

Jeffrey Lewis (SBN 66587)
KELLER ROHRBACK L.L.P.
300 Lakeside Drive, Suite 1000
Oakland, CA 64612
(510) 463-3900. Fax (510) 463-3901
jlewis@kellerrohrback.com

Lesley E. Weaver (SBN 191305)
BLEICHMAR FONTI & AULD, LLP
1901 Harrison Street, Suite 1100
Oakland, CA 94612
(510) 844-7759, Fax: (510) 844-7701
lweaver@bfalaw.com

Benjamin L. Bailey, *pro hac vice forthcoming*
BAILEY GLASSER LLP
209 Capitol Street
Charleston, WV 25301
(304) 345-6555, Fax (304) 342-1110
Bbailey@baileyglasser.com

David S. Casey, Jr., Esq. (SBN 60768)
CASEY GERRY SCHENK FRANCAVILLA
BLATT & PENFIELD LLP
110 Laurel Street
San Diego, CA 92101
(619) 238-1811, Fax (619) 544-9232
dcasey@cglaw.com

Lynn Lincoln Sarko, *pro hac vice forthcoming*
KELLER ROHRBACK L.L.P.
1201 Third Avenue, Suite 3200
Seattle, WA 98101
(206) 623-1900, Fax (206) 623-3384
lsarko@kellerrohrback.com

J. Gerard Stranch IV, *pro hac vice forthcoming*
BRANSTETTER, STRANCH & JENNINGS,
PLLC
223 Rosa L. Parks Avenue, Suite 200
Nashville, TN 37203
(615) 254-8801, Fax (615) 250-3937
gerards@bsjfirm.com

Robin L. Greenwald, *pro hac vice forthcoming*
WEITZ & LUXENBERG P.C.
700 Broadway
New York, NY 10003
(212) 558-5500, Fax (212) 344-5461
rgreenwald@weitzlux.com

Attorneys for Plaintiffs

****Additional Counsel Listed on Signature Page***

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

EUGENIA AMADOR and PAUL
JOACHIMCZYK, individually and on behalf of
all others similarly situated,

Plaintiffs,

v.

AUDI AG; AUDI OF AMERICA, INC.; AUDI
OF AMERICA LLC; VOLKSWAGEN GROUP
OF AMERICA, INC.; and VOLKSWAGEN AG,

Defendants.

No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Judge:

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	NATURE OF THE ACTION	1
III.	PARTIES	4
IV.	JURISDICTION AND VENUE	5
V.	PLAINTIFFS' FACTS.....	8
	A. Defendants Misleadingly Tout Their Commitment to the Environment and to Their Consumers.....	8
	B. Defendants Intentionally Hid the Excessive and Illegal Levels of Pollutants Emitted By the Defeat Device Vehicles.	15
VI.	PLAINTIFFS' FACTS.....	18
	A. Plaintiff Paul Joachimczyk	18
	B. Plaintiff Eugenia Amador	19
VII.	CLASS ACTION ALLEGATIONS	19
	1. Numerosity: Federal Rule of Civil Procedure 23(a)(1)	20
	2. Commonality and Predominance: Federal Rule of Civil Procedure 23(a)(2) and 23(b)(3)	20
	3. Typicality: Federal Rule of Civil Procedure 23(a)(3).....	21
	4. Adequacy: Federal Rule of Civil Procedure 23(a)(4)	21
	5. Declaratory and Injunctive Relief: Federal Rule of Civil Procedure 23(b)(2)	22
	6. Superiority: Federal Rule of Civil Procedure 23(b)(3)	22
VIII.	ANY APPLICABLE STATUTES OF LIMITATION ARE TOLLED	22
	A. Discovery Rule Tolling.....	22
	B. Tolling Due To Fraudulent Concealment	24
	C. Estoppel.....	24
IX.	CAUSES OF ACTION	25
	A. Claims Asserted on Behalf of the Entire Class	25

1	COUNT I: FRAUD BY CONCEALMENT (Common Law)	25
2	COUNT II: BREACH OF CONTRACT	30
3	COUNT III: BREACH OF EXPRESS WARRANTY	31
4	COUNT IV: BREACH OF IMPLIED WARRANTY	33
5	COUNT V: IMPLIED AND WRITTEN WARRANTY Magnuson - Moss	
6	Warranty Act (15 U.S.C. §§ 2301, <i>et seq.</i>)	34
7	COUNT VI: UNJUST ENRICHMENT	35
8	B. State-Specific Claims	36
9	COUNT VII: VIOLATION OF CALIFORNIA CONSUMERS LEGAL	
10	REMEDIES ACT (Cal. Civ. Code §§ 1750, <i>et seq.</i>)	36
11	COUNT VIII: VIOLATION OF CALIFORNIA FALSE ADVERTISING LAW	
12	(Cal. Bus. & Prof. Code §§ 17500, <i>et seq.</i>)	38
13	COUNT IX: BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY	
14	(Cal. Com. Code § 2314)	39
15	COUNT X: FRAUD BY CONCEALMENT (California Law)	40
16	COUNT XI: VIOLATION OF SONG-BEVERLY CONSUMER WARRANTY	
17	ACT FOR BREACH OF IMPLIED WARRANTY OF	
18	MERCHANTABILITY (Cal. Civ. Code §§ 1791.1 & 1792)	44
19	COUNT XII: VIOLATIONS OF THE WISCONSIN DECEPTIVE TRADE	
20	PRACTICES ACT (Wis. Stat. § 100.18)	46
21	COUNT XIII: BREACH OF EXPRESS WARRANTY (Wis. Stat. §§ 402.313	
22	and 411.210)	50
23	COUNT XIV: BREACH OF IMPLIED WARRANTY OF	
24	MERCHANTABILITY (Wis. Stat. §§ 402.314 and 411.212)	53
25	COUNT XV: VIOLATIONS OF CONNECTICUT UNLAWFUL TRADE	
26	PRACTICES ACT (Conn. Gen. Stat. § 42-110A, <i>et seq.</i>)	54
27	COUNT XVI: BREACH OF EXPRESS WARRANTY (Conn. Gen. Stat. Ann.	
28	§ 42A-2-313)	58
	COUNT XVII: BREACH OF IMPLIED WARRANTY OF	
	MERCHANTABILITY (Conn. Gen. Stat. Ann. § 42A-2-314)	61
	X. REQUEST FOR RELIEF	62

XI.	DEMAND FOR JURY TRIAL	63
-----	-----------------------------	----

I. INTRODUCTION

Plaintiffs Paul Joachimczyk and Eugenia Amador, individually and on behalf of all others similarly situated, allege the following against Audi AG, Audi of America, Inc., Audi of America LLC, Volkswagen Group of America, Inc., and Volkswagen AG (collectively “Defendants”), based where applicable on personal knowledge, information and belief, and the investigation of counsel. This Court has jurisdiction over this action pursuant to the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1332(d).

II. NATURE OF THE ACTION

1. Hot on the heels of the 2015 scandal surrounding Volkswagen Group’s installation of “Defeat Devices” in Volkswagen, Audi, and Porsche diesel vehicles that unlawfully concealed from regulators and consumers the true and illegally-high levels of pollutants these vehicles emitted, another “Defeat Device” embedded in numerous Audi vehicles has just been discovered.

2. Unbelievably, despite Volkswagen’s promises to “come clean” and to be honest about its past mistakes in 2015, it apparently persisted in concealing and selling vehicles with a different Defeat Device in hundreds of thousands, if not millions, of Audi-branded vehicles.

3. This nationwide class action concerns the installation of illegal “Defeat Devices” in hundreds of thousands of Audi-branded vehicles sold in the United States. The “Defeat Device” circumvents carbon dioxide emissions limits by keeping engine speed—and thus carbon dioxide emissions—artificially low in conditions that only occur when the vehicles are undergoing emissions testing. During normal operation, this program is deactivated, and the vehicles emit carbon dioxide at levels significantly higher than the legal limit.

4. This “Defeat Device” is present in both diesel- and gasoline-powered vehicles. Audi and Volkswagen represented to consumers and regulators that these vehicles offered excellent performance in combination with legal, clean emissions; in truth, those characteristics were mutually exclusive.

1 While undergoing emissions testing, the vehicles sacrificed any semblance of high performance in order
2 to limit CO₂ emissions; while on the road, the vehicles may have performed as advertised but emitted
3 much higher CO₂ emissions.

4 5. Instead of delivering on their promises of high performance coupled with low or
5 compliant emissions, Defendants devised a way to make it appear that their cars did what they said they
6 would when, in fact, they did not. Put simply, Defendants lied to consumers and regulators alike and
7 continued to lie over a period of years.

8 6. The story of Volkswagen's 2015 diesel Defeat Device scandal is now well known:
9 Volkswagen and its subsidiaries installed software that used signals like whether the steering wheel was
10 being turned to recognize when vehicles were undergoing emissions testing, and operated the vehicles'
11 emissions control systems at compliant levels *only* during testing. Under normal operating conditions,
12 these emissions control systems were deactivated or operated at lower levels, resulting in increased
13 performance and fuel efficiency but vastly increased—and illegal—levels of oxides of nitrogen. In the
14 autumn of 2015, the Environmental Protection Agency (EPA) and California Air Resources Board
15 (CARB) issued Notices of Violation for these Defeat Devices, and both private and government
16 litigation ensued. Judge Breyer of the Northern District of California granted final approval of a
17 settlement resolving many claims relating to 2.0-liter diesel engines on October 25, 2016. Claims
18 relating to 3.0-liter diesel engines, and to certain defendants, are still being litigated as of the filing of
19 this Complaint.
20
21
22

23 7. On November 6, 2016, German newspaper *Bild am Sonntag* reported that the California
24 Air Resources Board ("CARB") had discovered another Defeat Device, this time on several Audi
25 models, both gasoline and diesel, equipped with a certain 8-speed automatic transmission. Like the
26 Defeat Devices used in the diesel vehicles, this device uses engine and transmission management
27
28

1 software and the car's sensors to detect when the vehicle is undergoing emissions testing, and then
2 operates vehicle systems to reduce carbon dioxide emissions to legal levels only during test cycles.

3 8. According to the *Bild am Sonntag* report, the device works as follows: When the affected
4 vehicles are turned on, they activate a "warm-up" mode. In that mode, the engine management computer
5 instructs the automatic transmission to change gears at unusually low engine speeds (commonly
6 measured in revolutions per minute or RPM), keeping engine speed low and thus burning less fuel and
7 emitting lower amounts of carbon dioxide. However, this mode remains active only until the steering
8 wheel is turned 15 degrees or more, at which point the engine management computer switches the
9 transmission into normal mode, wherein the transmission shifts at normal, higher RPM, offering higher
10 performance, lower fuel economy, and significantly greater carbon dioxide emissions.

11 9. The effect of this method is that during emissions testing, which typically takes place on
12 a dynamometer or "rolling road"—something like a car-sized treadmill—the car remains in "warm-up"
13 mode indefinitely, because the steering wheel is not turned. Meanwhile, in normal driving conditions,
14 any turn requires the steering wheel to be turned more than 15 degrees, and the car switches to its
15 normal shifting program.

16 10. *Bild am Sonntag* further reports that Audi documents confirm this scheme. In February
17 2013, during testing of Audi vehicles, Audi's then-head of powertrain development, Axel Eiser, asked
18 when the "cycle-optimized shift program" would be ready, and suggested that the emissions-cheating
19 shift program be configured so that it is "100% active when on the roller, but only .01% with the
20 customer." Other news outlets, including the Wall Street Journal, have also reported seeing this
21 document.

22 11. The transmission used in this scheme is ZF's 8HP55 eight-speed automatic, referred to by
23 Audi as AL551-8Q. These transmissions are equipped on numerous Audi vehicles, both diesel and
24 gasoline, including, on information and belief, certain model years of the A6, A7, A8, Q5, and Q7
25

1 models. On information and belief, the transmission is also equipped on higher performance versions of
2 some of these models. The list of vehicles equipped with this transmission that also use the Defeat
3 Device software that operates it in the above-described manner may grow or change as the investigation
4 by Plaintiffs' counsel proceeds. The vehicles equipped with the newly-discovered Defeat Device
5 software targeting carbon dioxide are the subject of this lawsuit, and are referred to hereinafter as the
6 "Defeat Device Vehicles."

7
8 12. Because of Defendants' actions, the cars it sold to Plaintiffs and the Class are not what
9 Defendants promised. During normal operation, they pollute the atmosphere with much higher levels of
10 carbon dioxide than the artificially-manipulated test results disclose or than are permitted by federal and
11 state environmental protection laws. Meanwhile, when the engine and transmission are operated in a
12 manner that actually limits pollution to legal levels, the vehicles cannot deliver the performance that
13 Defendants advertise.

14
15 13. Defendants' actions substantially decrease the current and resale value of these vehicles.

16 **III. PARTIES**

17 14. Plaintiff Paul Joachimczyk is a resident and citizen of Farmington, Hartford County,
18 Connecticut.

19 15. Plaintiff Eugenia Amador is a resident and citizen of Alameda, Alameda County,
20 California.

21
22 16. Volkswagen Group of America, Inc. is a corporation doing business in every U.S. state
23 and the District of Columbia and is organized under the laws of New Jersey, with its principal place of
24 business at 2200 Ferdinand Porsche Dr., Herndon, Virginia 20171. Volkswagen is therefore a citizen of
25 New Jersey and Virginia. *See* 28 U.S.C. § 1332(d)(10).

26 17. Volkswagen AG is the parent corporation and sole owner of Volkswagen Group of
27 America, Inc. Volkswagen AG is based in Germany and directly controls and directs the actions of
28

1 Volkswagen Group of America, Inc., which acts as its agent in the United States. As a result, this Court
2 has specific jurisdiction over Volkswagen AG.

3 18. Audi AG is based and incorporated in Germany and is a subsidiary of Volkswagen AG.
4 Audi AG is an agent of Volkswagen AG and, in part, directs the operations of Audi of America, Inc. and
5 Audi of America LLC, which act as its agents in the United States. As a result, this Court has specific
6 jurisdiction over Audi AG.
7

8 19. Audi of America, Inc. is a corporation doing business in every state and the District of
9 Columbia, and is organized under the laws of New Jersey, with its principal place of business at 2200
10 Ferdinand Porsche Dr., Herndon, Virginia 20171. Audi of America, Inc. is therefore a citizen of New
11 Jersey and Virginia. *See* 28 U.S.C. § 1332(d)(10).
12

13 20. Audi of America LLC is a Delaware corporation doing business in every state and the
14 District of Columbia, with its principal place of business at 3800 W. Hamlin Road, Auburn Hills,
15 Michigan 48326. Audi of America LLC is therefore a citizen of Delaware and Michigan. *See* 28 U.S.C.
16 § 1332(d)(10).
17

18 21. At all relevant times, Defendants, each of which is a direct or indirect subsidiary and
19 agent of Volkswagen AG, manufactured, distributed, sold, leased, and warranted the Defeat Device
20 Vehicles under the Audi brand name throughout the United States. Defendants also developed and
21 disseminated the owners' manuals and warranty booklets, advertisements, and other promotional
22 materials relating to the Defeat Device Vehicles.

23 IV. JURISDICTION AND VENUE

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

1 23. This Court has personal jurisdiction over Defendants Volkswagen Group of America,
2 Inc., Audi of America LLC, and Audi of America, Inc. because they conduct business in California and
3 have sufficient minimum contacts with California.

4 24. This Court has specific jurisdiction over Volkswagen AG and Audi AG because they
5 have purposefully availed themselves of this forum by directing their agents and distributors—
6 Volkswagen Group of America, Inc., Audi of America, Inc., and Audi of America LLC—to take action
7 here.
8

9 25. Upon information and belief, Volkswagen AG controls 99.55% of Audi AG. Upon
10 information and belief, Audi of America LLC is an operating subsidiary of Audi AG.

11 26. At all relevant times, Volkswagen AG used and uses its agent Audi AG to develop and
12 manufacture Audi branded vehicles, and used and uses its agents Volkswagen Group of America, Inc.
13 and Audi of America, Inc. to sell Audi-branded cars in the United States. Through its agents Audi AG
14 and Volkswagen Group of America, Inc., Volkswagen AG also directs the actions of both Audi of
15 America, Inc. and Audi of America LLC. Audi of America, Inc. refers to itself as an operating unit of
16 Volkswagen Group of America, Inc. in its communications with clients, including the warranty
17 documents for the Defeat Device Vehicles.
18

19 27. Volkswagen AG uses its agent, Volkswagen Group of America, Inc., to perform the
20 critical work of developing, distributing, and marketing the Defeat Device Vehicles in California and
21 throughout the United States. Audi AG and Volkswagen Group of America, Inc., in turn, direct and use
22 Audi of America, Inc. and Audi of America LLC for marketing and customer relations relating to the
23 sales of Defeat Device Vehicles in California and throughout the United States.
24

25 28. Audi AG closely directed the actions of its agents Audi of America LLC and/or Audi of
26 America, Inc. in advertising and selling the cars it manufactures in Germany in the United States. As a
27 result, this Court has specific jurisdiction over Audi AG.
28

1 29. In turn, Volkswagen AG closely controlled and directed the actions of Audi AG and its
2 subsidiaries, and of Volkswagen Group of America, Inc. As a result, this Court has specific jurisdiction
3 over Volkswagen AG.

4 30. The remarkable level of centralized and intimate control Volkswagen AG exerts over
5 Volkswagen Group of America, Inc. and other Volkswagen subsidiaries is well-documented.
6 Volkswagen AG itself describes this highly-centralized structure in its corporate governance document
7 as follows: Volkswagen AG “targets and requirements [are] laid down by the Board of Management of
8 Volkswagen AG or the Group Board of Management [and] must be complied with in accordance with
9 the applicable legal framework.”
10

11 31. This top-down governance manifests in Volkswagen AG’s intimate management of
12 Volkswagen Group of America, Inc. For example, in 2011, when Volkswagen AG’s CEO visited the
13 newly built Volkswagen plant in Tennessee, *Bloomberg Business* reported that “he berated staff for
14 hanging chrome parts for air vents, doors and gear shifts on the wall. To check that they uniformly
15 glistened before agreeing to use them in the sedan, he wanted them displayed on a table with light
16 shining down at the same angle that customers would see the parts in the car.”
17

18 32. That single plant in Chattanooga, Tennessee is Defendants’ only assembly plant in the
19 United States, and it conducts final assembly of only one of the numerous models that Defendants sell in
20 the United States. Even then, the majority of components and parts are manufactured in factories in
21 Europe and around the world, or purchased from vendors, and shipped to Tennessee to be assembled.
22 The other models that Volkswagen Group of America, Inc., Audi of America, Inc., and Audi of America
23 LLC, market and sell in the United States, including vehicles at issue in this lawsuit, are assembled
24 elsewhere in the world, including in Ingolstadt, Germany, and Bratislava, Slovakia. The engines,
25 transmissions, and computerized systems in the Defeat Device Vehicles are among the components
26 manufactured outside the United States. In sum, Volkswagen AG exerts significant, and sometimes
27
28

total, control over the design, technology, marketing, and manufacturing of the vehicles it sells through Volkswagen Group of America, Inc., Audi of America, Inc., and Audi of America LLC, in California and throughout the United States.

33. Venue is proper in this District under 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the claims occurred in this District, and because Defendants have caused harm to Class members residing in this District.

V. PLAINTIFFS' FACTS

A. Defendants Misleadingly Tout Their Commitment to the Environment and to Their Consumers.

34. Soon after the diesel scandal broke in September 2015, Volkswagen admitted to the scheme and apologize to its customers, promising to “make things right” and to “win back the trust” of customers, dealers, regulators, the public, and employees.



1 35. But over a year later, yet another Defeat Device, targeting a different pollutant and
2 installed in hundreds of thousands of additional vehicles, has been discovered. Far from coming clean,
3 Defendants continued to cheat on emissions testing, and continued to cover it up.

4 36. Defendants intentionally designed, marketed, and sold cars in order to mislead consumers
5 and regulators about the amount of pollution those cars created and the performance they produced.
6 Despite touting themselves as an environmentally-conscientious company that produced efficient,
7 emissions-compliant, and simultaneously luxurious and high-performing cars for people who cared
8 about the environment but also wanted to enjoy driving, Defendants sold expensive cars that produced
9 pollution at levels far above federal and state regulations, and then intentionally and knowingly hid this
10 truth. To facilitate this deception, Defendants intentionally cheated on emissions testing through the use
11 of the Defeat Device software that managed the Defeat Device Vehicles' engines and transmissions to
12 emit legal levels of carbon dioxide only when undergoing emissions testing.
13

14 37. Long after Defendants became aware that many of their vehicles were deliberately
15 designed to cheat emissions tests, and even after EPA and CARB issued Notices of Violation for diesel
16 vehicles, Defendants continued to mislead consumers. While sales of new diesel vehicles including
17 those equipped with the Defeat Device described herein ceased in late 2015, sales of gasoline vehicles
18 so equipped continue to this day. Numerous news reports indicate that Audi did not stop producing
19 vehicles equipped with the Defeat Device software until May 2016, a full eight months after the 2015
20 scandal broke and one month before Volkswagen's now-approved settlement valued at \$14.7 was
21 announced.
22

23 38. Volkswagen and Audi advertised their concern for the environment even while selling
24 vehicles equipped with Defeat Devices that polluted at levels far greater than legal limits. For example,
25 on the "Environment" page of its website, Volkswagen Group of America, Inc., stated as late as
26 September 2015 that it takes "environmental responsibility very seriously. When it comes to making our
27
28

1 cars as green as possible, Volkswagen has an integrated strategy focused on reducing fuel consumption
2 and emissions, building the world's cleanest diesel engines and developing totally new power systems,
3 which utilize new fuel alternatives." That "integrated strategy" for reducing emissions seems to have
4 consisted only of cheating emissions testing so that Volkswagen and Audi vehicles only *appeared* to
5 offer reduced emissions, while continuing to pollute.
6

7 39. Defendants bolster their apparent environmental bona fides by trumpeting the fact that
8 the Audi A3 TDI and VW Jetta TDI were named the 2010 Green Car of the Year and the 2009 Green
9 Car of the Year, respectively. Shortly after the truth about Volkswagen's diesel Defeat Devices came out
10 in late September 2015, *Green Car Journal* rescinded those awards.
11

12 40. Audi-branded 3.0-liter TDI equipped models were the subject of the second EPA notice
13 of violation in November 2015. These vehicles were advertised as "sipping fuel" while offering cleaner
14 emissions than gasoline models and offering excellent performance, using phrases like "beauty with
15 benevolence," "intelligent performance," and "a cleaner future" (highlighting added). The below
16 advertisements were live on Audi's www.audiusa.com website as of November 2, 2015:
17
18
19
20
21
22
23
24
25
26
27
28



Clean diesel technology explained

Understand how clean diesel technology impacts fuel efficiency and performance, while being a more eco-conscious choice.

[Explore clearly better diesel](#)

2015 TDI® model lineup

With everything TDI® clean diesel has to offer, it's no wonder it's the intelligent choice. It starts with incredible performance, efficiency and a range second to none. It also turns out it could make the world a cleaner place—by cutting emissions by 12%.

[View TDI® model gallery](#)

Models of note



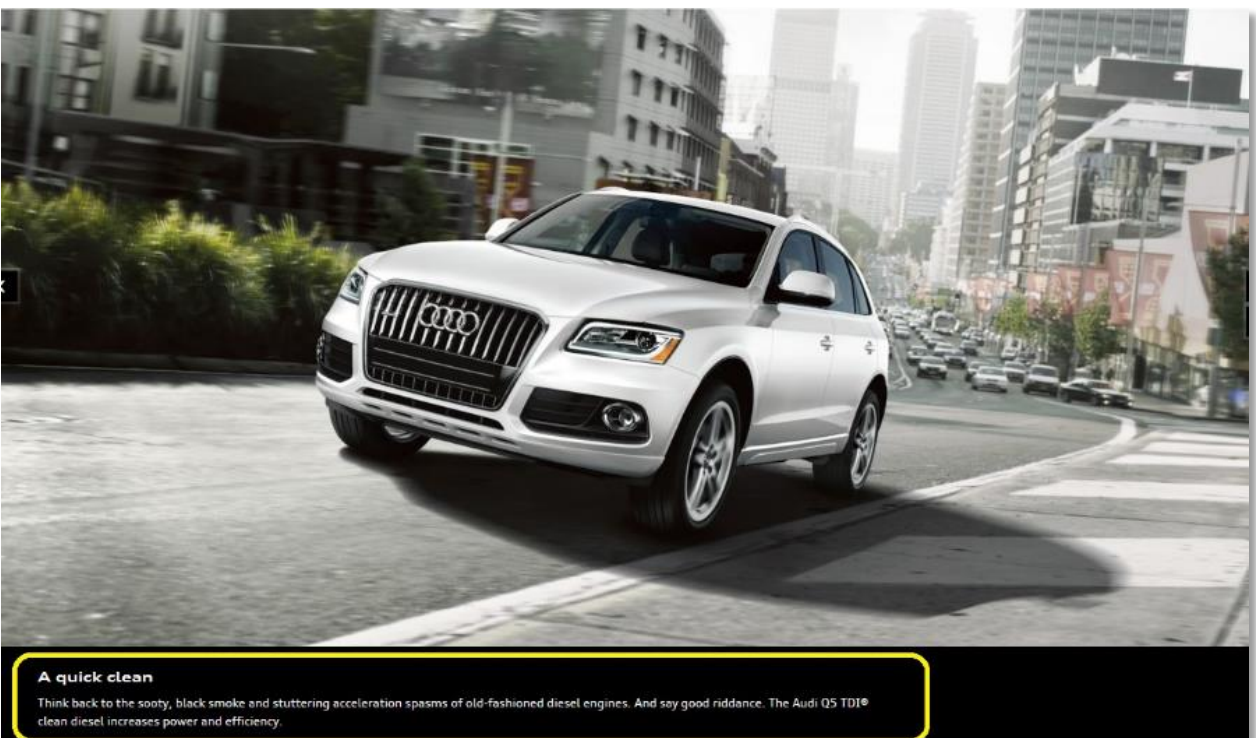
A6 TDI®
Starting at \$59,500



Q5 TDI®
Starting at \$48,100



A8 L TDI®
Starting at \$85,200



The future can look brighter



A cleaner future
Is beginning now.

With the TDI® clean diesel, Audi is pioneering the way for the vehicles and fuels of tomorrow. 12% lower CO₂ emissions than gasoline, TDI® is kind to the planet and has superior fuel efficiency combined with more torque and quick acceleration. An unbeatable combination.*

Intelligent performance

Efficiency shouldn't feel this powerful.

Audi TDI® clean diesel technology is packed with low-end torque, giving you incredible acceleration and passing power. So even though you feel the power kick in at higher speeds, the ingenious TDI® engine helps reduce fuel consumption.



41. Each of the models featured in the first three advertisements is now known to utilize the transmission “warm-up” mode Defeat Device that is the subject of this Complaint. The fourth advertisement makes reference to reduced levels of carbon dioxide pollution, but the truth is that these vehicles emit lower levels of carbon dioxide only on a dynamometer, not during normal operating conditions.

42. Carbon dioxide is a significant greenhouse gas and the excessive emission of carbon dioxide is a major cause of global warming and ocean acidification. For this reason, emissions of carbon dioxide by vehicles sold in the United States and California are regulated by the EPA and CARB.

43. Audi television advertisements featuring one of these vehicles, the A8, uses the tagline “Truth in Engineering” and can be seen at <http://www.youtube.com/watch?v=Afwgq0wqx2g>.

This is Truth in Engineering.

44. Defendants also launched a “Think Blue” program, which they explained is part of their policy of being “more responsible on the road and more environmentally conscious—not just in our cars.” Volkswagen advertised their Think Blue Collection as “eco-conscious” on its Facebook webpage in or about April 2014, using the image below:



45. Unfortunately for consumers who bought Defendants’ cars and for everyone affected by global warming, Defendants’ engineering was far from “truthful” and their professed commitment to

1 environmental consciousness was illusory. Defendants have designed and sold cars that emit pollutants
2 at breath-taking levels, and disguised it by further engineering them to detect and cheat on state and
3 federal environmental testing.

4 **B. Defendants Intentionally Hid the Excessive and Illegal Levels of Pollutants Emitted By the**
5 **Defeat Device Vehicles.**

6 46. Defendants' Defeat Devices are part of a computerized engine control system that
7 monitors sensors throughout the cars' engine, transmission, and exhaust systems and controls operation
8 of the cars' systems to ensure optimal performance. The functions controlled by those systems include
9 transmission shift points, fuel injection, valve and ignition timing, and operation of the engines' forced
10 air induction systems such as turbochargers. The engine control computer can, for example, ensure that
11 the air-to-fuel mixture is correct based on sensor readings such as throttle position, air flow, and engine
12 temperature.
13

14 47. Because modern cars include these sophisticated computers and sensors throughout the
15 car's systems, emissions testing sometimes uses a car's existing sensors to measure the presence of
16 pollutants and track compliance with EPA and state emissions standards. Emissions testing stations plug
17 a diagnostic device into the car's on-board diagnostics ("OBD II") port and use the car's own exhaust
18 sensors during the testing procedure to measure the substances emitted. Some states, instead of or in
19 addition to an OBD II diagnostic device, use a probe inserted into the car's exhaust pipe to measure the
20 chemicals emitted.
21

22 48. In either case, during testing the cars are driven for a standardized duration and engine
23 speed on a dynamometer, to simulate driving on the road without actually moving. The one respect in
24 which driving on a dynamometer differs significantly from normal operation is that the steering wheel
25 need not (and, realistically, cannot) be turned more than a few degrees from straight.
26

27 49. Here, Defendants programmed the engine control computers in the Defeat Device
28 Vehicles with software that effectively detects when the vehicle is undergoing emissions testing by

1 turning off a low-emitting gear-shifting program only once the steering wheel is turned more than fifteen
2 degrees. This ensures that the engine never revs above a certain, unrealistically low engine speed during
3 emissions testing, resulting in less fuel burnt and less carbon dioxide emitted than under normal driving
4 conditions. When the car is not being emissions tested—that is, under the vast majority of normal
5 operating conditions—the engine control systems operate the engine and transmission in a manner that
6 does not comply with EPA or CARB emissions requirements.
7

8 50. In short, this software allows Defendants’ Defeat Device Vehicles to meet emissions
9 standards in labs or state testing stations while permitting the vehicles to emit carbon dioxide at levels
10 above the standard allowed under United States laws and regulations during normal operation.
11 Volkswagen has already admitted that the Defeat Devices relating to oxides of nitrogen installed in its
12 diesel vehicles violated state and federal laws, including CARB standards and the Clean Air Act, but has
13 remained silent about its additional, carbon dioxide cheating scheme.
14

15 51. Nor was the diesel scandal the first time that Volkswagen allegedly engineered vehicles
16 to cheat emission standards. As reported by the *Los Angeles Times* on September 23, 2015, Volkswagen
17 paid a \$120,000 fine to EPA in 1974 in order to settle charges that “it gamed pollution control systems
18 in four models by changing carburetor settings and shutting off an emissions-control system at low
19 temperatures.”
20

21 52. Moreover, it appears Defendants were warned as long ago as 2007 by suppliers and their
22 own employees not to cheat on emissions tests. According to September 27, 2015 report by the
23 *Associated Press* concerning the diesel Defeat Device, “VW’s internal investigation has found a 2007
24 letter from parts supplier Bosch warning Volkswagen not to use the software during regular operation.”
25 Also, “a Volkswagen technician raised concerns about illegal practices in connection with emissions
26 levels in 2011.”
27
28

1 53. Despite those warnings, Defendants manufactured, marketed, and sold cars with Defeat
2 Devices designed to allow higher levels of pollutant emissions than those allowed by state and federal
3 law, thus defrauding their customers, and engaging in unfair competition under state and federal laws.

4 54. Defendants' illegal actions have caused Class Members significant harm. Even if
5 Defendants were to repair the Defeat Device Vehicles so that they comply with emissions requirements,
6 the repair would not compensate Plaintiffs and the Class for the significant harm Defendants' deception
7 has caused. This is true for at least two reasons.

8 55. First, any repairs performed as part of the recall are likely to significantly diminish the
9 performance of the Defeat Device Vehicles. The Defeat Device works by causing the transmission to
10 shift gears at unusually low engine speed, emitting legal levels of carbon dioxide at the expense of
11 performance. If Defendants were to "repair" the Defeat Device Vehicles by reprogramming the car's
12 software to engage this shift program—which currently operates only when the car first starts up or is
13 undergoing emissions testing—at all times in a manner that reduces available engine power and
14 performance to bring carbon dioxide emissions within legal limits. Plaintiffs' and Class Members' cars
15 will therefore not perform as advertised if "repaired" in this manner.

16 56. Second, even if a more functional repair is possible, it could not compensate for the
17 financial damages Plaintiffs and Class Members have suffered, including the high prices Plaintiffs and
18 the Class paid to own high-performing, luxurious Audi-branded vehicles that complied with emissions
19 requirements and comported with Audi's advertised commitment to the environment and the inevitable
20 reduction in resale value caused by any recall to repair the vehicles and any resulting diminished
21 performance. Adding insult to injury, many of the Defeat Device Vehicles have already seen their values
22 diminished by Defendants' diesel Defeat Device scandal.

23 57. Third, Plaintiffs and Class members are already experiencing reputational harm as
24 unwilling vectors for Defendants' pollution-producing vehicles.
25

60. In the autumn of 2015, after the diesel Defeat Device scandal came to light, Volkswagen's then-CEO, Martin Winterkorn, said in a statement that he was "deeply sorry that we have broken the trust of our customers and the public," and that Defendants would be suspending sales of some 2015 and 2016 vehicles with diesel engines. But despite the appearance of candor, Defendants continued to sell gasoline vehicles equipped with Defeat Devices long after Winterkorn's statement.

17

VI. PLAINTIFFS' FACTS

19 62. Plaintiff Paul Joachimczyk is a resident of Farmington, Connecticut. In or about May
20 2013, while a resident of Wisconsin, he purchased a new 2013 Audi A8 equipped with a 3.0-liter
21 gasoline V6 engine and a ZF 8-speed automatic transmission, VIN WAUAGAFD7DN001667, from
22 International Autos Group's Audi Milwaukee dealership in Milwaukee, Wisconsin.
23

63. Unbeknownst to Mr. Joachimczyk, his vehicle contained a Defeat Device designed to
bypass emission standards and deceive consumers and regulators. He would never have bought the car
in the first place if he knew the truth about its emission levels or if Defendants had not concealed the
illegal Defeat Device.

64. The eventual resale value of the car has been an important consideration for Mr. Joachimczyk throughout his ownership. He believes that Defendants' actions have significantly diminished the current and resale value of his A8.

B. Plaintiff Eugenia Amador

65. Plaintiff Eugenia Amador is a resident of Alameda, California. On or about April 29, 2016, she leased a new 2016 Audi Q5 equipped with an automatic transmission, VIN WA1L2AFP4GA118259, from Audi dealer in Oakland, California, financed through VW Financial.

66. Unbeknownst to Ms. Amador, her vehicle contained a Defeat Device designed to bypass emission standards and deceive consumers and regulators. She would never have bought the car in the first place if she knew the truth about its emission levels or if Defendants had not concealed the illegal Defeat Device.

67. The eventual resale value of the car has been an important consideration for Ms. Amador throughout her ownership. She believes that Defendants' actions have significantly diminished the current and resale value of her Q5.

VII. CLASS ACTION ALLEGATIONS

68. Plaintiffs bring this action on behalf of themselves and as a class action, pursuant to the provisions of Rules 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure on behalf of the following Class:

The Class

All persons or entities in the United States who are current or former owners and/or lessees of an Audi "Defeat Device Vehicle." Defeat Device Vehicles include, without limitation, all Audi vehicles equipped with ZF-supplied 8-speed automatic transmissions that use a shifting program on start-up that is disabled once the steering wheel is turned.

69. Excluded from the Class are individuals who have personal injury claims resulting from the "Defeat Device" in the automatic transmission system. Also excluded from the Class are Defendants and their subsidiaries and affiliates; all persons who make a timely election to be excluded from the

1 Class; governmental entities; and the judge to whom this case is assigned and his/her immediate family.
2 Plaintiffs reserve the right to revise the Class definition based upon information learned through
3 discovery.

4 70. Certification of Plaintiffs' claims for class-wide treatment is appropriate because
5 Plaintiffs can prove the elements of their claims on a class-wide basis using the same evidence as would
6 be used to prove those elements in individual actions alleging the same claim.
7

8 71. This action has been brought and may be properly maintained on behalf of the Class
9 proposed herein under Federal Rule of Civil Procedure 23.

10 **1. Numerosity: Federal Rule of Civil Procedure 23(a)(1)**

11 72. The members of the Class are so numerous and geographically dispersed that individual
12 joinder of all Class members is impracticable. While Plaintiffs are informed and believe that there are
13 not less than hundreds of thousands of members of the Class, the precise number of Class members is
14 unknown to Plaintiffs, but it may be ascertained from Defendants' records. Class members may be
15 notified of the pendency of this action by recognized, Court-approved notice dissemination methods,
16 which may include U.S. mail, electronic mail, Internet postings, and/or published notice.
17

18 **2. Commonality and Predominance: Federal Rule of Civil Procedure 23(a)(2) and**
19 **23(b)(3)**

20 73. This action involves common questions of law and fact, which predominate over any
21 questions affecting individual Class members, including, without limitation:

- 22 (a) Whether Defendants engaged in the conduct alleged herein;
23 (b) Whether Defendants designed, advertised, marketed, distributed, leased, sold, or
24 otherwise placed Defeat Device Vehicles into the stream of commerce in the United States;
25 (c) Whether the transmission control system in the Defeat Device Vehicles contains a defect
26 in that it does not comply with EPA requirements;
27
28

(d) Whether the transmission control systems in Defeat Device Vehicles can be made to comply with EPA standards without substantially degrading the performance of the Defeat Device Vehicles;

(e) Whether Defendants knew about the Defeat Device and, if so, how long Defendants have known;

(f) Whether Defendants designed, manufactured, marketed, and distributed Defeat Device Vehicles with a “Defeat Device;”

(g) Whether Defendants’ conduct violates consumer protection statutes, warranty laws, and other laws as asserted herein;

(h) Whether Plaintiffs and the other Class members overpaid for their Defeat Device Vehicles;

(i) Whether Plaintiffs and the other Class members are entitled to equitable relief, including, but not limited to, restitution or injunctive relief;

(j) Whether Plaintiffs and the other Class members are entitled to damages and other monetary relief and, if so, in what amount; and

(k) Whether Defendants continue to unlawfully conceal and misrepresent whether additional vehicles, besides those reported in the press to date, are in fact Defeat Device Vehicles.

3. Typicality: Federal Rule of Civil Procedure 23(a)(3)

74. Plaintiffs’ claims are typical of the other Class members’ claims because, among other things, all Class members were comparably injured through Defendants’ wrongful conduct as described above.

4. Adequacy: Federal Rule of Civil Procedure 23(a)(4)

75. Plaintiffs are adequate Class representatives because their interests do not conflict with the interests of other members of the Class he seeks to represent; Plaintiffs have retained counsel

1 competent and experienced in complex class action litigation; and Plaintiffs intend to prosecute the
2 action vigorously. The Class's interests will be fairly and adequately protected by Plaintiffs and their
3 counsel.

4 **5. Declaratory and Injunctive Relief: Federal Rule of Civil Procedure 23(b)(2)**

5 76. Defendant has acted or refused to act on grounds generally applicable to Plaintiffs and the
6 other members of the Class, thereby making appropriate final injunctive relief and declaratory relief, as
7 described below, with respect to the Class as a whole.

8 **6. Superiority: Federal Rule of Civil Procedure 23(b)(3)**

9 77. A class action is superior to any other available means for the fair and efficient
10 adjudication of this controversy, and no unusual difficulties are likely to be encountered in the
11 management of this class action. The damages or other financial detriment suffered by Plaintiffs and the
12 other Class members are relatively small compared to the burden and expense that would be required to
13 individually litigate their claims against Defendants, so it would be impracticable for members of the
14 Class to individually seek redress for Defendants' wrongful conduct.

15 78. Even if Class members could afford individual litigation, the court system could not.
16 Individualized litigation creates a potential for inconsistent or contradictory judgments, and increases the
17 delay and expense to all parties and the court system. By contrast, the class action device presents far
18 fewer management difficulties and provides the benefits of single adjudication, economy of scale, and
19 comprehensive supervision by a single court.

20 **VIII. ANY APPLICABLE STATUTES OF LIMITATION ARE TOLLED**

21 **A. Discovery Rule Tolling**

22 79. The tolling doctrine was made for cases of concealment like this one. For the following
23 reasons, any otherwise-applicable statutes of limitation have been tolled by the discovery rule with
24 respect to all claims.

1 80. Through the exercise of reasonable diligence, and within any applicable statutes of
2 limitation, Plaintiffs and members of the proposed Class could not have discovered that Defendants
3 were concealing and misrepresenting the true emissions levels of its vehicles, including but not limited
4 to their use of Defeat Devices.

5
6 81. As reported in *The New York Times* on September 19, 2015, the International Council on
7 Clean Transportation, a research group, first noticed the difference between Defendants' diesel vehicles
8 emissions in testing laboratories and in normal use on the road. The International Council on Clean
9 Transportation brought the Defeat Device issue to the attention of the EPA. The EPA, in turn, conducted
10 further tests on the vehicles, and ultimately uncovered the unlawful use of Defeat Device software in
11 2.0-liter diesel vehicles to conceal higher-than-legal emissions of oxides of nitrogen. A further
12 governmental investigation later revealed the inclusion of the Defeat Device software in 3.0-liter diesel
13 vehicles. Finally, more than a year after these violations, reports emerged that CARB had discovered yet
14 another Defeat Device, this time using the transmission's shifting protocols in both diesel and gasoline
15 vehicles to conceal heightened carbon dioxide emissions. Each time another Defeat Device was
16 discovered, Defendants begrudgingly admitted that they had been caught and apologized to their
17 customers—creating the impression that they had come clean about their emissions cheating schemes—
18 but in truth continued to conceal the additional Defeat Device(s), and to sell the vehicles equipped with
19 them to unsuspecting consumers. Thus, Defendants' deception with respect to the Defeat Devices was
20 painstakingly concealed from consumers and regulators alike.

21
22
23 82. Plaintiffs and the other Class members could not reasonably discover, and did not know
24 of facts that would have caused a reasonable person to suspect, that Defendants intentionally failed to
25 report information within their knowledge to federal and state authorities, dealerships, or consumers.

26 83. Likewise, a reasonable and diligent investigation could not have disclosed that
27 Defendants had information in their possession about the existence of its sophisticated emissions
28

1 deception and that they concealed that information, which was only discovered by Plaintiffs
2 immediately before this action was filed.

3 **B. Tolling Due To Fraudulent Concealment**

4 84. Throughout the relevant time period, all applicable statutes of limitation have been tolled
5 by Defendants' knowing and active fraudulent concealment and denial of the facts alleged in this
6 Complaint.
7

8 85. Instead of disclosing their deception, or that the emissions from the Defeat Device
9 Vehicles were far worse than represented, Defendants' falsely represented that its vehicles complied
10 with federal and state emissions standards, and that they were reputable manufacturers whose
11 representations could be trusted.

12 **C. Estoppel**

13 86. Defendants had a continuous duty to tell the truth about their products and to disclose to
14 Plaintiffs and the other Class members the facts that they knew about the emissions from Defeat Device
15 Vehicles, and of those vehicles' failure to comply with federal and state laws.
16

17 87. Although they had the duty throughout the relevant period to disclose to Plaintiffs and
18 Class members that they had engaged in the deception described in this Complaint, Defendants chose to
19 evade federal and state emissions and clean air standards with respect to the Defeat Device Vehicles,
20 and intentionally misrepresented their blatant and deceptive lack of compliance with federal and state
21 law regulating vehicle emissions and clean air.
22

23 88. Thus, Defendants are estopped from relying on any statutes of limitations in defense of
24 this action.
25
26
27
28

IX. CAUSES OF ACTION

A. Claims Asserted on Behalf of the Entire Class

**COUNT I:
FRAUD BY CONCEALMENT
(Common Law)**

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

90. Plaintiffs bring this claim on behalf of the Class.

91. Defendants intentionally concealed and suppressed material facts concerning the quality and character of the Defeat Device Vehicles. As alleged in this Complaint, Defendants engaged in deception to evade federal and state vehicle emissions standards by installing software designed to conceal its vehicles' emissions of pollutants.

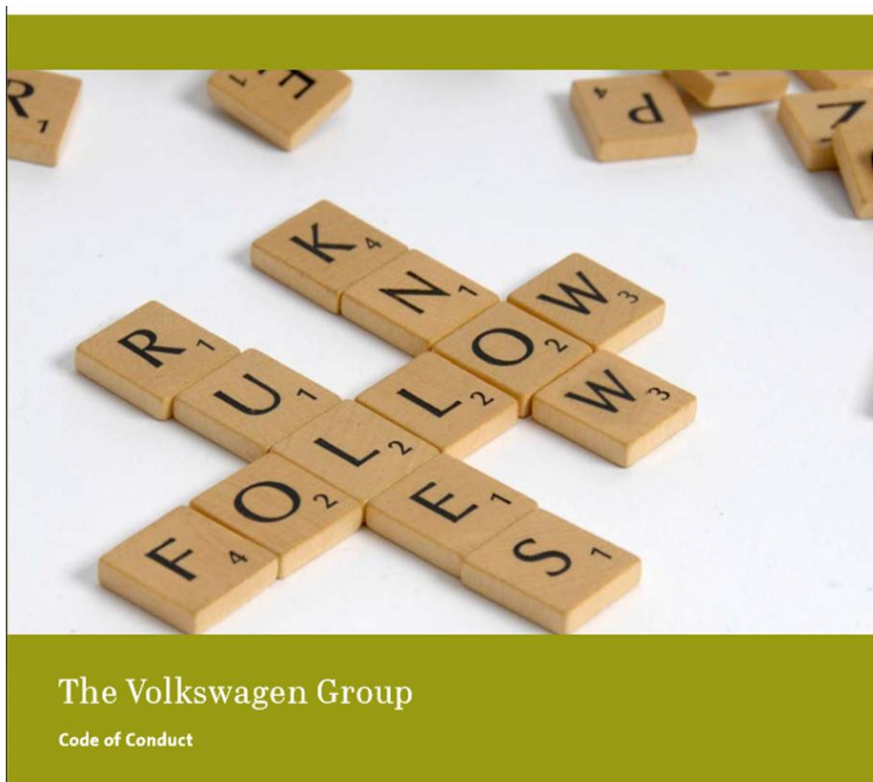
92. The software installed on the vehicles at issue was designed nefariously to cheat emissions certification testing, such that the vehicles would show lower emissions of carbon dioxide than when actually operating on the road. The result was what Defendants intended: vehicles passed emissions certifications by way of deliberately induced readings that do not reflect normal operations.

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

94. Defendants concealed and suppressed material facts concerning what is evidently their true corporate culture—one characterized by an emphasis on profits and sales above compliance with federal and state clean air law and emissions regulations that are meant to protect the public and consumers. They also emphasized profits and sales above the trust that Plaintiffs and Class members placed in their representations.

95. Necessarily, Defendants also took steps to ensure that its employees did not reveal the details of their deception to regulators or consumers, including Plaintiffs and Class members. This deception continued even as Defendants issued feigned apologies for its diesel Defeat Device conduct. Defendants did so in order to boost the reputations of their vehicles and to falsely assure purchasers and lessors of their vehicles, including certified previously owned vehicles, that they are reputable manufacturers that comply with applicable law, including federal and state clean air and emissions regulations, and that their vehicles likewise comply with applicable laws and regulations.

96. For example, the cover of Volkswagen Group's publicly-available corporate "Code of Conduct," in both English and German editions, features an image with the words "Know" and "Follow" "Rules" (German: "Kennen" and "Einhalten" "Regeln"). Following the revelations (and admissions) of years of concerted efforts to circumvent and cheat emissions regulations worldwide, this imagery, along with Volkswagen's other efforts to portray itself as a reputable and honest automaker, rings hollow.





97. Ironically, the German edition’s cover also features the letters spelling out “Compliance” in English—in a jumbled pile.

98. Defendants’ false representations were material to consumers, both because they concerned the quality of the Defeat Device Vehicles, including their compliance with applicable federal and state laws and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As Defendants well knew, their customers, including Plaintiffs and Class members, highly valued that the vehicles they were purchasing or leasing offered high performance—performance only made possible by concealing the vehicles’ true emissions levels from regulators.

99. Defendants had a duty to disclose the emissions deception they engaged in with respect to the vehicles at issue because knowledge of the deception and its details were known and/or accessible only to Defendants, because Defendants had exclusive knowledge as to implementation and

1 maintenance of their deception, and because Defendants knew the facts were unknown to or not
2 reasonably discoverable by Plaintiffs or Class members.

3 100. Defendants also had a duty to disclose because they made general affirmative
4 representations about the qualities of their vehicles with respect to emissions standards which were
5 misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above
6 regarding their emissions deception, the actual emissions of their vehicles, their actual philosophy with
7 respect to compliance with federal and state clean air law and emissions regulations, and their actual
8 practices with respect to the vehicles at issue.

9
10 101. Having volunteered to provide information to Plaintiffs and the Class, Defendants had the
11 duty to disclose the entire truth. These omitted and concealed facts were material because they directly
12 affect the value of the Defeat Device Vehicles purchased or leased by Plaintiffs and Class members.
13 Whether a manufacturer's products comply with federal and state clean air law and emissions
14 regulations, and whether that manufacturer tells the truth with respect to such compliance or non-
15 compliance, are material concerns to a consumer, including with respect to the emissions certifications
16 testing their vehicles must pass. Defendants represented to Plaintiffs and Class members that they were
17 purchasing compliant, high-performing vehicles, and certification testing appeared to confirm this—
18 except that, secretly, Defendants had thoroughly subverted the testing process.

19
20 102. Defendants actively concealed and/or suppressed these material facts, in whole or in part,
21 to pad and protect its profits and to avoid the perception that their vehicles did not or could not comply
22 with federal and state laws governing clean air and emissions, which perception would hurt the brand's
23 image and cost Defendants money, and Defendants did so at the expense of Plaintiffs and Class
24 members.

25
26 103. On information and belief, Defendants have still not made full and adequate disclosures,
27 particularly as to past conduct, and continue to defraud Plaintiffs and Class members by concealing
28

1 material information regarding both the emissions qualities of their vehicles and their emissions
2 deception.

3 104. Plaintiffs and Class members were unaware of the omitted material facts referenced
4 herein, and they would not have acted as they did if they had known of the concealed and/or suppressed
5 facts, in that they would not have purchased purportedly compliant cars manufactured by Defendants,
6 and/or would not have continued to drive their heavily polluting vehicles, or would have taken other
7 affirmative steps in light of the information concealed from them. Plaintiffs' and Class members' actions
8 were justified. Defendants were in exclusive control of the material facts, and such facts were not known
9 to the public, Plaintiffs, or Class members.
10

11 105. Because of the concealment and/or suppression of the facts, Plaintiffs and Class members
12 have sustained damages because they own vehicles that are diminished in value as a result of
13 Defendants' concealment of the true quality and quantity of those vehicles' emissions and Defendants'
14 failure to timely disclose the actual emissions qualities and quantities of hundreds of thousands of Audi-
15 branded vehicles and the serious issues engendered by Defendants' corporate policies. Had Plaintiffs
16 and Class members been aware of Defendants' emissions deceptions with regard to the vehicles at issue,
17 and their callous disregard for compliance with applicable federal and state law and regulations,
18 Plaintiffs and Class members who purchased or leased new or certified previously owned vehicles
19 would have paid less for their vehicles or would not have purchased or leased them at all.
20
21

22 106. The value of Plaintiffs' and Class members' vehicles has diminished as a result of
23 Defendants' fraudulent concealment of their emissions deception, which has greatly tarnished the
24 Volkswagen and Audi brand names attached to Plaintiffs' and Class members' vehicles and made any
25 reasonable consumer reluctant to purchase any of the Defeat Device Vehicles, let alone pay what
26 otherwise would have been fair market value for the vehicles.
27
28

1 107. Accordingly, Defendants are liable to Plaintiffs and Class members for damages in an
2 amount to be proven at trial.

3 108. Defendants' acts were done wantonly, maliciously, oppressively, deliberately, with intent
4 to defraud, and in reckless disregard of Plaintiffs' and Class members' rights and the representations that
5 Defendants made to them, in order to enrich Defendants. Defendants' conduct warrants an assessment of
6 punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be
7 determined according to proof.

8 109. Plaintiffs plead this count pursuant to the laws of Michigan, where Defendants have
9 significant operations, on behalf of all members of the Class. As necessary, and in the alternative,
10 Plaintiffs may allege sub-classes, based on the residences at pertinent times of members of the Class, to
11 allege fraudulent concealment under the laws of states other than Michigan.
12

13
14 **COUNT II:**
15 **BREACH OF CONTRACT**

16 110. Plaintiffs incorporate by reference all preceding allegations as though fully set forth
17 herein.

18 111. Plaintiffs bring this Count on behalf of the Class.

19 112. Defendants' misrepresentations and omissions alleged herein, including Defendants'
20 failure to disclose the existence of the "Defeat Device" and/or defective design as alleged herein, caused
21 Plaintiffs and the other Class members to make their purchases or leases of their Defeat Device
22 Vehicles. Absent those misrepresentations and omissions, Plaintiffs and the other Class members would
23 not have purchased or leased these Defeat Device Vehicles, would not have purchased or leased these
24 Defeat Device Vehicles at the prices they paid, and/or would have purchased or leased less expensive
25 alternative vehicles that did not contain the "Defeat Device." Accordingly, Plaintiffs and the other Class
26 members overpaid for their Defeat Device Vehicles and did not receive the benefit of their bargain.
27
28

1 113. Each and every sale or lease of a Defeat Device Vehicle constitutes a contract between
2 Defendants and the purchaser or lessee. Defendants breached these contracts by selling or leasing
3 Plaintiffs and the other Class members defective Defeat Device Vehicles and by misrepresenting or
4 failing to disclose the existence of the Defeat Device and/or defective design, including information
5 known to Defendants rendering each Defeat Device Vehicle less emissions compliant, and thus less
6 valuable, than vehicles not equipped with Defeat Devices.
7

8 114. As a direct and proximate result of Defendants' breach of contract, Plaintiffs and the
9 Class have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all
10 compensatory damages, incidental and consequential damages, and other damages allowed by law.
11

12 **COUNT III:**
13 **BREACH OF EXPRESS WARRANTY**

14 115. Plaintiffs incorporate by reference every prior and subsequent allegation of this
15 Complaint as if fully restated here.

16 116. Plaintiffs bring a cause of action against Defendants for breach of express warranty on
17 behalf of himself and the Class.

18 117. Defendants made numerous representations, descriptions, and promises to Plaintiffs and
19 Class members regarding the performance and emission controls of their vehicles.

20 118. For example, Defendants included in the warranty booklets for some or all of the Defeat
21 Device Vehicles the warranty that its vehicles were "designed, built and equipped so as to conform at
22 the time of sale with all applicable regulations of the United States Environmental Protection Agency."
23
24
25
26
27
28

Audi of America, Inc., an operating unit of Volkswagen Group of America, Inc. ("Audi"), the authorized United States importer of Audi vehicles, warrants to the original retail purchaser or original lessee and any subsequent purchaser or lessee that every **model year 2014** Audi vehicle imported by Audi:

- was designed, built and equipped so as to conform at the time of sale with all applicable regulations of the United States Environmental Protection Agency (EPA), and
- is free from defects in material and workmanship which causes the vehicle to fail to conform with EPA regulations for 2 years after the date of first use or delivery of the vehicle to the original retail purchaser or original lessee or until the vehicle has been driven 24,000 miles, whichever occurs first.

119. Defendants, however, knew or should have known that their representations, descriptions, and promises were false. Defendants were aware that they had installed Defeat Devices in the vehicles they sold to Plaintiffs and Class members.

120. Plaintiffs and Class members reasonably relied on Defendants' representations in purchasing or leasing vehicles. Those vehicles, however, did not perform as was warranted. Unbeknownst to Plaintiffs and Class members, those vehicles included devices that caused them to pollute at higher than allowable levels. Those devices are defects. Accordingly, Defendants breached their express warranty by providing a product containing defects that were never disclosed to the Plaintiffs and Class members.

121. As a direct and proximate result of Defendants' false and misleading representations and warranties, Plaintiffs and Class members suffered significant damages and seek the relief described below.

**COUNT IV:
BREACH OF IMPLIED WARRANTY**

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

123. Plaintiffs bring this cause of action against Defendants for breach of implied warranty on behalf of himself and the Class.

124. Defendants made numerous representations, descriptions, and promises to Plaintiffs and Class members regarding the functionality and performance of their vehicles.

125. Plaintiffs and Class members reasonably relied on Defendants' representations in purchasing the Defeat Device Vehicles.

126. As set forth throughout this Complaint, Defendants knew that its representations, descriptions and promises regarding these engines and transmissions were false.

127. When Plaintiffs and Class members purchased Defendants' vehicles, they did not conform to the promises or affirmations of fact made in Defendants' promotional materials, including that the vehicles were designed to meet the most demanding environmental standards. Instead, as alleged above, those vehicles were designed to cheat those standards, and the vehicles emitted higher levels of pollution than promised, and cannot perform as advertised without exceeding emissions limits.

128. The Defeat Device Vehicles thus failed to conform to Defendants' implied warranty regarding their functionality.

129. As a direct and proximate result of Defendants' false and misleading representations and warranties, Plaintiffs and Class members suffered significant injury when Defendants sold them cars that, it is now clear, are worth far less than the price Plaintiffs and Class members paid for them. Accordingly, Plaintiffs and the Class seek the relief described below.

COUNT V:
IMPLIED AND WRITTEN WARRANTY
Magnuson - Moss Warranty Act (15 U.S.C. §§ 2301, *et seq.*)

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

131. Plaintiffs assert this cause of action on behalf of himself and the other members of the Class.

132. This Court has jurisdiction to decide claims brought under 15 U.S.C. § 2301 by virtue of 15 U.S.C. § 2310(d).

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

134. Plaintiffs and Class members are "consumers," as that term is defined in 15 U.S.C. § 2301(3).

135. Each Defendant is a "warrantor" and "supplier" as those terms are defined in 15 U.S.C. § 2301(4) and (5).

136. 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.

137. As described herein, Defendants provided Plaintiffs and Class members with "implied warranties" and "written warranties" as those term are defined in 15 U.S.C. § 2301.

138. Defendants have breached these warranties as described in more detail above. Without limitation, Defendants' Defeat Device vehicles are defective, as described above, which resulted in the problems and failures also described above.

139. By Defendants' conduct as described herein, including knowledge of the defects inherent in the vehicles and Defendants' action, and inaction, in the face of the knowledge, Defendants have

1 failed to comply with their obligations under their written and implied promises, warranties, and
2 representations.

3 140. In their capacity as warrantors, and by the conduct described herein, any attempts by
4 Defendants to limit the implied warranties in a manner that would exclude coverage of the defective
5 software and systems is unconscionable and any such effort to disclaim, or otherwise limit, liability for
6 the defective the software and supporting systems is null and void.
7

8 141. All jurisdictional prerequisites have been satisfied.

9 142. Plaintiffs and members of the Class are in privity with Defendants in that they purchased
10 the software from Defendants or their agents.

11 143. As a result of Defendants' breach of warranties, Plaintiffs and Class members are entitled
12 to revoke their acceptance of the vehicles, obtain damages and equitable relief, and obtain costs pursuant
13 to 15 U.S.C. § 2310.
14

15 **COUNT VI:**
16 **UNJUST ENRICHMENT**

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

19 145. Plaintiffs bring this count on behalf of himself and, where applicable, the Class.

20 146. Plaintiffs and members of the Class conferred a benefit on Defendants by, inter alia,
21 using (and paying a premium for) its vehicles.

22 147. Defendants have retained this benefit, and know of and appreciate this benefit.

23 148. Defendants were and continue to be unjustly enriched at the expense of Plaintiffs and
24 Class members.

25 149. Defendants should be required to disgorge this unjust enrichment.
26
27
28

B. State-Specific Claims

**COUNT VII:
VIOLATION OF CALIFORNIA CONSUMERS LEGAL REMEDIES ACT
(Cal. Civ. Code §§ 1750, *et seq.*)**

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

151. Plaintiffs bring this Count on behalf of all members of the Class who are or have been residents of California at any relevant time (“California members of the Class”).

152. California’s Consumers Legal Remedies Act (“CLRA”), Cal. Civ. Code §§ 1750, *et seq.*, proscribes “unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer.”

153. The Defeat Device Vehicles are “goods” as defined in Cal. Civ. Code § 1761(a).

154. Plaintiffs and the other California members of the Class are “consumers” as defined in Cal. Civ. Code § 1761(d), and Plaintiffs, the other California members of the Class, and Defendants are “persons” as defined in Cal. Civ. Code § 1761(c).

155. As alleged above, Defendants made numerous representations concerning the benefits, performance, and safety features of the Defeat Device Vehicles that were misleading.

156. In purchasing or leasing the Defeat Device Vehicles, Plaintiffs and the other Class members were deceived by Defendants’ failure to disclose that the Defeat Device Vehicles were equipped with systems that, but for the use of Defeat Devices to cheat emissions testing, failed EPA and California emissions standards.

157. Defendants’ conduct, as described hereinabove, was and is in violation of the CLRA. Defendants’ conduct violates at least the following enumerated CLRA provisions:

1 (a) Cal. Civ. Code § 1770(a)(5): Representing that goods have characteristics, uses, and
2 benefits which they do not have;

3 (b) Cal. Civ. Code § 1770(a)(7): Representing that goods are of a particular standard, quality,
4 or grade, if they are of another;

5 (c) Cal. Civ. Code § 1770(a)(9): Advertising goods with intent not to sell them as advertised;
6 and

7 (d) Cal. Civ. Code § 1770(a)(16): Representing that goods have been supplied in accordance
8 with a previous representation when they have not.
9

10 158. The other California members of the Class have suffered injury in fact and actual
11 damages resulting from Defendants' material omissions and misrepresentations because they paid an
12 inflated purchase or lease price for the Defeat Device Vehicles.
13

14 159. Defendants knew, should have known, or were reckless in not knowing of the defective
15 design and/or manufacture of the engine and transmission systems, and that the Defeat Device Vehicles
16 were not suitable for their intended use.

17 160. The facts concealed and omitted by Defendants to the California members of the Class
18 are material in that a reasonable consumer would have considered them to be important in deciding
19 whether to purchase or lease the Defeat Device Vehicles or pay a lower price. Had Plaintiff Amador and
20 the other California members of the Class known about the defective nature of the Defeat Device
21 Vehicles, they would not have purchased or leased the Defeat Device Vehicles or would not have paid
22 the prices they paid.
23

24 161. The injuries suffered by Plaintiff Amador and the other California members of the Class
25 were proximately caused by Defendants' fraudulent and deceptive business practices.
26
27
28

**COUNT VIII:
VIOLATION OF CALIFORNIA FALSE ADVERTISING LAW
(Cal. Bus. & Prof. Code §§ 17500, *et seq.*)**

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

163. Plaintiffs bring this count on behalf of the California members of the Class.

164. California Bus. & Prof. Code § 17500 states:

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

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

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

167. Plaintiffs and the other Class members have suffered an injury in fact, including the loss of money or property, as a result of Defendants' unfair, unlawful, and/or deceptive practices. In purchasing or leasing their Defeat Device Vehicles, Plaintiffs and the other Class members relied on the misrepresentations and/or omissions of Defendants with respect to the safety, performance, legal compliance, and reliability of the Defeat Device Vehicles. Defendants' representations turned out not to be true because the Defeat Device Vehicles are distributed with faulty and defective engine and transmission systems, rendering certain emissions functions effectively inoperative. Had Plaintiffs and

1 the other Class members known this, they would not have purchased or leased their Defeat Device
2 Vehicles and/or paid as much for them. Accordingly, Plaintiffs and the other Class members overpaid
3 for their Defeat Device Vehicles and did not receive the benefit of their bargain.

4
5 168. All of the wrongful conduct alleged herein occurred, and continues to occur, in the
6 conduct of Defendants' business. Defendants' wrongful conduct is part of a pattern or generalized
7 course of conduct that is still perpetuated and repeated, both in the State of California and nationwide.

8 169. Plaintiff Amador, individually and on behalf of the other California members of the
9 Class, requests that this Court enter such orders or judgments as may be necessary to enjoin Defendants
10 from continuing their unfair, unlawful, and/or deceptive practices and to restore to Plaintiff and the other
11 Class members any money Defendants acquired by unfair competition, including restitution and/or
12 restitutionary disgorgement, and for such other relief set forth below.

13
14 **COUNT IX:**
15 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
16 **(Cal. Com. Code § 2314)**

17 170. Plaintiffs incorporate by reference all preceding allegations as though fully set forth
18 herein.

19 171. Plaintiffs bring this Count on behalf of the California members of the Class.

20 172. Volkswagen is and was at all relevant times a merchant with respect to motor vehicles
21 under Cal. Com. Code § 2104.

22 173. A warranty that the Defeat Device Vehicles were in merchantable condition was implied
23 by law in the instant transaction, pursuant to Cal. Com. Code § 2314.

24 174. These Defeat Device Vehicles, when sold and at all times thereafter, were not in
25 merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the
26 Defeat Device Vehicles are inherently defective in that they do not comply with federal and state
27
28

1 emissions standards, rendering certain emissions functions effectively inoperative; and the engine and
2 transmission systems were not adequately designed, manufactured, and tested.

3 175. At all relevant times, Defendants knew or should have known of the defects in the Defeat
4 Device Vehicles.

5 176. The California members of the Class have had sufficient direct dealings with either
6 Defendants or their agents (dealerships) to establish privity of contract between Defendants on one hand
7 and Plaintiffs and the other Class members on the other. Notwithstanding this, privity is not required in
8 this case because the California members of the Class are intended third-party beneficiaries of contracts
9 between Defendants and their dealers; specifically, they are the intended beneficiaries of Defendants'
10 implied warranties. The dealers were not intended to be the ultimate consumers of the Defeat Device
11 Vehicles and have no rights under the warranty agreements provided with the Defeat Device Vehicles;
12 the warranty agreements were designed for and intended to benefit the ultimate consumers only. Finally,
13 privity is also not required because the Defeat Device Vehicles are dangerous instrumentalities due to
14 the aforementioned defects and nonconformities.

15 177. As a direct and proximate result of Defendants' breach of the warranties of
16 merchantability, Plaintiff Amador and the other California members of the Class have been damaged in
17 an amount to be proven at trial.

18
19
20
21 **COUNT X:**
22 **FRAUD BY CONCEALMENT**
(California Law)

23 178. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth
24 herein.

25 179. This claim is brought pursuant to the law of California on behalf of California members
26 of the Class.

1 180. Defendants intentionally concealed and suppressed material facts concerning the quality
2 of the Defeat Device Vehicles. As alleged in this complaint, Defendants engaged in a secret deception to
3 evade federal and state vehicle emissions standards by installing software designed to conceal its
4 vehicles' emissions of the pollutant carbon dioxide, which is a greenhouse gas that contributes to global
5 warming. The software installed on the vehicles at issue was designed nefariously to cheat emissions
6 certification testing, such that the vehicles would show lower emissions during testing than when
7 actually operating on the road. The result was what Defendants intended: vehicles passed emissions
8 certifications by way of deliberately induced false readings.

9
10 181. The California members of the Class reasonably relied upon Defendants' false
11 representations. They had no way of knowing that Defendants' representations were false and gravely
12 misleading. As alleged herein, Defendants employed extremely sophisticated methods of deception. The
13 California members of the Class did not, and could not, unravel Defendants' deception on their own.

14
15 182. Defendants concealed and suppressed material facts concerning what is evidently the true
16 culture of Volkswagen—one characterized by an emphasis on profits and sales above compliance with
17 federal and state clean air law, and emissions regulations that are meant to protect the public and
18 consumers. It also emphasized profits and sales about the trust that Plaintiffs and California members of
19 the Class placed in Defendants' representations.

20
21 183. Necessarily, Defendants also took steps to ensure that its employees did not reveal the
22 details of its deception to regulators or consumers, including Plaintiffs and California members of the
23 Class. Defendants did so in order to boost the reputations of its vehicles and to falsely assure purchasers
24 and lessors of its vehicles, including certified previously owned vehicles, that Defendants is a reputable
25 manufacturer that complies with applicable law, including federal and state clean air law and emissions
26 regulations, and that its vehicles likewise comply with applicable law and regulations. Defendants' false
27 representations were material to consumers, both because they concerned the quality of the Defeat
28

1 Device Vehicles, including their compliance with applicable federal and state law and regulations
2 regarding clean air and emissions, and also because the representations played a significant role in the
3 value of the vehicles.

4
5 184. Defendants had a duty to disclose the emissions deception it engaged in with respect to
6 the Defeat Device Vehicles because knowledge of the deception and its details were known and/or
7 accessible only to Defendants, because Defendants had exclusive knowledge as to the implementation
8 and maintenance of the deception, and because Defendants knew the facts were not known to or
9 reasonably discoverable by Plaintiffs or California members of the Class. Defendants also had a duty to
10 disclose because they made general affirmative representations about the qualities of its vehicles with
11 respect to emissions standards which were misleading, deceptive, and incomplete without the disclosure
12 of the additional facts set forth above regarding the emissions deception, the actual emissions of
13 Defendants' vehicles, Defendants' actual philosophy with respect to compliance with federal and state
14 clean air law and emissions regulations, and Defendants' actual practices with respect to the vehicles at
15 issue.
16

17 185. Having volunteered to provide information to Plaintiffs, Defendants had the duty to
18 disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material
19 because they directly impact the value of the Defeat Device Vehicles purchased or leased by the
20 California members of the Class.
21

22 186. Whether a manufacturer's products comply with federal and state clean air law and
23 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or
24 non-compliance, are material concerns to a consumer, including with respect to the emissions
25 certifications testing their vehicles must pass. Defendants represented to Plaintiffs and California
26 members of the Class that they were purchasing "clean" vehicles, and certification testing appeared to
27 confirm this—except that, secretly, Defendants had subverted the testing process.
28

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

5 188. On information and belief, Defendant have still not made full and adequate disclosures,
6 particularly as to past conduct, and continues to defraud Plaintiffs and California members of the Class
7 by concealing material information regarding both the emissions qualities of the Defeat Device Vehicles
8 and its emissions deception.
9

10 189. Plaintiffs and California members of the Class were unaware of the omitted material facts
11 referenced herein, and they would not have acted as they did if they had known of the concealed and/or
12 suppressed facts, in that they would not have purchased Defeat Device Vehicles manufactured by
13 Defendants, and/or would not have continued to drive their heavily polluting vehicles, and/or would
14 have taken other affirmative steps in light of the information concealed from them. Defendants' and
15 California members of the Class' actions were justified. Defendant was in exclusive control of the
16 material facts, and such facts were not known to the public, Plaintiffs, or California members of the
17 Class.
18

19 190. Because of the concealment and/or suppression of the facts, Plaintiffs and California
20 members of the Class have sustained damage because they own vehicles that have diminished in value
21 as a result of Defendants' concealment of the true quality and quantity of those vehicles' emissions and
22 Defendants' failure to timely disclose the actual emissions qualities and quantities of Audi-branded
23 vehicles and the serious issues engendered by Defendants' corporate policies. Had Plaintiffs and
24 California members of the Class been aware of Defendants' emissions deception with regard to the
25 vehicles at issue, and the companies' callous disregard for compliance with applicable federal and state
26 law and regulations, Plaintiffs and California members of the Class who purchased or leased new or
27
28

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

3 191. The values of Plaintiffs' and California members of the Class' vehicles have been
4 diminished as a result of Defendants' fraudulent concealment of the emissions deception, which has
5 greatly tarnished the Audi brand name attached to Plaintiffs' and California members of the Class'
6 vehicles and made any reasonable consumer reluctant to purchase any of the Defeat Device Vehicles, let
7 alone pay what otherwise would have been fair market value for the vehicles.
8

9 192. Accordingly, Defendants are liable to Plaintiff Amador and California members of the
10 Class for damages in an amount to be proven at trial.

11 193. Defendants' acts were done wantonly, maliciously, oppressively, deliberately, with intent
12 to defraud, and in reckless disregard of Plaintiffs' and California members of the Class' rights and the
13 representations that Defendants made to them, in order to enrich Defendants. Defendants' conduct
14 warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future,
15 which amount is to be determined according to proof.
16

17 **COUNT XI:**
18 **VIOLATION OF SONG-BEVERLY CONSUMER WARRANTY ACT FOR BREACH OF**
19 **IMPLIED WARRANTY OF MERCHANTABILITY**
(Cal. Civ. Code §§ 1791.1 & 1792)

20 194. Plaintiffs incorporate by reference all preceding allegations as though fully set forth
21 herein.

22 195. Plaintiffs bring this Count on behalf of the California members of the Class.

23 196. Plaintiff Amador and the other California members of the Class who purchased or leased
24 the Defeat Device Vehicles in California are "buyers" within the meaning of Cal. Civ. Code § 1791(b).
25

26 197. The Defeat Device Vehicles are "consumer goods" within the meaning of Cal. Civ. Code
27 § 1791(a).
28

1 198. Defendants are each “manufacturers” of the Defeat Device Vehicles within the meaning
2 of Cal. Civ. Code § 1791(j).

3 199. Defendants impliedly warranted to the California members of the Class that the Defeat
4 Device Vehicles were “merchantable” within the meaning of Cal. Civ. Code §§ 1791.1(a) & 1792;
5 however, the Defeat Device Vehicles do not have the quality that a buyer would reasonably expect.
6

7 200. Cal. Civ. Code § 1791.1(a) states: “Implied warranty of merchantability” or “implied
8 warranty that goods are merchantable” means that the consumer goods meet each of the following:

- 9 (a) Pass without objection in the trade under the contract description.
10 (b) Are fit for the ordinary purposes for which such goods are used.
11 (c) Are adequately contained, packaged, and labeled.
12 (d) Conform to the promises or affirmations of fact made on the container or label.
13

14 201. The Defeat Device Vehicles would not pass without objection in the automotive trade
15 because they do not pass EPA and state law emissions regulations.

16 202. Because the Defeat Device falsely caused Defeat Device Vehicles to obtain EPA
17 certification and pass emissions tests when in fact they emit significantly more carbon dioxide than the
18 legal limit during normal operation, they are not fit for ordinary purposes.

19 203. The Defeat Device Vehicles are not adequately labeled because the labeling fails to
20 disclose the Defeat Device that causes certain emissions systems of the Defeat Device Vehicles to
21 become fully operational only during emissions testing.
22

23 204. Defendants breached the implied warranty of merchantability by manufacturing and
24 selling Defeat Device Vehicles containing the Defeat Device. Furthermore, Defendants’ fraudulent use
25 of the Defeat Device has caused the California members of the Class to not receive the benefit of their
26 bargain and has caused Defeat Device Vehicles to depreciate in value.
27
28

1 205. As a direct and proximate result of Defendants' breach of the implied warranty of
 2 merchantability, the California members of the Class received goods whose dangerous and
 3 dysfunctional condition substantially impairs their value to Plaintiffs and the other Class members. The
 4 California members of the Class have been damaged as a result of the diminished value of Defendants'
 5 products, the products' malfunctioning, and the nonuse of their Defeat Device Vehicles.

6 206. Pursuant to Cal. Civ. Code §§ 1791.1(d) & 1794, Plaintiff Amador and the other
 7 California members of the Class are entitled to damages and other legal and equitable relief including, at
 8 their election, the purchase price of their Defeat Device Vehicles, or the overpayment or diminution in
 9 value of their Defeat Device Vehicles.
 10

11 207. Pursuant to Cal. Civ. Code § 1794, Plaintiff Amador and the other California members of
 12 the Class are entitled to costs and attorneys' fees.
 13

14 **COUNT XII:**
 15 **VIOLATIONS OF THE WISCONSIN DECEPTIVE TRADE PRACTICES ACT**
 16 **(Wis. Stat. § 100.18)**

17 208. Plaintiffs incorporate by reference each preceding paragraph as though fully set forth
 18 herein.

19 209. Plaintiff Joachimczyk brings this action on behalf of the Wisconsin Class against all
 20 Defendants.

21 210. Plaintiff and the Wisconsin Class members are members of "the public" within the
 22 meaning of Wis. Stat. § 100.18(1). Plaintiff and Wisconsin Class members purchased or leased one or
 23 more Defeat Device Vehicles.

24 211. Plaintiffs and Wisconsin Class members are "persons" under the Wisconsin Deceptive
 25 Trade Practices Act ("Wisconsin DTPA"), Wis. Stat. § 100.18(1).

26 212. Each Defendant is a "person, firm, corporation or association" within the meaning of
 27 Wis. Stat. § 100.18(1).
 28

1 213. The Wisconsin DTPA makes unlawful any “representation or statement of fact which is
2 untrue, deceptive or misleading.” Wis. Stat. § 100.18(1).

3 214. In the course of Defendants’ business, Volkswagen intentionally or negligently concealed
4 and suppressed material facts concerning the true emissions produced by the Defeat Device Vehicles.
5 Defendants accomplished this by installing illegal Defeat Device software in the Defeat Device Vehicles
6 that caused the vehicles to operate in a low emission test mode only during emissions testing. During
7 normal operations, the Defeat Device Vehicles would emit significantly larger quantities of noxious
8 contaminants. The result was what Defendants intended—the Defeat Device Vehicles passed emissions
9 testing by way of deliberately induced false readings. Plaintiffs and Wisconsin Class members had no
10 way of discerning that Defendants’ representations were false and misleading because Defendants’
11 Defeat Device was concealed and used sophisticated technology. Plaintiffs and Wisconsin Class
12 members did not and could not unravel Defendants’ deception on their own. In fact, it took years—and
13 the discovery of an entirely separate Defeat Device—before investigators detected Defendants’ cheating
14 using sophisticated, expensive equipment and applying decades of combined experience.
15

16 215. Defendants thus violated the Wisconsin DTPA, at a minimum by making myriad
17 “representation[s] or statement[s] of fact which [are] untrue, deceptive or misleading” concerning the
18 Defeat Device Vehicles.
19

20 216. In the course of Defendants’ business, and in connection with consumer transactions,
21 Defendants engaged in misleading, false, unfair or deceptive acts or practices that violated the
22 Wisconsin DTPA by installing, failing to disclose and/or actively concealing the “Defeat Device” and
23 the true cleanliness and performance of the Defeat Device Vehicles, by marketing their vehicles as legal,
24 reliable, environmentally clean, efficient, and of high quality, and by presenting themselves as a
25 reputable manufacturer that valued environmental cleanliness and efficiency, and that stood behind their
26 vehicles after they were sold.
27
28

1 217. Defendants compounded the deception by repeatedly asserting that the Defeat Device
2 Vehicles were safe, reliable, environmentally clean, efficient, and of high quality, and by claiming to be
3 reputable manufacturers that valued safety, environmental cleanliness, and efficiency, and stood behind
4 their vehicles after they were sold.

5 218. The Clean Air Act and EPA implementing regulations require that automobiles limit their
6 emissions output to specified levels. These laws are intended for the protection of public health and
7 welfare. “Defeat Devices” like those in the Defeat Device Vehicles are defined and prohibited by the
8 Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 CFR § 86.1809. By installing
9 illegal “Defeat Devices” in the Defeat Device Vehicles and by making those vehicles available for
10 purchase, Defendants violated federal law and therefore engaged in conduct that violates the Wisconsin
11 DTPA.
12

13 219. Defendants knew they had installed the “Defeat Device” in the Defeat Device Vehicles,
14 and knew the true nature of the engine and transmission systems for years, but concealed all of that
15 information until recently. Defendants also knew that they valued profits over environmental
16 cleanliness and compliance with the law, and that they were manufacturing, selling, and distributing
17 vehicles throughout the United States that did not comply with EPA regulations, but concealed this
18 information as well.
19

20 220. Defendants intentionally and knowingly misrepresented material facts regarding the
21 Defeat Device Vehicles with intent to mislead Plaintiffs and the Wisconsin Class.
22

23 221. Defendants knew or should have known that their conduct violated the Wisconsin DTPA.

24 222. Defendants owed Plaintiffs and Wisconsin Class members a duty to disclose, truthfully,
25 all the facts concerning the cleanliness, efficiency and reliability of the Defeat Device Vehicles because
26 they:
27
28

1 A. possessed exclusive knowledge that they were manufacturing, selling, and
2 distributing vehicles throughout the United States that did not comply with EPA regulations;

3 B. intentionally concealed the foregoing from regulators, Plaintiffs, and Class
4 members; and/or

5 C. made incomplete or negligent representations about the environmental cleanliness
6 of the Defeat Device Vehicles generally, and the use of the Defeat Device in particular, while
7 purposefully withholding material facts from Plaintiffs that contradicted these representations.

8 223. Defendants concealed the illegal Defeat Device and the true emissions, efficiency and
9 performance of the Defeat Device Vehicles, resulting in negative publicity once the fraud was exposed.
10 The value of the Defeat Device Vehicles has therefore decreased. In light of the stigma Defendants'
11 misconduct attached to the Defeat Device Vehicles, the Defeat Device Vehicles are now worth less than
12 they otherwise would be.
13 they otherwise would be.

14 224. Defendants' supply and use of the illegal Defeat Device and concealment of the true
15 characteristics of the Defeat Device Vehicles were material to Plaintiffs and the Wisconsin Class. A
16 vehicle made by a reputable manufacturer of environmentally friendly and emissions-compliant vehicles
17 is worth more than an otherwise comparable vehicle made by a disreputable manufacturer of
18 environmentally dirty vehicles that conceals its polluting engines rather than promptly remedying them.
19 environmentally dirty vehicles that conceals its polluting engines rather than promptly remedying them.

20 225. Defendants' unfair or deceptive acts or practices were likely to and did in fact deceive
21 regulators and reasonable consumers, including Plaintiffs and Wisconsin Class members, about the true
22 environmental cleanliness and efficiency of Audi-branded vehicles, the quality of the Audi brand, the
23 devaluing of environmental cleanliness and integrity at Audi, and the true value of the Defeat Device
24 Vehicles.
25 Vehicles.

26 226. Plaintiffs and Wisconsin Class members suffered ascertainable loss and actual damages
27 as a direct and proximate result of Defendants' misrepresentations and its concealment of and failure to
28 as a direct and proximate result of Defendants' misrepresentations and its concealment of and failure to

1 disclose material information. Plaintiffs and the Wisconsin Class members who purchased or leased the
2 Defeat Device Vehicles would not have purchased or leased them at all and/or—if the Vehicles’ true
3 nature had been disclosed and mitigated, and the Vehicles rendered legal to sell—would have paid
4 significantly less for them. Plaintiffs also suffered diminished value of their vehicles, as well as lost or
5 diminished use.

6
7 227. Defendants had an ongoing duty to all of their customers to refrain from unfair and
8 deceptive practices under the Wisconsin DTPA in the course of its business.

9 228. Defendants’ violations present a continuing risk to Plaintiffs as well as to the general
10 public. Defendants’ unlawful acts and practices complained of herein affect the public interest.

11 229. Plaintiffs and the Wisconsin Class seek damages, court costs and attorneys’ fees under
12 Wis. Stat. § 100.18(11)(b)(2), and any other just and proper relief available under the Wisconsin DTPA.
13

14 **COUNT XIII:**
15 **BREACH OF EXPRESS WARRANTY**
16 **(Wis. Stat. §§ 402.313 and 411.210)**

17 230. Plaintiffs reallege and incorporate by reference all preceding allegations as though fully
18 set forth herein.

19 231. Plaintiffs bring this Count on behalf of the Wisconsin Class.

20 232. Defendants are and were at all relevant times “merchants” with respect to motor vehicles
21 under Wis. Stat. § 402.104(3) and 411.103(1)(t), and “sellers” of motor vehicles under § 402.103(1)(d).

22 233. With respect to leases, Defendants are and were at all relevant times “lessors” of motor
23 vehicles under Wis. Stat. § 411.103(1)(p).

24 234. The Defeat Device Vehicles are and were at all relevant times “goods” within the
25 meaning of Wis. Stat. §§ 402.105(1)(c) and 411.103(1)(h).
26
27
28

1 235. In connection with the purchase or lease of each one of its new vehicles, Defendants
2 provide an express warranty for a period of four years or 50,000 miles, whichever occurs first. This
3 warranty exists to cover “any repair to correct a manufacturers defect in materials or workmanship.”

4 236. The Clean Air Act requires manufacturers of light-duty vehicles to provide two federal
5 emission control warranties: a “Performance Warranty” and a “Design and Defect Warranty.”

6 237. The EPA requires vehicle manufacturers to provide a Performance Warranty with respect
7 to the vehicles’ emission systems. Thus, Defendants also provide an express warranty for their vehicles
8 through a Federal Emissions Performance Warranty. The Performance Warranty required by the EPA
9 applies to repairs that are required during the first two years or 24,000 miles, whichever occurs first,
10 when a vehicle fails an emissions test. Under this warranty, certain major emission control components
11 are covered for the first eight years or 80,000 miles, whichever comes first. These major emission
12 control components subject to the longer warranty include the catalytic converters, the electronic
13 emission control unit, and the onboard emission diagnostic device or computer.

14 238. The EPA requires vehicle manufacturers to issue Design and Defect Warranties with
15 respect to their vehicles’ emission systems. Thus, Defendants also provide an express warranty for their
16 vehicles through a Federal Emission Control System Defect Warranty. The Design and Defect Warranty
17 required by the EPA covers repair of emission control or emission related parts which fail to function or
18 function improperly because of a defect in materials or workmanship. This warranty provides protection
19 for two years or 24,000 miles, whichever comes first, or, for the major emission control components, for
20 eight years or 80,000 miles, whichever comes first.

21 239. As manufacturers of light-duty vehicles, Defendants were required to provide these
22 warranties to purchasers or lessees of the Defeat Device Vehicles.
23
24
25
26
27
28

1 240. Defendants' warranties formed a basis of the bargain that was reached when Plaintiffs
2 and other Wisconsin Class members purchased or leased Defeat Device Vehicles equipped with the non-
3 compliant engine and transmission systems.

4 241. Plaintiffs and the Wisconsin Class members experienced defects within the warranty
5 period. Despite the existence of warranties, Defendants failed to inform Plaintiffs and Wisconsin Class
6 members that the Defeat Device Vehicles were intentionally designed and manufactured to be out of
7 compliance with applicable state and federal emissions laws, and failed to fix the defective emission
8 components free of charge.

9 242. Defendants breached the express warranty promising to repair and correct a
10 manufacturing defect or materials or workmanship of any parts they supplied. Defendants have not
11 repaired or adjusted, and have been unable to repair or adjust, the Defeat Device Vehicles' materials and
12 workmanship defects.

13 243. Affording Defendants a reasonable opportunity to cure their breach of written warranties
14 would be unnecessary and futile here.

15 244. Furthermore, the limited warranty promising to repair and/or correct a manufacturing
16 defect fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and
17 the other Wisconsin Class members whole.

18 245. Accordingly, recovery by Plaintiffs and the other Wisconsin Class members is not
19 restricted to the limited warranty promising to repair and/or correct a manufacturing defect, and
20 Plaintiffs, individually and on behalf of the other Wisconsin Class members, seek all remedies as
21 allowed by law.

22 246. Also, as alleged in more detail herein, at the time Defendants warranted and sold or
23 leased the Defeat Device Vehicles, they knew that the Defeat Device Vehicles were inherently defective
24 and did not conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
25

1 material facts regarding the Defeat Device Vehicles. Plaintiffs and the other Wisconsin Class members
2 were therefore induced to purchase or lease the Defeat Device Vehicles under false and/or fraudulent
3 pretenses.

4 247. Moreover, many of the injuries flowing from the Defeat Device Vehicles cannot be
5 resolved through the limited remedy of “replacements or adjustments,” as many incidental and
6 consequential damages have already been suffered because of Defendants’ fraudulent conduct as alleged
7 herein, and because of its continued failure to provide such limited remedy within a reasonable time, and
8 any limitation on Plaintiffs’ and the other Wisconsin Class members’ remedies would be insufficient to
9 make Plaintiffs and the other Wisconsin Class members whole.

10 248. Finally, because of Defendants’ breach of warranty as set forth herein, Plaintiffs and the
11 other Wisconsin Class members assert, as additional and/or alternative remedies, the revocation of
12 acceptance of the goods and the return to Plaintiffs and the other Wisconsin Class members of the
13 purchase or lease price of all Defeat Device Vehicles currently owned or leased, and for such other
14 incidental and consequential damages as allowed.

15 249. Defendants were provided notice of these issues by numerous complaints filed against
16 them, including the instant Complaint, within a reasonable amount of time after reports emerged of
17 Defendants’ use of a Defeat Device in the Defeat Device Vehicles to evade clean air standards.

18 250. As a direct and proximate result of Defendants’ breach of express warranties, Plaintiff
19 and the other Wisconsin Class members have been damaged in an amount to be determined at trial.

20
21
22
23 **COUNT XIV:**
24 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
25 **(Wis. Stat. §§ 402.314 and 411.212)**

26 251. Plaintiffs reallege and incorporate by reference all allegations of the preceding
27 paragraphs as though fully set forth herein.

28 252. Plaintiffs bring this Count on behalf of the Wisconsin Class.

1 261. Plaintiff Joachimczyk brings this action on behalf of the Connecticut Class.

2 262. The Connecticut Unfair Trade Practices Act (“Connecticut UTPA”) provides: “No
3 person shall engage in unfair methods of competition and unfair or deceptive acts or practices in the
4 conduct of any trade or commerce.” Conn. Gen. Stat. § 42-110b(a).

5 263. Defendants are “person[s]” within the meaning of Conn. Gen. Stat. § 42-110a(3).
6 Defendants are in “trade” or “commerce” within the meaning of Conn. Gen. Stat. § 42-110a(4).

7 264. Defendants participated in deceptive trade practices that violated the Connecticut UTPA
8 as described herein.

9 265. In the course of their business, Defendants concealed and suppressed material facts
10 concerning the Defeat Device Vehicles. Defendants accomplished this by installing illegal Defeat
11 Device software in the Defeat Device Vehicles that caused the vehicles to operate in a low emission test
12 mode only during emissions testing. During normal operations, the Defeat Device Vehicles would
13 significantly larger quantities of noxious contaminants. The result was what Defendants intended—the
14 Defeat Device Vehicles passed emissions testing by way of deliberately induced false readings.
15 Plaintiffs and Connecticut Class members had no way of discerning that Defendants’ representations
16 were false and misleading because Volkswagen’s Defeat Device software was extremely sophisticated
17 technology. Plaintiffs and Connecticut Class members did not and could not unravel Defendants’
18 deception on their own. In fact, it took years—and the discovery of an entirely separate Defeat
19 Device—before investigators detected Defendants’ cheating using sophisticated, expensive equipment
20 and applying decades of combined experience.

21 266. Defendants thus violated the Act by, at minimum: employing deception, deceptive acts or
22 practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with
23 intent that others rely upon such concealment, suppression or omission, in connection with the sale of
24 Defeat Device Vehicles.

1 267. Defendants engaged in misleading, false, unfair or deceptive acts or practices that
2 violated the Connecticut UTPA by installing, failing to disclose and actively concealing the illegal
3 Defeat Device and the true cleanliness and performance of the Defeat Device Vehicles, by marketing
4 their vehicles as legal, reliable, environmentally clean, and of high quality, and by presenting themselves
5 as reputable manufacturers that valued environmental cleanliness and efficiency, and that stood behind
6 their vehicles after they were sold.
7

8 268. The Clean Air Act and EPA regulations require that automobiles limit their emissions
9 output to specified levels. These laws are intended for the protection of public health and welfare.
10 “Defeat Devices” like those in the Defeat Device Vehicles are defined and prohibited by the Clean Air
11 Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 CFR § 86.1809. By installing illegal “Defeat
12 Devices” in the Defeat Device Vehicles and by making those vehicles available for purchase,
13 Defendants violated federal law and therefore engaged in conduct that violates the Connecticut UTPA.
14

15 269. Defendants knew the true nature of the Defeat Device Vehicles for years, but concealed
16 all of that information until recently. Defendants also knew that they valued profits over environmental
17 cleanliness, efficiency, and compliance with the law, and that it was manufacturing, selling, and
18 distributing vehicles throughout the United States that did not comply with EPA regulations. Defendants
19 concealed this information as well.
20

21 270. Defendants intentionally and knowingly misrepresented material facts regarding the
22 Defeat Device Vehicles with intent to mislead Plaintiffs and the Connecticut Class.

23 271. Defendants knew or should have known that their conduct violated the Connecticut
24 UTPA.

25 272. Defendants owed Plaintiffs a duty to disclose illegality, public health and safety risks, the
26 true environmental cleanliness and efficiency of the Defeat Device Vehicles and the devaluing of safety
27 at Audi, because Defendants:
28

1 A. possessed exclusive knowledge that they were manufacturing, selling, and
2 distributing vehicles throughout the United States that did not comply with EPA regulations;

3 B. intentionally concealed the foregoing from regulators, Plaintiffs, and Class
4 members; and/or

5 C. made incomplete representations about the environmental cleanliness and
6 efficiency of the Defeat Device Vehicles generally, and the use of the Defeat Device in
7 particular, while purposefully withholding material facts from Plaintiffs that contradicted these
8 representations.
9

10 273. Defendants concealed the illegal Defeat Device and the true emissions, efficiency, and
11 performance of the Defeat Device Vehicles, resulting in negative publicity once the defects finally
12 began to be disclosed. The value of the Defeat Device Vehicles has therefore been diminished. In light
13 of the stigma attached to those vehicles by Defendants' conduct, they are now worth significantly less
14 than they otherwise would be.
15

16 274. Defendants' fraudulent use of the "Defeat Device" and its concealment of the true
17 characteristics of the Defeat Device Vehicles were material to Plaintiffs and the Connecticut Class.

18 275. Defendants' unfair or deceptive acts or practices were likely to and did in fact deceive
19 regulators and reasonable consumers, including Plaintiffs, about the true environmental cleanliness and
20 efficiency of Audi-branded vehicles, the quality of the Audi brand, the devaluing of environmental
21 cleanliness and integrity at Audi, and the true value of the Defeat Device Vehicles
22

23 276. Plaintiffs and the Connecticut Class suffered ascertainable loss and actual damages as a
24 direct and proximate result of Volkswagen's misrepresentations and its concealment of and failure to
25 disclose material information. Plaintiffs and the Connecticut Class members who purchased or leased
26 the Defeat Device Vehicles would not have purchased or leased them at all and/or—if the Vehicles' true
27 nature had been disclosed and mitigated, and the Vehicles rendered legal to sell—would have paid
28

1 significantly less for them. Plaintiffs also suffered diminished value of their vehicles, as well as lost or
2 diminished use.

3 277. Defendants had an ongoing duty to their customers to refrain from unfair and deceptive
4 practices under the Connecticut UTPA. All owners of Defeat Device Vehicles suffered ascertainable
5 loss in the form of the diminished value of their vehicles as a result of Defendants' deceptive and unfair
6 acts and practices made in the course of Defendants' business.

7
8 278. Defendants' violations present a continuing risk to Plaintiffs as well as to the general
9 public. Defendants' unlawful acts and practices complained of herein affect the public interest.

10 279. As a direct and proximate result of Defendants' violations of the Connecticut UTPA,
11 Plaintiffs and the Connecticut Class have suffered injury-in-fact and/or actual damage.

12 280. Plaintiffs and Class members are entitled to recover their actual damages, punitive
13 damages, and attorneys' fees pursuant to Conn. Gen. Stat. § 42-110g.

14
15 281. Defendants acted with a reckless indifference to another's rights or wanton or intentional
16 violation to another's rights and otherwise engaged in conduct amounting to a particularly aggravated,
17 deliberate disregard of the rights and safety of others.

18 **COUNT XVI:**
19 **BREACH OF EXPRESS WARRANTY**
20 **(Conn. Gen. Stat. Ann. § 42A-2-313)**

21 282. Plaintiffs reallege and incorporate by reference all preceding allegations as though fully
22 set forth herein.

23 283. Plaintiffs bring this Count on behalf of the Connecticut Class.

24 284. Volkswagen is and was at all relevant times a merchant with respect to motor vehicles
25 under Conn. Gen. Stat. Ann. § 42a-2-104(1).

26 285. In connection with the purchase or lease of each one of its new vehicles, Defendants
27 provide an express New Vehicle Limited Warranty ("NVLW") for a period of four years or 50,000
28

1 miles, whichever occurs first. This NVLW exists to cover “any repair to correct a manufacturers defect
2 in materials or workmanship.”

3 286. The Clean Air Act requires manufacturers of light-duty vehicles to provide two federal
4 emission control warranties: a “Performance Warranty” and a “Design and Defect Warranty.”

5 287. The EPA requires vehicle manufacturers to provide a Performance Warranty with respect
6 to the vehicles’ emission systems. Thus, Defendants also provide an express warranty for its vehicles
7 through a Federal Emissions Performance Warranty. The Performance Warranty required by the EPA
8 applies to repairs that are required during the first two years or 24,000 miles, whichever occurs first,
9 when a vehicle fails an emissions test. Under this warranty, certain major emission control components
10 are covered for the first eight years or 80,000 miles, whichever comes first. These major emission
11 control components subject to the longer warranty include the catalytic converters, the electronic
12 emission control unit, and the onboard emission diagnostic device or computer.

13 288. The EPA requires vehicle manufacturers to issue Defect Warranties with respect to their
14 vehicles’ emission systems. Thus, Defendants also provide an express warranty for their vehicles
15 through a Federal Emission Control System Defect Warranty. The Design and Defect Warranty required
16 by the EPA covers repair of emission control or emission related parts which fail to function or function
17 improperly because of a defect in materials or workmanship. This warranty provides protection for two
18 years or 24,000 miles, whichever comes first, or, for the major emission control components, for eight
19 years or 80,000 miles, whichever comes first.

20 289. As manufacturers of light-duty vehicles, Defendants were required to provide these
21 warranties to purchasers of the Defeat Device Vehicles.

22 290. Defendants’ warranties formed the basis of the bargain that was reached when Plaintiffs
23 and other Class members purchased or leased their Defeat Device Vehicles.

1 291. Plaintiffs and Class members experienced defects within the warranty period. Despite
2 the existence of warranties, Defendants failed to inform Plaintiffs and class members that the Defeat
3 Device Vehicles were intentionally designed and manufactured to be out of compliance with applicable
4 state and federal emissions laws, and failed to fix the defective emission components free of charge.

5 292. Defendants breached the express warranty promising to repair and correct a
6 manufacturing defect or materials or workmanship of any parts they supplied. Defendants have not
7 repaired or adjusted, and have been unable to repair or adjust, the Defeat Device Vehicles' materials and
8 workmanship defects.

9 293. Affording Defendants a reasonable opportunity to cure their breach of written warranties
10 would be unnecessary and futile here.

11 294. Furthermore, the limited warranty promising to repair and/or correct a manufacturing
12 defect fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and
13 the other Class members whole.

14 295. Accordingly, recovery by Plaintiffs and the other Class members is not restricted to the
15 limited warranty promising to repair and/or correct a manufacturing defect, and Plaintiffs, individually
16 and on behalf of the other Class members, seek all remedies as allowed by law.

17 296. Also, as alleged in more detail herein, at the time Defendants warranted and sold the
18 Defeat Device Vehicles they knew that the Defeat Device Vehicles were inherently defective and did
19 not conform to their warranties; further, Defendants had wrongfully and fraudulently concealed material
20 facts regarding the Defeat Device Vehicles. Plaintiffs and the other Class members were therefore
21 induced to purchase or lease the Defeat Device Vehicles under false and/or fraudulent pretenses.

22 297. Moreover, many of the injuries flowing from the Defeat Device Vehicles cannot be
23 resolved through the limited remedy of "replacements or adjustments," as many incidental and
24 consequential damages have already been suffered because of Defendants' fraudulent conduct as alleged

1 herein, and because of its failure and/or continued failure to provide such limited remedy within a
 2 reasonable time, and any limitation on Plaintiffs' and the other Class members' remedies would be
 3 insufficient to make Plaintiffs and the other Class members whole.

4 298. Finally, due to Defendants' breach of warranty as set forth herein, Plaintiffs and the other
 5 Class members assert as an additional and/or alternative remedy, as set forth in Conn. Gen. Stat. Ann.
 6 § 42a-2-711, for a revocation of acceptance of the goods, and for a return to Plaintiffs and the other
 7 Class members of the purchase price of all Defeat Device Vehicles currently owned or leased, and for
 8 such other incidental and consequential damages as allowed under Conn. Gen. Stat. Ann. §§ 42a-2-711
 9 and 42a-2-608.
 10

11 299. Defendants were provided notice of these issues by numerous complaints filed against
 12 them, including the instant Complaint within a reasonable amount of time after Defendants' use of a
 13 Defeat Device in the Defeat Device Vehicles to evade clean air standards came to light.
 14

15 300. As a direct and proximate result of Defendants' breach of express warranties, Plaintiff
 16 and the other Class members have been damaged in an amount to be determined at trial.

17 **COUNT XVII:**
 18 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
 19 **(Conn. Gen. Stat. Ann. § 42A-2-314)**

20 301. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though
 21 fully set forth herein.

22 302. Plaintiffs bring this Count on behalf of the Connecticut Class.

23 303. Defendants are and were at all relevant times each merchants with respect to motor
 24 vehicles under Conn. Gen. Stat. Ann. § 42a-2-104(1).

25 304. A warranty that the Defeat Device Vehicles were in merchantable condition is implied by
 26 law in the instant transactions pursuant to Conn. Gen. Stat. Ann. § 42a-2-314. These Defeat Device
 27 Vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the
 28

1 ordinary purpose for which cars are used. Specifically, the Defeat Device Vehicles are inherently
2 defective in that they do not comply with federal and state emissions standards, rendering certain safety
3 and emissions functions effectively inoperative; and the engine and transmission systems were not
4 adequately designed, manufactured, and tested.

5 305. Defendants were provided notice of these issues by the investigations of the EPA and
6 individual state regulators, numerous complaints filed against them including the instant complaint,
7 within a reasonable amount of time after the allegations of Defeat Device Vehicle defects became
8 public.

9 306. As a direct and proximate result of Defendants' breach of the warranties of
10 merchantability, Plaintiffs and the other Class members have been damaged in an amount to be proven
11 at trial.

12 **X. REQUEST FOR RELIEF**

13 WHEREFORE, Plaintiffs, individually and on behalf of members of the Class, respectfully
14 request that the Court enter judgment in their favor and against Defendants, as follows:

15 A. Certification of the proposed Class, including appointment of Plaintiffs' counsel as Class
16 Counsel;

17 B. An order temporarily and permanently enjoining Defendants from continuing the
18 unlawful, deceptive, fraudulent, and unfair business practices alleged in this Complaint;

19 C. Injunctive relief in the form of a recall or free replacement;

20 D. Public injunctive relief necessary to protect public health and welfare, and to remediate
21 the environmental harm caused by the Defeat Device Vehicles' unlawful emissions;

22 E. Costs, restitution, damages, and disgorgement in an amount to be determined at trial;

23 F. Revocation of acceptance;

24 G. Damages under the Magnuson-Moss Warranty Act;

H. For treble and/or punitive damages as permitted by applicable laws;

I. An order requiring Defendants to pay both pre- and post-judgment interest on any amounts awarded;

J. An award of costs and attorneys' fees; and

K. Such other or further relief as may be appropriate.

XI. DEMAND FOR JURY TRIAL

Plaintiffs demand a jury trial.

DATED this 17th day of November, 2016.

KELLER ROHRBACK L.L.P.

By /s/ Jeffrey Lewis

Jeffrey Lewis (66587)
KELLER ROHRBACK L.L.P.
300 Lakeside Drive, Suite 1000
Oakland, CA 94612
(510) 463-3900, Fax (510) 463-3901
jlewis@kellerrohrback.com

Lynn Lincoln Sarko, *pro hac vice forthcoming*
Derek W. Loeser, *pro hac vice forthcoming*
Gretchen Freeman Cappio, *pro hac vice forthcoming*
Ryan McDevitt, *pro hac vice forthcoming*
KELLER ROHRBACK L.L.P.
1201 Third Avenue, Suite 3200
Seattle, WA 98101
(206) 623-1900, Fax (206) 623-3384
lsarko@kellerrohrback.com
dloeser@kellerrohrback.com
gcappio@kellerrohrback.com
rmcdevitt@kellerrohrback.com

Lesley E. Weaver (State Bar No. 191305)
BLEICHMAR FONTI & AULD, LLP
1901 Harrison Street, Suite 1100
Oakland, CA 94612
(510) 844-7759, Fax: (510) 844-7701
lweaver@bfalaw.com

1 J. Gerard Stranch IV, *pro hac vice forthcoming*
2 BRANSTETTLER, STRANCH &
3 JENNINGS, PLLC
4 223 Rosa L. Parks Avenue, Suite 200
Nashville, TN 37203
(615) 254-8801, Fax (615) 250-3937
gerards@bsjfirm.com

5 Benjamin L. Bailey, *pro hac vice forthcoming*
6 BAILEY GLASSER LLP
7 209 Capitol Street
8 Charleston, WV 25301
(304) 345-6555, Fax (304) 342-1110
Bbailey@baileyglasser.com

9 Robin L. Greenwald, *pro hac vice forthcoming*
10 WEITZ & LUXENBERG P.C.
11 700 Broadway
New York, NY 10003
(212) 558-5500, Fax (212) 344-5461
rgreenwald@weitzlux.com

12 David S. Casey, Jr., Esq. (SBN 60768)
13 Gayle M. Blatt, Esq. (SBN 122048)
14 Jeremy Robinson, Esq. (SBN 188325)
15 CASEY GERRY SCHENK FRANCAVILLA BLATT &
16 PENFIELD LLP
17 110 Laurel Street
San Diego, CA 92101
(619) 238-1811, Fax (619) 544-9232
dcasey@cglaw.com
gmb@cglaw.com
jrobinson@cglaw.com

18 ***Attorneys for Plaintiffs***
19
20
21
22
23
24
25
26
27
28

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS	DEFENDANTS
(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)	County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)
(c) Attorneys (Firm Name, Address, and Telephone Number)	NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)	III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)																												
<table><tr><td>1 U.S. Government Plaintiff</td><td>3 Federal Question (U.S. Government Not a Party)</td></tr><tr><td>2 U.S. Government Defendant</td><td>4 Diversity (Indicate Citizenship of Parties in Item III)</td></tr></table>	1 U.S. Government Plaintiff	3 Federal Question (U.S. Government Not a Party)	2 U.S. Government Defendant	4 Diversity (Indicate Citizenship of Parties in Item III)	<table><tr><td></td><td>PTF</td><td>DEF</td><td></td><td>PTF</td><td>DEF</td></tr><tr><td>Citizen of This State</td><td>1</td><td>1 Incorporated or Principal Place of Business In This State</td><td>4</td><td>4</td><td></td></tr><tr><td>Citizen of Another State</td><td>2</td><td>2 Incorporated and Principal Place of Business In Another State</td><td>5</td><td>5</td><td></td></tr><tr><td>Citizen or Subject of a Foreign Country</td><td>3</td><td>3 Foreign Nation</td><td>6</td><td>6</td><td></td></tr></table>		PTF	DEF		PTF	DEF	Citizen of This State	1	1 Incorporated or Principal Place of Business In This State	4	4		Citizen of Another State	2	2 Incorporated and Principal Place of Business In Another State	5	5		Citizen or Subject of a Foreign Country	3	3 Foreign Nation	6	6	
1 U.S. Government Plaintiff	3 Federal Question (U.S. Government Not a Party)																												
2 U.S. Government Defendant	4 Diversity (Indicate Citizenship of Parties in Item III)																												
	PTF	DEF		PTF	DEF																								
Citizen of This State	1	1 Incorporated or Principal Place of Business In This State	4	4																									
Citizen of Another State	2	2 Incorporated and Principal Place of Business In Another State	5	5																									
Citizen or Subject of a Foreign Country	3	3 Foreign Nation	6	6																									

IV. NATURE OF SUIT (Place an "X" in One Box Only)					
CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
110 Insurance 120 Marine 130 Miller Act 140 Negotiable Instrument 150 Recovery of Overpayment Of Veteran's Benefits 151 Medicare Act 152 Recovery of Defaulted Student Loans (Excludes Veterans) 153 Recovery of Overpayment of Veteran's Benefits 160 Stockholders' Suits 190 Other Contract 195 Contract Product Liability 196 Franchise	PERSONAL INJURY 310 Airplane 315 Airplane Product Liability 320 Assault, Libel & Slander 330 Federal Employers' Liability 340 Marine 345 Marine Product Liability 350 Motor Vehicle 355 Motor Vehicle Product Liability 360 Other Personal Injury 362 Personal Injury - Medical Malpractice	PERSONAL INJURY 365 Personal Injury - Product Liability 367 Health Care/Pharmaceutical Personal Injury Product Liability 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY 370 Other Fraud 371 Truth in Lending 380 Other Personal Property Damage 385 Property Damage Product Liability	625 Drug Related Seizure of Property 21 USC § 881 690 Other LABOR 710 Fair Labor Standards Act 720 Labor/Management Relations 740 Railway Labor Act 751 Family and Medical Leave Act 790 Other Labor Litigation 791 Employee Retirement Income Security Act IMMIGRATION 462 Naturalization Application 465 Other Immigration Actions	422 Appeal 28 USC § 158 423 Withdrawal 28 USC § 157 PROPERTY RIGHTS 820 Copyrights 830 Patent 840 Trademark SOCIAL SECURITY 861 HIA (1395ff) 862 Black Lung (923) 863 DIWC/DIWW (405(g)) 864 SSID Title XVI 865 RSI (405(g)) FEDERAL TAX SUITS 870 Taxes (U.S. Plaintiff or Defendant) 871 IRS-Third Party 26 USC § 7609	375 False Claims Act 376 Qui Tam (31 USC § 3729(a)) 400 State Reapportionment 410 Antitrust 430 Banks and Banking 450 Commerce 460 Deportation 470 Racketeer Influenced and Corrupt Organizations 480 Consumer Credit 490 Cable/Sat TV 850 Securities/Commodities/Exchange 890 Other Statutory Actions 891 Agricultural Acts 893 Environmental Matters 895 Freedom of Information Act 896 Arbitration 899 Administrative Procedure Act/Review or Appeal of Agency Decision 950 Constitutionality of State Statutes
REAL PROPERTY 210 Land Condemnation 220 Foreclosure 230 Rent Lease & Ejectment 240 Torts to Land 245 Tort Product Liability 290 All Other Real Property	CIVIL RIGHTS 440 Other Civil Rights 441 Voting 442 Employment 443 Housing/Accommodations 445 Amer. w/Disabilities-Employment 446 Amer. w/Disabilities-Other 448 Education	PRISONER PETITIONS Habeas Corpus: 463 Alien Detainee 510 Motions to Vacate Sentence 530 General 535 Death Penalty Other: 540 Mandamus & Other 550 Civil Rights 555 Prison Condition 560 Civil Detainee-Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation-Transfer 8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION	Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
	Brief description of cause:

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

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

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2) (Place an "X" in One Box Only)	SAN FRANCISCO/OAKLAND	SAN JOSE	EUREKA-MCKINLEYVILLE
---	-----------------------	----------	----------------------

DATE:	SIGNATURE OF ATTORNEY OF RECORD:
-------	----------------------------------

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

Authority For Civil Cover Sheet. The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)
 - c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment).”
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
 - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
 - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
 - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
 - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
 - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket.
- Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.