/beetle/> (last accessed on October 3, 2015).

1 efficient when operated, cost more to repair, will have diminished performance, and
2 have a diminished resale value.²⁹

3 56. Defendants' representations about the benefits of the Clean Diesel cars,
4 such as their claims that they were "green," powerful, and fuel efficient, were
5 deliberately intended to materially influence Plaintiff's and the Class' purchasing
6 decisions.

7 57. In addition, the EPA has ordered Defendants to recall the Class
8 Vehicles and refit them so that they comply with EPA emissions requirements
9 during normal operation. As a result, the performance of the Class Vehicles will
10 likely diminish. First, they will likely not be as fuel efficient. Second, their
11 performance is likely to suffer. Early testing indicates that a 2011 Jetta TDI lost 32
12 foot-pounds of torque and as much as 15 horsepower when tested with the "defeat
13 device" engaged, losses of over 13% and over 10%, respectively, compared to
14 advertised performance.³⁰

15 **D. Defendants Benefited from Their Misrepresentations**

16 58. Defendants extensively profited from their deceptive conduct. For
17 example, in September 2013, Volkswagen sold over 40,000 units in the United
18 States—just the third time Volkswagen had done so in 40 years. Volkswagen
19 credited these Clean Diesel cars for this growth in sales.³¹

20 59. Moreover, as discussed above, Defendants charged Plaintiff and Class
21 members a substantial premium for the Clean Diesel cars. Defendants would not
22 have received these premiums had they disclosed that the Class Vehicles were

23
24 ²⁹ William Boston, Amy Harder, and Mike Spector, Volkswagen Halts U.S. Sales of Certain Diesel Cars, THE WALL
STREET JOURNAL, September 20, 2015, available at <http://www.wsj.com/articles/volkswagen-ceo-apologizes-after-epa-accusations-1442754877>.

25
26 ³⁰ Benjamin Zhang, Here's How much Power Volkswagen's Cheating Engines Could Lose Without Trick Software, BUSINESS INSIDER, available at <http://www.businessinsider.com/vw-diesel-engines-power-lose-without-cheating-software-2015-10>.

27
28 ³¹ Volkswagen of America, Inc., Press Release, TDI Sales Boost Volkswagen to New Achievement in August (September 4, 2013), available at <http://media.vw.com/release/615/>.

1 equipped with defeat devices designed to circumvent emissions testing, and the cars
2 actually emitted high levels of pollutants during normal operations.

3 **V. PLAINTIFF'S FACTS**

4 **Plaintiff Scott Weiss**

5 60. Plaintiff Scott Weiss purchased a 2013 Jetta TDI from an authorized
6 dealer in California. Mr. Weiss still owns the vehicle.

7 61. At the time the 2013 Jetta TDI was purchased, through the filing of the
8 complaint, this vehicle was equipped with a "defeat device," which allowed the
9 vehicle to pass EPA emissions standards. However, under normal operating
10 conditions, the vehicle emitted excessive levels of pollutants.

11 62. At the time Mr. Weiss purchased the vehicle, he was unaware of the
12 existence of the "defeat device" and high level of pollutants being emitted from his
13 car. He remained unaware of these facts until after the EPA issued its NOV to
14 Defendants identifying the existence of the "defeat device."

15 63. Mr. Weiss purchased his vehicle based on the reasonable belief that the
16 vehicle complied with U.S. emission standards, properly met all EPA certification
17 requirements, and would retain those characteristics throughout its useful operating
18 life. Defendants were responsible for making the representations and omissions
19 that led to this reasonable belief.

20 64. As a result of Defendants' omissions and misrepresentations, Mr. Weiss
21 has been damaged because he owns a vehicle that is diminished in value. He also
22 bought a car he otherwise would not have bought, and paid more for that car.
23 Furthermore, after Defendants institute the retrofits mandated by the EPA, Mr.
24 Weiss will incur additional maintenance costs, such as the cost of fuel.

25 **VI. TOLLING OF THE STATUTE OF LIMITATIONS**

26 **A. Discovery Rule Tolling**

27 65. Until the EPA announced its Notice of Violation on September 18,
28 2015, Plaintiff and Class members had no way of knowing about Defendants'

1 purposeful violation of the EPA's laws and regulations through the use of their
2 "defeat device." Defendants' deception involved sophisticated software
3 manipulation, which was only uncovered by sophisticated investigations by the
4 EPA and state regulators. For example, the Los Angeles *Times* reported on
5 September 18, 2015, the substantial investigations by the California Air Resources
6 Board ("CARB") required to uncover Defendants' deception. CARB tested on a
7 special dynamometer in a laboratory, utilized open road testing with portable
8 equipment, and used special testing devised by CARB to uncover Defendants'
9 scheme and how it evaded detection during emissions certifications tests.

10 Defendants were intent on hiding their behavior from regulators and consumers.

11 66. Before Defendants' misconduct was disclosed by the EPA, Plaintiff
12 and Class members could not have discovered through the exercise of reasonable
13 diligence that Defendants were concealing the conduct complained of herein and
14 misrepresenting Defendants' true position with respect to the emissions qualities of
15 their vehicles.

16 67. Plaintiff and other Class members did not discover, and did not know
17 of facts that would have caused a reasonable person to suspect, that Defendants did
18 not report information within their knowledge to federal and state authorities, their
19 dealerships, or consumers; nor would a reasonable and diligent investigation have
20 disclosed that Defendants had information in their possession about the existence of
21 their sophisticated scheme and that they opted to conceal that information, which
22 was discovered by Plaintiff only shortly before this action was filed. Nor in any
23 event would such an investigation on the part of Plaintiff and other Class members
24 have disclosed that Defendants valued profits over compliance with federal and
25 state law, or the trust that the Plaintiff and other Class members had placed in
26 Defendants' representations, or that, necessarily, Defendants actively discouraged
27 their personnel from raising or disclosing issues with regard to the true quality and
28

1 quantity of the emissions, and the emissions software, of their vehicles, or of
2 Defendants' fraudulent scheme.

3 **B. Fraudulent Concealment Tolling**

4 68. All applicable statutes of limitations have been tolled by the operation
5 of the discovery rule with respect to claims as to the Class Vehicles.

6 69. All applicable statutes of limitations have been tolled by Defendants'
7 knowing and active fraudulent concealment and denial of the facts alleged herein
8 throughout the time period relevant to this action.

9 70. Instead of disclosing their deceptive scheme, that the quality and
10 quantity of emissions from the Class Vehicles were far worse than represented, or
11 their disregard of federal and state law, Defendants instead falsely represented that
12 the Clean Diesel vehicles complied with federal and state emissions standards, and
13 that Defendants were reputable manufacturers whose representations could be
14 trusted.

15 **C. Estoppel**

16 71. Defendants were under a continuous duty to disclose to Plaintiff and
17 the other Class members the true character, quality, and nature of emissions from
18 the vehicles at issue, and of those vehicles' emissions systems, and of the
19 compliance of those systems with applicable federal and state law.

20 72. Defendants knowingly, affirmatively, and actively concealed the true
21 nature, quality, and character of the emissions systems, and the emissions, of the
22 vehicles at issue.

23 73. Defendants were also under a continuous duty to disclose to Plaintiff
24 and the other Class members that they had engaged in the scheme complained of
25 herein to evade federal and state emissions and clean air standards, and that they
26 systematically devalued compliance with, and deliberately flouted, federal and state
27 law regulating vehicle emissions and clean air.

74. Based on the foregoing, Defendants are estopped from relying on any statutes of limitations in defense of this action.

VII. CLASS ACTION ALLEGATIONS

75. The Classes' claims all derive directly from a common course of conduct by Defendants. This case is about Defendants' responsibility for their knowledge and deception, their conduct, and their products. Defendants engaged in uniform and standardized conduct toward the Classes. They did not differentiate, in degree of care or candor, in their actions or inactions, or in the content of their statements or omissions, among individual Class members. The objective facts on these subjects are the same for all Class members. Within each Claim for Relief asserted by the respective Classes, the same legal standards govern. Accordingly, Plaintiff brings this lawsuit as a class action on his own behalf and on behalf of all other persons similarly situated as members of the proposed Classes pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3) and/or (b)(2) and/or (c)(4). This action satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of those provisions.

A. Nationwide Consumer Class

76. Plaintiff brings this action and seek to certify and maintain it as a class action under Rules 23(a); (b)(2); and/or (b)(3); and/or (c)(4) of the Federal Rules of Civil Procedure on behalf of himself and a Nationwide Consumer Class defined as follows:

All persons in the United States who, prior to the date on which Defendants' fraud was revealed, entered into a lease or bought a Class Vehicle, and who (i) still own or lease the Class Vehicle, or (ii) sold the Class Vehicle after the date on which Defendants' fraud was revealed, or (iii) owned a Class Vehicle which was, following an accident, declared a total loss after the date on which Defendants' fraud was revealed.

B. California Consumer Class

77. Plaintiff alleges class action claims on behalf of a class of consumers in California (“California Class”). This class is defined as follows:

All persons who, prior to the date on which Defendants’ fraud was revealed, entered into a lease or bought a Class Vehicle in California, and who (i) still own or lease the Class Vehicle, or (ii) sold the Class Vehicle after the date on which Defendants’ fraud was revealed, or (iii) owned a Class Vehicle which was, following an accident, declared a total loss after the date on which Defendants’ fraud was revealed.

C. Definitions and Exclusions

78. The Nationwide Consumer Class and the California Class, and their members, are sometimes referred to herein as the “Class” or “Classes.”

79. Excluded from each Class are Defendants and their employees, officers, directors, legal representatives, heirs, successors and wholly or partly owned subsidiaries or affiliates of Defendants; Class Counsel and their employees; and the judicial officers and their immediate family members and associated court staff assigned to this case.

D. Numerosity and Ascertainability

80. This action satisfies the requirements of Fed. R. Civ. P. 23(a)(1). There are hundreds of thousands of Class Vehicles nationwide, and numerous Class Vehicles in California. Individual joinder of all Class members is impracticable.

81. Each of the Classes is ascertainable because its members can be readily identified using registration records, sales records, production records, and other information kept by Defendants or third parties in the usual course of business and within their control. Plaintiff anticipates providing appropriate notice to each certified Class, in compliance with Fed. R. Civ. P. 23(c)(2)(A) and/or (B), to be approved by the Court after class certification, or pursuant to court order under Fed. R. Civ. P. 23(d).

E. Commonality and Predominance of Common Issues

82. This action satisfies the requirements of Fed. R. Civ. P. 23(a)(2) and 23(b)(3) because questions of law and fact that have common answers that are the same for each of the respective Classes predominate over questions affecting only individual Class members. These common issue (and answers) include, without limitation, the following:

- a. Whether the Defendants engaged in the conduct alleged herein;
- b. Whether the Class Vehicles have “defeat devices” installed in them;
- c. Whether the Class Vehicles emitted high levels of pollutants when operated in normal conditions;
- d. Whether Defendants knew or should have known about the “defeat devices”;
- e. Whether Defendants knew or should have known that the Class Vehicles emitted unlawful levels of pollutants when operated in normal conditions;
- f. Whether the Class Vehicles have defects in that they do not comply with federal emissions regulations;
- g. Whether the Class Vehicles have suffered a diminution of value as a result of the Class Vehicles’ incorporation of the “defeat devices”;
- h. Whether Defendants had a duty to disclose the existence of the “defeat devices”;
- i. Whether Defendants had a duty to disclose that the Class Vehicles emitted unlawful levels of pollutants when operated in normal conditions;
- j. Whether Defendants omitted and failed to disclose material facts about the Class Vehicles;

- k. Whether Defendants' conduct tolls any or all applicable limitations periods by acts of fraudulent concealment, application of the discovery rule, or equitable estoppel;
- l. Whether Defendants misrepresented that the Class Vehicles were "clean" and environmentally friendly;
- m. Whether Defendants' unlawful, unfair, and/or deceptive practices harmed Plaintiff and the Classes;
- n. Whether Defendants have been unjustly enriched by their conduct;
- o. Whether Plaintiff and other Class members overpaid for the Class Vehicles;
- p. Whether Plaintiff and other Class members are entitled to damages and other monetary relief and, if so, in what amount;
- q. Whether Plaintiff and Class members are entitled to declaratory relief; and
- r. Whether Plaintiff and the Classes are entitled to equitable relief, including but not limited to, a preliminary and/or permanent injunction.

F. Typicality

83. This action satisfies the requirements of Fed. R. Civ. P. 23(a)(3) because Plaintiff's claims are typical of the claims of the Class members, and arise from the same course of conduct by Defendants. The relief Plaintiff seeks is typical of the relief sought for the absent Class members.

G. Adequate Representation

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

1 85. Plaintiff and his counsel are committed to vigorously prosecuting this
2 action on behalf of the Classes, and have the financial resources to do so. Neither
3 Plaintiff nor his counsel have interests adverse to those of the Classes.

4 **H. Superiority**

5 86. This action satisfies the requirements of Fed. R. Civ. P. 23(b)(2)
6 because Defendants have acted and refused to act on grounds generally applicable
7 to each Class, thereby making appropriate final injunctive and/or corresponding
8 declaratory relief with respect to each Class as a whole.

9 87. This action satisfies the requirements of Fed. R. Civ. P. 23(b)(3)
10 because a class action is superior to other available methods for the fair and
11 efficient adjudication of this controversy. The common questions of law and fact
12 regarding Defendants' conduct and responsibility predominate over any questions
13 affecting only individual Class members.

14 88. Because the damages suffered by each individual Class member may
15 be relatively small, the expense and burden of individual litigation would make it
16 very difficult or impossible for individual Class members to redress the wrongs
17 done to each of them individually, such that most or all Class members would have
18 no rational economic interest in individually controlling the prosecution of specific
19 actions, and the burden imposed on the judicial system by individual litigation by
20 even a small fraction of the Class would be enormous, making class adjudication
21 the superior alternative under Fed. R. Civ. P. 23(b)(3)(A).

22 89. The conduct of this action as a class action presents far fewer
23 management difficulties, far better conserves judicial resources and the parties'
24 resources, and far more effectively protects the rights of each Class member than
25 would piecemeal litigation. Compared to the expense, burdens, inconsistencies,
26 economic infeasibility, and inefficiencies of individualized litigation, the challenges
27 of managing this action as a class action are outweighed by the benefits to the
28 legitimate interests of the parties, the Court, and the public, of class treatment in this

1 Court, making class adjudication superior to other alternatives, under Fed. R. Civ.
2 P. 23(b)(3)(D).

3 90. Plaintiff is not aware of any obstacles likely to be encountered in the
4 management of this action that would preclude its maintenance as a class action.
5 Rule 23 provides the Court with authority and flexibility to maximize the
6 efficiencies and benefits of the class mechanism and reduce management
7 challenges. The Court may, on motion of Plaintiff or on its own determination,
8 certify a nationwide class or California class for claims sharing common legal
9 questions; utilize the provisions of Rule 23(c)(4) to certify any particular claims,
10 issues, or common questions of fact or law for class-wide adjudication; certify and
11 adjudicate bellwether class claims; and utilize Rule 23(c)(5) to divide any Class into
12 subclasses.

13 **VIII. CLAIMS FOR RELIEF**

14 **COUNT I**

15 **FRAUD/FRAUDULENT CONCEALMENT**

16 91. Plaintiff hereby incorporates by reference the allegations contained in
17 the preceding paragraphs of this Complaint, as if fully set forth herein.

18 92. Plaintiff brings this Count against Defendants on behalf of members of
19 the Nationwide Consumer Class. In the event a nationwide class cannot be
20 maintained on this claim, this claim is asserted by the California Class.

21 93. Defendants intentionally concealed and suppressed material facts
22 concerning the Clean Diesel cars. Defendants' conduct defrauded Plaintiff and the
23 Class through intentional and affirmative misrepresentations, omissions,
24 suppression, and concealments of material fact.

25 94. These misrepresentations and omissions include, but are not limited to,
26 the fact that Defendants did not disclose that the Clean Diesel cars included "defeat
27 devices" nor that these cars emitted unlawful levels of pollutants during normal
28 operating conditions. Moreover, Defendants repeatedly advertised the Clean Diesel

1 cars as environmentally safe, clean, efficient, and powerful, even though these
2 statements were not true. Defendants intended Plaintiff and the Class to rely on
3 those representations.

4 95. Defendants knew or had reason to know that Plaintiff and the Class
5 would reasonably rely on their misrepresentation and omissions.

6 96. Plaintiff and the Class reasonably relied upon Defendants' false
7 representations and omissions. Plaintiff and the Class had no means of learning or
8 knowing that Defendants' representations and omissions were false and misleading,
9 in part because Defendants used sophisticated means of deceiving their customers.

10 97. Defendants took steps to ensure that their employees did not reveal the
11 details of their scheme to regulators or consumers, including Plaintiff and other
12 Class members. Defendants did so to boost the reputation of their vehicles and
13 falsely assure purchasers and lessees of their vehicles, including previously owned
14 vehicles, that Defendants are reputable manufacturers that comply with applicable
15 law, including federal and state clean air laws and emissions regulations.
16 Defendants' false representations were material to consumers, both because those
17 representations concern the quality of the affected vehicles, including their
18 compliance with applicable federal and state law and regulations, and also because
19 the representations played a significant role in the value of the vehicles.

20 98. Defendants had a duty to disclose the concealed material facts,
21 including but not limited to the existence of the defeat devices and the fact that the
22 Clean Diesel cars in actuality emitted high levels of pollutants during normal
23 operations because:

- 24 a. Knowledge of the actual emissions and performance of the vehicles
25 was known and/or accessible only to and by Defendants;
26 b. Knowledge of the scheme and its details were known and/or accessible
27 only to and by Defendants;
28

- c. Defendants had exclusive knowledge as to implementation and maintenance of their scheme;
- d. Defendants knew the facts were not known to or reasonably discoverable by Plaintiff nor the Class;
- e. Defendants made general affirmative representations about the qualities of the Clean Diesel cars with respect to emission standards which were deceptive, misleading, and incomplete without the disclosure of additional facts.

99. Defendants had a duty to disclose information regarding their Clean Diesel cars, including the actual emissions of these vehicles, and the existence of the defeat devices.

100. These omitted and concealed facts were material because they directly impact the value of the Class Vehicles purchased or leased by Plaintiff and other Class members. Whether a manufacturer's products comply with federal and state environmental regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, particularly with respect to the emissions certification testing that vehicles must pass.

101. Defendants actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect their profits and to keep from regulators and the public that their Clean Diesel cars did not or could not comply with federal and state laws governing clean air and emissions. Defendants concealed these facts at the expense of Plaintiff and Class members.

102. On information and belief, Defendants still have not made full and adequate disclosures, and continue to defraud Plaintiff and Class members by concealing material information regarding the emission qualities of the Class Vehicles and their efforts to circumvent emissions standards.

103. Defendants knew and intended to mislead consumers, including Plaintiff and Class members, and intended Plaintiff and Class members to rely on their misrepresentations and omissions. Plaintiff and Class members were unaware of the omitted material facts referenced herein.

104. Because of the concealment and/or suppression of the facts, Plaintiff and other Class members have sustained damages in an amount to be proven at trial. Plaintiff and Class members have been damaged because, inter alia, they own vehicles that are diminished in value. They also bought or leased cars that could not have been offered for sale in the U.S. by Defendants and their agents, had Defendants been truthful about the fact that the cars did not meet U.S. emissions standards. Moreover, Plaintiff and Class members paid more for those cars. Furthermore, after Defendants institute the retrofits mandated by the EPA, Plaintiff and Class members will incur additional expenses, such as the cost of fuel, and suffer diminished performance.

105. Defendants' actions and misconduct, as alleged in this Complaint, were undertaken wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiff's and other Class members' rights and the representations that Defendants made to them, in order to enrich Defendants. Defendants' conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

COUNT II

VIOLATIONS OF THE CONSUMERS LEGAL REMEDIES ACT

(CAL. BUS. & PROF. CODE §§ 1750, *et seq.*)

106. Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs of this Complaint, as if fully set forth herein.

107. Plaintiff brings this Count against Defendants on behalf of members of the California Class.

108. The California’s Consumers Legal Remedies Act prohibits any person from

- a. “Misrepresenting the source, sponsorship, approval, or certification of goods or services,” CAL. BUS. & PROF. CODE § 1770(2),
- b. “Misrepresenting the affiliation, connection, or association with, or certification by, another,” CAL. BUS. & PROF. CODE § 1770(3),
- c. “Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have,” CAL. BUS. & PROF. CODE § 1770(5)
- d. “Representing that goods or services are of a particular standard, quality, or grade . . . if they are of another,” CAL. BUS. & PROF. CODE § 1770(7),
- e. “Advertising goods or services with intent not to sell them as advertised,” CAL. BUS. & PROF. CODE § 1770(9), and
- f. “Representing that the subject of a transaction has been supplied in accordance with a previous representations when it has not.” CAL. BUS. & PROF. CODE § 1770(16).

109. The Class Vehicles are “goods” as defined by CAL. BUS. & PROF. CODE § 1761(a) because they have been bought or leased primarily for personal, family, or household purposes.

110. Defendants are each a “person” as defined by CAL. BUS. & PROF. CODE § 1761(c).

111. Plaintiff and other Class members are each a “consumer” as defined by CAL. BUS. & PROF. CODE § 1761(d) because they bought or leased goods and services for personal, family, or household purpose.

112. In the course of Defendants’ businesses, they willfully failed to disclose and actively concealed the “defeat device,” misrepresented the EPA approval of the Class vehicles, concealed the true level of emissions from the Class

1 Vehicles, misrepresented the “green” qualities of the Class Vehicles, and advertised
2 the Class Vehicles as possessing qualities they did not possess. Defendants
3 therefore engaged in acts and practices that violate CAL. BUS. & PROF. CODE §
4 1770.

5 113. Defendants knew or should have known of these misrepresentations,
6 omissions, and concealments, and intended to mislead consumers, including
7 Plaintiff and Class members, and intended Plaintiff and Class members to rely on
8 their misrepresentations. Plaintiff and Class members were unaware of the omitted
9 facts referenced herein, and those facts are material because a reasonable consumer
10 would have considered them to be important in deciding whether to purchase or
11 lease the Class Vehicles.

12 114. Plaintiff and the Class reasonably relied on Defendants’ concealment
13 and misrepresentation of material facts to their detriment. Defendants’ conduct as
14 set forth above and otherwise proximately caused injuries to Plaintiff and the other
15 Class members.

16 115. Defendants had reason to know that the Class would rely on
17 Defendants’ representations because the representations were made in the course of
18 advertising the Class Vehicles for sale to the Class.

19 116. Plaintiff and other Class members suffered measurable injuries as a
20 result of Defendants’ conduct. Plaintiff and other Class members overpaid for the
21 affected vehicles and did not receive the benefit of the bargain. Additionally, the
22 Class Vehicles suffered a diminution in value. Plaintiff and Class members also
23 face future inevitable costs and diminished performance. These injuries are the
24 direct and natural consequences of Defendants’ misrepresentations, concealments,
25 and omissions.

26 117. Defendants actively and willfully with an intent to deceive or
27 otherwise mislead, concealed and/or suppressed the material facts regarding the
28 defective and non-EPA compliant Clean Diesel cars, the defeat device, and other

1 aspects of the Class Vehicles in whole or in part, with the intent to deceive and
 2 mislead Plaintiff and the other Class members and to induce Plaintiff and the other
 3 Class members to purchase or lease a Class Vehicle at a premium price, which did
 4 not match the true value of the vehicle.

5 118. Plaintiff and the other Class members seek injunctive relief to prevent
 6 further unlawful, unfair, and/or fraudulent acts or practices by Defendants.

7 119. After mailing appropriate notice and demand in accordance with CAL.
 8 BUS. & PROF. CODE §§ 1782(a) & (d), Plaintiff will subsequently amend this
 9 Complaint to also include a request for compensatory and punitive damages.

10 **COUNT III**

11 **VIOLATIONS OF CALIFORNIA'S FALSE ADVERTISING LAW**

12 **(CAL. BUS. & PROF. CODE §§ 17500, *et seq.*)**

13 120. Plaintiff hereby incorporates by reference the allegations contained in
 14 the preceding paragraphs of this Complaint, as if fully set forth herein.

15 121. Plaintiff brings this Count against Defendants on behalf of members of
 16 the California Class.

17 122. California's False Advertising Law makes it unlawful "for any ...
 18 corporation ... with intent directly or indirectly to dispose of real or personal
 19 property ... to induce the public to enter into any obligation relating thereto, to
 20 make or disseminate or cause to be made or disseminated ... from this state before
 21 the public in any state, in any newspaper or other publication, or any advertising
 22 device, ... or in any other manner or means whatever, including over the Internet,
 23 any statement ... which is untrue or misleading, and which is known, or which by
 24 the exercise of reasonable care should be known, to be untrue or misleading." CAL.
 25 BUS. & PROF. CODE § 17500.

26 123. In the course of Defendants' businesses, they caused to be made and/or
 27 disseminated through California and other states, through advertising, marketing,
 28 and other publications, statements that were untrue, misleading, and which were

1 known, or which through the exercise of reasonable care should have been known,
2 to be true and misleading to consumers, including Plaintiff and other Class
3 members. Defendants therefore engaged in acts and practices that violate CAL.
4 BUS. & PROF. CODE § 17500, including but not limited to: misrepresentations
5 regarding the Class Vehicles' emissions, cost of operation, relative savings, true
6 value, performance, and general characteristics. Those misrepresentations were
7 material and likely to deceive a reasonable consumer.

8 124. Defendants knew and intended to mislead consumers, including
9 Plaintiff and Class members, and intended Plaintiff and Class members to rely on
10 their misrepresentations. Plaintiff and Class members were unaware of the omitted
11 material facts referenced herein.

12 125. Plaintiff and the Class reasonably relied on Defendants' concealment
13 and misrepresentation of material facts to their detriment. Defendants' conduct as
14 set forth above and otherwise proximately caused injuries to Plaintiff and the other
15 Class members.

16 126. Defendants had reason to know that the Class would rely on
17 Defendants' representations because the representations were made in the course of
18 advertising the Class Vehicles for sale to the Class.

19 127. Plaintiff and other Class members suffered measurable injuries as a
20 result of Defendants' conduct. Plaintiff and other Class members overpaid for the
21 affected vehicles and did not receive the benefit of the bargain. Additionally, the
22 Class Vehicles suffered a diminution in value. Plaintiff and Class members also
23 face future inevitable costs and diminished performance. These injuries are the
24 direct and natural consequences of Defendants' misrepresentations, concealments,
25 and omissions.

26 128. Defendants actively and willfully with an intent to deceive or
27 otherwise mislead, concealed and/or suppressed the material facts regarding the
28 defective and non-EPA compliant Clean Diesel cars, the defeat device, and other

1 aspects of the Class Vehicles in whole or in part, with the intent to deceive and
 2 mislead Plaintiff and the other Class members and to induce Plaintiff and the other
 3 Class members to purchase or lease a Class Vehicle at a premium price, which did
 4 not match the true value of the vehicle.

5 129. Plaintiff and the other Class members seek injunctive relief to prevent
 6 further unlawful, unfair, and/or fraudulent acts or practices by Defendants.

7 130. Plaintiff and the other Class members also seek such orders or
 8 judgments as may be necessary to restore to Plaintiff and the other Class members
 9 any money Defendants acquired by means of false advertising, including restitution
 10 and disgorgement.

11 **COUNT IV**

12 **VIOLATIONS OF THE SONG-BEVERLY WARRANTY ACT**

13 **(CAL. CIV. CODE §§ 1791, *et seq.*)**

14 131. Plaintiff hereby incorporates by reference the allegations contained in
 15 the preceding paragraphs of this Complaint, as if fully set forth herein.

16 132. Plaintiff brings this Count against Defendants on behalf of members of
 17 the California Class.

18 133. The Affected Vehicles are “consumer goods” as defined by CAL. CIV.
 19 CODE § 1791(a).

20 134. Defendants are “manufacturers” as defined by CAL. CIV. CODE §
 21 1791(j).

22 135. Defendants impliedly warranted to Plaintiff and other Class members
 23 that the Affected Vehicles were “merchantable” as defined by CAL. CIV. CODE §§
 24 1791.1(a) & 1792.

25 136. Among the warranties included in the implied warranty of
 26 merchantability is the warranty that the goods will pass without objection in the
 27 trade under the contract description, are fit for the ordinary purposes for which such
 28 goods are used, are adequately contained, packaged, and labeled, and conform to

1 the promises or affirmations of fact made on the container or label. CAL. CIV. CODE
2 § 1791.1(a).

3 137. Defendants expressly warranted to Plaintiff and other Class members
4 that the Affected Vehicles contained certain qualities, met certain requirements, and
5 would perform in a certain manner as defined by CAL. CIV. CODE § 1791.2.

6 138. By advertising the “green” and “clean” qualities of the Clean Diesel
7 cars, Defendants expressly warranted to Plaintiff and other Class members that the
8 affected vehicles, at a minimum, complied with all applicable laws and regulations
9 relating to emissions standards. Moreover, Defendants expressly warranted to
10 Plaintiff and to other Class members that their Clean Diesel engines were
11 comparatively more “green” and “clean” than alternative vehicle choices.

12 139. Defendants also warranted specific, measurable performance
13 characteristics of Class Vehicles through the use of an EPA fuel economy label,
14 which misrepresented the “greenhouse gas” rating, miles per gallon, yearly fuel
15 costs, and fuel savings over five years to consumers. These labels were intended to
16 give consumers a means of comparing the Class Vehicles to alternative vehicles
17 they might purchase. Defendants made these express representations part of the
18 basis of the bargain for the Class Vehicles.

19 140. Such statements and representations were intended by Defendants to
20 be, and are, among the facts a reasonable consumer would consider to be material in
21 the purchase of a vehicle.

22 141. Defendants should have reasonably expected the Class, as ultimate
23 users of the Class Vehicles, to use and be affected by the Class Vehicles. Members
24 of the Class were foreseeable users of the Class Vehicles and intended beneficiaries
25 of Defendants’ contracts to sell the vehicles. Defendants actively misled the Class
26 by making affirmative misrepresentations regarding the Class Vehicles.

27 142. At the time of the sales, Defendants had knowledge that the affected
28 vehicles would not comply with the aforementioned implied and express warranties.

1 143. Defendants breached their implied and express warranties.

2 144. For the reasons set forth above in the Complaint, the Class Vehicles
3 would not pass without objection in the trade because the retail sale by Defendants
4 of a vehicle that contains a defeat device is unlawful. Likewise, the Class Vehicles
5 would not pass without objection in the trade because the retail sale by Defendants
6 of a vehicle that does not comply with governing emissions standards is unlawful,
7 as is the sale of a vehicle whose certificate of compliance was fraudulently
8 obtained.

9 145. Also for the reasons set forth above, the Class Vehicles are not fit for
10 the ordinary purpose for which vehicles are used because they do not comply with
11 applicable federal and state emissions standards.

12 146. Furthermore, the Class Vehicles do not conform to the promise or
13 affirmations of fact made on their labels because those labels misstated that they
14 complied with applicable federal and state emissions standards, and the stated gas
15 mileage for comparison purposes was not achieved via EPA-compliant testing
16 procedures.

17 147. Contrary to Defendants' representations, the Class Vehicles did not
18 comply with applicable environmental regulations and emitted between 10 and 40
19 times the amount of pollutants allowed by those regulations.

20 148. Additionally, Defendants stated that the Class Vehicles achieved a
21 certain "greenhouse gas" rating and fuel efficiency, measured in terms of miles per
22 gallon, when tested in accordance with applicable EPA regulations. Defendants
23 also stated that the Class Vehicles achieved certain horsepower and torque ratings
24 when test in accordance with applicable EPA regulations. Those statements created
25 an express warranty that, under normal operating conditions, the Class Vehicles
26 would achieve the stated fuel efficiency, produce a certain amount of emissions,
27 and achieve a certain level of horsepower and torque for purposes of comparing the
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1 affected vehicles to alternative vehicles. These statements were typically contained
2 on an EPA mileage sticker on the vehicle.

3 149. However, if the affected vehicles had been tested in accordance with
4 EPA standards while also complying with pollution regulations, they would have
5 achieved significantly lower fuel efficiency than was stated on the EPA mileage
6 sticker on the vehicle and significantly lower horsepower and torque.

7 150. Class members are excused from the requirement to deliver
8 nonconforming goods to the manufacturer's service and repair facilities in this state
9 because Defendants are refusing to accept delivery; because delivery cannot
10 reasonably be accomplished; and/or because of futility and the nature of the
11 nonconformity, which Defendants have admitted they have no ability to bring into
12 conformity at this time.

13 151. Defendants were provided notice of their breaches by their own and
14 governmental inquiries and investigations, and by numerous complaints, among
15 other sources of information. Defendants were aware of their own intentional
16 conduct causing the breaches long before Plaintiff and the Class, and Defendants
17 had ample notice and a reasonable number of opportunities to repair the breaches.
18 Defendants have also been put on notice by other complaints that have been filed
19 throughout the United States. Alternatively, this complaint is written notice of
20 nonconformity to Defendants under CAL. CIV. CODE § 1793.2(c).

21 152. Class members are excused from any requirement that they allow a
22 reasonable number of attempts to bring California vehicles into conformity based
23 on futility and the nature of the nonconformity because Defendants have admitted
24 they have no ability to do so at this time.

25 153. As a result of the foregoing breaches of warranty, Plaintiff and other
26 Class members have been damaged. Plaintiff and other Class members purchased
27 or leased vehicles in California that at the time of sale or lease, could not have been
28 sold or leased in the United States because they did not meet U.S. or California

emissions standards. In light of the defects in the Class Vehicles, Plaintiff and Class members overpaid for their vehicles. The Class Vehicles are of diminished value because they do not comply with applicable federal and state emissions standards, cost more to operate, are less efficient when operated, cost more to repair, have a diminished resale value, and will have diminished performance.

154. Plaintiff and the other Class members seek injunctive relief to prevent further unlawful, unfair, and/or fraudulent acts or practices by Defendants.

155. Plaintiff and the other Class members also seek damages pursuant to CAL. CIV. CODE §§ 1791.2(d) and 1794, including but not limited to, the purchase price of the Affected Vehicles, the overpayment for the Affected Vehicles, and the diminution in value of the Affected Vehicles.

156. In addition to all other damages and remedies, Plaintiff and other Class members are entitled, pursuant to CAL. CIV. CODE § 1794(e)(1), to recover damages and reasonable attorney's fees and costs, and may recover a civil penalty of up to two times to amount of damages.

157. Because Defendants' failure to comply was willful, seek a civil penalty of twice the amount of actual damages pursuant to CAL. CIV. CODE § 1794(c). Plaintiff and other Class members also seek attorney's fees pursuant to CAL. CIV. CODE § 1794(d).

COUNT V

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

(CAL. COM. CODE § 2314)

158. Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs of this Complaint, as if fully set forth herein.

159. Plaintiff brings this Count against Defendants on behalf of the California Class.

160. UCC § 2-314, codified at CAL. COM. CODE § 2314, provides that, unless disclaimed, there is an implied warranty of merchantability with respect to

1 goods purchased from a merchant. An implied warranty of merchantability
2 attached to each of the Class Vehicles.

3 161. Among the warranties included in the implied warranty of
4 merchantability is the warranty that the goods will pass without objection in the
5 trade; that the goods are fit for the ordinary purposes for which such goods are used;
6 and that the goods conform to the promise of affirmations of fact made on the
7 container or label if any.

8 162. Defendants should have reasonably expected the Class, as ultimate
9 users of the Class Vehicles, to use and be affected by the Class Vehicles. Members
10 of the Class were foreseeable users of the Class Vehicles and intended beneficiaries
11 of Defendants' contracts to sell the vehicles. Defendants actively misled the Class
12 by making affirmative misrepresentations regarding the Class Vehicles.

13 163. At the time of the sales, Defendants had knowledge that the affected
14 vehicles would not comply with the aforementioned implied warranties.

15 164. Defendants breached their implied warranties.

16 165. For the reasons set forth above in the Complaint, the Class Vehicles
17 would not pass without objection in the trade because the retail sale by Defendants
18 of a vehicle that contains a defeat device is unlawful. Likewise, the Class Vehicles
19 would not pass without objection in the trade because the retail sale by Defendants
20 of a vehicle that does not comply with governing emissions standards is unlawful,
21 as is the sale of a vehicle whose certificate of compliance was fraudulently
22 obtained.

23 166. Also for the reasons set forth above, the Class Vehicles are not fit for
24 the ordinary purpose for which vehicles are used because they do not comply with
25 applicable federal and state emissions standards.

26 167. Furthermore, the Class Vehicles do not conform to the promise or
27 affirmations of fact made on their labels because those labels misstated that they
28 complied with applicable federal and state emissions standards, and the stated gas

1 mileage for comparison purposes was not achieved via EPA-compliant testing
2 procedures.

3 168. Defendants were provided notice of their breaches by their own and
4 governmental inquiries and investigations, and by numerous complaints, among
5 other sources of information. Defendants were aware of their own intentional
6 conduct causing the breaches long before Plaintiff and the Class, and Defendants
7 had ample notice and opportunity to correct the breaches.

8 169. As a result of the foregoing breaches of warranty, Plaintiff and other
9 Class members have been damaged. Plaintiff and other Class members purchased
10 or leased vehicles in California that at the time of sale or lease, could not have been
11 sold or leased in the United States because they did not meet U.S. or California
12 emissions standards. In light of the defects in the Class Vehicles, Plaintiff and
13 Class members overpaid for their vehicles. The Class Vehicles are of diminished
14 value because they do not comply with applicable federal and state emissions
15 standards, cost more to operate, are less efficient when operated, cost more to
16 repair, have a diminished resale value, and will have diminished performance.

17 **COUNT VI**

18 **BREACH OF EXPRESS WARRANTY**

19 **(CAL. COM. CODE § 2313)**

20 170. Plaintiff hereby incorporates by reference the allegations contained in
21 the preceding paragraphs of this Complaint, as if fully set forth herein.

22 171. Plaintiff brings this Count against Defendants on behalf of the
23 California Class.

24 172. UCC § 2-313, codified at CAL. COM. CODE § 2313, provides that an
25 express warranty is created when an affirmation of fact or promise made by a seller
26 relating to goods becomes part of the basis of the bargain for the goods, or when
27 any description of goods becomes part of the basis of the bargain. By advertising
28 the “green” and “clean” qualities of the Clean Diesel cars, Defendants expressly

1 warranted to Plaintiff and other Class members that the affected vehicles, at a
2 minimum, complied with all applicable laws and regulations relating to emissions
3 standards. Moreover, Defendants expressly warranted to Plaintiff and to other
4 Class members that their Clean Diesel engines were comparatively more “green”
5 and “clean” than alternative vehicle choices.

6 173. Defendants also warranted specific, measurable performance
7 characteristics of Class Vehicles through the use of an EPA fuel economy label,
8 which misrepresented the “greenhouse gas” rating, miles per gallon, yearly fuel
9 costs, and fuel savings over five years to consumers. These labels were intended to
10 give consumers a means of comparing the Class Vehicles to alternative vehicles
11 they might purchase. Defendants made these express representations part of the
12 basis of the bargain for the Class Vehicles.

13 174. Such statements were intended by Defendants to be, and are, among
14 the facts a reasonable consumer would consider to be material in the purchase of a
15 vehicle.

16 175. Additionally, Defendants should have reasonably expected the Class,
17 as ultimate users of the Class Vehicles, to use and be affected by the Class Vehicles.
18 Defendants actively made affirmative misrepresentations regarding the Class
19 Vehicles.

20 176. Contrary to Defendants’ representations, the Class Vehicles did not
21 comply with applicable environmental regulations and emitted between 10 and 40
22 times the amount of pollutants allowed by those regulations.

23 177. Additionally, Defendants stated that the Class Vehicles achieved a
24 certain “greenhouse gas” rating and fuel efficiency, measured in terms of miles per
25 gallon, when tested in accordance with applicable EPA regulations. Defendants
26 also stated that the Class Vehicles achieved certain horsepower and torque ratings
27 when test in accordance with applicable EPA regulations. Those statements created
28 an express warranty that, under normal operating conditions, the Class Vehicles

1 would achieve the stated fuel efficiency, produce a certain amount of emissions,
2 and achieve a certain level of horsepower and torque for purposes of comparing the
3 affected vehicles to alternative vehicles. These statements were typically contained
4 on an EPA mileage sticker on the vehicle.

5 178. However, if the affected vehicles had been tested in accordance with
6 EPA standards while also complying with pollution regulations, they would have
7 achieved significantly lower fuel efficiency than was stated on the EPA mileage
8 sticker on the vehicle and significantly lower horsepower and torque.

9 179. Plaintiff and other Class members did not have an opportunity to
10 inform Defendants of the breach because Defendants deliberately withheld material
11 information and actively misled the Class with regard to the performance, value,
12 and other characteristics of the Class Vehicles. Defendants were provided notice of
13 their breaches by their own and governmental inquiries and investigations, and by
14 numerous complaints, among other sources of information. Defendants were aware
15 of their own intentional conduct causing the breaches long before Plaintiff and the
16 Class knew, and Defendants had ample notice and opportunity to correct the
17 breaches.

18 180. As a result of the foregoing breaches of express warranties, Plaintiff
19 and other Class members have been damaged. Plaintiff and other Class members
20 purchased or leased vehicles in California that at the time of sale or lease, could not
21 have been sold or leased in the United States because they did not meet U.S. or
22 California emissions standards. In light of the defects in the Class Vehicles,
23 Plaintiff and Class members overpaid for their vehicles. The Class Vehicles are of
24 diminished value because they do not comply with applicable federal and state
25 emissions standards, cost more to operate, are less efficient when operated, cost
26 more to repair, have a diminished resale value, and will have diminished
27 performance.

28

COUNT VII
VIOLATIONS OF THE MAGNUSON-MOSS
WARRANTY ACT
(15 U.S.C. §§ 2301 et seq.)

181. Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs of this Complaint, as if fully set forth herein.

182. Plaintiff brings this Count against Defendants on behalf of members of the Nationwide Consumer Class.

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

184. The Class Vehicles are “consumer products” within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(1).

185. Plaintiff and Class members are “consumers” within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(3).

186. Defendants are “suppliers” and “warrantors” within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(4)-(5).

187. 15 U.S.C. § 2310(d)(1) provides a cause of action for any consumer who is damaged by the failure of a warrantor to comply with an implied or written warranty.

188. Volkswagen provided Plaintiff and the other Class members with an implied warranty of merchantability in connection with the purchase or lease of their vehicles that is an “implied warranty” within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(7). As a part of the implied warranty of merchantability, Volkswagen warranted that the Class Vehicles were fit for the ordinary purpose of passenger motor vehicles, would pass without objection in the trade as designed, manufactured, and marketed, and would comply with applicable federal and state emissions standards.

1 189. Volkswagen breached this implied warranty and is therefore liable to
2 Plaintiff and the Class pursuant to 15 U.S.C. § 2310(d)(1) because, without
3 limitation, the Class Vehicles share a common design defect in that they emit high
4 levels of pollutants and are equipped with defeat devices intended to evade
5 detection of their unlawful emissions. The Defendants have admitted that the Class
6 Vehicles are defective and anticipate recalling the Class Vehicles, but the recalls are
7 woefully insufficient.

8 190. Defendants provided Plaintiff and the other Class members with an
9 express written warranty in connection with the purchase or lease of their vehicles,
10 as described further below, that is a “written warranty” within the meaning of the
11 Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(6). Defendants made written
12 affirmations of fact that the Class Vehicles would be free of defects that would
13 prevent ordinary use. Defendants affixed labeling and other written affirmations
14 making specific, performance-related representations related to the nature of the
15 Class Vehicles, including the performance within specified emissions ranges. The
16 EPA fuel economy label affixed to each Class Vehicle warranted the “greenhouse
17 gas” rating, yearly fuel cost, the fuel savings over a period of five years, the miles-
18 per-gallon the car achieved, and the horsepower and torque the car achieved, all
19 based on knowingly and intentionally misleading information.

20 191. Defendants breached their express warranties for the Class Vehicles
21 by, among other things, selling or leasing to Class Members Class Vehicles that are
22 not free of material defects; they emit high levels of pollutants, do not achieve
23 warranted horsepower and torque, and are equipped with defeat devices intended to
24 evade detection of their unlawful emissions.

25 192. Any efforts to limit the express and implied warranties in a manner that
26 would exclude coverage of the Class Vehicles is unconscionable, and any such
27 effort to disclaim, or otherwise limit, liability for the Class Vehicles is null and
28 void.

1 193. Any limitations on the express and implied warranties are procedurally
2 unconscionable. Defendants purposefully misrepresented the Class Vehicles to
3 consumers. Additionally, there was unequal bargaining power between Defendants,
4 on the one hand, and Plaintiff and the other Class members, on the other.

5 194. Any limitations on the express and implied warranties are
6 substantively unconscionable. Defendants knew that defeat devices were installed
7 on the Class Vehicles and that they were misrepresenting the emissions, fuel
8 performance, and value of the Class Vehicles. Defendants failed to disclose the
9 defeat device to Plaintiff and the other Class members well after becoming aware of
10 them. Given this intentionally fraudulent behavior, Defendants' enforcement of any
11 durational limitations on those warranties, would be harsh and shock the
12 conscience.

13 195. Plaintiff and each of the other Class members have had sufficient
14 direct dealings with either Defendants or their agents (dealerships) to establish
15 privity of contract.

16 196. Nonetheless, privity is not required here because Plaintiff and each of
17 the other Class members are intended third-party beneficiaries of contracts between
18 Defendants and their dealers and agents. Specifically, Plaintiff and each of the
19 other Class members are intended third-party beneficiaries of the implied and
20 written warranties. The dealers and agents were not intended to be the ultimate
21 consumers of the Class Vehicles and have no rights under the warranty agreements
22 provided for the Class Vehicles: the warranty agreements were designed for and
23 intended to benefit consumers. Finally, privity is also not required because the
24 Class Vehicles are unsafe and hazardous instrumentalities due to the toxic level of
25 pollutants they produce with normal use.

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

3 198. Furthermore, affording Defendants an opportunity to cure their breach
4 of warranties would be unnecessary and futile. At the time of sale or lease of each
5 Class Vehicle, the Defendants knew, should have known, or were reckless in not
6 knowing of their misrepresentations concerning the Class Vehicles' inability to
7 perform as warranted, but nonetheless failed to rectify the situation and/or disclose
8 the defective design. Under the circumstances, the remedies available under any
9 informal settlement procedure would be inadequate, and any requirement that
10 Plaintiff resorts to an informal dispute resolution procedure and afford Defendants a
11 reasonable opportunity to cure their breach of warranties is excused and thereby
12 deemed satisfied.

13 199. The amount in controversy of Plaintiff's individual claims meets or
14 exceeds the sum of \$25. The amount in controversy of this action exceeds the sum
15 of \$50,000, exclusive of interest and costs, computed on the basis of all claims to be
16 determined in this lawsuit. Plaintiff, individually and on behalf of the other Class
17 members, seeks all damages permitted by law, including diminution in value of
18 their vehicles, in an amount to be proven at trial. In addition, pursuant to 15 U.S.C.
19 § 2310(d)(2), Plaintiff and the other Class members are entitled to recover a sum
20 equal to the aggregate amount of costs and expenses (including attorneys' fees
21 based on actual time expended) determined by the Court to have reasonably been
22 incurred by Plaintiff and the other Class members in connection with the
23 commencement and prosecution of this action.

24 200. Additionally, Plaintiff and each of the other Class members are entitled
25 to equitable relief under 15 U.S.C. § 2310(d)(1).
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27
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COUNT VIII

VIOLATIONS OF CALIFORNIA’S UNFAIR COMPETITION LAW

(CAL. BUS. & PROF. CODE §§ 17200, *et seq.*)

201. Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs of this Complaint, as if fully set forth herein. Plaintiff brings this Count against Defendants on behalf of members of the California Class.

202. California’s Unfair Competition Law prohibits “unfair competition,” which is defined as “any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising.” CAL. BUS. & PROF. CODE § 17200.

203. Defendants are each a “person” as defined by CAL. BUS. & PROF. CODE § 17201.

204. In the course of Defendants’ businesses, they willfully failed to disclose and actively concealed the “defeat device” and true level of emissions from the Class Vehicles, both of which are material facts. Defendants therefore engaged in acts and practices that violate CAL. BUS. & PROF. CODE § 17200, including but not limited to: the use of deception, misrepresentation, and the knowing concealment, suppression, or omission of material fact with the intent that others would rely upon such concealment, suppression, or omission, in connection with the sale or advertisement of the Class Vehicles.

205. Defendants knew and intended to mislead consumers, including Plaintiff and Class members, and intended Plaintiff and Class members to rely on their misrepresentations. Plaintiff and Class members were unaware of the omitted material facts referenced herein.

206. Defendants engaged in unlawful business practices by defrauding consumers, engaging in fraudulent concealment, and violating: 15 U.S.C. §§ 2301, *et seq.*; CAL. BUS. & PROF. CODE §§ 1750, *et seq.*; CAL. BUS. & PROF. CODE §§

1 17500, *et seq.*; CAL. CIV. CODE §§ 1791, *et seq.*; and CAL. COM. CODE §§ 2313,
2 2314.

3 207. Defendants engaged in fraudulent business practices by making
4 misrepresentations and material omissions that were likely to mislead the public.

5 208. Defendants engaged in unfair business practices by committing
6 misconduct described herein that caused substantial injury to consumers. That
7 injury is not outweighed by any countervailing benefits to consumers or
8 competition, and consumers could not reasonably avoid injury.

9 209. Plaintiff and the Class reasonably relied on Defendants' concealment
10 and misrepresentation of material facts to their detriment. Defendants' conduct as
11 set forth above and otherwise proximately caused injuries to Plaintiff and the other
12 Class members.

13 210. Defendants had reason to know that the Class would rely on
14 Defendants' representations because the representations were made in the course of
15 advertising the Class Vehicles for sale to the Class.

16 211. Plaintiff and other Class members suffered measurable injuries as a
17 result of Defendants' conduct. Plaintiff and other Class members overpaid for the
18 affected vehicles and did not receive the benefit of the bargain. Additionally, the
19 Class Vehicles suffered a diminution in value. Plaintiff and Class members also
20 face future inevitable costs and diminished performance. These injuries are the
21 direct and natural consequences of Defendants' misrepresentations, concealments,
22 and omissions.

23 212. Defendants actively and willfully with an intent to deceive or
24 otherwise mislead, concealed and/or suppressed the material facts regarding the
25 defective and non-EPA compliant Clean Diesel cars, the defeat device, and other
26 aspects of the Class Vehicles in whole or in part, with the intent to deceive and
27 mislead Plaintiff and the other Class members and to induce Plaintiff and the other
28

1 Class members to purchase or lease a Class Vehicle at a premium price, which did
2 not match the true value of the vehicle.

3 213. Plaintiff and the other Class members seek injunctive relief to prevent
4 further unlawful, unfair, and/or fraudulent acts or practices by Defendants under
5 CAL. BUS. & PROF. CODE § 17200.

6 214. Plaintiff and the other Class members also seek such orders or
7 judgments as may be necessary to restore to Plaintiff and the other Class members
8 any money Defendants acquired by means of unfair competition, including
9 restitution and disgorgement, as provided in CAL. BUS. & PROF. CODE §§ 17203 &
10 3345.

11 **COUNT IX**

12 **UNJUST ENRICHMENT**

13 215. Plaintiff hereby incorporates by reference the allegations contained in
14 the preceding paragraphs of this Complaint, as if fully set forth herein.

15 216. Plaintiff brings this Count against Defendants on behalf of members of
16 the Nationwide Consumer Class. In the alternative, this Claim is asserted on behalf
17 of the California Class.

18 217. As a result of their wrongful and fraudulent acts, concealments, and
19 omissions pertaining to the design defect of their vehicles and the concealment of
20 the defect, as set forth above, Defendants charged a higher price for their vehicles
21 than the vehicles' true value. Defendants were also able to sell cars to customers
22 that they would have otherwise been unable to sell.

23 218. Defendants enjoyed the benefit of increased financial gains, to the
24 detriment of Plaintiff and other Class members, who paid a premium price that did
25 not reflect the true value of the affected vehicles. It would be inequitable, unjust,
26 and unconscionable for Volkswagen to retain those wrongfully obtained funds.

27 219. Plaintiff and other Class members have no adequate remedy at law.
28

1 220. Plaintiff and other Class members therefore seek disgorgement of all
2 profits, plus interest.

3 **IX. PRAYER FOR RELIEF**

4 221. Plaintiff, on behalf of himself and all others similarly situated, requests
5 the Court to enter judgment against Defendants, as follows:

- 6 a. An order certifying the proposed Classes, designating Plaintiff as the
7 named representative of the Classes, designating the undersigned as
8 Class Counsel, and making such further orders for the protection of
9 Class members as the Court deems appropriate, under Fed. R. Civ. P.
10 23;
- 11 b. A declaration that the Clean Diesel cars have defective emissions
12 systems;
- 13 c. A declaration that Defendants are financially responsible for notifying
14 all Class members about the defective nature of the Class Vehicles;
- 15 d. An order enjoining Defendants to desist from further deceptive
16 distribution, sales, and lease practices with respect to the Class
17 Vehicles, and such other injunctive relief that the Court deems just and
18 proper;
- 19 e. An award to Plaintiff and Class members of compensatory, exemplary,
20 and punitive remedies and damages and statutory penalties, including
21 interest, in an amount to be proven at trial;
- 22 f. An award to Plaintiff and Class members for the return of the purchase
23 prices of the Class Vehicles, with interest from the time it was paid, for
24 the reimbursement of the reasonable expenses occasioned by the same,
25 for damages and for reasonable attorneys' fees;
- 26 g. An award to Plaintiff and Class members for the premium that they
27 overpaid for the Class Vehicles as opposed to gasoline vehicles, with
28 interest from the time it was paid, for the reimbursement of the

reasonable expenses occasioned by the same, for damages and for reasonable attorneys' fees;

- h. An award to Plaintiff and Class members for the additional expenses they incur for operating and maintaining their vehicles, such as fuel, after Defendants implement a retrofit of the emissions system;
- i. 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 Class Vehicles, or make full restitution to Plaintiff and Class members;
- j. An award of attorneys' fees and costs, as allowed by law;
- k. An award of prejudgment and post judgment interest, as provided by law;
- l. Leave to amend the Complaint to conform to the evidence produced at trial; and
- m. Such other relief as may be appropriate under the circumstances.

X. DEMAND FOR JURY TRIAL

222. Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands a jury trial as to all issues triable by a jury.

Respectfully submitted,

Dated: October 15, 2015

BOIES, SCHILLER & FLEXNER LLP

By: /s/ David L. Zifkin
David L. Zifkin (SBN 232845)

David Boies
dboies@bsfllp.com
333 Main Street
Armonk, NY 10504

1 Tel: 914-749-8200
2 Fax: 914-749-8300

3 David L. Zifkin (SBN 232845)
4 dzifkin@bsfllp.com
5 Edward H. Takashima (SBN 270945)
6 etakashima@bsfllp.com
7 401 Wilshire Blvd., Suite 850
8 Santa Monica, CA 90401
9 Tel: 310-752-2400
10 Fax: 310-752-2490

11 *Attorneys for Plaintiff*
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