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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

ALEX REID, MATT REMNEK, ADAM
 KELLER, SANDY COBB, SHANE
 EWART, JACLYN FOSTER,
 RICHARDSON AYRES HAXTON,
 ROBERT HEWITT, JEREMY HOLLIS,
 BRANDON KRUSE, KEITH KRUSE,
 DONALD MASON, KARLA MERROW,
 SARA NICOL ROBERTS, FREDERICK
 RUDOLPH, CHRISTOPHER H.
 SCHRICKER, ERICA SHOAF and CHRIS
 WOBBE on behalf of themselves and all
 others similarly situated,

Plaintiffs,

vs.

VOLKSWAGEN AG, VOLKSWAGEN
 GROUP OF AMERICA, INC., AUDI AG,
 AUDI OF AMERICA, PORSCHE AG,
 AND PORSCHE CARS OF NORTH
 AMERICA,

Defendants.

Case No.:

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

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1 Plaintiffs Alex Reid, Matt Remnek, Adam Keller, Sandy Cobb, Shane Ewart, Jaclyn
2 Foster, Richardson Ayres Haxton, Robert Hewitt, Brandon Kruse, Keith Kruse, Donald Mason,
3 Karla Merrow, Sara Nicol Roberts, Frederick Rudolph, Christopher H. Schricker, Erica Shoaf,
4 Chris Wobbe, ("Plaintiffs") individually and on behalf of all others similarly situated (the
5 "Class") allege as follows:

6
7 **I. INTRODUCTION**

8 1. This class action against Volkswagen Group of America, Inc., Volkswagen AG,
9 Audi AG, Audi of America, Porsche AG, Porsche Cars of North America (collectively
10 "Defendants" or "Volkswagen") arises from one of the largest illegal schemes and corporate
11 frauds in history by which Defendants deceived federal and state agencies, American
12 consumers, consumers abroad and even Volkswagen's own shareholders. Plaintiffs bring this
13 action against the Defendants for fraudulent misrepresentation and concealment, breach of
14 express and implied warranties, violations of the Magnuson-Moss Warranty Act (15 USC §
15 2301, *et seq.*), various state consumer protection and product liability statutes, and the
16 Racketeering Influenced and Corrupt Organizations Act (18 USC § 1961 *et seq.* ("RICO")),
17 seeking damages and equitable relief for purchasers of approximately 482,000 vehicles
18 equipped with a 2.0 liter turbo charged direct injection ("TDI") Clean Diesel engines used in
19 Audi and Volkswagen vehicles and approximately 85,000 vehicles equipped with 3.0 liter TDI
20 Clean Diesel engines used in Audi, Porsche and Volkswagen vehicles (collectively referred to
21 as "Defeat Device Vehicles") which Defendants knew failed to meet, and intentionally violated,
22 federal and state emissions requirements and standards.

23 2. One of the largest car manufacturers in the world, Volkswagen markets,
24 advertises, distributes and sells vehicles under the Audi, Porsche, Volkswagen and other brand
25 names throughout the United States. Volkswagen and/or its agents designed, manufactured and
26 installed the engine systems in the Defeat Device Vehicles which are the subject of this action.
27 Volkswagen also developed and disseminated the owner's manuals and warranty booklets,
28

1 advertisements and other promotional materials relating to the Defeat Device Vehicles which
2 were used to market and sell those vehicles to an unsuspecting public.

3 3. At all times material, Volkswagen endeavored to circumvent important laws that
4 were legislated by Congress and rules and regulations implemented by the Environmental
5 Protection Agency ("EPA"), and similar laws passed by state legislatures, including California,
6 and rules and regulations implemented by state environmental agencies, including the California
7 Air Resources Board ("CARB").

8 4. The United States government, and several states, including California, passed
9 and enforced such laws to protect their citizens from pollution and, in particular, various
10 chemicals and agents that have been demonstrated to cause disease in humans, including nitrous
11 oxide. The emission of nitrogen oxides ("NOx") is tightly regulated in the United States
12 because NOx emissions have a variety of negative environmental and health impacts. Most
13 significantly, by reacting with volatile organic compounds such as methane, NOx forms
14 tropospheric ozone, which, in turn, can damage lung tissue in children, the elderly and
15 asthmatics. In addition, once in the atmosphere, NOx gases react, forming smog and acid rain.
16 Volkswagen was required to adhere to these critically important laws, rules and regulations of
17 the United States, the EPA, CARB and other state agencies.

18 5. Intent on successfully reaching a goal of becoming the largest auto maker in the
19 world by 2018, Volkswagen embarked on an ambitious plan to expand core-brand sales in the
20 United States. Volkswagen's plan involved more than doubling its sales in the United States
21 from 324,402 units in 2007 to 800,000 units by 2018. A significant part of Volkswagen's effort
22 to achieve its ambitious goals in the face of ever increasing environmental awareness was to
23 intensify sales and marketing efforts in the United States by promoting its diesel vehicles as low
24 emission, fuel efficient cars that achieved performance comparable with gasoline vehicles. To
25 that end, Volkswagen actively promoted its diesel vehicles as "clean" and "green," coining the
26 label for their diesel vehicles – "Clean Diesel."

1 6. Volkswagen held itself out to consumers as an unabashed champion of "green"
2 responsibility. Indeed, on the "Environment" page of Volkswagen America's website, the
3 Company states that it takes "**environmental responsibility very seriously**. When it comes to
4 **making our cars as green as possible**, Volkswagen has an integrated **strategy** focused on
5 **reducing fuel consumption** and **emissions**, building the **world's cleanest diesel engines** and
6 developing totally new power systems, which utilize new fuel alternatives." (emphasis added)¹

7 ²

8 7. These marketing representations and assurances were well received by an
9 environmentally conscious public. Indeed, as touted by Volkswagen, according to the EPA and
10 the United States Department of Transportation ("USDOT"), "converting one-third of the cars
11 on the road today to TDI Clean Diesel would save approximately 1.4 million barrels of oil a day
12 — equal to the daily shipments from Saudi Arabia to the United States."³

13 8. Defendants bolstered their environmental deception by trumpeting the fact that
14 certain Clean Diesel Vehicles — the Audi A3 TDI and VW Jetta TDI — were named the 2010
15 Green Car of the Year and the 2009 Green Car of the Year, respectively. Volkswagen also
16 launched a "Think Blue" program, which it presented as a policy of being "more responsible on
17 the road and more environmentally conscious - not just in our cars." In addition, Volkswagen
18 supported and directed a website to promote the Company's "clean" diesel technology —
19 www.clearlybetterdiesel.org — wherein it was represented that the technology reduces smog

21
22 ¹ Emphasis added throughout except where otherwise noted.

23 ² <http://update.vw.com/environment/index.htm> (last visited on December 9, 2015)

24 ³ <http://www.clearlybetterdiesel.org/info.html#cleanDiesel> (last visited on December 3,
25 2015), citing

26 [http://www.volkswagenag.com/content/vwcorp/info_center/en/news/2011/05/Clean_Diese](http://www.volkswagenag.com/content/vwcorp/info_center/en/news/2011/05/Clean_Diesel_USA.html)
27 [l_USA.html](http://www.volkswagenag.com/content/vwcorp/info_center/en/news/2011/05/Clean_Diesel_USA.html).

1 and "meets the highest standards in all 50 states, thanks to ultra-low sulfur diesel (ULSD) fuel
2 and innovative engine technology that burns cleaner."

3 9. Volkswagen aggressively marketed its Defeat Device Vehicles as having the
4 "***world's cleanest diesel engines***" that comply with the "***most demanding emissions laws***." In
5 widely distributed sales brochures, Volkswagen boasted that its "***[c]lean diesel vehicles meet***
6 ***the strictest EPA standards***" while "***reduc[ing] sooty emissions by up to 90%***," providing
7 consumers "***a fuel-efficient and eco-conscious vehicle***."

8 10. For performance oriented eco-enthusiasts, Volkswagen claimed "This ain't your
9 daddy's diesel" – meaning diesel engines were no longer noisy, smelly, poor-performing
10 polluters but could provide performance and fuel efficiency that was comparable – if not
11 superior – to conventional gasoline engines, all in an eco-friendly package.

12 11. Volkswagen's Clean Diesel campaign in the American market was a tremendous
13 success despite the fact that Volkswagen's Defeat Device Vehicles cost between ***\$1,000 to***
14 ***\$7,000 or more*** over the comparably-equipped gasoline powered version of the same model.

15 12. But behind its "clean" advertising and promotional imagery lurked a very dirty
16 secret, as confirmed by the EPA on September 18, 2015: the Defeat Device Vehicles utilized a
17 defeat device which was knowingly incorporated by Volkswagen to cheat on emissions tests.

18 13. As Cynthia Giles, Assistant Administrator for the Office of Enforcement and
19 Compliance Assurance ("OECA") stated, "using a defeat device in cars to evade clean air
20 standards is illegal and a threat to public health." However, Volkswagen did exactly that in its
21 2009-2015 2.0 liter TDI Clean Diesel engines. Unbeknownst to consumers and the public at
22 large, the defeat device, — secret, sophisticated software — automatically detected when the
23 vehicles were undergoing emissions testing and engaged the vehicles' full emissions control in
24 order to meet regulatory standards. At all other times, the defeat device disabled the emissions
25 controls, thereby causing Volkswagen Defeat Device Vehicles to omit as much as forty times
26 the EPA allowable emissions of NOx. This defeat device had been included in numerous Audi
27 and Volkswagen models equipped with 2.0 liter TDI Clean Diesel engine, as follows:

- 1 ○ Volkswagen Jetta, Jetta SportWagen (2009-2015)
- 2 ○ Volkswagen Beetle, Beetle Convertible (2009-2015)
- 3 ○ Audi A3 (2009-2015)
- 4 ○ Volkswagen Golf (2009-2015)
- 5 ○ Volkswagen Passat (2014-2015)
- 6 ○ Volkswagen Golf SportWagen (2015)

7 14. Remarkably, this revelation was far from the end of the scandal. Even as the
8 EPA and CARB continued their investigation of the 2.0 liter TDI Clean Diesel engines, they
9 discovered that the 3.0 liter TDI Clean Diesel engines used in certain Audi, Porsche and
10 Volkswagen vehicles sold between the 2009 and 2015 model years also included a defeat
11 device. This defeat device had been included in numerous models equipped with the 3.0 liter
12 TDI Clean Diesel engine, as follows:

- 13 ○ Audi A6
- 14 ○ Audi A7
- 15 ○ Audi A8
- 16 ○ Audi Q5
- 17 ○ Audi Q7
- 18 ○ Porsche Cayenne
- 19 ○ Volkswagen Touareg

20 15. On September 18, 2015, following a lengthy investigation, the EPA and CARB
21 issued notices of violation against Volkswagen Group of America, Inc. finding that almost
22 500,000 vehicles equipped with the 2.0 liter TDI Clean Diesel engines manufactured by both
23 Audi and Volkswagen failed to meet federal and California state emissions requirements. The
24 EPA ordered the iconic car manufacturer to immediately recall all Defeat Device Vehicles, and
25 Volkswagen was forced to acknowledge that the defeat devices had been installed on as many
26 as eleven million 2.0 liter TDI Clean Diesel engines sold throughout the world.

1 16. On September 19, 2015, the *New York Times* published a front-page article
2 entitled "U.S. Orders Major VW Recall Over Emissions Test Trickery." The article reported
3 that the Company had "illegally installed software in its diesel-power cars to evade standards for
4 reducing smog" and that Volkswagen had "admitted to the use of a so-called defeat device. The
5 recall involves 4-cylinder Volkswagen and Audi vehicles from model years 2009-2015." The
6 Department of Justice ("DOJ") has opened an investigation, and fines of as much as \$18 billion
7 could be levied against Volkswagen as a result of Defendants' misconduct.

8 17. As reported in the *New York Times* on September 19, 2015, a research group
9 called the International Council on Clean Transportation, first noticed the difference between
10 Volkswagen's emissions in testing laboratories and in normal usage on the road, and brought the
11 defeat device issue to the attention of the EPA. The EPA, in turn, conducted further tests on the
12 vehicles and ultimately uncovered the unlawful use of the defeat device software, which
13 previously had been painstakingly concealed from consumers and regulators alike.

14 18. On September 20, 2015, Volkswagen admitted that the EPA allegations were
15 true and admitted to using a defeat device. Volkswagen AG CEO, Martin Winterkorn
16 ("Winterkorn") stated: "I personally am deeply sorry that we have broken the trust of our
17 customers and the public." Volkswagen faces inevitable fines, possible criminal charges and
18 has already suffered, and will continue to suffer, massive public disgrace. Putting all that aside,
19 there are still a half million cars running on emissions set ups that never should have left the
20 factory in the first place. Each of these Defeat Device Vehicles is also illegal because
21 Volkswagen did not obtain a valid EPA certificate of conformity for importing them.

22 19. Thereafter, on November 25, 2015, CARB issued a demand that Audi, Porsche
23 and Volkswagen prepare a recall of all vehicles sold since model year 2009 that were equipped
24 with the 3.0 liter TDI Clean Diesel engine. This demand, which covered the Audi A6, A7, Q5,
25 Q7, the Porsche Cayenne, and the Volkswagen Touareg, followed an admission by Audi that
26 the 3.0 liter TDI Clean Diesel engine also included a defeat device.

1 20. Volkswagen is now being investigated by the DOJ and the attorneys general of
2 virtually every state. Volkswagen has been ordered by the EPA to recall Defeat Device
3 Vehicles and repair them so that they comply with EPA emissions requirements at all times
4 during normal operations.

5 21. Even if Volkswagen is able to make Defeat Device Vehicles EPA compliant,
6 they will still nonetheless suffer actual harm and damages because their vehicles are no longer
7 performing as they did when purchased and as advertised.

8 22. Plaintiffs and members of the Class were induced to purchase or lease illegal
9 Defeat Device Vehicles as a consequence of Defendants' fraudulent scheme and conduct. Now
10 Plaintiffs and the members of the Class are left with vehicles that not only violate the Clean Air
11 Act and various state laws, they do not, and cannot, perform as represented by Volkswagen or
12 as required by law. Plaintiffs and members of the Class have suffered damages by virtue of
13 having purchased or leased Defeat Device Vehicles that they would not have purchased or
14 leased had they known that they were illegally imported and/or had defective engine systems
15 and contained defeat devices. Alternatively, Plaintiffs and members of the Class would not
16 have paid as much for those Defeat Device Vehicles. Even if Defendants were to rectify the
17 emissions problem and bring the vehicles into compliance, Plaintiffs and members of the Class
18 have suffered diminution in value of their Defeat Device Vehicles as the vehicles do not, and
19 cannot, perform as advertised and are likely subject to heightened maintenance requirements.
20 Bringing the offending Defeat Device Vehicles into compliance with EPA and applicable state
21 emissions standards, even if possible, will result in negatively impacting other vehicle
22 specifications, such as fuel economy, horsepower and torque. Thus, Plaintiffs and members of
23 the Class will suffer from increased fuel costs and still possess Defeat Device Vehicles that do
24 not, and cannot, perform as advertised.

25 23. Not surprisingly, Volkswagen AG CEO Winterkorn has been forced to resign.
26 There have been shake-ups at Volkswagen as a consequence of its dirty secret regarding its
27 Defeat Device Vehicles being exposed, due not to the Defendants, who actively concealed their
28

1 fraudulent schemes, but to an independent investigation and testing performed by the
2 International Council for Clean Transportation and West Virginia University, which, in turn,
3 resulted in governmental agencies leading to the disclosure of the truth, thus helping to bring an
4 end to this massive corporate fraud afflicting hundreds of thousands of American consumers.

5 6 **II. JURISDICTION AND VENUE**

7 24. This Court has jurisdiction over this action under the Class Action Fairness Act,
8 28 U.S.C. § 1332(d). The aggregate claims of the individual Class members exceed the sum or
9 value of \$5,000,000, exclusive of interests and costs. More than two-thirds of the members of
10 the proposed plaintiff class are citizens of states other than that of the Defendants. This Court
11 also has federal question jurisdiction to decide claims brought under 15 U.S.C. § 2301 (the
12 Magnuson- Moss Warranty Act) and 18 U.S.C. §§ 1962(c)-(d) (Racketeering Influenced
13 Corrupt Organizations Act) by virtue of 28 U.S.C. § 1331. This Court also has jurisdiction over
14 this action pursuant to 28 U.S.C. §§ 1367(a).

15 25. This Court has jurisdiction over Volkswagen because Volkswagen conducts
16 business in the Northern District of California and has minimum contacts in the district or
17 otherwise intentionally avails itself of the markets within the district through its promotion, sale,
18 marketing, and distribution of its vehicles sufficient to render the exercise of jurisdiction by this
19 Court proper and necessary.

20 26. Venue is proper in this District under 28 U.S.C. § 1391(b) because a substantial
21 part of the events or omissions giving rise to Plaintiffs' claims occurred in this District. The
22 California Air Resources Board is located within this district. Volkswagen also advertised,
23 marketed, sold and leased Defeat Device Vehicles in this District. Other lawsuits arising from
24 the same operative facts have been initiated in this District and the Judicial Panel on
25 Multidistrict Litigation has assigned this multi-district litigation against the Defendants
26 asserting civil claims on behalf of plaintiff consumers in federal to the Northern District of
27 California.

1 **III. PARTIES**

2 27. Plaintiff Alex Reid is a resident of Reseda, Los Angeles County, California, and
3 purchased a 2012 Volkswagen Jetta TDI equipped with a 2.0 liter Clean Diesel engine on June
4 27, 2012, from Timmons Volkswagen of Long Beach, located in Long Beach, California.
5 Plaintiff still owns this vehicle. At the time Plaintiff purchased this vehicle, Plaintiff was
6 unaware that the vehicle was equipped with a defeat device that evaded applicable emissions
7 requirements. Plaintiff purchased this vehicle based on representations made by Volkswagen
8 regarding its performance, gas mileage, compliance with applicable regulations and fitness for
9 use as a personal vehicle. As a result of Volkswagen's actions and false statements, Plaintiff has
10 suffered an ascertainable loss caused by, *inter alia*, out-of pocket-losses, future additional fuel
11 costs, diminished performance of the vehicle and diminished residual and/or resale value of the
12 vehicle.

13 28. Plaintiff Matt Remnek is a resident of San Marcos, San Diego County,
14 California, and purchased a 2015 Volkswagen Passat equipped with a 2.0 liter Clean Diesel
15 engine on July 18, 2015 from Volkswagen of Murrieta, located in Murrieta, California. Plaintiff
16 still owns this vehicle. At the time Plaintiff purchased this vehicle, Plaintiff was unaware that
17 the vehicle was equipped with a defeat device that evaded applicable emissions requirements.
18 Plaintiff purchased this vehicle based on representations made by Volkswagen regarding its
19 performance, gas mileage, compliance with applicable regulations and fitness for use as a
20 personal vehicle. As a result of Volkswagen's actions and false statements, Plaintiff has
21 suffered an ascertainable loss caused by, *inter alia*, out-of pocket-losses, future additional fuel
22 costs, diminished performance of the vehicle and diminished residual and/or resale value of the
23 vehicle.

24 29. Plaintiff Adam Keller is a resident of Los Angeles, Los Angeles County,
25 California, and purchased a 2014 Volkswagen Jetta SportWagen equipped with a 2.0 liter Clean
26 Diesel engine on October 4, 2014, from McKenna Motors Huntington Beach located in
27 Huntington Beach, California. Plaintiff still owns this vehicle. At the time Plaintiff purchased
28

1 this vehicle, Plaintiff was unaware that the vehicle was equipped with a defeat device that
2 evaded applicable emissions requirements. Plaintiff purchased this vehicle based on
3 representations made by Volkswagen regarding its performance, gas mileage, compliance with
4 applicable regulations and fitness for use as a personal vehicle. As a result of Volkswagen's
5 actions and false statements, Plaintiff has suffered an ascertainable loss caused by, *inter alia*,
6 out-of pocket-losses, future additional fuel costs, diminished performance of the vehicle and
7 diminished residual and/or resale value of the vehicle.

8 30. Plaintiff Sandy Cobb is a resident of Homewood, Jefferson County, Alabama,
9 and purchased a 2009 Volkswagen Jetta TDI equipped with a 2.0 liter Clean Diesel engine on
10 May 7, 2013 from CarMax, located in Hoover, Alabama. Plaintiff still owns this vehicle. At
11 the time Plaintiff purchased this vehicle, Plaintiff was unaware that the vehicle was equipped
12 with a defeat device that evaded applicable emissions requirements. Plaintiff purchased this
13 vehicle based on representations made by Volkswagen regarding its performance, gas mileage,
14 compliance with applicable regulations and fitness for use as a personal vehicle. As a result of
15 Volkswagen's actions and false statements, Plaintiff has suffered an ascertainable loss caused
16 by, *inter alia*, out-of pocket-losses, future additional fuel costs, diminished performance of the
17 vehicle and diminished residual and/or resale value of the vehicle.

18 31. Plaintiff Shane Ewart is a resident of Florida and purchased a used 2012 VW
19 Jetta TDI Sedan equipped with a 2.0 liter Clean Diesel engine on September 2, 2014, from
20 Volkswagen of New Port Richey located in New Port Richey, Florida. Plaintiff still owns this
21 vehicle. At the time Plaintiff purchased this vehicle, Plaintiff was unaware that the vehicle was
22 equipped with a defeat device that evaded applicable emissions requirements. Plaintiff
23 purchased this vehicle based on representations made by Volkswagen regarding its
24 performance, gas mileage, compliance with applicable regulations and fitness for use as a
25 personal vehicle. As a result of Volkswagen's actions and false statements, Plaintiff has
26 suffered an ascertainable loss caused by, *inter alia*, out-of pocket-losses, future additional fuel
27
28

1 costs, diminished performance of the vehicle and diminished residual and/or resale value of the
2 vehicle.

3 32. Plaintiff Jaclyn Foster is a resident of West Virginia, and purchased a 2014
4 Volkswagen Jetta TDI equipped with a 2.0 liter Clean Diesel engine in 2014 from Moses
5 Automotive, Inc. in Huntington, West Virginia. Plaintiff still owns this vehicle. At the time
6 Plaintiff purchased this vehicle, Plaintiff was unaware that the vehicle was equipped with a
7 defeat device that evaded applicable emissions requirements. Plaintiff purchased this vehicle
8 based on representations made by Volkswagen regarding its performance, gas mileage,
9 compliance with applicable regulations and fitness for use as a personal vehicle. As a result of
10 Volkswagen's actions and false statements, Plaintiff has suffered an ascertainable loss caused
11 by, *inter alia*, out-of pocket-losses, future additional fuel costs, diminished performance of the
12 vehicle and diminished residual and/or resale value of the vehicle.

13 33. Plaintiff Richardson Ayres Haxton is a resident of Jackson, Hinds County,
14 Mississippi, and purchased a 2014 Volkswagen Passat TDI equipped with a 2.0 liter Clean
15 Diesel engine on March 28, 2014, from Ritchey Automotive Group located in Jackson,
16 Mississippi. Plaintiff still owns this vehicle. At the time Plaintiff purchased this vehicle,
17 Plaintiff was unaware that the vehicle was equipped with a defeat device that evaded applicable
18 emissions requirements. Plaintiff purchased this vehicle based on representations made by
19 Volkswagen regarding its performance, gas mileage, compliance with applicable regulations
20 and fitness for use as a personal vehicle. As a result of Volkswagen's actions and false
21 statements, Plaintiff has suffered an ascertainable loss caused by, *inter alia*, out-of pocket-
22 losses, future additional fuel costs, diminished performance of the vehicle and diminished
23 residual and/or resale value of the vehicle.

24 34. Plaintiff Robert Hewitt is a resident of San Antonio, Bexar County, Texas, and
25 purchased a new 2014 Volkswagen Jetta SportWagen TDI equipped with a 2.0 liter Clean
26 Diesel engine on April 17, 2014 from Volkswagen of Alamo Heights in San Antonio, Texas.
27 Plaintiff still owns this vehicle. At the time Plaintiff purchased this vehicle, Plaintiff was
28

1 unaware that the vehicle was equipped with a defeat device that evaded applicable emissions
2 requirements. Plaintiff purchased this vehicle based on representations made by Volkswagen
3 regarding its performance, gas mileage, compliance with applicable regulations and fitness for
4 use as a personal vehicle. As a result of Volkswagen's actions and false statements, Plaintiff has
5 suffered an ascertainable loss caused by, *inter alia*, out-of pocket-losses, future additional fuel
6 costs, diminished performance of the vehicle and diminished residual and/or resale value of the
7 vehicle.

8 35. Plaintiff Jeremy Hollis is a resident of Fordyce, Dallas County, Arkansas, and
9 purchased a 2013 Volkswagen Jetta TDI equipped with a 2.0 liter Clean Diesel engine on April
10 29, 2013, from North Point Volkswagen, located in Little Rock, Arkansas. Plaintiff still owns
11 this vehicle. At the time Plaintiff purchased this vehicle, Plaintiff was unaware that the vehicle
12 was equipped with a defeat device that evaded applicable emissions requirements. Plaintiff
13 purchased this vehicle based on representations made by Volkswagen regarding its
14 performance, gas mileage, compliance with applicable regulations and fitness for use as a
15 personal vehicle. As a result of Volkswagen's actions and false statements, Plaintiff has
16 suffered an ascertainable loss caused by, *inter alia*, out-of pocket-losses, future additional fuel
17 costs, diminished performance of the vehicle and diminished residual and/or resale value of the
18 vehicle.

19 36. Plaintiff Brandon Kruse is a resident of Pulaski, Pulaski County, Virginia, and
20 purchased two new 2014 Volkswagen Jetta TDIs equipped with 2.0 liter Clean Diesel engines
21 on June 12, 2015, from Flow Volkswagen in Charlottesville, Virginia. Plaintiff still owns these
22 vehicles. At the time Plaintiff purchased these vehicles, Plaintiff was unaware that the vehicles
23 were equipped with a defeat device that evaded applicable emissions requirements. Plaintiff
24 purchased these vehicles based on representations made by Volkswagen regarding their
25 performance, gas mileage, compliance with applicable regulations and fitness for use as
26 personal vehicles. As a result of Volkswagen's actions and false statements, Plaintiff has
27 suffered an ascertainable loss caused by, *inter alia*, out-of pocket-losses, future additional fuel
28

1 costs, diminished performance of the vehicles and diminished residual and/or resale value of the
2 vehicles.

3 37. Plaintiff Keith Kruse is a resident of Street, Harford County, Maryland, and
4 purchased a new 2012 Volkswagen Golf TDI equipped with a 2.0 liter Clean Diesel engine on
5 April 25, 2012, from Heritage Park Volkswagen Parkville in Parkville, Maryland. Plaintiff still
6 owns this vehicle. At the time Plaintiff purchased this vehicle, Plaintiff was unaware that the
7 vehicle was equipped with a defeat device that evaded applicable emissions requirements.
8 Plaintiff purchased this vehicle based on representations made by Volkswagen regarding its
9 performance, gas mileage, compliance with applicable regulations and fitness for use as a
10 personal vehicle. As a result of Volkswagen's actions and false statements, Plaintiff has
11 suffered an ascertainable loss caused by, *inter alia*, out-of pocket-losses, future additional fuel
12 costs, diminished performance of the vehicle and diminished residual and/or resale value of the
13 vehicle.

14 38. Plaintiff Donald Mason is a resident of La Center, Clark County, Washington,
15 and purchased a new 2014 Volkswagen Jetta TDI equipped with a 2.0 liter Clean Diesel engine
16 on October 4, 2013, from Dick Hannah Volkswagen in Vancouver, Washington. Plaintiff still
17 owns this vehicle. At the time Plaintiff purchased this vehicle, Plaintiff was unaware that the
18 vehicle was equipped with a defeat device that evaded applicable emissions requirements.
19 Plaintiff purchased this vehicle based on representations made by Volkswagen regarding its
20 performance, gas mileage, compliance with applicable regulations and fitness for use as a
21 personal vehicle. As a result of Volkswagen's actions and false statements, Plaintiff has
22 suffered an ascertainable loss caused by, *inter alia*, out-of pocket-losses, future additional fuel
23 costs, diminished performance of the vehicle and diminished residual and/or resale value of the
24 vehicle.

25 39. Plaintiff Karla Merrow is a resident of Paragould, Greene County, Arkansas, and
26 purchased a 2011 Volkswagen Jetta TDI equipped with a 2.0 liter Clean Diesel engine on
27 August 8, 2014, from Owens Murphy, located in Little Rock, Arkansas. Plaintiff still owns this
28

1 vehicle. At the time Plaintiff purchased this vehicle, Plaintiff was unaware that the vehicle was
2 equipped with a defeat device that evaded applicable emissions requirements. Plaintiff
3 purchased this vehicle based on representations made by Volkswagen regarding its
4 performance, gas mileage, compliance with applicable regulations and fitness for use as a
5 personal vehicle. As a result of Volkswagen's actions and false statements, Plaintiff has
6 suffered an ascertainable loss caused by, *inter alia*, out-of pocket-losses, future additional fuel
7 costs, diminished performance of the vehicle and diminished residual and/or resale value of the
8 vehicle.

9 40. Plaintiff Sara Nicol Roberts is a resident of Alabama. Plaintiff Roberts was a
10 resident of Georgia when she purchased a 2014 Volkswagen Jetta SportWagen equipped with a
11 2.0 liter Clean Diesel engine in 2014 from Nalley Volkswagen in Alpharetta, Georgia. Plaintiff
12 still owns this vehicle. At the time Plaintiff purchased this vehicle, Plaintiff was unaware that
13 the vehicle was equipped with a defeat device that evaded applicable emissions requirements.
14 Plaintiff purchased this vehicle based on representations made by Volkswagen regarding its
15 performance, gas mileage, compliance with applicable regulations and fitness for use as a
16 personal vehicle. As a result of Volkswagen's actions and false statements, Plaintiff has
17 suffered an ascertainable loss caused by, *inter alia*, out-of pocket-losses, future additional fuel
18 costs, diminished performance of the vehicle and diminished residual and/or resale value of the
19 vehicle.

20 41. Plaintiff Frederick Rudolph is a resident of Tennessee, and purchased a 2014
21 Volkswagen Passat TDI equipped with a 2.0 liter Clean Diesel engine in 2014 from Hallmark
22 Automotive of Tennessee. Plaintiff still owns this vehicle. At the time Plaintiff purchased this
23 vehicle, Plaintiff was unaware that the vehicle was equipped with a defeat device that evaded
24 applicable emissions requirements. Plaintiff purchased this vehicle based on representations
25 made by Volkswagen regarding its performance, gas mileage, compliance with applicable
26 regulations and fitness for use as a personal vehicle. As a result of Volkswagen's actions and
27 false statements, Plaintiff has suffered an ascertainable loss caused by, *inter alia*, out-of pocket-
28

1 losses, future additional fuel costs, diminished performance of the vehicle and diminished
2 residual and/or resale value of the vehicle.

3 42. Plaintiff Christopher H. Schricker is a resident of Arizona, and purchased a 2011
4 Volkswagen Golf TDI equipped with a 2.0 liter Clean Diesel engine in June, 2015, from a
5 private seller, Sarrah Black. Plaintiff still owns this vehicle. At the time Plaintiff purchased
6 this vehicle, Plaintiff was unaware that the vehicle was equipped with a defeat device that
7 evaded applicable emissions requirements. Plaintiff purchased this vehicle based on
8 representations made by Volkswagen regarding its performance, gas mileage, compliance with
9 applicable regulations and fitness for use as a personal vehicle. As a result of Volkswagen's
10 actions and false statements, Plaintiff has suffered an ascertainable loss caused by, *inter alia*,
11 out-of pocket-losses, future additional fuel costs, diminished performance of the vehicle and
12 diminished residual and/or resale value of the vehicle.

13 43. Plaintiff Erica Shoaf is a resident of Pennsylvania, and purchased a 2014
14 Volkswagen Jetta TDI equipped with a 2.0 liter Clean Diesel engine on April 19, 2014, from
15 Heritage VW Parkville located in Baltimore, Maryland. Plaintiff still owns this vehicle. At the
16 time Plaintiff purchased this vehicle, Plaintiff was unaware that the vehicle was equipped with a
17 defeat device that evaded applicable emissions requirements. Plaintiff purchased this vehicle
18 based on representations made by Volkswagen regarding its performance, gas mileage,
19 compliance with applicable regulations and fitness for use as a personal vehicle. As a result of
20 Volkswagen's actions and false statements, Plaintiff has suffered an ascertainable loss caused
21 by, *inter alia*, out-of pocket-losses, future additional fuel costs, diminished performance of the
22 vehicle and diminished residual and/or resale value of the vehicle.

23 44. Plaintiff Chris Wobbe is a resident of Springfield, Lane County, Oregon, and
24 purchased a new 2014 Volkswagen Jetta TDI equipped with a 2.0 liter Clean Diesel engine on
25 January 29, 2014, from Sheppard Motors in Eugene, Oregon. Plaintiff still owns this vehicle.
26 At the time Plaintiff purchased this vehicle, Plaintiff was unaware that the vehicle was equipped
27 with a defeat device that evaded applicable emissions requirements. Plaintiff purchased this
28

1 vehicle based on representations made by Volkswagen regarding its performance, gas mileage,
2 compliance with applicable regulations and fitness for use as a personal vehicle. As a result of
3 Volkswagen's actions and false statements, Plaintiff has suffered an ascertainable loss caused
4 by, *inter alia*, out-of pocket-losses, future additional fuel costs, diminished performance of the
5 vehicle and diminished residual and/or resale value of the vehicle.

6 45. Defendant Volkswagen Group of America, Inc. is a New Jersey corporation
7 headquartered at 2200 Ferdinand Porsche Drive, Herndon, Virginia. Volkswagen of America
8 manufactures, distributes, markets and sells vehicles under both the Audi and Volkswagen
9 brand names throughout the United States and its territories.

10 46. Volkswagen AG is a corporation organized under the laws of Germany and is
11 headquartered in Wolfsburg, Germany. Volkswagen AG is the parent corporation and
12 controlling owner of Audi AG, Porsche AG and Volkswagen Group of America. Through
13 Volkswagen Group of America, Audi AG, Porsche AG and the wholly-owned subsidiaries of
14 Audi AG and Porsche AG, Volkswagen AG conducts substantial business in the United States,
15 including, *inter alia*, the design, manufacture and importation of vehicles into the United States
16 for distribution, sale and use.

17 47. Audi AG is a corporation organized under the laws of Germany and is
18 headquartered in Chemnitz, Germany. Approximately 99.55% of Audi AG is owned by
19 Volkswagen AG. Audi AG is the Parent Corporation and sole owner of Porsche Cars North
20 America. Audi AG designs and manufactures Audi-branded vehicles for distribution and sale
21 throughout the United States.

22 48. Audi of America is a wholly-owned sub of Audi AG and is incorporated in and
23 headquartered at Herndon, Virginia. Audi of America is the sole and exclusive United States
24 importer of automobiles manufactured by Audi AG. Audi of America distributes Audi-branded
25 vehicles for sale throughout the United States.

26 49. Porsche AG is a corporation organized under the laws of Germany and is
27 headquartered in Stuttgart, Germany. Porsche AG is the Parent Corporation and sole owner of
28

1 Porsche Cars North America. Porsche AG designs and manufactures Porsche-branded vehicles
2 for distribution and sale throughout the United States.

3 50. Porsche Cars of North America is a wholly owned sub of Porsche AG and is
4 incorporated in Delaware and headquartered at One Porsche Drive, Atlanta, Georgia. Porsche
5 Cars North America is the sole and exclusive United States importer of automobiles
6 manufactured by Porsche AG, including the Porsche Cayenne. Porsche Cars North America
7 distributes Porsche-branded vehicles for sale throughout the United States.

8
9 **IV. FACTS**

10 **A. The EPA and CARB Discover Volkswagen's Deceptive Conduct**

11 51. On Friday, September 18, 2015, the EPA and CARB each issued a notice of
12 violation ("NOV") to Volkswagen. Both NOVs contained a shocking finding – that
13 Volkswagen had, for years, included a defeat device in its 2.0 liter TDI Clean Diesel engines.
14 This defeat device was designed specifically to mask the inability of the 2.0 liter TDI Clean
15 Diesel engine to comply with applicable federal and state emissions standards and requirements.
16 As a result of this defeat device, nearly 500,000 Volkswagen and Audi vehicles were certified
17 as being compliant with applicable regulations when, in some cases, the engines emitted forty
18 times the allowable levels of certain pollutants.

19 52. In its very first paragraph, the EPA NOV, attached hereto as "Exhibit A,"
20 concluded that "*[t]hese defeat devices bypass, defeat, or render inoperative elements of the*
21 *vehicles' emission control system that exist to comply with [Clean Air Act] emission*
22 *standards.* Therefore, VW violated section 203(a)(3)(B) of the [Clean Air Act], 42 U.S.C. §
23 7522(a)(3)(B)."

24 53. The CARB NOV, attached hereto as "Exhibit B," noted Volkswagen's
25 "admission of [use of a] defeat device," and stated that "[i]n order to protect public health and
26 the environment from harmful pollutants, the California Air Resources Board (CARB)
27 rigorously implements its vehicle regulations through its certification, in use compliance, and
28

1 enforcement programs." The CARB NOV then went on to summarize the lengthy investigative
2 efforts undertaken by the agency:

3
4 CARB was engaged in dialogue with our European counterparts concerning high
5 in use emissions from light duty diesels. CARB deployed a number of efforts
6 using portable measurement systems and other approaches to increase our
7 understanding for the California fleet. In 2014, the International Council for
8 Clean Transportation (ICCT) and West Virginia University (WVU) identified
9 through their test program, and brought to the CARB's and the United States
10 Environmental Protection Agency's (EPA) attention, concerns of elevated oxides
11 of nitrogen (NO_x) emissions over real world driving. The ICCT actions were
12 consistent and complementary to our activities. This prompted CARB to start an
13 investigation and discussions with the Volkswagen Group of American (VW) on
14 the reasons behind these high NO_x emissions observed on their 2.0 liter diesel
15 vehicles over real world driving conditions. ***As you know, these discussions over***
16 ***several months culminated in VW's admission in early September 2015 that it***
17 ***has, since model year 2009, employed a defeat device to circumvent CARB and***
18 ***the EPA emission test procedures*** VW initiated testing to replicate the
19 ICCTI WVU testing and identify the technical reasons for the high on-road
20 emissions. VW shared the results of this testing and a proposed recalibration fix
21 for the Gen1 (Lean NO_x Trap technology) and Gen2 (Selective Catalytic
22 Reduction (SCR) technology) with CARB staff on December 2, 2014. Based on
23 this meeting, CARB and EPA at that time agreed that VW could implement the
24 software recall; however, CARB cautioned VW that if our confirmatory testing
25 showed that the fix did not address the on-road NO_x issues, they would have to
26 conduct another recall. Based on this meeting, VW initiated a voluntary recall in
27 December 2014 which, according to VW, affected approximately 500,000
28

1 vehicles in the United States (-50,000 in California). The recall affected all 2009
2 to 2014 model-year diesel fueled vehicles equipped with Gen1 and Gen2
3 technology. This recall was claimed to have fixed among other things, the
4 increased real world driving NOx issue.

5
6 CARB commenced confirmatory testing on May 6, 2015 to determine the
7 efficacy of the recall on both the Gen1 and Gen2 vehicles. CARB confirmatory
8 testing was completed on a 2012 model-year Gen2 VW test group
9 CVWX02.0U4S, to be followed with Gen1 testing. CARB staff tested this vehicle
10 on required certification cycles (FTP, US06 and HWFET) and over-the-road
11 using a Portable Emission Measurement Systems (PEMS). On some certification
12 cycles, the recall calibration resulted in the vehicle failing the NOx standard.
13 Over-the-road PEMS testing showed that the recall calibration did reduce the
14 emissions to some degree but NOx emissions were still significantly higher than
15 expected.

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

23
24 ***CARB shared its test results with VW on July 8, 2015. CARB also shared its***
25 ***results with the EPA. Several technical meetings with VW followed where VW***
26 ***disclosed that Gen1, Gen2 and the 2015 model-year improved SCR vehicle***
27 ***(known as the Gen3) had a second calibration intended to run only during***
28

1 **certification testing.** During a meeting on September 3, 2015, VW admitted to
2 CARB and EPA staff that these vehicles were designed and manufactured with a
3 defeat device to bypass, defeat, or render inoperative elements of the vehicles'
4 emission control system. ***This defeat device was neither described nor justified***
5 ***in the certification applications submitted to EPA and CARB. Therefore, each***
6 ***vehicle so equipped would not be covered by a valid federal Certificate of***
7 ***Conformity (COC) or CARB Executive Order (EO) and would be in violation of***
8 ***federal and state law.***

9
10 Based upon our testing and discussions with VW, CARB has determined that the
11 previous recall did not address the high on-road NOx emissions, and also resulted
12 in the vehicle failing certification standards. Therefore, the recall is deemed
13 ineffective and is deemed unapproved. ***VW must immediately initiate discussions***
14 ***with CARB to determine the appropriate corrective action to rectify the***
15 ***emission non-compliance and return these vehicles to the claimed certified***
16 ***configuration.*** CARB program and enforcement staff is prepared to work closely
17 with VW to find corrective actions to bring these vehicles into compliance.

18
19 CARB has also initiated an enforcement investigation of VW regarding all model-
20 year 2009 through 2015 light-duty diesel vehicles equipped with 2.0 liter engines.
21 We expect VW's full cooperation in this investigation so this issue can be
22 addressed expeditiously and appropriately.

23 See Ex. B.

24 54. The EPA and CARB NOV's disclosed the lengthy efforts undertaken by both
25 agencies leading up to Volkswagens' belated admission that, over the course of several years, it
26 had gamed emissions standards in order to allow it to put vehicles on the road that spew
27 dangerous and illegal pollutants. Both the EPA and CARB NOV's indicated that their
28

1 investigations of Volkswagen were continuing and that the matter might be referred for further
2 criminal investigation and prosecution. Moreover, based on Volkswagen's admission that the
3 subject vehicles contained defeat devices, the potential fines faced by Volkswagen in the United
4 States alone could be in excess of \$18 billion. Separate and apart from the potential fines and
5 potential criminal action, both the EPA and CARB NOV's demanded that Volkswagen take
6 immediate steps to address vehicles sold with the illegal defeat device and remedy their inherent
7 and purposeful Defeats.

8
9 **B. Concerns over Pollution and Adverse Health Impacts Result in Strict
10 Federal and State Regulation**

11 55. The EPA NOV provides a detailed summary of the history, purpose and
12 application of federal regulation of vehicle emissions pursuant to the Clean Air Act and the
13 EPA's treatment of defeat devices.

14 In creating the CAA, Congress found, in part, that "the increasing use of motor
15 vehicles ... has resulted in mounting dangers to the public health and welfare."
16 CAA § 101(a)(2), 42 U.S.C. § 7401(a)(2). Congress' purpose in creating the
17 CAA, in part, was "to protect and enhance the quality of the Nation's air resources
18 so as to promote the public health and welfare and the productive capacity of its
19 population," and "to initiate and accelerate a national research and development
20 program to achieve the prevention and control of air pollution." CAA § 101(b)(1)-
21 (2), 42 U.S.C. § 7401 (b)(1)-(2). The CAA and the regulations promulgated
22 thereunder aim to protect human health and the environment by reducing
23 emissions of nitrogen oxides (NO_x) and other pollutants from mobile sources of
24 air pollution. Nitrogen oxides are a family of highly reactive gases that play a
25 major role in the atmospheric reactions with volatile organic compounds (VOCs)
26 that produce ozone (smog) on hot summer days. Breathing ozone can trigger a
27
28

1 variety of health problems including chest pain, coughing, throat irritation, and
2 congestion. Breathing ozone can also worsen bronchitis, emphysema, and asthma.
3 Children are at greatest risk of experiencing negative health impacts from
4 exposure to ozone.

5 * * *

6 Light-duty vehicles must satisfy emission standards for certain air pollutants,
7 including NO_x. 40 C.F.R. § 86.1811-04. The EPA administers a certification
8 program to ensure that every vehicle introduced into United States commerce
9 satisfies applicable emission standards. Under this program, the EPA issues
10 certificates of conformity (COCs), and thereby approves the introduction of
11 vehicles into United States commerce.

12
13 To obtain a COC, a light-duty vehicle manufacturer must submit a COC
14 application to the EPA for each test group of vehicles that it intends to enter into
15 United States commerce. 40 C.F.R. § 86.1843-0 I. The COC application must
16 include, among other things, a list of all auxiliary emission control devices
17 (AECDs) installed on the vehicles. 40 C.F.R. § 86.1844-01(d)(II). An AECD is
18 "any element of design which senses temperature, vehicle speed, engine RPM,
19 transmission gear, manifold vacuum or any other parameter for the purpose of
20 activating, modulating, delaying, or deactivating the operation of any part of the
21 emission control system." 40 C.F.R. § 86.1803-01. The COC application must
22 also include "a justification for each AECD, the parameters they sense and
23 control, a detailed justification of each AECD that results in a reduction in
24 effectiveness of the emission control system, and [a] rationale for why it is not a
25 defeat device." 40 C.F.R. § 86.1844-01 (d)(11).

26 * * *

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

15 *See Ex. A.*

16 56. In addition to the Federal Clean Air Act, the State of California maintains its
17 own air quality standards, implemented through regulations applied to all cars marketed and
18 sold within the state in order to combat motor vehicle pollution in highly populated regions such
19 as Los Angeles. The standards in effect in California, overseen by CARB, are generally
20 referred to as "CARB standards." Many other states, including Arizona, Connecticut, Maine,
21 Maryland, Massachusetts, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode
22 Island, Vermont and Washington have chosen to enact the more rigorous CARB standards over
23 EPA standards. As a result, the majority of cars sold in the United States are designed and
24 manufactured to be compliant with CARB standards.

25 57. As part of efforts to curb greenhouse gases, reduce pollution and address the
26 negative health impacts caused by pollution, CARB has adopted a series of standards for
27
28

1 vehicle emissions, including standards for diesel engines used in passenger cars. In 2002,
2 CARB adopted regulations implementing "Strategies to Control Emissions from Diesel
3 Engines." Pursuant to these regulations, diesel engines certified for road use must employ
4 emissions controls that substantially reduce NOx emissions. 13 CCR § 2700 *et seq.*

5 58. CARB regulation of diesel emissions is rooted in lengthy research into the
6 negative impact of diesel exhaust on the health of Californians and environmental quality.

7
8 Diesel engines emit a complex mixture of air pollutants, composed of gaseous and
9 solid material. The visible emissions in diesel exhaust are known as particulate
10 matter or PM. ***In 1998, California identified diesel exhaust particulate matter***
11 ***(PM) as a toxic air contaminant based on its potential to cause cancer,***
12 ***premature death, and other health problems.*** Diesel engines also contribute to
13 California's fine particulate matter (PM2.5) air quality problems. Those most
14 vulnerable are children whose lungs are still developing and the elderly who may
15 have other serious health problems. ***Based on year 2006-2008 emissions in***
16 ***California, diesel PM contributes each year to approximately 2,000 premature***
17 ***deaths, with an uncertainty range of 1,500 to 2,400. In addition, diesel soot***
18 ***causes visibility reduction and is a potent global warmer.***⁴

19 20 1. Overview of EPA Emissions Standards and Certification Process

21 59. In 1990, the Clean Air Act was substantially amended, granting the EPA
22 authority and responsibility for the oversight of vehicle emissions. Pursuant to the Clean Air
23 Act, the EPA established two tiers of emissions standards. Tier 1 standards were adopted in
24

25 ⁴ California Environmental Protection Agency Air Resources Board, Diesel & Health
26 Research, <http://www.arb.ca.gov/research/diesel/diesel-health.htm> (last visited October 8,
27 2015).

1 1991 and were phased in between 1994 through 1997 and included separate emissions
2 standards, based on vehicle weight, for automobiles and "light trucks," a category which
3 includes minivans, pickup trucks and SUVs. The Tier 1 standards were effective until 2003 and
4 in 2004 the EPA began phasing in Tier 2 standards.

5 60. The Tier 2 standards did away with the distinction between automobiles and light
6 trucks, instead adopting a series of eleven separate rankings, referred to as "BINS." These
7 rankings include eight permanent BINs and three temporary BINs.⁵ Also in 2008, Tier 2
8 standards that were specific to cars equipped with diesel engines were adopted. The Tier 2
9 standard was substantially more rigorous, focusing on limiting soot, NO_x and sulfur dioxide
10 emissions. The restrictions were so rigorous that, in anticipation of the new standard, in 2007,
11 Volkswagen pulled its four cylinder diesel models from its line up while it designed a new, Tier
12 2 compliant engine.

13 61. As indicated in the table below, each of these BINs establishes a variety of
14 standards by which emissions performance is measured over the useful life of the vehicle.
15 Included in the measurements are emissions of NO_x, non-methane organic gas ("NMOG"),
16 carbon monoxide ("CO"), particulate matter ("PM") and hydrocarbons and formaldehyde
17 ("HCHO").

26
27 ⁵ The three temporary BINs expired between 2006 and 2008.

**Light-Duty Vehicle, Light-Duty Truck, and Medium-Duty Passenger Vehicle --
Tier 2 Exhaust Emission Standards**

	Standard	Emission Limits at 50,000 miles					Emission Limits at Full Useful Life (120,000 miles) ²				
		NO _x	NMOG	CO	PM	HCHO	NO _x	NMOG	CO	PM	HCHO
		(g/mi)	(g/mi)	(g/mi)	(g/mi)	(g/mi)	(g/mi)	(g/mi)	(g/mi)	(g/mi)	(g/mi)
Federal	Bin 1	-	-	-	-	-	0	0	0	0	0
	Bin 2	-	-	-	-	-	0.02	0.01	2.1	0.01	0.004
	Bin 3	-	-	-	-	-	0.03	0.055	2.1	0.01	0.011
	Bin 4	-	-	-	-	-	0.04	0.07	2.1	0.01	0.011
	Bin 5	0.05	0.075	3.4	-	0.015	0.07	0.09	4.2	0.01	0.018
	Bin 6	0.08	0.075	3.4	-	0.015	0.1	0.09	4.2	0.01	0.018
	Bin 7	0.11	0.075	3.4	-	0.015	0.15	0.09	4.2	0.02	0.018
	Bin 8	0.14	0.100 0.125 ^c	/3.4	-	0.015	0.2	0.125 0.156	/4.2	0.02	0.018
	Bin 9	0.2	0.075 0.140	/3.4	-	0.015	0.3	0.090 0.180	/4.2	0.06	0.018
	Bin 10	0.4	0.125 0.160	/3.4 4.4	/-	0.015 0.018	/0.6	0.156 0.230	/4.2 6.4	/0.08	0.018 0.027
	Bin 11	0.6	0.195	5	-	0.022	0.9	0.28	7.3	0.12	0.032

United States Environmental Protection Agency, Emission Standards Reference Guide, United States Environmental Protection Agency, Emission Standards Reference Guide, <http://www3.epa.gov/otaq/standards/light-duty/tier2stds.htm> (last visited October 8, 2015).

62. While vehicle manufacturers can seek to have their cars qualified under any of the eight permanent BINs, the average emissions of their entire fleet must be consistent with the

1 BIN 5 standards. Thus, for every car qualified under BINs 6-8, the manufacturer must
2 manufacture and sell a number of cars qualified at standards below BIN 5 to meet fleet
3 requirements. In addition, to encourage manufacturers to lower NOx emissions, the EPA allows
4 automakers to "bank" NOx credits if its fleet generates less NOx than allowed under the
5 standard in any given year. Once "banked" those NOx credits can used for future model years
6 or traded to other manufacturers whose fleets do not meet NOx emissions standards.

7 63. Volkswagen apparently sought to use its 2.0 Liter TDI Clean Diesel engines as a
8 means of "banking" NOx credits. Even as it was building its defeat device into new vehicles,
9 Volkswagen actively lobbied the EPA for special dispensations, including fuel economy credits
10 similar to those granted by the EPA for zero-emission electric vehicles. As reported in the *New*
11 *York Times*, according to Margo Oge, a former director of the EPA's Office of Transportation
12 and Air Quality who led negotiations with Volkswagen, the Company "wanted a special deal for
13 diesel cars that we now know weren't even meeting the standard."⁶ Mrs. Oge noted that one of
14 the Volkswagen executives suspended in the wake of the disclosure of the defeat
15 device, Wolfgang Hatz, was active in negotiations with the EPA and repeatedly stressed the
16 value of its diesel emissions system over hybrids and electric vehicles. "He said the company
17 simply did not believe in electric powertrains or hybrids." *Id.* Hatz, who had previously
18 worked for Audi, became the director of engine and transmission development for all
19 Volkswagen brands in 2007. In that role, Hatz was responsible for the development of the 2.0
20 Liter TDI Clean Diesel engines.

21 64. Pursuant to 40 CFR § 86.1809-10, titled "Prohibition of defeat devices," "[n]o
22 new light-duty vehicle, light-duty truck, medium-duty passenger vehicle, or complete heavy-
23 duty vehicle shall be equipped with a defeat device." The prohibition on defeat devices
24 establishes, *inter alia*, that vehicle certification applications must include engineering
25 evaluations demonstrating that subject vehicles do not contain defeat devices designed to result

26
27 ⁶ Volkswagen Sought a Green Seal for its Diesel Cars, *New York Times*, October 6, 2015.

1 in a "discontinuity in emissions of non-methane organic gases, carbon monoxide, oxides of
2 nitrogen and formaldehyde." In addition, certification applications for vehicles equipped with
3 diesel engines must include similar engineering evaluations addressing particulate emissions.
4 40 CFR § 86.1809-10(e).

6 **2. Overview of CARB Emissions Standards and Certification Process**

7 65. CARB maintains standards for passenger cars and light duty trucks which both
8 incorporate the EPA standards set forth in 40 CFR § 86 and add over one hundred pages of
9 additional requirements.⁷

10 66. As with the standards adopted and enforced by the EPA, CARB implemented
11 multiple tiers of standards, the first phased in between the 2001 and 2003 model years and the
12 second, referred to as "LEV II standards," phased in for the 2004 model year. Instead of the
13 multiple "BINs" adopted by the EPA, Under the LEV II standard, CARB maintains standards
14 for just three categories of gas or diesel powered light passenger vehicles, low-emission vehicle
15 ("LEV"), ultra-low emission vehicle ("ULEV") and super-ultra-low emission vehicle
16 ("SULEV"). In addition, there are alternate classifications for vehicles equipped with hybrid,
17 natural gas or electric engines. As of 2004, the LEV standard is the minimum acceptable
18 standard in the State of California, and a ULEV is certified as emitting approximately 50% less
19 pollution than a LEV.

22 ⁷ See California Environmental Protection Agency Air Resources Board, California 2001
23 - 2014 Model Pollutant Exhaust Emission Standards and Test Procedures and 2009 - 2016
24 Model Greenhouse Gas Exhaust Emission Standards and Test Procedures for Passenger Cars,
25 Light-Duty Trucks, and Medium-Duty Vehicles (2012),
26 [http://www.arb.ca.gov/msprog/levprog/cleandoc/ldtps_2001-](http://www.arb.ca.gov/msprog/levprog/cleandoc/ldtps_2001-2014_cp_or_2016_ghg_my_clean_complete_lev_iii_12-12.pdf)
27 [2014_cp_or_2016_ghg_my_clean_complete_lev_iii_12-12.pdf](http://www.arb.ca.gov/msprog/levprog/cleandoc/ldtps_2001-2014_cp_or_2016_ghg_my_clean_complete_lev_iii_12-12.pdf) (last visited October 8, 2015)

LEV II Exhaust Mass Emission Standards for New 2004 through 2014 Model LEVs, ULEVs, and SULEVs in the Passenger Car, Light-Duty Truck and Medium-Duty Vehicle Classes							
Vehicle Type	Durability Vehicle Basis (mi)	Vehicle Emission Category	NMOG (g/mi)	Carbon Monoxide	Oxides of Nitrogen (g/mi)	Formaldehyde (mg/mi)	Particulates (g/mi)
All PCs; LDTs 8,500 lbs. GVW or less	50,000	LEV	0.075	3.4	0.05	15	n/a
		LEV, Option 1	0.075	3.4	0.07	15	n/a
		ULEV	0.040	1.7	0.05	8	n/a
Vehicles in this category are tested at their loaded vehicle weight	120,000	LEV	0.090	4.2	0.07	18	0.01
		LEV, Option 1	0.055	4.2	0.10	18	0.01
		ULEV	0.055	2.1	0.07	11	0.01
		SULEV	0.010	1.0	0.02	4	0.01
	150,000 (optional)	LEV	0.090	4.2	0.07	18	0.01
		LEV, Option 1	0.090	4.2	0.10	18	0.01
		ULEV	0.055	2.1	0.07	11	0.01
		SULEV	0.010	1.0	0.02	4	0.01
MDVs 8,501 – 10,000 lbs. GVW	120,000	LEV	0.195	6.4	0.2	32	0.12
		ULEV	0.143	6.4	0.2	16	0.06
		SULEV	0.100	3.2	0.1	8	0.06
	150,000 (optional)	LEV	0.195	6.4	0.2	32	0.12
		ULEV	0.143	6.4	0.2	16	0.06
		SULEV	0.100	3.2	0.1	8	0.06

67. The LEV I standards put in place by CARB between 2001 and 2003 allowed for significantly higher NOx emissions in diesel engines than do the LEV II standards that are now in place. Under LEV II, as indicated by the above chart, CARB makes no distinction between the NOx emissions of diesel vehicles and the emissions levels of gas powered vehicles.

68. Under CARB guidelines, vehicles are certified for sale by model year. Each model year requires a new certification and any modifications that relate to emissions, including production running changes or field fixes, must be approved by CARB.

69. For all vehicles manufactured since the 2001 model year, similar to the EPA's testing procedures, CARB requires that pre-production prototype vehicles be submitted for "durability and certification testing" to demonstrate that the vehicles will remain compliant throughout their useful life. CARB requires that these applications be submitted to CARB and

the EPA concurrently. California Environmental Protection Agency Air Resources Board, On-Road New Vehicle & Engine Certification Program, <http://www.arb.ca.gov/msprog/onroad/cert/cert.php> (last visited October 8, 2015).

70. After vehicles have received pre-production certification from CARB, the manufacturer must prepare and submit a detailed functional testing plan to CARB "at least 90 days prior to the start of production."⁸ This testing plan, which must provide for the testing of "all vehicles produced for sale in California," is designed to ensure that the production vehicles be "identical in all material respects to those for which certification was granted" prior to production. California Environmental Protection Agency Air Resources Board, On-Road New Vehicle & Engine Certification Program, *supra*. The plan must, among other things, "list[] the emission control components and systems to be tested and specif[y] the testing procedures to be used." *Id.* CARB guidelines list no fewer than thirty separate emissions related components which must be tested, including, the "diesel particulate control system," "Exhaust Gas Recirculation" or "EGR" systems, air flow sensors, oxygen sensors, and all components of the EGR Control System. *Id.* It must also include "on-board emission control diagnostic system of any type, either completely self-contained or requiring external peripheral equipment" included in the vehicle. *Id.* The testing plan must accommodate testing "during the vehicle assembly process before the end of the assembly line" where appropriate and provides that testing based on a sampling of vehicles is only appropriate where "components [] cannot practically be functionally checked on every vehicle." *Id.* The manufacturer must submit a quarterly statement to CARB certifying that "the approved test plan has been conducted on all vehicles

⁸ State of California Air Resources Board, California Assembly-Line Test Procedures for 2001 and Subsequent Model-Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles (1999), <http://www.arb.ca.gov/msprog/levprog/cleandoc/altps01.pdf> (last visited October 8, 2015).

1 produced for sale in California. The statement shall be signed by an official of the manufacturer
2 who has verified its accuracy and shall accompany the quarterly audit test report." *Id.*

3 71. CARB also maintains fleet average requirements for manufacturers that are
4 generally more stringent than those required by the EPA. Each year, manufacturers are required
5 to submit reports detailing the number of particular models sold in the state of California as well
6 as the emissions reports relevant to those models in order to confirm compliance with fleet
7 average standards.

8 72. CARB standards specifically refer to and adopt the federal prohibition of defeat
9 devices set forth in 40 CFR § 86.1809-10.

10
11 **C. The Design of the Emissions Systems Used in Volkswagen's 2.0 Liter TDI
Clean Diesel engines**

12 73. Typically, two approaches to reducing NOx emissions have been used in diesel
13 engines, selective catalytic reduction ("SCR") and lean NOx trap ("LNT") systems. In engines
14 using SCR, urea is injected into the exhaust stream, reacting with the NOx and converting it into
15 nitrogen and oxygen. The SCR method is highly effective, but it adds weight and bulk to a car
16 because it requires a tank to store the urea, a heater to keep the urea fluid, and pumps, valves,
17 mixers and catalyst to maintain the reaction between the urea and the NOx. It also requires
18 frequent servicing in order to refill the urea tank. In addition, SCR systems add approximately
19 \$50 in the manufacturer's cost to produce a car.⁹

20 74. The lean NOx trap or LNT system is also sometimes referred to as a NOx
21 storage catalytic converter. The system was initially designed by Toyota in the 1970s. In LNT
22 systems, NOx is trapped and stored in a storage catalytic converter. When a storage catalytic
23 converter is full, the stored NOx is burned off through the release of an extra blast of fuel into
24

25 ⁹ Tom De Chant, *Volkswagen's Little Engine that Couldn't*, NovaNext, Sept. 22, 2015,
26 <http://www.pbs.org/wgbh/nova/next/tech/volkswagen-diesel-emissions/> (last accessed Oct. 9,
27 2015).

1 the engine's cylinders. The extra fuel travels to the catalytic converter where it burns off the
2 stored NOx, converting it to nitrogen and oxygen. Under normal operating conditions, an LNT
3 system burns this extra blast of fuel (sometimes referred to as a fuel-rich mixture) for one or
4 two seconds every minute. The more often that a car is running on a fuel-rich mixture, the
5 higher the car's fuel consumption is.

6 75. Until recent years, car makers generally preferred SCR because it offered better
7 fuel economy and a proven track record. However, it appears that a substantial portion of the
8 482,000 automobiles equipped with the 2.0 liter TDI Clean Diesel engines and sold in the
9 United States, specifically those sold in model years 2009-2011, were equipped with LNT
10 systems.

11
12 **D. The 2.0 Liter TDI Clean Diesel engine Received Accolades**

13 76. Use of the LNT system was consistently highlighted by Volkswagen and
14 received wide accolades upon its introduction in 2009. The 2.0 TDI Clean Diesel engine was
15 named one of Ward's ten best engines for three years straight following its introduction in 2009.

16 77. Celebrating the inclusion of the Volkswagen engine on the prestigious Ward's
17 list, then-CEO Stefan Jacoby said "[w]e're pleased that Ward's has recognized our advanced 2.0-
18 liter clean diesel engine as one of their 2009 10 Best Engines," "[t]he all-new 2.0L turbo diesel
19 engine is not only the *first of its kind to be emissions-compliant in all 50 states*, but perhaps the
20 *most technically refined powerplant of its kind in the world.*" The Company further
21 highlighted its use of the unusual LNT emissions system. "As the pioneering entry in the new
22 era of clean diesel in North America, the new TDI engine technology in the Jetta sedan and
23 SportWagen meets the United States most stringent emissions control standard — California's
24 Tier II/Bin 5 — without the use of urea injection. Additionally, the technology enables 20- to
25
26
27
28

1 40-percent better fuel efficiency than gasoline engines with comparable acceleration and
2 significantly better torque."¹⁰ The Company press release went on to note:

3 In response to the U.S. federal mandate for Ultra Low Sulfur Diesel (ULSD),
4 Volkswagen has been able to greatly reduce nitrous oxide (NOx) and particulate
5 emissions on its clean diesel TDI engines through use of three key technologies: a
6 common rail direct injection system; piezo fuel injectors; and an advanced exhaust
7 system aftertreatment system. The result is a reduction of NOx and particulate
8 emissions by up to 90-percent; exceptional noise and vibration harshness
9 performance; and fuel efficiency on par with more complex and expensive
10 gas/electric hybrid systems.

11 *Id.*

12 78. In 2010, when the engine made the list for the second time, Ward's highlighted
13 the engine's "gargantuan torque, fuel economy and driving pleasure," noting that "this pint-sized
14 stump puller vaults the Jetta to the head of its segment with the ability to average nearly 44 mpg
15 (5.3 L/100 km) by Ward's editors who weren't afraid to explore the space of the TDI's
16 powerband."¹¹ Ward's again noted that "[t]he real story with the Jetta TDI begins in the exhaust
17 stream, which requires no urea-injection, using only oxidation catalysts and regenerating
18 particulate filters to meet emissions standards. It can be sold in all 50 states."¹²

19
20 ¹⁰ George Achorn, *Volkswagen's 2.0L Turbo Clean Diesel Engine Recognized as 2009*
21 *Ward's 20 Best Engine*, VW Vortex, Jan. 14, 2009,
22 [http://www.vwvortex.com/news/volkswagen-news/volkswagen-s-2-0l-turbo-clean-diesel-](http://www.vwvortex.com/news/volkswagen-news/volkswagen-s-2-0l-turbo-clean-diesel-engine-recognized-as-2009-ward-s-10-best-engine/)
23 [engine-recognized-as-2009-ward-s-10-best-engine/](http://www.vwvortex.com/news/volkswagen-news/volkswagen-s-2-0l-turbo-clean-diesel-engine-recognized-as-2009-ward-s-10-best-engine/) (last accessed October 8, 2015).

24 ¹¹ Tom Murphy, *Volkswagen AG: 2.0L Turbocharged DOHC I-4 Diesel*, Wards Auto,
25 Dec. 21, 2009, [http://wardsauto.com/news-amp-analysis/volkswagen-ag-20l-turbocharged-](http://wardsauto.com/news-amp-analysis/volkswagen-ag-20l-turbocharged-dohc-i-4-diesel)
26 [dohc-i-4-diesel](http://wardsauto.com/news-amp-analysis/volkswagen-ag-20l-turbocharged-dohc-i-4-diesel) (last accessed October 8, 2015).

27 ¹² *Id.*

1 79. Finally, in 2011, the engine made the Ward's list for the third straight year and
2 Ward's noted the inclusion of a LNT system as being unique among diesel offerings in the
3 United States. "Most compelling is the TDI's ability to meet 50-state U.S. and European
4 emissions regulations without urea-injection after treatment necessary with larger diesel
5 engines. Instead, the Jetta uses only oxidation catalysts and regenerating particulate filters to
6 meet federal Tier 2 Bin 5 emissions standards."¹³

7
8 **E. Volkswagen's Fraudulent Defeat Device was Incorporated in Multiple**
9 **Revisions of the Emissions System and Multiple Engines**

10 80. The defeat device utilized by Volkswagen was not simply designed into the 2.0
11 liter TDI Clean Diesel and forgotten about. Between the introduction of the engine in the 2009
12 model year and the discovery of the defeat device in September 2015, no fewer than three
13 substantial revisions of the 2.0 liter TDI Clean Diesel emissions system were designed, each
14 requiring that the defeat device itself be revised to incorporate changes necessary to operate
15 with radically different emissions systems.

16 81. Volkswagen's false claims regarding its diesel engines continued through at least
17 three versions of the 2.0 liter TDI Clean Diesel engine. For example, in 2014, as Volkswagen
18 marketed a revised diesel engine slated for inclusion in 2015 models, Douglas Skorupski,
19 Volkswagen's manager of technical strategy, described the 2015 revision to the 2.0 liter TDI
20 Clean Diesel engine as "continuing to improve and will be even cleaner and more fuel-efficient
21 and powerful." An article published by JD Power and Associates on March 19, 2014, noted that
22 "Volkswagen says that the new engine produces fewer emissions, boasts improved throttle
23 response, and experiences less internal friction, the latter enhancement contributing to better
24 fuel-economy numbers." The article went on to note that:

25 [t]his is an important engine for Volkswagen. Last year, one out of every four
26 VWs sold in the United States was equipped with a TDI Clean Diesel engine,

27 ¹³ Murphy, *supra*.

1 according to the company, and together with VW Group's luxury brand Audi,
 2 more than 100,000 TDI Clean Diesel vehicles hit American roads.
 3 Jeff Youngs, *New TDI Clean Diesel engine Coming for 2015 Volkswagen Models*, JD Power,
 4 Mar. 19, 2014, [http://www.jdpower.com/cars/articles/car-news/new-tdi-clean-diesel-engine-](http://www.jdpower.com/cars/articles/car-news/new-tdi-clean-diesel-engine-coming-2015-volkswagen-models)
 5 [coming-2015-volkswagen-models](http://www.jdpower.com/cars/articles/car-news/new-tdi-clean-diesel-engine-coming-2015-volkswagen-models) (last accessed Oct. 8, 2015).

6 82. Even while revising and updating the 2.0 liter TDI Clean Diesel engine between
 7 the 2009 through 2015 model years, Volkswagen continued to include, in each revision, the
 8 illegal defeat device that allowed it to appear compliant with federal and state emissions
 9 requirements. Throughout this period, under normal operation, the 2.0 liter TDI Clean Diesel
 10 engine produced levels of NOx that were as much as forty times higher than the levels allowed
 11 under applicable emissions standards.

12 83. Volkswagen eventually acknowledged the inclusion of the defeat device in three
 13 different generations of the 2.0 liter TDI Clean Diesel engine, and an article published by
 14 *Business Insider* identified the effected models in each generation of 2.0 Liter TDI Clean Diesel
 15 engine¹⁴:

16 **Generation 1: Approximately 325,000 vehicles**

- 17 ○ VW Jetta TDI (Model Years 2009 – 2014)
- 18 ○ VW Jetta SportWagen TDI (Model Years 2009-2014)
- 19 ○ VW Golf TDI (Model Years 2010-2014)
- 20 ○ VW Beetle TDI and VW Beetle Convertible TDI (Model Years 2012 – 2014)

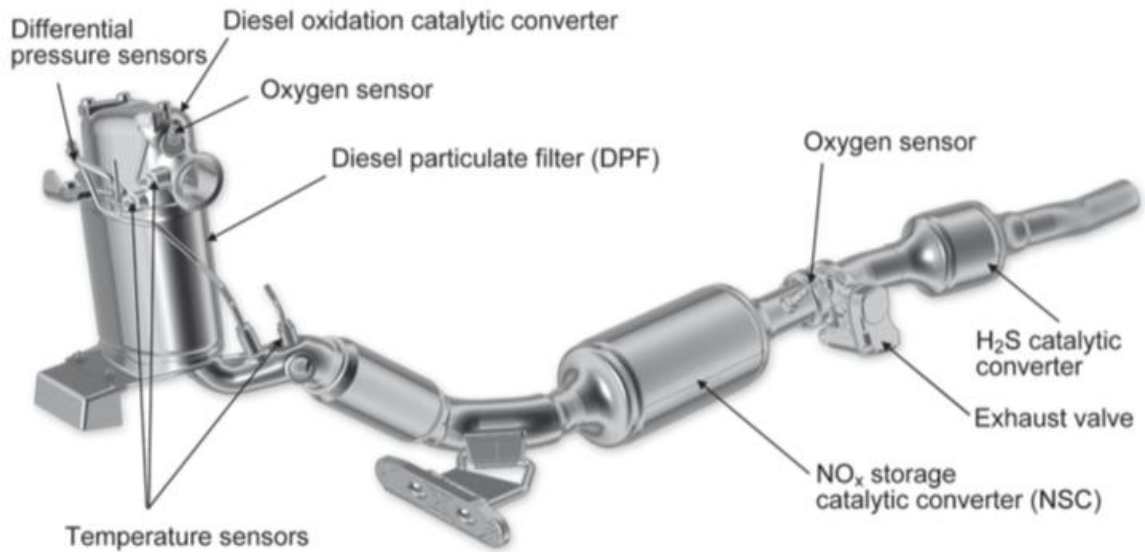
21 **Generation 2: Approximately 90,000 vehicles**

- 22 ○ VW Passat TDI (Model Years 2012-2014)

23 **Generation 3: Approximately 67,000 vehicles**

- 24 ○ VW Jetta TDI (Model Year 2015)

26 ¹⁴ [http://www.businessinsider.com/it-looks-like-vws-emission-cheating-fix-will-be-](http://www.businessinsider.com/it-looks-like-vws-emission-cheating-fix-will-be-expensive-2015-10)
 27 [expensive-2015-10](http://www.businessinsider.com/it-looks-like-vws-emission-cheating-fix-will-be-expensive-2015-10) (last visited on November 25, 2015).



- VW Golf TDI (Model year 2015)
- VW Golf SportWagen TDI (Model Year 2015)
- VW Beetle TDI and VW Beetle Convertible TDI (Model Year 2015)
- VW Passat TDI (Model Year 2015)

84. The first version of the system used a LNT system to meet TIER2/BIN5 standards. As discussed in detail in section C above, the LNT system functions by capturing NO_x in a storage tank, called the NO_x storage catalytic converter, and, when the tank is full, burning off the stored NO_x by releasing extra fuel into the engine that is subsequently burned off in the emissions system and the NO_x storage catalytic converter.

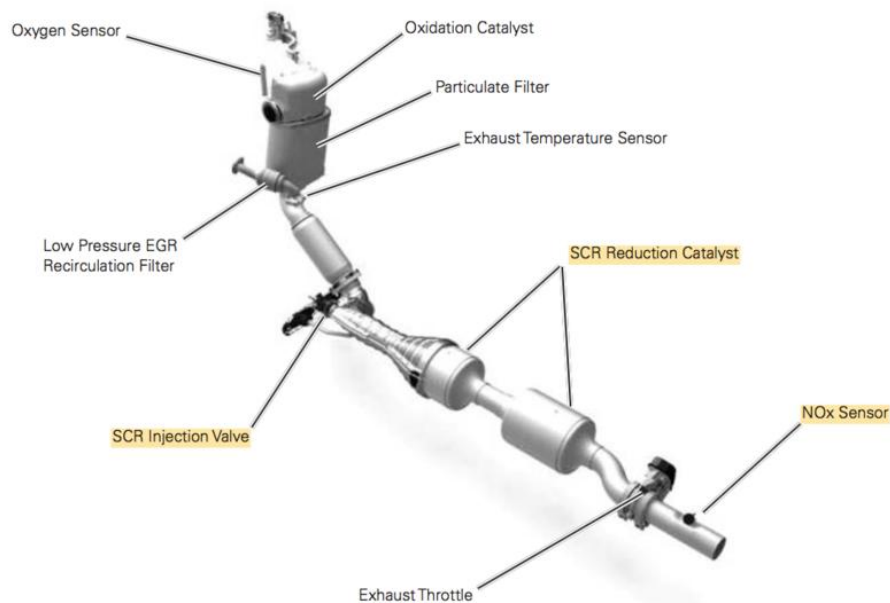
85. In the first generation emissions system, the defeat device likely functioned by preventing the burn off of stored NO_x. Instead, when the NO_x storage catalytic converter filled, additional NO_x was likely released into the atmosphere. As a result, the defeat device would enhance fuel efficiency by preventing the release of fuel needed to catalyze or burn off the stored NO_x. The defeat device also likely enhanced performance by diverting engine operation needed to power the catalyzation process. Industry commentators have opined that fixing this

1 first generation system to bring it into compliance with TIER2/BIN5 standards will likely have
2 a negative impact on both performance and fuel economy.¹⁵

3 86. The second generation of the emissions system, introduced in the 2012 model
4 year for the Volkswagen Passat, utilized a selective catalytic reduction or SCR system rather
5 than the LNT system used in the first generation system. This was a substantial redesign,
6 necessitating the incorporation of urea storage tanks and substantially changing the service
7 process for subject vehicles because, as noted in section C, the SCR system requires periodic
8 refilling of the urea tank. Volkswagen claimed that the improvements made both in the motor
9 and the emissions system resulted in a 45% reduction in total emissions when compared the first
10 generation system.¹⁶

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21 ¹⁵ Paul Lienert & Joseph W. Reuters, *Illegal VW diesel emission systems may require 2*
22 *solutions*, Automotive News, Sept. 30, 2015,
23 [http://www.autonews.com/article/20150930/OEM11/150929774/illegal-vw-diesel-emission-](http://www.autonews.com/article/20150930/OEM11/150929774/illegal-vw-diesel-emission-systems-may-require-2-solutions)
24 [systems-may-require-2-solutions](http://www.autonews.com/article/20150930/OEM11/150929774/illegal-vw-diesel-emission-systems-may-require-2-solutions). (last accessed October 8, 2015).

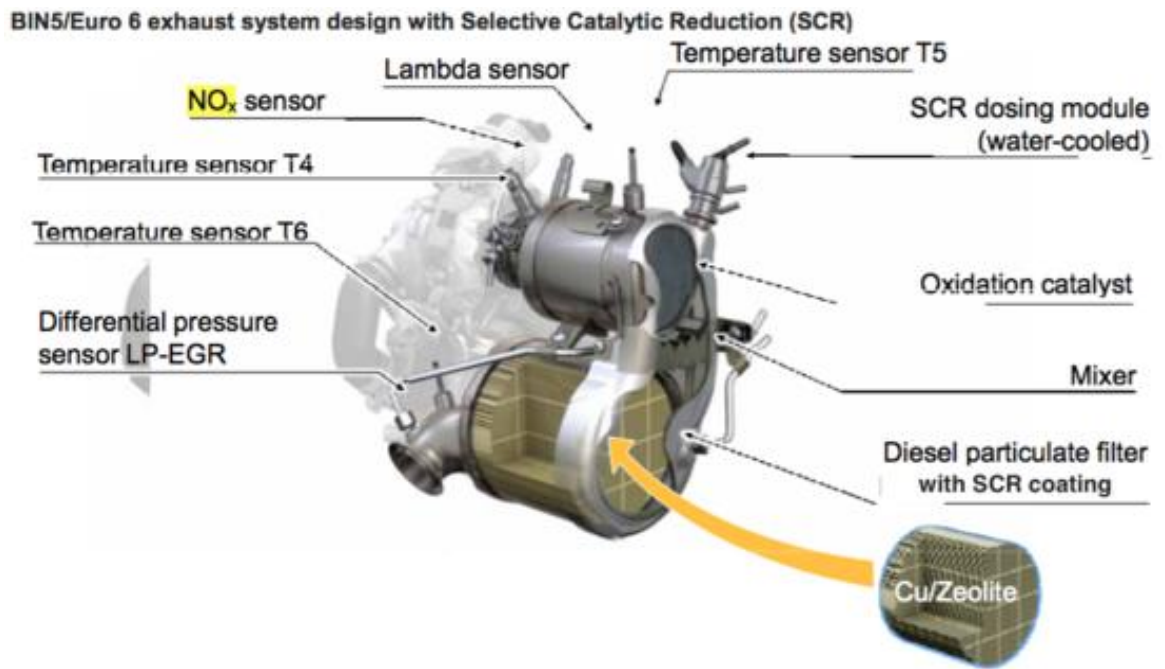
25 ¹⁶ K.C. Colwell, *Detailed: VW's New 2.0-Liter EA288 Four-Cylinder TDI Diesel*, Car and
26 Driver, Mar. 2, 2012, [http://blog.caranddriver.com/detailed-vw%E2%80%99s-new-2-0-liter-](http://blog.caranddriver.com/detailed-vw%E2%80%99s-new-2-0-liter-ea288-four-cylinder-tdi-diesel/)
27 [ea288-four-cylinder-tdi-diesel/](http://blog.caranddriver.com/detailed-vw%E2%80%99s-new-2-0-liter-ea288-four-cylinder-tdi-diesel/) (last accessed October 8, 2015).



87. This redesign also required a redesign of the defeat device. In the second generation of the emissions system, industry commentators have suggested that the defeat device functioned by substantially limiting the amount of urea used to treat NOx.¹⁷ Using less urea allowed the emissions system to be designed with smaller urea tanks that required filling less often than they otherwise would. Fixing this system in order to bring it into compliance with TIER2/BIN5 standards may require both a hardware and software fix, as a substantially larger urea storage tank may need to be installed. In the alternative, impacted cars may need much more frequent servicing in order to refill depleted urea tanks.

88. The third generation system, announced in 2014, reflected another substantial redesign of the emissions system, instead of being far from the engine, as is the case with more traditional exhaust systems, the third generation system was designed to be close-mounted to the engine and was modular, allowing the use of either a LNT or a SCR system.

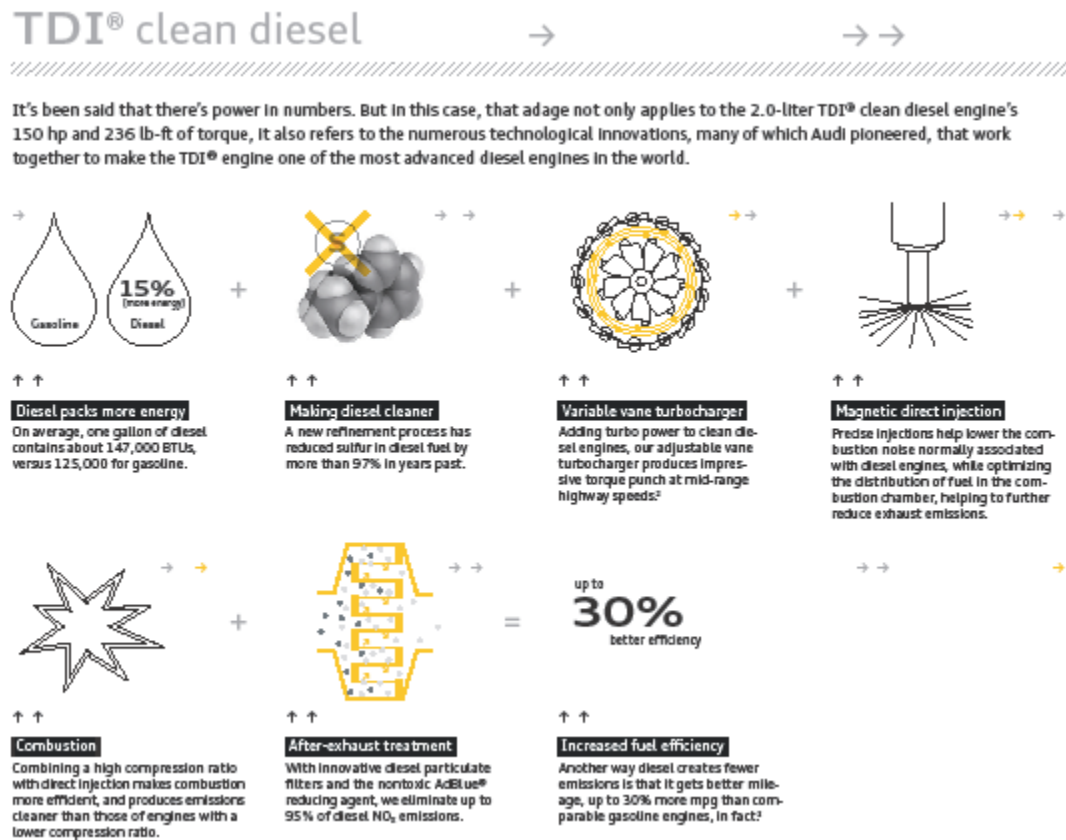
¹⁷ Paul Lienert & Joseph W. Reuters, *supra*



F. Volkswagen's Marketing Highlights the Performance, Efficiency and Environmental Benefits of its "Clean Diesel" Engine

89. Volkswagen consistently marketed the 2.0 liter TDI Clean Diesel engine equipped cars as fuel-efficient and environmentally friendly while still being performance oriented. The 2.0 liter TDI Clean Diesel engine, first introduced in 2009, was heralded as a significant technological improvement over older diesel engines. With its turbocharged direct injection, the 2.0 liter TDI Clean Diesel engine was marketed as providing the same fuel economy that diesel engines had long been known for coupled with substantially enhanced performance, a no compromise mix of performance, fuel economy and clean emissions.

90. The "technical innovation" of the 2.0 liter TDI Clean Diesel engine was also touted by Volkswagen in marketing materials for its Audi line of cars. For example, the brochure for the 2015 Audi A3 provided a graphic explaining why the 2.0 liter TDI Clean Diesel engine was "one of the most advanced diesel engines in the world."



91. The 2012 Golf TDI Clean Diesel was marketed by Volkswagen as a clean, performance oriented car:

You may not know that the T in TDI stands for turbo, but you'll see why when you get behind the wheel. It's the perfect union of power, performance, and fuel efficiency that delivers 140 hp and 236 lbs/ft torque for exceptional acceleration off the line, all while getting up to 42 mpg. That's up to 609 miles on one tank. Plus, the TDI Clean Diesel engine produces 90 percent fewer sooty emissions than previous diesel engines. That's what we like to call a win-win-win situation.

TDI Clean Diesel

TDI

 Clean Diesel

Fun: 1. Compromise: 0.

140 horsepower

236 lbs/ft torque

Mileage

42 highway miles per gallon*

Travel

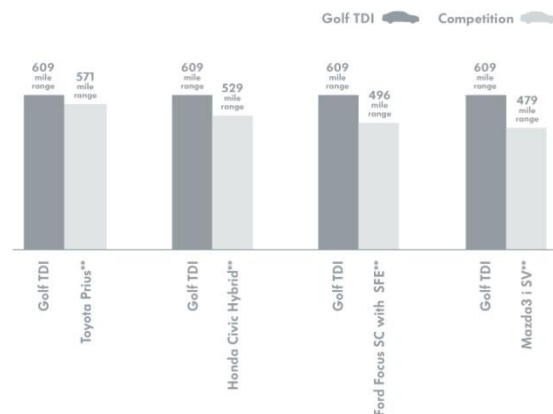
609 miles per tank*

90% fewer sooty emissions compared to previous diesel engines

95% less sulfur content in the ultra-low-sulfur diesel fuel

TDI Clean Diesel. You may not know that the T in TDI stands for turbo, but you'll see why when you get behind the wheel. It's the perfect union of power, performance, and fuel efficiency that delivers 140 hp and 236 lbs/ft torque for exceptional acceleration off the line, all while getting up to 42 highway mpg. That's up to 609 miles on one tank.* Plus, the TDI Clean Diesel engine produces 90 percent fewer sooty emissions than previous diesel engines. That's what we like to call a win-win-win situation.

Competitive range comparison

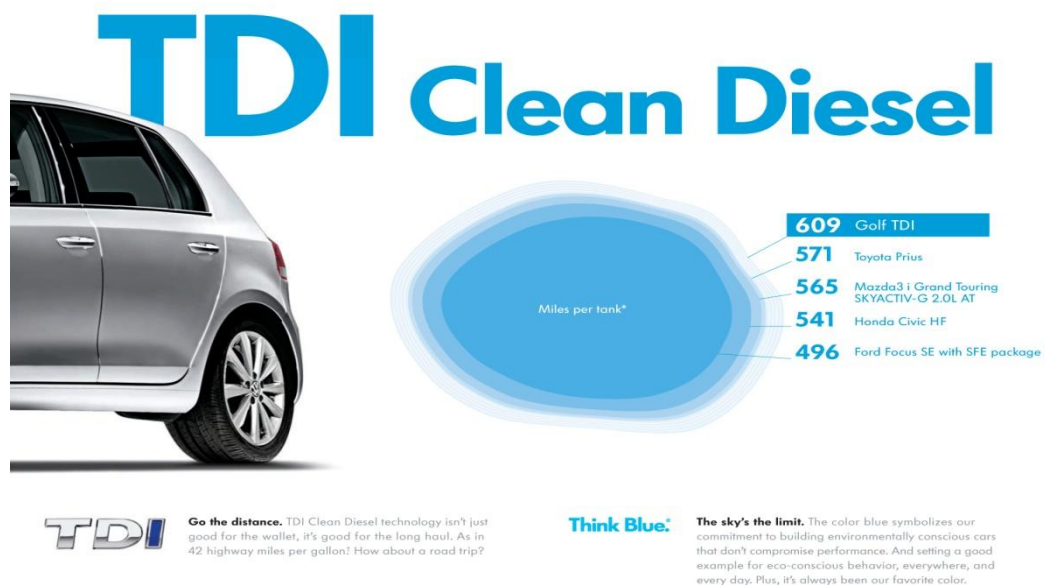


*2011 2.0L TDI Clean Diesel, DSG automatic: 38 city/42 highway mpg. Range based on 42 highway mpg EPA estimate and a 14.5-gallon tank. EPA estimates. Your mileage will vary. **Comparisons based on manufacturers' published data. 2011 1.8L Toyota Prius, ECVT transmission: 51 city/48 highway mpg. Range based on 48 highway mpg EPA estimate and a 11.9-gallon tank. 2011 1.4L Honda Civic Hybrid, CVT transmission: 40 city/43 highway mpg. Range based on 43 highway mpg EPA estimate and a 12.3-gallon tank. 2011 2.0L Ford Focus SE with SFE Package, automatic transmission: 28 city/40 highway mpg. Range based on 40 highway mpg EPA estimate and a 12.4-gallon tank. 2011 2.0L Mazda3 i SV, manual transmission: 25 city/33 highway mpg. Range based on 33 highway mpg EPA estimate and a 14.3-gallon tank. All fuel economy values are EPA estimates. Your mileage will vary.

92. While claiming to deliver on power and performance, Volkswagen also promised a car that was good for the environment. The 2013 Golf TDI Clean Diesel was sold as "Good, clean fun" with "236 lb/ft of torque for some serious oomph." "But what's more amazing is

what is doesn't give you: those sooty emissions from years past. In fact, it has 90% fewer emissions than previous diesel engines." Volkswagen distinguished the TDI logo with a stripe of blue, explaining that "[t]he color blue symbolizes our commitment to building environmentally conscious cars that don't compromise performance. And setting a good example for eco-conscious behavior, everywhere, and every day."

93. This same Volkswagen marketing brochure claimed that in vehicles equipped with the 2.0 liter TDI Clean Diesel engine, "you get a lot more of everything, without giving up



anything," promising "up to 814 highway miles on a single tank of fuel" and "all that addictive torque."



94. Brochures for the 2015 Volkswagen Jetta referred to the "efficient 2.0L TDI Clean Diesel engine" and highlighted claims of 46 MPG freeway gas mileage coupled with 236 pound feet of torque as indicia that the car was both "efficient" and "performance" oriented. Similarly, marketing material for the 2015 Volkswagen Bug highlighted the 2.0L TDI Clean Diesel engine, stating "[s]aving has never been so fun. This available turbocharged diesel engine gets impressive mileage, along with putting out an equally impressive 236 lbs/ft of torque."

95. The 2015 Volkswagen Passat equipped with the 2.0 liter TDI Clean Diesel engine was marketed both for its performance and fuel economy: "[w]ith up to 43 hwy mpg, it's easy to see why the TDI Clean Diesel gives the Passat more range than any other midsize sedan in its class. And since it's turbocharged, we didn't have to sacrifice an ounce of power to be incredibly efficient."

96. Volkswagen marketed the 2.0 liter TDI Clean Diesel engine as a no-compromises engine, "Fast. Efficient. Stylish. Pick three."

Fast. Efficient. Stylish. Pick three.

With a TDI Clean Diesel engine, you get a lot more of everything, without giving up anything. The direct-injection engine of the Passat TDI was engineered to go the distance—up to 814 highway miles on a single tank of fuel.* Add in all that addictive torque and this will lead to road trip after road trip.



TDI

Volkswagen has sold more diesel cars in the U.S. than every other brand combined**

Turbocharged performance and efficiency†

97. The combination of performance, fuel efficiency and "clean" emissions was constantly highlighted by Volkswagen. For example the website for Volkswagen Group of America highlighted its technology under "Environment," "TDI: Clean Diesel for Everyone"

Audi and Volkswagen pioneered TDI clean diesel engines and today, the Volkswagen Group of America is ***the market leader in clean diesel***. In 2013, Audi and Volkswagen sold more than 100,000 clean diesel cars in the United States. ***Clean diesel delivers more torque, lower fuel consumption and reduces***

1 ***CO2 emissions compared with equivalent gasoline engines.*** Volkswagen's
2 newest and most fuel-efficient TDI Clean Diesel engine will power the 2015 Golf,
3 Beetle, Passat and Jetta starting in the second half of 2014.

4 Audi has been at the forefront of clean diesel since the introduction of Audi TDI
5 technology in 2009. Since then, nearly 40,000 Audi TDI vehicles have been sold
6 in the United States, delivering an average of 30 percent better fuel economy and
7 range than gasoline. Continuing our commitment to clean diesel technology and
8 innovative solutions that improve efficiency and driving dynamics, Audi has
9 made a dramatic expansion of TDI technology in the United States for the 2014
10 model year. Available TDI models include the A6, A7, A8 L, Q5 and Q7, as well
11 as the introduction of the A3 TDI sedan.

12 Volkswagen Group of America, Clean Diesel TDI,

13 http://www.volkswagengroupamerica.com/clean_diesel_tdi.html (last accessed Sept. 22, 2015).

14 98. Volkswagen also made specific representations about "Making diesel cleaner,"
15 claiming that the 2.0 liter TDI Clean Diesel used in the Audi A3 "achieved ultra-low emissions
16 vehicle (Bin-5/ULEV II) status in all 50 states while reducing emissions by an average of 12%
17 compared to their gasoline equivalents." Volkswagen asserted that "[w]ith innovative diesel
18 particulate filters and the nontoxic AdBlue® reducing agent, we eliminate 95% of diesel NOx
19 emissions." According to Volkswagen this, coupled with the increased fuel efficiency of diesel
20 resulted in an engine that gets "30% more mpg than comparable gasoline engines."

21 99. Prior to the publication of the EPA and CARB NOV's, Volkswagen had won
22 wide praise for its implementation of the 2.0 liter TDI Clean Diesel engine. The 2011 Golf was
23 named by the Kelley Blue Book ("KBB"), one of the most widely relied on used car pricing
24 guides, as one of the "Top 10 Green Cars" of 2011. KBB noted that the 2.0 liter TDI Clean
25 Diesel engine was "capable of delivering quick launches and 42 highway miles per gallon." In
26 addition, the Volkswagen Golf was named the 2015 Car of the Year by Motor Trend magazine.

1 In naming the Golf, Motor Trend highlighted the performance and fuel economy of the 2.0 liter
2 TDI Clean Diesel engine.

3
4 Even more impressive, Volkswagen has also included room in the line-up for
5 diesel . . . versions of the Golf. The Golf TDI and its 2.0-liter turbo-diesel inline-
6 four return an EPA combined rating of 36mpg The best part is that neither
7 car is a penalty box to drive. What the TDI lacks in horsepower it mostly makes
8 up for in torque. While it didn't feel quite as quick as the TSI, it was no slouch for
9 a C-segment car.

10
11 Motor Trend further noted that "[n]o matter which Golf variant we jumped into, we emerged
12 with smiles on our faces [w]e were also impressed with the powertrains in our Golf
13 variants – from the TDI's torquey low-end surge to the GTI's rev-happy rush, there wasn't a dud
14 in the group."

15 100. Volkswagen's marketing of the 2.0 liter TDI Clean Diesel engine as a
16 performance oriented, environmentally friendly engine worked and spawned a strong customer
17 base in the United States. Autoweek columnist and digital editor Andrew Stoy, himself a TDI
18 owner, explained the appeal:

19
20 During my ownership, through conversations with readers and while
21 perusing online forums such as TDIClub.com, it became apparent that TDI
22 buyers were, and are, like me, environmentally conscious driving enthusiasts.

23 That we were unknowingly rolling coal, spewing exponentially more
24 emissions into the atmosphere than we realized, and that Volkswagen was
25 fully aware of its deception, carries a potent sting for those of us who
26 believed the extra cost of a VW TDI was worth the fuel economy and
27 emissions benefits.

1 Andrew Stoy, *Why Volkswagen's diesel betrayal is different*, Autoweek, Sept. 20, 2015,
2 http://www.volkswagengroupamerica.com/clean_diesel_tdi.html (last accessed Oct. 8, 2015).

3
4 **G. The Disclosure of Volkswagen's Deceptive Acts Roils the Car Industry**

5 101. On Friday, September 18, 2015, Consumer Reports, a non-profit consumer
6 advocacy group known for its independence and impartiality, responded to the EPA NOV by
7 announcing that it had "suspended its 'recommended' rating of two VW vehicles: The Jetta
8 diesel and Passat diesel." In light of an expected recall, Consumer Reports stated that "[t]hese
9 recommendations will be suspended until Consumer Reports can re-test these vehicles with a
10 recall repair performed. Once the emissions systems are functioning properly, we will assess
11 whether the repair has adversely affected performance or fuel economy." Consumer Reports'
12 decision to suspend its ratings for these vehicles was driven by the seriousness of the EPA
13 NOV.

14 102. In addition to suspending its recommendations, Consumer Reports issued a
15 blistering statement by Ellen Bloom, the senior director of federal policy for Consumers Union:

16
17 This is a serious violation of the law. ***Volkswagen was ripping off the consumer***
18 ***and hurting the environment at the same time.*** The carmaker was apparently
19 installing software in vehicles that effectively let them generate more pollution
20 than advertised. It's outrageous. We applaud the EPA and California for cracking
21 down on Volkswagen. These actions send a powerful message that if a carmaker
22 uses technology to get around the rules, regulators are going to come down hard
23 on you for breaking the law.

24
25 103. The statement issued by Consumer Reports also highlighted the impact of
26 Volkswagen's fraud on the consumers who purchased cars equipped with the 2.0 liter TDI Clean
27 Diesel engine, stating that "Volkswagen will likely have to recall the vehicles when they have a
28

1 fix that satisfies both the EPA and CARB." The Consumer Reports statement went on to note
2 that, while consumers could "continue to drive [the cars] normally" substantial
3 complications were likely to arise for consumers:

4
5 . . . while it is legal to sell the car, CARB and the California Department of Motor
6 Vehicles may not allow the buyer to register the vehicle, and current owners may
7 not be allowed to renew their registrations, until all the emission recall work has
8 been completed. Some states that follow California emission standards (so-called
9 Partial Zero Emission states) also have rules in place that require all emissions-
10 related recalls to be completed before periodical emission testing. If the recall is
11 not completed, the vehicle cannot pass the inspection, and the state will decline
12 renewal of the vehicle registration.

13
14 104. Commenting on the extent of Volkswagen's deception, Ezra Dyer of Popular
15 Mechanics noted that, "[p]utting aside the inevitable fines, possible criminal charges, and
16 massive public disgrace, there are half a million cars running an emissions setup that never
17 should've left the factory. And there's no quick fix to make up for VW's lies."¹⁸ Dyer also
18 highlighted the extent of Volkswagen's fraud on consumers:

19
20 The intentionality behind the deceit makes this situation different from even a
21 huge-scale recall. This isn't a story about a part that was made one cent cheaper
22 than it should've been, where a car company cut a corner to save a little cash. It's
23 about a huge corporation eying the rulebook and deciding there's a competitive
24

25
26 ¹⁸ [http://www.popularmechanics.com/cars/a17430/ezra-dyer-volkswagen-diesel-](http://www.popularmechanics.com/cars/a17430/ezra-dyer-volkswagen-diesel-controversy/)
27 [controversy/](http://www.popularmechanics.com/cars/a17430/ezra-dyer-volkswagen-diesel-controversy/) (last visited on November 24, 2015).

1 advantage in violating the Clean Air Act. Incompetence is one thing, but
2 calculated mendacity is quite another.

3 *Id.*

4 **H. Volkswagen acknowledges that it "Screwed Up" and has "Broken the**
5 **Trust" of "Our Customers and the Public"**

6 105. On Friday, September 18, 2015, shortly after the EPA and CARB NOV's were
7 made public, Volkswagen issued a press release acknowledging the NOV's and claims that "the
8 company takes this matter very seriously and is cooperating with the investigation."

9 106. Acknowledging a likely recall, the September 18, 2015, press release further
10 stated that:

11 Volkswagen is committed to fixing this issue as soon as possible. We want to
12 assure customers and owners of these models that their automobiles are safe to
13 drive, and we are working to develop a remedy that meets emissions standards
14 and satisfies our loyal and valued customers. Owners of these vehicles do not
15 need to take any action at this time.

16
17 107. However, as the full extent of Volkswagen's deceit became public, the company
18 was forced to issue an additional statement over the ensuing weekend, acknowledging
19 "manipulations" by the company that resulted in the violation of environmental standards.
20 Thus, on Sunday, September 20, 2015, Volkswagen issued this statement from Winterkorn:

21
22 **Wolfsburg, September 20, 2015 - The U.S. Environmental Protection Agency**
23 **and the California Air Resources Board (EPA and CARB) revealed their**
24 **findings that while testing diesel cars of the Volkswagen Group they have**
25 **detected manipulations that violate American environmental standards.**
26
27
28

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

7
8 We do not and will not tolerate violations of any kind of our internal rules or of
9 the law.

10
11 The trust of our customers and the public is and continues to be our most
12 important asset. We at Volkswagen will do everything that must be done in order
13 to ***re-establish the trust*** that so many people have placed in us, and we will do
14 everything necessary in order to ***reverse the damage this has caused.*** This matter
15 has first priority for me, personally, and for our entire Board of Management.

16
17 108. On September 21, 2015, in Brooklyn, New York, Horn acknowledged that "we
18 have totally screwed up."¹⁹ Horn continued by acknowledging that "our company was
19 dishonest with the EPA, and the California Air Resources Board and all of you." *Id.*

20
21 ¹⁹ News Clip: Volkswagen: 'We Have Totally Screwed Up' (Reuters, 2015) (on file with
22 NYTimes.com), accessed from
23 [http://www.nytimes.com/video/business/international/100000003928968/volkswagen-we-have-](http://www.nytimes.com/video/business/international/100000003928968/volkswagen-we-have-totally-screwed-up.html?hp&action=click&pgtype=Homepage&modref=HPVideoRefer&module=first-column-region®ion=top-news&WT.nav=top-news)
24 [totally-screwed-](http://www.nytimes.com/video/business/international/100000003928968/volkswagen-we-have-totally-screwed-up.html?hp&action=click&pgtype=Homepage&modref=HPVideoRefer&module=first-column-region®ion=top-news&WT.nav=top-news)
25 [up.html?hp&action=click&pgtype=Homepage&modref=HPVideoRefer&module=first-column-](http://www.nytimes.com/video/business/international/100000003928968/volkswagen-we-have-totally-screwed-up.html?hp&action=click&pgtype=Homepage&modref=HPVideoRefer&module=first-column-region®ion=top-news&WT.nav=top-news)
26 [region®ion=top-news&WT.nav=top-news](http://www.nytimes.com/video/business/international/100000003928968/volkswagen-we-have-totally-screwed-up.html?hp&action=click&pgtype=Homepage&modref=HPVideoRefer&module=first-column-region®ion=top-news&WT.nav=top-news) (last accessed Oct. 8, 2015).

1 109. The revelations regarding the extent of Volkswagen's fraud continued on
2 September 22, 2015, with Volkswagen's acknowledgment that eleven million cars sold by
3 Volkswagen included the same defeat device discovery by the EPA and CARB. Volkswagen
4 also announced that it had set aside \$7.3 billion to address the fall-out from its fraud. In
5 addition, without public explanation, in late September Volkswagen AG suspended three high
6 level managers who occupied key roles in the development of the 2.0 liter TDI Clean Diesel
7 engine: Ulrich Hackenberg, the head of development for all Volkswagen Group brands,
8 including Audi, had been the head of development for Volkswagen-brand cars from 2007 to
9 2013; Heinz-Jakob Neusser was the head of development for the Volkswagen brand; and
10 finally, Wolfgang Hatz had been the head of engine and transmission development for all
11 Volkswagen brands. Volkswagen AG has yet to acknowledge what role these three or former
12 CEO Winterkorn, played in the development and use of the defeat device.²⁰

13 110. On September 23, 2015, even while claiming no knowledge of Volkswagen's
14 purposeful use of defeat devices to evade compliance with laws, regulations and standards for
15 diesel emissions, Winterkorn resigned his position as CEO of Volkswagen AG. That same day,
16 state prosecutors in Braunschweig, Germany announced that they were reviewing Volkswagen's
17 actions to determine if criminal charges would be brought against individuals responsible for
18 the defeat device. Under German law, companies cannot be criminally prosecuted.

19 111. In prepared remarks issued in advance of an October 8, 2015 hearing by
20 the House Energy and Commerce subcommittee on oversight, Volkswagen of America CEO
21 Horn offered, "[o]n behalf of our company, and my colleagues in Germany, . . . a sincere
22 apology for Volkswagen's use of a software program that served to defeat the regular emissions
23

24
25 ²⁰ On December 10, 2015, Audi AG announced that Ulrich Hackenberg had left the
26 company by "mutual agreement". *Audi technical boss steps down over emissions crisis*,
27 Deutsche Press-Agentur, Dec. 10, 2015.
28

1 testing regime."²¹ Horn further acknowledged that "We have broken the trust of our customers,
2 dealerships, and employees, as well as the public and regulators." *Id.* During his testimony,
3 Horn further acknowledged that Volkswagen must "get to the point that we put people first and
4 not the pressure and corporate profits."²²

5 112. On October 7, 2015, Volkswagen announced that it was withdrawing its
6 applications for EPA certification of vehicles equipped with the 2.0 Liter TDI Clean Diesel
7 engine powered vehicles for the 2016 model year. The EPA certification must be renewed
8 annually for all cars sold in the United States and, without the certification, it will likely be at
9 least a year before Volkswagen is again able to sell cars equipped with the 2.0 liter TDI Clean
10 Diesel engine in the United States. Automobile industry analysts speculated that
11 Volkswagen's withdrawal of the applications indicated the challenges that the company was
12 having in bringing the engine's emissions into compliance and a reflection of the fact that fixes
13 to the 2.0 liter TDI Clean Diesel engine would require different fixes for each of the three
14 generations of the engine that were equipped with the defeat device. An article published on
15 Wired.com quoted Rebecca Lindland of Kelley Blue Book as stating that "[t]he fix is not only
16 too costly, but may not even be functional yet," "[i]f there was a software fix they would have
17 implemented it long ago. This isn't a simple matter of a recall or fixing a broken or
18

19
20 ²¹ Michael Biesecker & Matthew Daly, *VW's US CEO to face tough questions in*
21 *congressional hearing*, Associated Press, Oct. 8, 2015, retrieved from
22 [http://www.businessinsider.com/ap-vws-us-ceo-to-face-tough-questions-in-congressional-](http://www.businessinsider.com/ap-vws-us-ceo-to-face-tough-questions-in-congressional-hearing-2015-10)
23 [hearing-2015-10](http://www.businessinsider.com/ap-vws-us-ceo-to-face-tough-questions-in-congressional-hearing-2015-10) (last accessed Oct. 8, 2015).

24 ²² Mike Spector & Amy Harder, *Volkswagen U.S. CEO Says He Didn't Know in 2014 of*
25 *Emissions Defeat Devices*, The Wall Street Journal, Oct. 8, 2015,
26 [http://www.wsj.com/articles/volkswagen-u-s-ceo-says-he-didnt-know-in-2014-of-emissions-](http://www.wsj.com/articles/volkswagen-u-s-ceo-says-he-didnt-know-in-2014-of-emissions-defeat-devices-1444316371)
27 [defeat-devices-1444316371](http://www.wsj.com/articles/volkswagen-u-s-ceo-says-he-didnt-know-in-2014-of-emissions-defeat-devices-1444316371) (last accessed Oct. 8, 2015).
28

compromised part. This is the entire powertrain, impacting the daily driving experience, not just in specific situations. This impacts the very foundation of the vehicle."²³

I. The Defeat Device Scandal Expands to 3.0 Liter TDI Engines Used in Audi, Porsche and Volkswagen Vehicles

113. On November 2, 2015, the EPA and CARB issued letters indicating that they believed certain Audi, Porsche and Volkswagen vehicles equipped with 3.0 liter TDI Diesel Clean Engines were equipped with defeat devices that functioned similarly to those used in the vehicles equipped with 2.0 Liter TDI Clean Diesel engines.²⁴

114. In the November NOV, the EPA identified the nature and function of the defeat device that it had identified in the 3.0 Liter diesel engines:

Each VW vehicle identified by the table below has AECDs that were not described in the application for the COC that purportedly covers the vehicle. Specifically, VW manufactured and installed software in the electronic control module (ECM) of each vehicle that causes the vehicle to perform differently when the vehicle is being tested for compliance with EPA emission standards than in normal operation and use.

When this software determines the vehicle has begun the FTP 75 Federal emission test procedure, it directs the vehicle to employ a low NOx temperature conditioning mode. A status bit in the software indicates that a "temperature conditioning" mode is active. In this low NOx temperature conditioning mode,

²³ <http://www.wired.com/2015/10/vw-may-not-sell-next-years-diesel-models-us/> (last visited on November 25, 2015).

²⁴ The November 2, 2015 Letter from the EPA (the "November NOV") and the November 2, 2015 letter from CARB (the November 2 CARB Letter") are attached hereto as Exhibits C and D respectively.

1 the vehicle operates under a number of emission control parameters, including
2 injection timing, exhaust gas recirculation rate, and common rail fuel pressure in
3 such a way that the parameters yield low engine-out NO_x emissions and high
4 exhaust temperatures. The high exhaust temperatures heat the selective catalytic
5 reduction system ("catalyst") and improve the catalyst's ability to reduce tailpipe
6 NO_x emissions. In this low NO_x temperature conditioning mode, the combination
7 of low engine-out NO_x and improved catalyst performance results in tailpipe
8 NO_x emissions that are below the applicable emissions standard.

9
10 However, the software employs a "timer" that coincides with the low NO_x
11 temperature conditioning mode. At exactly one second after the completion of
12 the initial phases of the FTP 75 Federal emissions test procedure (1,370 seconds,
13 which is when the vehicle would normally be turned off), this software directs
14 the vehicle to cease low NO_x temperature conditioning mode. The "temperature
15 conditioning" status bit switches to zero, and a second status bit indicates the
16 activation of "transition to normal mode." In this "normal mode," the emission
17 control system is immediately less effective. Compared to the low NO_x
18 temperature conditioning mode, the vehicle employs a different injection timing,
19 exhaust gas recirculation rate, and common rail fuel pressure. This yields higher
20 levels of NO_x from the engine and reduced exhaust temperatures.

21
22 In addition, when the vehicle starts under conditions that the software determines
23 are not the beginning of the FTP 75 Federal emission test procedure, the vehicle
24 does not use the low NO_x temperature conditioning mode at all. Instead, the
25 emission control parameters are set consistent with the "normal mode."
26
27
28

1 In sum, as soon as the vehicle senses that it is not being tested, it uses "normal
2 mode." In "normal mode," tailpipe emissions of NO_x are up to 9 times the
3 applicable NO_x standard levels, depending on model type and type of drive cycle
4 (e.g., city, highway).

5 November NOV at 4.

6 115. In the November NOV, the EPA asserted that it had "determined that VW
7 manufactured and installed defeat devices in certain model year 2014-2016 diesel light-duty
8 vehicles equipped with 3.0 liter engines." Specifically, the EPA determined that the 2014
9 Volkswagen Touareg, the 2015 Porsche Cayenne and the 2016 Audi A6 Quattro, A7 Quattro,
10 A8, A8L and Q5 equipped with the 3.0 liter diesel engines were not manufactured in a manner
11 consistent with their respective certificates of conformity filed by Audi, Porsche and
12 Volkswagen. The EPA indicated that its investigation was ongoing, that it might further expand
13 the list of vehicles equipped with defeat devices, and that it might refer the violations to the
14 DOJ for further investigation and prosecution. *Id.*

15 116. The November 2 CARB Letter provided details regarding the testing of the 3.0
16 liter TDI Clean Diesel engines that the EPA and CARB had undertaken:

17
18 The purpose of this letter is to inform VW that ARB has conducted defeat device
19 screening and certification testing on an Audi A6 Model of the 2016 Test Group
20 GVGAJ03.0NU4 and a 2014 Volkswagen Touareg model of Audi Test Group
21 EADXT03.02UG. ARB tested these two models using non-traditional defeat
22 device screening cycles and it shows that both these Test Groups are
23 demonstrating the same type of emissions behaviors as those in which VW has
24 admitted defeat devices exist. The Touareg has also failed a Federal Test
25 Procedure certification test for oxides of nitrogen. These activities corroborate
26 testing conducted by U.S. EPA and Environment Canada on a 2014 WJ Touareg
27 (Test Group EADXT03.02UG) and a 2015 Porsche Cayenne (Test Group
28

1 FPRXT03.0CDD), respectively. This testing has also yielded evidence of a defeat
2 device. If this issue exists across all 2014-2016 test groups represented by these
3 vehicles, approximately 1600 vehicles could be impacted in California.

4 November 2 CARB Letter at 2.

5 117. The November 2 CARB Letter also noted that CARB "is very disappointed with
6 this development as VW . . . was alerted on September 25, 2015 . . . that ARB would be
7 immediately conducting defeat device testing." *Id.* CARB demanded that "VW [] immediately
8 initiate discussions with ARB to discuss the testing results that appear to confirm the presence
9 of a defeat device in the GVGAJ03.0NU4, EADXT03.02UG and FPRXT03.0CDD Test Groups
10 and the implications on other 3.0 liter diesel product lines. VW must ensure that the appropriate
11 Audi and Porsche AG management and engineering staff are made available for these
12 discussions." *Id.* The next day, Volkswagen pushed back, **denying** the allegations by the EPA
13 and CARB that the 3.0 liter Clean Diesel Engines were equipped with a defeat device. While
14 indicating that Volkswagen would "cooperate fully with the EPA [to] clarify this matter in its
15 entirety," a statement by the Volkswagen AG asserted that "Volkswagen AG wishes to
16 emphasize that no software has been installed in the 3-liter V6 diesel power units to alter
17 emissions characteristics in a forbidden manner," the German automaker said in a statement."²⁵

18 118. Despite Volkswagen's denial, on November 4, 2015, Audi announced that it was
19 halting sales of all 2013-2015 model year vehicles equipped with the 3.0 liter TDI Clean Diesel
20 engine, including the A6, A7, A8, A8L and Q5. That same day, Porsche also announced that it
21 was halting sales of all 2014-2016 model year Porsche Cayennes equipped with the 3.0 liter
22 TDI Clean Diesel engine. Volkswagen still refused to acknowledge the existence of a defeat
23 device, instead asserting that stop sale orders were undertaken in order to give Audi, Porsche
24

25 _____
26 ²⁵ http://www.mlive.com/auto/index.ssf/2015/11/volkswagen_denies_rigging_30-l.html
27 (last visited on November 30, 2015).
28

1 and Volkswagen an opportunity to evaluate the concerns raised by the EPA and CARB.²⁶
2 Indeed, according to the Wall Street Journal, Volkswagen specifically denied that the decision
3 to include a larger universe of cars than that addressed by the EPA and CARB was an
4 acknowledgment that more vehicles were equipped with defeat devices. *Id.* Porsche denied
5 that its Cayenne models were equipped with defeat devices, stating that "all of our information
6 was that the Porsche Cayenne Diesel is fully compliant."²⁷

7 119. Despite the prior denials, on November 19, 2015, in the course of meetings with
8 the EPA and CARB, Volkswagen admitted the existence of a defeat device in approximately
9 85,000 vehicles sold in the United States and equipped with 3.0 liter TDI Clean Diesel
10 engines.²⁸ Volkswagen's admission extended well beyond the initial findings by the EPA and
11 CARB, including not just 2014-2016 model years identified in the November NOV or the
12 November 2 CARB Letter, to encompass all vehicles between the 2009-2016 model years
13 equipped with the 3.0 liter diesel engine.

14 120. On November 24, 2015, CARB issued a letter to Audi, Porsche and Volkswagen
15 (the "November 25 CARB Letter"), attached hereto as "Exhibit E." Noting that during a
16 meeting with representatives of CARB and the EPA on November 19, 2015, "Audi AG
17 confirmed that the 3.0 liter diesel models identified in the November 2, 2015 letter – and all
18 2009 and newer 3.0 liter diesel liters (sic) in Audi U.S. models A6, A7, A8, Q5 and Q7 –
19 contained undisclosed Auxiliary Emission Control Devices (AECDs)." Ex. E at 2. The
20 November 25 CARB Letter also noted that "[w]hile the 3.0 liter engine was developed by Audi,
21

22 ²⁶ *Volkswagen, Audi Halt Sales of 3.0 Liter Diesel 2013-2016 Models*, Wall Street Journal,
23 November 4, 2015

24 ²⁷ *Porsche halts sales of Cayenne diesel cars in N. America*, *Agence France Presse*,
25 November 4, 2015.

26 ²⁸ [http://autoweek.com/article/vw-diesel-scandal/epa-30-liter-diesel-vw-audi-and-porsche-](http://autoweek.com/article/vw-diesel-scandal/epa-30-liter-diesel-vw-audi-and-porsche-models-also-have-defeat-devices)
27 [models-also-have-defeat-devices](http://autoweek.com/article/vw-diesel-scandal/epa-30-liter-diesel-vw-audi-and-porsche-models-also-have-defeat-devices) (last visited November 30, 2015).
28

1 the same engines have been used by VW and Porsche in their Touareg and Porsche [Cayenne]
2 models since 2009." *Id.* CARB ordered Audi, Porsche and Volkswagen to "take appropriate
3 corrective action to remedy the nonconformity and return these vehicles to claimed certified
4 configurations which meet required standards." *Id.* Pursuant to that demand, CARB ordered
5 Audi, Porsche and Volkswagen to submit a recall plan within forty-five business days. *Id.*

6 121. The belated admission that defeat devices were incorporated into the 3.0 liter
7 TDI Clean Diesel engines is significant in that, as noted by CARB, the 3.0 liter TDI Clean
8 Diesel engine was designed by Audi, not Volkswagen, indicia that the emissions fraud at
9 Volkswagen and its subsidiaries was systemic, occurring not just through multiple revisions of
10 Volkswagen's 2.0 Liter TDI Clean Diesel but in the Audi-designed 3.0 liter TDI Clean Diesel
11 engine.

12
13 **J. The 3.0 liter TDI Clean Diesel engine was Marketed as Clean and Environmentally Friendly**

14 122. As with the 2.0 Liter TDI Clean Diesel engine, the 3.0 liter diesel engine was
15 marketed as an environmentally friendly, performance oriented engine. For example, the
16 marketing brochure for the 2012 diesel-powered Porsche Cayenne described its engine as "a
17 technological marvel, able to take its unique fuel source and transform it into clean, efficient,
18 and incredibly torque-rich power."²⁹ "What is new is the degree of refinement that Porsche has
19 brought to it, making a new 3.0-liter turbo diesel V6 that is far advanced from what many
20 people perceive—especially in terms of its acceleration, clean emissions, and quiet-running
21 operation." *Id.* Describing the Porsche Cayenne as a "cleaner diesel," Porsche asserted that the
22 3.0 liter diesel was "compliant with U.S. emissions standards" and described the function of the
23 engine's SCR exhaust system:

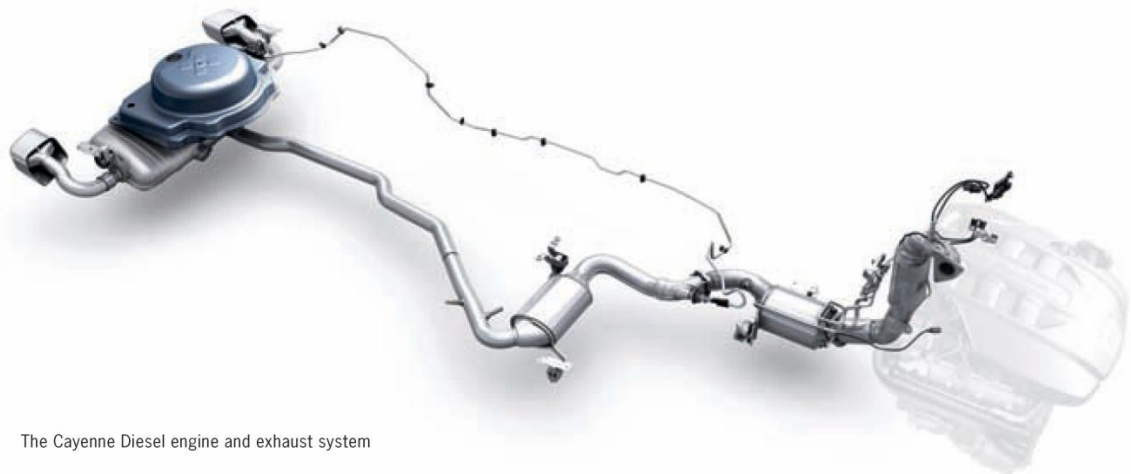
24
25
26 ²⁹ [http://www.auto-brochures.com/makes/Porsche/Cayenne/Porsche_US%20Cayenne-](http://www.auto-brochures.com/makes/Porsche/Cayenne/Porsche_US%20Cayenne-Diesel_2012.pdf)
27 [Diesel_2012.pdf](http://www.auto-brochures.com/makes/Porsche/Cayenne/Porsche_US%20Cayenne-Diesel_2012.pdf) (last visited on November 30, 2015).
28

1 From the moment you start your Cayenne Diesel, innovative features intelligently
2 apply clean diesel technologies.

3
4 As the exhaust gases exit the combustion chamber, they will travel through four
5 separate processes— Exhaust Gas Recirculation, which reduces the formation of
6 nitrogen oxides; the Oxidation Catalytic Converter, which converts pollutants
7 such as carbon hydrates into less harmful substances; the Diesel Particulate Filter,
8 which traps and eliminates the majority of particulate; and the Reduction
9 Catalytic Converter, which converts the remaining nitrogen oxides to nitrogen and
10 oxygen utilizing the AdBlue® agent.

11
12 These processes help to ensure the reduction of harmful pollutants into the
13 environment and make the Cayenne Diesel compliant with U.S. emissions
14 standards.

15 *Id.*



24
25 123. As with Porsche, Audi marketed the 3.0 liter TDI Clean Diesel engine as an
26 environmentally friendly engine that provided performance and fuel efficiency. For example,
27 the 2015 Audi Q5 SUV highlighted the 3.0 liter TDI Clean Diesel engine as "food for thought.
28

1 The TDI clean diesel engine available in the Q5 has achieved ultra-low emissions vehicle (Bin-
2 5/ULEV II) status in all 50 states while producing approximately 10.3% fewer CO₂ emissions
3 than its comparable gasoline-fueled engine. And the brainy attributes don't hide the brawn—in
4 fact, Audi has dominated the 24 Hours of Le Mans over the years with TDI prototype race cars.
5 With these facts in mind, maybe you are thinking that a TDI might be your choice—which goes
6 to show that clean diesel really is fuel for thought."³⁰ Audi used nearly identical language in its
7 marketing brochure for the 2014 model year A8 sedan.³¹

8 124. In its brochure for the 2013 Q7 SUV, Audi claimed that the 3.0 liter Audi TDI
9 Clean Diesel engine had a "20 percent reduction in CO₂ emissions over comparably sized
10 gasoline engines," coupled with Audi's claim that the engine provided excellent torque and fuel
11 efficiency, the result was, according to Audi, "progress by the gallon."³² Similarly, in a
12 brochure for its 2015 model year A6, Audi lauded the 3.0 liter "TDI Clean Diesel," highlighting
13 it low emissions: "The TDI® clean diesel engine available in the A6 has achieved ultra-low
14 emissions vehicle (Bin-5/ ULEV II) status in all 50 states while producing approximately 15.3%
15 fewer CO₂ emissions than its comparable gasoline-fueled engine."³³

16 125. Volkswagen marketed the 3.0 liter TDI Clean Diesel engine as being "cleaner
17 than conventional diesels" and "less is more." As described in the brochure for the 2010
18 Touareg, "[a]nd finally, imagine your choice of 2 stunning powerplants. First, the new Touareg

20 ³⁰ http://www.auto-brochures.com/makes/Audi/Q5/Audi_US%20Q5_2015-1.pdf (last
21 visited on December 1, 2015).

22 ³¹ http://www.auto-brochures.com/makes/Audi/A8/Audi_US%20A8_2014-1.pdf (last
23 visited on December 1, 2015).

24 ³² http://www.auto-brochures.com/makes/Audi/Q7/Audi_US%20Q7_2013.pdf (last visited
25 on December 1, 2015).

26 ³³ http://www.auto-brochures.com/makes/Audi/A6/Audi_US%20A6_2015-2.pdf (last
27 visited on December 1, 2015).

1 TDI Clean Diesel. It offers fuel efficiency, power, performance, and a \$1,150 tax credit from
 2 Uncle Sam because it qualifies as an alternative motor vehicle. The TDI engine is cleaner than
 3 conventional diesels, emitting as much as 95% less soot as well as a reduction in oxides of
 4 nitrogen and sulfur."³⁴ Similarly, the 2014 Touareg brochure used the tag line "less is more."
 5 "Engineered with the idea that less is more. The Touareg TDI has lower CO2 emissions
 6 compared to 88% of other vehicles. So every getaway you make will be a clean one."³⁵

8 **K. Purchasers Paid a Premium for Defeat Device Vehicles**

9 126. Marketing the Defeat Device Vehicles as performance-oriented and
 10 environmentally friendly cars with good fuel economy was important to Volkswagen because
 11 the sticker prices of diesels in general and the 2.0 liter TDI Clean Diesel engine equipped cars in
 12 particular, are substantially higher than equivalent cars with gas engines. For example, for the
 13 2015 model year, diesel equipped Jettas started at \$21,640 while the gas-equipped Jettas were
 14 priced from \$17,325, representing a 25% premium.

15 127. With aggressive marketing, Volkswagen duped Plaintiffs and members of the
 16 Class into paying a substantial premium for their cars by stressing that the 2.0 Liter TDI Clean
 17 Diesel engine was performance oriented, fuel efficient and environmentally friendly. Following
 18 the revelation of Volkswagen's fraud, Plaintiffs and members of the Class have seen the resale
 19 value of their vehicles plummet. On October 5, 2015, KBB reported that the average resale
 20 value of Volkswagens equipped with the 2.0 Liter TDI Clean Diesel engine had fallen 13% in

22 ³⁴ [http://www.auto-](http://www.auto-brochures.com/makes/Volkswagen/Touareg/VW_US%20Touareg_2010.pdf)
 23 [brochures.com/makes/Volkswagen/Touareg/VW_US%20Touareg_2010.pdf](http://www.auto-brochures.com/makes/Volkswagen/Touareg/VW_US%20Touareg_2010.pdf) (last visited
 24 December 1, 2015).

25 ³⁵ [http://www.auto-](http://www.auto-brochures.com/makes/Volkswagen/Touareg/VW_US%20Touareg_2014-2.pdf)
 26 [brochures.com/makes/Volkswagen/Touareg/VW_US%20Touareg_2014-2.pdf](http://www.auto-brochures.com/makes/Volkswagen/Touareg/VW_US%20Touareg_2014-2.pdf) (last visited on
 27 December 1, 2015).

less than one month.³⁶ The resale value of these cars may continue to decline, causing damages to Plaintiffs and members of the Class in an amount to be proven at trial.

L. The Defeat Device Breached Express Warranties

128. In connection with the sale (by purchase or lease) of new vehicles, Volkswagen provided an express New Vehicle Limited Warranty, applicable to each vehicle and covering a period of three years or 36,000 miles, whichever occurs first. This New Vehicle Limited Warranty "covers any repair to correct a manufacturing Defeat in materials or workmanship."

129. In addition, in its Federal Emissions Control System Defeat Warranty, Volkswagen warranted every vehicle it sold for a period of two years or 24,000 miles and asserted that each of its vehicles:

- "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 Defeats in material and workmanship which causes the vehicle to fail to conform with EPA regulations"

V. TOLLING OF THE STATUTE OF LIMITATIONS

A. Fraudulent Concealment Tolling

130. Any applicable statute(s) of limitations has been tolled by Defendants' knowing, active fraudulent concealment and denial of the facts alleged herein. Plaintiffs and the other members of the Class could not have reasonably discovered that Volkswagen properly designed

³⁶ Associated Press, *Resale values falling for Volkswagen diesels*, CNBC, Oct. 6, 2015, <http://www.cnbc.com/2015/10/06/the-associated-press-resale-values-falling-for-volkswagen-diesels.html> (last accessed Oct. 8, 2015).

1 and installed a defeat device in the vehicles until shortly before this class action litigation was
2 commenced.

3 131. Instead of disclosing its emissions scheme, that the quality and quantity of
4 emissions from the subject vehicles was far worse than represented, and of its disregard of
5 federal and state law, Volkswagen falsely represented that its vehicles complied with federal
6 and state emissions standards and that it was a reputable manufacturer whose representations
7 could be trusted.

8 132. Defendants were and remain under a continuing duty to disclose to Plaintiffs and
9 the other members of the Class the true character, quality, and nature of the Defeat Device
10 Vehicles, the defeat devices incorporated in those Vehicles were purposeful design by
11 Volkswagen, will require costly repairs, and diminish residual or the resale value of the Defeat
12 Device Vehicles. As a result of the active concealment by Defendants, any and all statutes of
13 limitations otherwise applicable to the allegations herein have been tolled.

14
15 **B. Estoppel**

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

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

22 135. Volkswagen was also under a continuous duty to disclose to Plaintiffs and Class
23 members that it had engaged in the scheme complained of herein to evade federal and state
24 emissions and clean air standards, and that it systematically devalued compliance with, and
25 deliberately flouted, federal and state law regulating vehicle emissions and clean air.

26 136. Based on the foregoing, Volkswagen is estopped from relying on any statutes of
27 limitations in defense of this action.

1
2 **VI. CLASS ACTION ALLEGATIONS**

3 137. The claims of all members of the Class derive directly from a single course of
4 conduct by Volkswagen. Volkswagen has and continues to engage in uniform and standardized
5 conduct toward the Class. They did not differentiate, in degree of care or candor, their actions or
6 inactions, in the content of their statements or omissions, among individual members of the
7 Class. The objective facts on these subjects are the same for all members of the Class. Within
8 each Claim for Relief asserted by the respective subclasses, the same legal standards govern.
9 Additionally, many states share the same legal standards and elements of proof, facilitating the
10 certification of multi-state classes for some or all claims. Accordingly, Plaintiffs bring this
11 lawsuit as a class action on their own behalf and on behalf of all other persons similarly situated
12 as members of the proposed Class pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3)
13 and/or (b)(2) and/or (c)(4). This action satisfies the numerosity, commonality, typicality,
14 adequacy, predominance, and superiority requirements of those provisions.

15 138. Plaintiffs bring this action and seek to certify and maintain it as a class action
16 under Rules 23(a); (b)(1) and/or (b)(2); and (b)(3) of the Federal Rules of Civil Procedure on
17 their behalf and on behalf of the following Class and subclasses (collectively the "Classes"):

18
19 **The Nationwide Class (the "Class")**

20 All persons in the United States who purchased or leased vehicles
21 manufactured, distributed and/or sold by Defendants that were equipped
22 with the 2.0 liter TDI Clean Diesel engine subject to the September 18,
23 2015 Notice of Violation letters issued by the EPA and CARB or the 3.0
24 liter TDI Clean Diesel engine subject to the November 25, 2015 CARB
25 Letter.
26
27
28

1 **The Alabama Subclass**

2 All persons in the state of Alabama who purchased or leased vehicles
3 manufactured, distributed and/or sold by Defendants that were equipped
4 with the 2.0 liter TDI Clean Diesel engine subject to the September 18,
5 2015 Notice of Violation letters issued by the EPA and CARB or the 3.0
6 liter TDI Clean Diesel engine subject to the November 25, 2015 CARB
7 Letter.

8
9 **The Arizona Subclass**

10 All persons in the state of Arizona who purchased or leased vehicles
11 manufactured, distributed and/or sold by Defendants that were equipped
12 with the 2.0 liter TDI Clean Diesel engine subject to the September 18,
13 2015 Notice of Violation letters issued by the EPA and CARB or the 3.0
14 liter TDI Clean Diesel engine subject to the November 25, 2015 CARB
15 Letter.

16
17 **The Arkansas Subclass**

18 All persons in the state of Arkansas who purchased or leased vehicles
19 manufactured, distributed and/or sold by Defendants that were equipped
20 with the 2.0 liter TDI Clean Diesel engine subject to the September 18,
21 2015 Notice of Violation letters issued by the EPA and CARB or the 3.0
22 liter TDI Clean Diesel engine subject to the November 25, 2015 CARB
23 Letter.

24
25 **The California Subclass**

26 All persons in the state of California who purchased or leased vehicles
27 manufactured, distributed and/or sold by Defendants that were equipped
28

1 with the 2.0 liter TDI Clean Diesel engine subject to the September 18,
2 2015 Notice of Violation letters issued by the EPA and CARB or the 3.0
3 liter TDI Clean Diesel engine subject to the November 25, 2015 CARB
4 Letter.

5
6 **The Florida Subclass**

7 All persons in the state of Florida who purchased or leased vehicles
8 manufactured, distributed and/or sold by Defendants that were equipped
9 with the 2.0 liter TDI Clean Diesel engine subject to the September 18,
10 2015 Notice of Violation letters issued by the EPA and CARB or the 3.0
11 liter TDI Clean Diesel engine subject to the November 25, 2015 CARB
12 Letter.

13
14 **The Georgia Subclass**

15 All persons in the state of Georgia who purchased or leased vehicles
16 manufactured, distributed and/or sold by Defendants that were equipped
17 with the 2.0 liter TDI Clean Diesel engine subject to the September 18,
18 2015 Notice of Violation letters issued by the EPA and CARB or the 3.0
19 liter TDI Clean Diesel engine subject to the November 25, 2015 CARB
20 Letter.

21
22 **The Kentucky Subclass**

23 All persons in the state of Kentucky who purchased or leased vehicles
24 manufactured, distributed and/or sold by Defendants that were equipped
25 with the 2.0 liter TDI Clean Diesel engine subject to the September 18,
26 2015 Notice of Violation letters issued by the EPA and CARB or the 3.0
27
28

1 liter TDI Clean Diesel engine subject to the November 25, 2015 CARB
2 Letter.

3
4 **The Maryland Subclass**

5 All persons in the state of Maryland who purchased or leased vehicles
6 manufactured, distributed and/or sold by Defendants that were equipped
7 with the 2.0 liter TDI Clean Diesel engine subject to the September 18,
8 2015 Notice of Violation letters issued by the EPA and CARB or the 3.0
9 liter TDI Clean Diesel engine subject to the November 25, 2015 CARB
10 Letter.

11
12 **The Mississippi Subclass**

13 All persons in the state of Mississippi who purchased or leased vehicles
14 manufactured, distributed and/or sold by Defendants that were equipped
15 with the 2.0 liter TDI Clean Diesel engine subject to the September 18,
16 2015 Notice of Violation letters issued by the EPA and CARB or the 3.0
17 liter TDI Clean Diesel engine subject to the November 25, 2015 CARB
18 Letter.

19
20 **The Oregon Subclass**

21 All persons in the state of Oregon who purchased or leased vehicles
22 manufactured, distributed and/or sold by Defendants that were equipped
23 with the 2.0 liter TDI Clean Diesel engine subject to the September 18,
24 2015 Notice of Violation letters issued by the EPA and CARB or the 3.0
25 liter TDI Clean Diesel engine subject to the November 25, 2015 CARB
26 Letter.

1 **The Pennsylvania Subclass**

2 All persons in the state of Pennsylvania who purchased or leased
3 vehicles manufactured, distributed and/or sold by Defendants that were
4 equipped with the 2.0 liter TDI Clean Diesel engine subject to the
5 September 18, 2015 Notice of Violation letters issued by the EPA and
6 CARB or the 3.0 liter TDI Clean Diesel engine subject to the November
7 25, 2015 CARB Letter.

8
9 **The Tennessee Subclass**

10 All persons in the state of Tennessee who purchased or leased
11 vehicles manufactured, distributed and/or sold by Defendants that were
12 equipped with the 2.0 liter TDI Clean Diesel engine subject to the
13 September 18, 2015 Notice of Violation letters issued by the EPA and
14 CARB or the 3.0 liter TDI Clean Diesel engine subject to the November
15 25, 2015 CARB Letter.

16
17 **The Texas Subclass**

18 All persons in the state of Texas who purchased or leased vehicles
19 manufactured, distributed and/or sold by Defendants that were equipped
20 with the 2.0 liter TDI Clean Diesel engine subject to the September 18,
21 2015 Notice of Violation letters issued by the EPA and CARB or the 3.0
22 liter TDI Clean Diesel engine subject to the November 25, 2015 CARB
23 Letter.

24
25 **The Virginia Subclass**

26 All persons in the state of Virginia who purchased or leased vehicles
27 manufactured, distributed and/or sold by Defendants that were equipped
28

1 with the 2.0 liter TDI Clean Diesel engine subject to the September 18,
2 2015 Notice of Violation letters issued by the EPA and CARB or the 3.0
3 liter TDI Clean Diesel engine subject to the November 25, 2015 CARB
4 Letter.

5
6 **The Washington Subclass**

7 All persons in the state of Washington who purchased or leased
8 vehicles manufactured, distributed and/or sold by Defendants that were
9 equipped with the 2.0 liter TDI Clean Diesel engine subject to the
10 September 18, 2015 Notice of Violation letters issued by the EPA and
11 CARB or the 3.0 liter TDI Clean Diesel engine subject to the November
12 25, 2015 CARB Letter.

13
14 **The West Virginia Subclass**

15 All persons in the state of West Virginia who purchased or leased
16 vehicles manufactured, distributed and/or sold by Defendants that were
17 equipped with the 2.0 liter TDI Clean Diesel engine subject to the
18 September 18, 2015 Notice of Violation letters issued by the EPA and
19 CARB or the 3.0 liter TDI Clean Diesel engine subject to the November
20 25, 2015 CARB Letter.

21
22 139. Excluded from the Classes are: Defendants; any affiliate, parent, or subsidiary of
23 Defendants; any entity in which Defendants have a controlling interest; any officer, director, or
24 employee of Defendants; any successor or assign of Defendants; counsel for Plaintiffs or
25 anyone employed by counsel for Plaintiffs in this action and their immediate family; any Judge
26 to whom this case is assigned and his or her immediate family and staff.

1 140. This action has been brought and may properly be maintained on behalf of the
2 Class proposed above under the criteria of Federal Rule of Civil Procedure Rule 23.

3 141. **Numerosity.** This action satisfies the requirements of Fed. R. Civ. P. 23(a)(1).
4 Plaintiffs are informed and believe that there are over 482,000 vehicles equipped with the 2.0
5 liter TDI Clean Diesel engine as well as tens of thousands of vehicles equipped with the 3.0 liter
6 TDI Clean Diesel engines nationwide, as alleged above. Individual joinder of all Class members
7 is impracticable.

8 142. Each of the Classes is ascertainable because its members can be readily
9 identified using registration records, sales records, production records, and other information
10 kept by Defendants or third parties in the usual course of business and within their control.
11 Plaintiff anticipates providing appropriate notice to each certified Class, in compliance with
12 Fed. R. Civ. P. 23(c)(1)(2)(A) and/or (B), to be approved by the Court after class certification,
13 or pursuant to court order under Fed. R. Civ. P. 23(d).

14 143. **Existence and predominance of common questions.** Common questions of law
15 and fact exist as to all members of the Class and predominate over questions affecting only
16 individual members of the Class members as is required by Fed. R. Civ. P. 23(a)(2). These
17 common questions include the following:

- 18 a. Whether Volkswagen engaged in the conduct alleged herein;
- 19 b. Whether Volkswagen designed, manufactured, advertised, marketed,
20 distributed and sold Defeat Device Vehicles in the United States;
- 21 c. Whether the Defeat Device Vehicles are defective in that they are not
22 compliant with federal and state emissions standards and requirements;
- 23 d. Whether the Defeat Device Vehicles were purposefully designed to
24 include a defeat device in order to evade the requirements of federal and California state
25 emissions standards and requirements;
- 26 e. Whether and how long Volkswagen was aware of the existence of
27 defeat devices installed in the Defeat Device Vehicles;
- 28

1 f. Whether Volkswagen knowingly designed, manufactured, marketed,
2 advertised, distributed and sold Defeat Device Vehicles;

3 g. Whether either the Defeat Device Vehicles can be made, through a
4 recall, to comply with federal and California state emissions standards and requirements;

5 h. Whether any changes necessary to make Defeat Device Vehicles
6 compliant with federal and California state emissions standards and requirements will
7 negatively impact the performance, fuel efficiency or function of the Defeat Device Vehicles;

8 i. Whether any changes necessary to make Defeat Device Vehicles
9 compliant with federal and California state emissions standards and requirements will
10 diminish the residual or resale value of the Defeat Device Vehicles;

11 j. Whether purchasers of Defeat Device Vehicles overpaid for those
12 vehicles;

13 k. Whether the Defendants engaged in unfair, deceptive, unlawful and/or
14 fraudulent acts or practices in trade or commerce by failing to disclose the existence of the
15 defeat device;

16 l. Whether the Defeat Device Vehicles were unfit for the ordinary
17 purposes for which they were used, in violation of the implied warranty of merchantability;

18 m. Whether Defendants are liable to the Class for damages and/or
19 penalties, as a result of their own knowledge, conduct, action, or inaction, and if so, in what
20 amount; and

21 n. Whether Plaintiffs and the other members of the Class are entitled to
22 equitable relief, including but not limited to restitution or a preliminary and/or permanent
23 injunction.

24 144. **Typicality.** Plaintiffs' claims are typical of the claims of the Class as required by
25 Fed. R. Civ. P. 23(a)(3), because, among other things, Plaintiffs purchased Defeat Device
26 Vehicles which contain the same design defect found in all other Defeat Device Vehicles.

1 145. **Adequacy.** Plaintiffs are adequate representatives of the Class because their
2 interests do not conflict with the interests of the members of the Class they seek to represent.
3 Plaintiffs have retained counsel competent and experienced in complex class action litigation,
4 and Plaintiffs intend to prosecute this action vigorously. The interests of the members of Class
5 will be fairly and adequately protected by Plaintiffs and their counsel. As such, Plaintiffs meet
6 the requirements of Fed. R. Civ. P. 23(a)(4).

7 146. **Declaratory and Injunctive Relief.** Federal Rule of Civil Procedure 23(b)(2):
8 Defendants have acted or refused to act on grounds generally applicable to Plaintiffs and the
9 other members of the Class thereby making appropriate final injunctive relief and declaratory
10 relief, as described below, with respect to the Class as a whole.

11 147. **Superiority.** The class action is superior to other available means for the fair and
12 efficient adjudication of this dispute. The injury suffered by each member of the Class, while
13 meaningful on an individual basis, is not of such magnitude as to make the prosecution of
14 individual actions against Volkswagen economically feasible. Even if members of the Class
15 themselves could afford such individualized litigation, the court system could not. In addition to
16 the burden and expense of managing many actions arising from the design defect,
17 individualized litigation presents a potential for inconsistent or contradictory judgments.
18 Individualized litigation increases the delay and expense to all parties and the court system
19 presented by the legal and factual issues of the case. By contrast, the class action device
20 presents far fewer management difficulties and provides the benefits of single adjudication,
21 economy of scale, and comprehensive supervision by a single court.

22 148. In the alternative, the Class may be certified because:

23 a. the prosecution of separate actions by the individual members of the
24 Class would create a risk of inconsistent or varying adjudication with respect to individual
25 members of the Class;

26 b. the prosecution of separate actions by individual members of the Class
27 would create varying standards of conduct required of the Defendants;
28

1 c. the prosecution of separate actions by individual members of the Class
2 would create a risk of adjudications with respect to them which would, as a practical matter,
3 be dispositive of the interests of other members of the Class not parties to the adjudications,
4 or substantially impair or impede their ability to protect their interests; and

5 d. Volkswagen has acted, or refused to act on, grounds generally
6 applicable to the Class, thereby making appropriate final and injunctive relief with respect to
7 the members of the Class as a whole.

8
9 **VII. RICO ALLEGATIONS**

10 149. Defendants have engaged in a fraudulent scheme, common course of conduct
11 and conspiracy to increase market share and revenue for Defendants and for the Authorized
12 Dealerships associated with Defendants.

13 150. In order to achieve these goals, Defendants, designed, manufactured and
14 distributed for sale the Defeat Device Vehicles. To further these goals, Defendants
15 disseminated virtually uniform sales materials for use by Authorized Dealerships in the
16 marketing and sale of Defeat Device Vehicles. As a direct result of their conspiracy and
17 fraudulent scheme, Defendants realized revenues from Plaintiffs and the members of the Class
18 from the sale of Defeat Device Vehicles.

19
20 **A. The Defeat Device Enterprise**

21 151. Based on Plaintiffs' current knowledge, the following constitute one or more
22 groups of persons and entities associated in fact, hereinafter referred to as the "Defeat Device
23 Enterprise":

24 (a) Defendants;

25 (b) Authorized Dealerships that sold Defeat Device Vehicles and derived
26 revenue therefrom; and
27
28

1 (c) Any other individuals or entities that facilitated the sale of a Defeat
2 Device Vehicle and received revenue therefrom.

3 152. The Defeat Device Enterprise is an ongoing and continuing organization
4 consisting of corporations and individuals associated for the common or shared purpose of
5 selling, marketing and promoting the sale of Defeat Device Vehicles to Plaintiffs and the
6 members of the Class through the use of deceptive and misleading materials and statements, and
7 deriving profits from those sales.

8 153. The Defeat Device Enterprise functions by designing, manufacturing, marketing,
9 distributing and selling automobiles, including, but not limited to, Defeat Device Vehicles.
10 Many of the vehicles designed, manufactured, marketed and sold by Defendants not equipped
11 with defeat devices. However, through the Defeat Device Enterprise, Defendants have engaged
12 in a pattern of racketeering activity which involves a fraudulent scheme to generate revenue, for
13 Defendants, Authorized Dealerships and others, through the sale of Defeat Device Vehicles.

14 154. The Defeat Device Enterprise engaged in an affects interstate commerce because
15 it involves activities across state boundaries, including the distribution, marketing, promotion,
16 advertisement and sale of Defeat Device Vehicles to consumers and the receipt of revenues
17 derived from those sales.

18 155. Within the Defeat Device Enterprise, there is a common communication network
19 throughout which participants in the Defeat Device Enterprise share information. The Defeat
20 Device Enterprise uses this common communication network for the purposes of marketing,
21 promoting, advertising, selling and distributing Defeat Device Vehicles to the public, including
22 Plaintiffs and members of the Class.

23 156. Each participant in the Defeat Device Enterprise is linked in that there are
24 contractual relationships, financial ties, and continuing coordinated activities. Through the
25 Defeat Device Enterprise, Defendants engage in decision-making to implement the fraudulent
26 scheme and to function as a continuing unit for the common purpose of designing,
27
28

1 manufacturing, marketing, distributing and selling Defeat Device Vehicles as well as other
2 vehicles.

3 157. While each of the Defendants participates in the Defeat Device Enterprise, each
4 maintains a separate and distinct existence.

5 158. In furtherance of the Defeat Device Enterprise, Defendants fail to disclose the
6 true nature and function of the Defeat Device Vehicles. Also in furtherance of the Defeat
7 Device Enterprise, Defendants maintain control over the information regarding Defeat Device
8 Vehicles provided to consumers, potential purchasers, Plaintiffs and members of the Class.
9 Defendants maintain substantial control over the Defeat Device Enterprise by:

- 10 (a) designing and manufacturing Defeat Device Vehicles which,
11 unbeknownst to potential purchasers, Plaintiffs and members of the
12 Class, are equipped with Defeat Devices designed and intended to avoid
13 compliance with applicable federal and state emissions standards;
- 14 (b) designing and distributing uniform marketing materials that do not
15 disclose the use of a defeat device to avoid compliance with applicable
16 federal and state emissions requirements;
- 17 (c) designing and distributing uniform marketing materials that represent that
18 the Defeat Device Vehicles have features and attributes which, in fact,
19 they do not, including, but not limited to, engines and emissions systems
20 that are compliant with applicable federal and state emissions standards;
21 and
- 22 (d) instructing Authorized Dealerships to use standardized sales materials,
23 including uniform brochures that were developed, designed and
24 authorized by Defendants.

25 159. The Defeat Device Enterprise has an ascertainable structure separate and apart
26 from the pattern of racketeering activity in which Defendants have engaged.

1 160. Defendants have directed and controlled the ongoing organization necessary to
2 implement their scheme through communications of which Plaintiffs cannot now know because
3 all such information is in Defendants' possession.

4
5 **B. RICO Conspiracy**

6 161. Defendants have not undertaken the practices described herein in isolation, but as
7 part of a common scheme and conspiracy.

8 162. Defendants have engaged in a conspiracy to increase or maintain market share
9 and revenue and to generate revenue for Authorized Dealerships through the sale of Defeat
10 Device Revenue.

11 163. The objects of this conspiracy are: (a) to sell Defeat Device Vehicles; (b) to
12 increase market share for Defendants; (c) to generate revenue for Defendants; and (d) to
13 generate revenue for Authorized Dealerships through the sale of Defeat Device Vehicles.

14 164. To achieve these goals, the Defendants designed, manufactured and distributed
15 for sale the Defeat Device Vehicles and designed, distributed and required the use of marketing
16 materials that included uniform misrepresentations regarding the Defeat Device Vehicles. The
17 Authorized Dealerships used those marketing materials for the purpose of promoting, marketing
18 and selling Defeat Device Vehicles to Plaintiffs, members of the Class and the general public.

19 165. Each Defendant and member of the conspiracy has, with knowledge and intent,
20 agreed to the overall objectives of the conspiracy and participated in the common course of
21 conduct to commit acts of fraud in the sale of Defeat Device Vehicles.

22 166. In order for the conspiracy to succeed, each Defendant and each participant in
23 conspiracy had to agree to the use of similar devices and fraudulent tactics against their intended
24 targets. The instances of common conduct or activity that evidence the presence of a conspiracy
25 among the Defendants and co-conspirators include, but are not limited to:

- 1 (a) the use of similar advertisements and marketing materials that do not
2 disclose the existence of a defeat device in the Defeat Device Vehicles;
3 and
4 (b) the use of similar or common marketing materials that misrepresent the
5 nature, character and function of the Defeat Device Vehicles.

6 167. As a result of the conspiracy, Plaintiffs and members of the Class purchased, or
7 purchased for more than they would have otherwise paid, Defeat Device Vehicles.

8
9 **C. Use of the Mails and Wires**

10 168. Defendants used numerous interstate wire communications and mailings,
11 including virtually uniform misrepresentations, concealments and material omissions, to create
12 and manage their fraudulent scheme. Defendants' scheme includes, inter alia, false and
13 misleading marketing materials and product brochures, advertisements, warranty
14 representations, sales contracts, websites, and vehicle documentation.

15 169. Defendants' fraudulent use of the mails and wires included the following
16 communications sent by Defendants to each other, to Plaintiffs and members of the Class, to
17 relevant federal and state regulatory agencies, to Authorized Dealerships and to other third
18 parties:

- 19 (a) misrepresentations regarding the Defeat Device Vehicles' compliance
20 with applicable federal and state emissions requirements;
21 (b) omissions by which Defendants failed to disclose the existence and use of
22 defeat devices in the Defeat Device Vehicles
23 (c) misrepresentations regarding the fitness of the Defeat Device Vehicles
24 for their intended use;
25 (d) misrepresentations made for the purpose of gaining relevant federal and
26 state regulatory approval for the marketing and sale of Defeat Device
27 Vehicles;
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(e) omissions in filings made with relevant federal and state regulatory agencies about the inclusion of defeat devices in the Defeat Device Vehicles; and

(f) invoices and payments related to Defendants' improper scheme.

170. Defendants' uniform acts of concealment and omissions were knowing and intentional and were made for the purpose of deceiving Plaintiffs and members of the Class, deceiving relevant federal and state regulatory agencies, selling Defeat Device Vehicles and generating revenue, both for Defendants and for Authorized Dealerships, from the sale of those Defeat Device Vehicles.

171. Defendants knew or recklessly disregarded that their representations and omissions were material and were relied upon by Plaintiffs and members of the Class as shown by their purchase of, and payment for, Defeat Device Vehicles.

VIII. CLAIMS FOR RELIEF

A. Claims Brought on Behalf of the Nationwide Class

COUNT I

VIOLATIONS OF THE RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT (18 U.S.C. §§1962(c)-(d))

(On Behalf of All Plaintiffs and the Nationwide Class Against Defendants Volkswagen Group of America, Volkswagen AG, Audi AG, Audi of America, Porsche AG, and Porsche Cars of North America)

172. Plaintiffs incorporate by reference all of the foregoing allegations as if set forth fully herein.

173. Plaintiffs bring this claim on behalf of themselves and on behalf of the members of the Nationwide Class.

174. This Count is against Defendants Volkswagen Group of America, Volkswagen AG, Audi AG, Audi of America, Porsche AG, and Porsche Cars of North America.

1 175. This claim arises under 18 U.S.C. §§1962(a) – (d), which provides, in relevant
2 part, that:

3 (a) It shall be unlawful for any person who has received any income derived,
4 directly or indirectly, from a pattern of racketeering activity or through
5 collection of an unlawful debt in which such person has participated as a
6 principal within the meaning of section 2, title 18, United States Code, to
7 use or invest, directly or indirectly, any part of such income, or the
8 proceeds of such income, in acquisition of any interest in, or the
9 establishment or operation of, any enterprise which is engaged in, or the
10 activities of which affect, interstate or foreign commerce.

11 (b) It shall be unlawful for any person through a pattern of racketeering
12 activity or through collection of an unlawful debt to acquire or maintain,
13 directly or indirectly, any interest in or control of any enterprise which is
14 engaged in, or the activities of which affect, interstate or foreign
15 commerce.

16 (c) It shall be unlawful for any person employed by or associated with any
17 enterprise engaged in, or the activities of which affect, interstate or
18 foreign commerce, to conduct or participate, directly or indirectly, in the
19 conduct of such enterprise's affairs through a pattern of racketeering
20 activity or collection of unlawful debt.

21 (d) It shall be unlawful for any person to conspire to violate any of the
22 provisions of subsection (a), (b), or (c) of this section.

23 176. Volkswagen, one of the largest auto makers in the world, conducts its business
24 through various affiliates and subsidiaries, each of which is a separate legal entity. At all
25 relevant times, Defendants Volkswagen Group of America, Volkswagen AG, Audi AG, Audi of
26 America, Porsche AG, and Porsche Cars of North America, were "person[s]," as defined in 18
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1 U.S.C. §1961(3), because they were "capable of holding a legal or beneficial interest in
2 property."

3 177. In an effort to expand its global reach, market share, and standardization of
4 vehicle marketing and sales in the United States, Volkswagen AG formed Volkswagen Group
5 of America, a New Jersey company headquartered in Virginia. Volkswagen AG has hiring and
6 firing authority over the executive officers of Volkswagen Group of America, as well as
7 oversight of Volkswagen Group of America's operations, and tight control over the design,
8 manufacture, testing and marketing of the Defeat Device Vehicles. At all times, Volkswagen
9 Group of America acted for or on behalf of Volkswagen AG in undertaking the acts and/or
10 omissions alleged herein. Volkswagen AG is the majority owner of Audi AG and Porsche AG.
11 Both Audi AG and Porsche AG formed wholly-owned subsidiaries, Audi of America and
12 Porsche Cars of North America, respectively, for the purpose of distributing and selling Audi
13 and Porsche vehicles within the United States of America. Volkswagen AG has oversight of
14 both Audi AG and Porsche AG, through which it maintains control of Audi of America and
15 Porsche Cars of North America.

16 178. Defendants Volkswagen Group of America, Volkswagen AG, Audi AG, Audi of
17 America, Porsche AG, Porsche Cars of North America, and third parties serving as Authorized
18 Dealers of Audi, Porsche and Volkswagen vehicles, constituted an association-in-fact
19 enterprise, that sold and distributed vehicles equipped with defeat devices, implemented by
20 Defendants, and through which they engaged in a pattern of racketeering activity, under
21 U.S.C. §1961(4). This enterprise is referred to herein as the "Defeat Device Enterprise."

22 179. Defendants are associated with the Defeat Device Enterprise.

23 180. Each participant in the Defeat Device Enterprise had a systematic linkage to
24 other participants through corporate ties, contractual relationships, financial ties, and continuing
25 coordination of activities. Through the Defeat Device Enterprise, Defendants and others
26 engaged in consensual decision-making, and functioned as a continuing unit for the common
27 purpose of generating revenues from the sale of vehicles.
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1 181. Defendants participated in the operation and management of the Defeat Device
2 Enterprise by directing its affairs, as described herein. While Defendants participated in, and
3 are members of, the Defeat Device Enterprise, they have a separate existence from the
4 Enterprise, including distinct offices, bank accounts, officers, directors, employees, and
5 financial statements.

6 182. The Defeat Device Enterprise was created and/or used as a tool to carry out the
7 elements of Defendants' illicit scheme and pattern of racketeering activity. The Defeat Device
8 Enterprise has structures and purposes beyond the scope and commission of Defendants'
9 predicate acts and conspiracy to commit such acts, and is separate and distinct from
10 Volkswagen AG.

11 183. Defendants, utilizing other members of the Defeat Device Enterprise, such as
12 Authorized Dealerships, had the common purpose of maximizing revenues and increasing
13 market share by falsely advertising and selling the Defeat Device Vehicles as fuel efficient,
14 performance-oriented and environmentally friendly "Clean Diesel" vehicles that were compliant
15 with applicable federal and state regulations. The members of the Defeat Device Enterprise
16 knew or recklessly disregarded the fact that the Defeat Device Vehicles were intentionally
17 designed to evade applicable federal and state emissions requirements.

18 184. The Defeat Device Enterprise engaged in, and its activities affected, interstate
19 and foreign commerce by designing, manufacturing, marketing, distributing and selling the
20 Defeat Device Vehicles to hundreds of thousands of persons in the United States.

21 185. Defendants exerted substantial control over the Defeat Device Enterprise, and
22 participated in the conduct of the affairs of the Defeat Device Enterprise by:

- 23 (a) knowingly designing the Defeat Device Vehicles with defeat devices;
24 (b) knowingly designing, manufacturing, importing, distributing and selling
25 Defeat Device Vehicles;
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- 1 (c) importing the Defeat Device Vehicles without valid EPA certificates of
- 2 conformity because the applications submitted in support of such
- 3 certificates were fraudulent;
- 4 (d) designing and distributing brochures, advertisements and marketing
- 5 materials that misrepresented and concealed the defeat devices installed
- 6 and operating in the Defeat Device Vehicles;
- 7 (e) misrepresenting or concealing the defective nature of the Defeat Device
- 8 Vehicles from the public and regulators; and/or
- 9 (f) collecting revenues and profits from the sale of such products.

10 186. At all relevant times, Defendants knew of the ongoing scheme, were willing
11 participants in it, and profited from it.

12 187. Defendants directed and controlled the ongoing organization established to
13 implement the scheme at meetings and through communications of which Plaintiffs cannot fully
14 know at present, because all such information lies in Defendants' and others' hands.

15 188. Defendants committed, or aided and abetted the commission of, at least two
16 predicate acts of racketeering activity (*i.e.*, violations of 18 U.S.C. §§1341 and 1343), within the
17 past ten years. The multiple acts of racketeering activity that they engaged in or conspired to, or
18 aided or abetted in the commission of, were related to each other, pose a threat of continued
19 racketeering activity, and therefore constitute a "pattern of racketeering activity." The
20 racketeering activity was made possible by Defendants' regular use of the facilities, services,
21 distribution channels, and employees of the Defeat Device Enterprise.

22 189. The predicate acts of racketeering (18 U.S.C. §1961(1)) committed by
23 Defendants include, but are not limited to:

- 24 (a) Mail Fraud: Defendants violated 18 U.S.C. §1341, by sending or
- 25 receiving, or causing to be sent or received, materials via U.S. mail or
- 26 commercial interstate carriers for the purpose of executing the unlawful
- 27 scheme to design, manufacture, market, distribute and sell the Defeat
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1 Device Vehicles by means of false pretenses, misrepresentations,
2 promises, and omissions.

3 (b) Wire Fraud: Defendants violated 18 U.S.C. §1343, by transmitting and
4 receiving, or causing to be transmitted or received, materials by wire for
5 the purpose of executing the unlawful scheme to defraud and obtain
6 money on false pretenses, misrepresentations, promises, and omissions.

7 190. Defendants used, or directed the use of, interstate mail and wire communications
8 to create, operate and manage the scheme through virtually uniform misrepresentations,
9 concealments and material omissions. Defendants' fraudulent use of the mails and wires
10 included, but were not limited to, the transmission, delivery, or shipment of:

- 11 (a) the Defeat Device Vehicles;
- 12 (b) falsified emissions tests;
- 13 (c) fraudulent applications for EPA certificates of conformity;
- 14 (d) documents and communications that facilitated the falsified emissions
15 tests;
- 16 (e) false representations and applications to the CARB;
- 17 (f) false or misleading communications intended to lull the public and
18 regulators from discovering the defeat devices;
- 19 (g) sales and marketing materials, including brochures, advertising, websites,
20 product packaging, and labeling, which misrepresented and concealed the
21 true nature of the Defeat Device Vehicles;
- 22 (h) documents intended to facilitate the manufacture and importation of the
23 Defeat Device Vehicles, including bills of lading, shipping records,
24 reports and correspondence;
- 25 (i) documents to process and receive payment for the Defeat Device
26 Vehicles by unsuspecting consumers, including invoices and receipts;
- 27 (j) deposits of proceeds; and
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1 (k) other documents and things, including electronic communications.

2 191. Based on information and belief, Volkswagen AG, Audi AG, Porsche AG,
3 Volkswagen Group of America, Audi of America, or Porsche Cars of North America personnel,
4 for the purpose of executing the above-described scheme, caused to be delivered, or received,
5 shipments of the Defeat Device Vehicles and related documents by mail or a private interstate
6 carrier affecting interstate commerce as well as interstate wire communications and payments,
7 including the advertisements alleged above and transactions alleged below:

8 (a) sales and marketing materials, including advertising, brochures, websites,
9 product packaging, and labeling, which misrepresented and concealed the
10 true nature of the Defeat Device Vehicles;

11 (b) documents intended to facilitate the manufacture and importation of the
12 Defeat Device Vehicles, including bills of lading, shipping records,
13 reports and correspondence;

14 (c) documents to process and receive payment for the Defeat Device
15 Vehicles by unsuspecting consumers, including invoices and receipts;

16 (d) deposits of proceeds; and

17 (e) other documents and things, including electronic communications.

18 192. Based on information and belief, Volkswagen AG, Audi AG, Porsche AG,
19 Volkswagen Group of America, Audi of America, or Porsche Cars of North America personnel,
20 for the purpose of executing the above-described scheme, caused to be delivered, or received,
21 shipments of the Defeat Device Vehicles and related documents by mail or by private interstate
22 carrier affecting interstate commerce as well as interstate wire communications and payments,
23 including the advertisements alleged above and transactions alleged below:

24 193. Volkswagen also used the internet and other electronic facilities to carry out the
25 scheme and conceal the ongoing fraudulent activities. Specifically, Defendants made
26 representations about the Defeat Device Vehicles on their websites, YouTube, and through ads
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1 and reviews online, all of which were intended to mislead the public about the fuel-efficiency,
2 emissions standards, and other performance metrics.

3 194. Defendants also communicated by U.S. mail, by interstate facsimile, and by
4 interstate electronic mail with various other affiliates, regional offices, divisions, Auto
5 Dealerships and other third-party entities in furtherance of the scheme.

6 195. The mail and wire transmissions described herein were made in furtherance of
7 Defendants' scheme to deceive consumers and lure them into purchasing Defeat Device
8 Vehicles, which Defendants knew or recklessly disregarded as failing to comply with federal
9 and state emissions standards. These acts of mail and wire fraud were not committed in
10 isolation; rather, they were related and posed a threat of continued fraudulent activity, and
11 therefore constitute a pattern of racketeering activity.

12 196. The precise dates of the fraudulent uses of the U.S. mail and interstate wire
13 facilities have been deliberately hidden, and cannot be alleged without access to Defendants'
14 books and records.

15 197. Defendants and other members of the Defeat Device Enterprise have obtained
16 money and property belonging to Plaintiffs and the members of the Class as a result of these
17 violations. Plaintiffs and members of the Class have been injured in their business or property
18 by Defendants' overt acts of mail and/or wire fraud, and by their aiding and abetting others' acts
19 of mail and wire fraud.

20 198. Defendants have undertaken the practices described herein as part of a common
21 scheme and conspiracy. In violation of 18 U.S.C. §1962(d), Defendants conspired to violate 18
22 U.S.C. §1962(c), as described herein.

23 199. Various other persons, firms and corporations, including entities not named as
24 defendants herein, have participated as co-conspirators with Defendants in these offenses and
25 have performed acts in furtherance of the conspiracy.

26 200. Defendants aided and abetted others in the violations of the above laws, thereby
27 rendering them indictable as a principal in the 18 U.S.C. §§1341 and 1343 offenses.
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1 201. Defendants engaged in a conspiracy to: (a) increase or maintain revenues; (b)
2 increase market share; and (c) minimize losses of revenues or profits for Defendants and their
3 co-conspirators.

4 202. To achieve these goals, Defendants hid from Plaintiffs, members of the Class and
5 the general public the unlawfulness and emissions dangers of the Defeat Device Vehicles and
6 hid the fact that these vehicles were equipped with defeat devices.

7 203. Defendants and each member of the conspiracy, with knowledge and intent,
8 agreed to the overall objectives of the conspiracy and participated in the common course of
9 conduct to commit acts of fraud in designing, manufacturing, distributing, marketing, and
10 selling the Defeat Device Vehicles.

11 204. Plaintiffs and members of the Class have been injured in their property by the
12 violations of 18 U.S.C. §§1962(c) and 1962(d), including the loss of value of their vehicles,
13 incurred fuel costs, and other related expenses. In the absence of the fraudulent scheme,
14 Plaintiffs and the Class would not have incurred these economic losses.

15 205. The injuries suffered by Plaintiffs and members of the Class were directly and
16 proximately caused by Defendants' racketeering activities.

17 206. Defendants knew and intended that Plaintiffs and members of the Class would
18 rely on the misrepresentations and omissions about the engines and emissions systems of the
19 Defeat Device Vehicles and their compliance with federal and state emissions standards.

20 207. Defendants knew and intended that consumers would incur costs as a result. As
21 fully alleged herein, Plaintiffs, along with thousands of other consumers, did place such reliance
22 upon Defendants' representations and omissions.

23 208. Because of this deceptive scheme and conspiracy, Plaintiffs and members of the
24 Class purchased vehicles that, as designed and manufactured are not compliant with federal and
25 state emissions standards, rendering those vehicles worth substantially less than what Plaintiffs
26 and members of the Class paid for them. But for the scheme, Plaintiffs and the Class would not
27 have purchased the Defeat Device Vehicles. Therefore, the damages suffered by Plaintiffs and
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1 the Class may be measured by the amount paid for the vehicles, totaling many billions of
2 dollars, even without trebling their damages.

3 209. Pursuant to 18 U.S.C. §1964(c), Plaintiffs are entitled to recover three times their
4 actual damages as proven at trial, plus interest, the costs of bringing this suit, and reasonable
5 attorneys' fees.

6
7 **COUNT II**
8 **VIOLATION OF MAGNUSON-MOSS WARRANTY ACT**
9 **(15 U.S.C. § 2301, *et seq.*)**

10 210. Plaintiffs incorporate by reference all allegations set forth above as if set forth
11 fully herein.

12 211. Plaintiffs bring this claim on behalf of themselves and on behalf of the members
13 of the Nationwide Class.

14 212. Plaintiffs and Class Members are "consumers" within the meaning of the
15 Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(3).

16 213. Defendants are "suppliers" and "warrantors" within the meaning of the
17 Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(4)-(5).

18 214. Defeat Device Vehicles are "consumer products" within the meaning of the
19 Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(1). Title 15, United States Code, section
20 2310(d)(1) provides a cause of action for any consumer who is damaged by the failure of a
21 warrantor to comply with a written or implied warranty.

22 215. Defendants' express warranties are written warranties within the meaning of the
23 Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(6). Implied warranties for Defeat Device
24 Vehicles are covered under 15 U.S.C. § 2301(7). As described in detail above, Defendants
25 breached these warranties.

26 216. Defeat Device Vehicles share a common Defeat in that they were designed and
27 manufactured with a defeat device that prevents the vehicles from complying with applicable
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1 federal and state laws and regulations including, but not limited to, the Clean Air Act, when
2 being driven under normal conditions.

3 217. Plaintiffs and other members of the Class have had sufficient direct dealings with
4 either Defendants or their agents (Authorized Dealerships and technical support) to establish
5 privity of contract between Defendants, on one hand, and Plaintiffs and each member of the
6 Class on the other hand. In addition, Plaintiffs and each of the other members of the Class are
7 intended third-party beneficiaries of contracts between Defendants and Authorized Dealerships,
8 and specifically, of Defendants' express and implied warranties. The Authorized Dealerships
9 were not intended to be the ultimate consumers of Defeat Device Vehicles and have no rights
10 under the warranty agreements provided with these vehicles; the warranty agreements were
11 designed for and intended to benefit the consumers only.

12 218. Plaintiffs Schricker, Shoaf, Kruse, Wobbe, Hewitt, Kruse, Mason, Haxton, Cobb,
13 Merrow, Hollis, Foster, Roberts, Rudolph, Ewart, Remnek, Keller and Reid afforded
14 Defendants a reasonable opportunity to cure their fraud and breach of written warranties and
15 wholly compensate them for their damage. Defendants rejected each of Plaintiffs written
16 requests, demonstrating that any written demand would be futile and should be excused.

17 219. At the time of sale or lease of each Class Vehicle, Defendants knew, should have
18 known, or were reckless in not knowing of their misrepresentations and omissions concerning
19 Defeat Device Vehicles and their inability to perform as warranted. Despite this knowledge,
20 Defendants failed to rectify the situation and/or disclose the Defeat and have subsequently
21 refused Plaintiffs demands that they remedy the defects in the Defeat Device Vehicles. Thus
22 remedies available under any informal settlement procedure would be inadequate and any
23 requirement that Plaintiffs resort to an informal dispute resolution procedure and/or afford
24 Defendants a reasonable opportunity to cure their breach of warranties is excused and thereby
25 deemed satisfied.

26 220. Plaintiffs and other members of the Class would suffer economic hardship if they
27 returned their Defeat Device Vehicles but did not receive the return of all payments made by
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1 them. Because Defendants are refusing to acknowledge any revocation of acceptance and return
 2 immediately any payments made, Plaintiffs and the other members of the Class have not re-
 3 accepted these vehicles by retaining them.

4 221. The amount in controversy of Plaintiffs' individual claims meets or exceeds the
 5 sum of \$25. The amount in controversy of this action exceeds the sum of \$50,000, exclusive of
 6 interest and costs, computed on the basis of all claims to be determined in this lawsuit.

7 222. Plaintiffs, individually and on behalf of all other members of the Class, seek all
 8 damages permitted by law, including diminution in value of the Defeat Device Vehicles in an
 9 amount to be proven at trial.

10
 11 **B. Claims Brought on Behalf of the Alabama Subclass**

12
 13 **COUNT III**
 14 **VIOLATIONS OF THE ALABAMA DECEPTIVE TRADE PRACTICES ACT**
 15 **("ADTPA")**
 16 **(ALA. CODE 1975 § 8-19-1 et seq.)**
 17 **(On Behalf of the Alabama Subclass)**

18 223. Plaintiff Sandy Cobb ("Plaintiff" for purposes of all claims brought on behalf of
 19 the Alabama Subclass) incorporates by reference the allegations set forth above as if set forth
 20 fully herein.

21 224. Plaintiff brings this claim on behalf of herself and the Alabama Subclass.

22 225. Defendants' misrepresentations, active concealment, and failures to disclose
 23 violated the ADTPA in the following manner:

- 24 a. Defendants misrepresented that the Defeat Device Vehicles had characteristics,
 25 benefits, qualities or uses that they did not have (Ala. Code § 8-19-5(5));
- 26 b. Defendants misrepresented that the Defeat Device Vehicles were of a particular
 27 standard, quality, and/or grade when they were of another (Ala. Code § 8-19-
 28 5(7)); and

1 c. Defendants advertised the Defeat Device Vehicles with an intent not to sell them
2 as advertised (Ala. Code § 8-19-5(9)).

3 226. Defendants conduct is generally and specifically within the meaning of the
4 Alabama Deceptive Trade Practices Act, Ala. Code § 8-19-1 et seq. and in the course of
5 business that is prohibited, unfair, and deceptive.

6 227. The foregoing acts and omissions of the Defendants were undertaken willfully,
7 intentionally, and knowingly as part of its routine business.

8 228. Defendants' misrepresentations and omissions were material to Plaintiff and
9 members of the Alabama Subclass, such that a reasonable person would consider them
10 important in deciding whether to purchase the Defeat Device Vehicles and had Plaintiff and
11 members of the Alabama Subclass known the truth, they would have acted differently.

12 229. The conduct described herein has tremendous potential to be repeated where
13 other consumers similarly-situated will be treated with the same unscrupulous, unethical, unfair
14 and deceptive acts and practices.

15 230. As a direct and proximate result of the above described practices, Plaintiff and
16 members of the Alabama Subclass sustained damages in an amount to be proven at trial.

17
18 **COUNT IV**
19 **BREACH OF CONTRACT**
20 **(On Behalf of the Alabama Subclass)**

21 231. Plaintiff Cobb ("Plaintiff" for purposes of all claims brought on behalf of the
22 Alabama Subclass) incorporates by reference all allegations set forth above as if set forth fully
23 herein.

24 232. Plaintiff brings this claim on behalf of herself and the Alabama Subclass.

25 233. Defendants breached this warranty or contract obligation by failing to repair or
26 replace the defective emissions systems on the Defeat Device Vehicles.
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1 were "clean," fuel efficient, and compliant with federal and state emission laws, regulations, and
2 standards.

3 241. As set forth in detail above, Defendants knew that the Defeat Device Vehicles
4 were not "clean" and were not compliant with federal and state emission laws, regulations and
5 standards.

6 242. Plaintiff is informed and believes, and thereon alleges, that Defendants
7 undertook a systematic pattern of misrepresenting the true nature of the Defeat Device Vehicles,
8 including but not limited to the true nature of their emissions. The exact misrepresentations
9 made by Defendants are known exclusively by Defendants and the unidentified members of the
10 Alabama Subclass. This Complaint will be amended, if required, to specify each and every
11 misrepresentation made by Defendants in their advertisements, sales and marketing materials,
12 etc.

13 243. By misrepresenting the true nature of the Defeat Device Vehicles, Defendants
14 misrepresented to Plaintiff, members of the Alabama Subclass, the EPA, CARB and other
15 governmental agencies the actual amount of harmful emissions being placed into the
16 environment by the Defeat Device Vehicles. Additionally, Plaintiff and members of the
17 Alabama Subclass paid more for their vehicles than they otherwise would have paid for similar
18 vehicles that did not purport to be "clean" and fuel efficient.

19 244. Plaintiff is informed and believes, and thereon alleges, that these types of
20 misrepresentations concerning the environmental impact of the Defeat Device Vehicles were
21 commonly made by Defendants, caused by Defendants to be made and provided to Plaintiff and
22 other members of the Alabama Subclass. These common misrepresentations are material in that
23 the amount paid by Plaintiff and other members of the Alabama Subclass for the Defeat Device
24 Vehicles and the prices of these vehicles were inflated as a result of the misrepresentations.
25 Defendants' representations concerning the true nature of vehicles equipped with defeat devices
26 were, in fact, false and intentionally made to mislead Plaintiff and other members of the
27 Alabama Subclass.

1 245. The common representations made by Defendants regarding the Defeat Device
2 Vehicles were made with the intention to induce Plaintiff and the other members of the
3 Alabama Subclass to rely upon them in order to induce the purchase the vehicles.

4 246. Reliance by Plaintiff and the other members of the Alabama Subclass upon
5 Defendants' representations was reasonable and justified under the circumstances alleged
6 herein.

7 247. Reliance by Plaintiff and the other members of the Alabama Subclass upon
8 Defendants' representations was reasonable and justified given the fact that Defendants are a
9 highly-regulated automobile manufacturer and distributor, with a legal duty to accurately
10 calculate and report emission levels to the EPA and various state regulators. Plaintiff and other
11 members of the Alabama Subclass had a right to rely on Defendants to accurately represent the
12 information concerning the Defeat Device Vehicles.

13 248. Reliance by Plaintiff and the other members of the Alabama Subclass on
14 Defendants' representations was reasonable and justified given the belief by Plaintiff and the
15 other members of the Alabama Subclass that Defendants would act in good faith in reporting
16 information to the EPA and similar state regulators.

17 249. Plaintiff and the other members of the Alabama Subclass had no reason to
18 believe that the representations made to the EPA in Defendants' applications for certificates of
19 conformity for the Defeat Device Vehicles.

20 250. Plaintiff is informed and believes, and thereon alleges that, in reliance on these
21 representations, Plaintiff and the other members of the Alabama Subclass were induced to and
22 did purchase the Defeat Device Vehicles based upon misrepresentations made by, or caused to
23 be made by, Defendants.

24 251. As a proximate result of Defendants' wrongful acts and omissions as alleged
25 herein, Plaintiff and the other members of the Alabama Subclass have been damaged in an
26 amount according to proof at time of trial including, but not limited to, damages needed to
27 compensate Plaintiff and the other members of the Alabama Subclass for the loss in fair market
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1 value that each of the Defeat Device Vehicles will suffer, as well as increased costs that may
2 result due to decreases in vehicle performance once the Defeat Device Vehicles are fixed
3 through recall and brought into environmental compliance, assuming such a fix is possible.
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5 **COUNT VI**
6 **NEGLIGENT MISREPRESENTATION**
7 **(On Behalf of the Alabama Subclass)**

8 252. Plaintiff Cobb ("Plaintiff" for purposes of all claims brought on behalf of the
9 Alabama Subclass) incorporates by reference all allegations set forth above as if set forth fully
10 herein.

11 253. Plaintiff brings this claim on behalf of herself and the Alabama Subclass.

12 254. Defendants had a duty to provide honest and accurate information to customers
13 so that customers could make informed decisions regarding the purchase or lease of
14 automobiles.

15 255. Defendants specifically and expressly misrepresented material facts to Plaintiff
16 and the other members of the Alabama Subclass, as set forth in detail above, including, but not
17 limited to representations that the Defeat Device Vehicles complied with federal and state
18 emissions laws, regulations and standards and possessed certain performance and fuel economy
19 characteristics.

20 256. Defendants knew, or in the exercise of reasonable diligence should have known,
21 that the ordinary consumer would be misled by these misrepresentations.

22 257. Plaintiff Cobb and the other members of the Alabama Subclass justifiably relied
23 on Defendants' misrepresentations and have been damaged thereby.
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1 **C. Claims Brought on Behalf of the Arizona Subclass**

2
3 **COUNT VII**
4 **VIOLATIONS OF THE CONSUMER FRAUD ACT**
5 **(ARIZ. REV. STAT. §§ 44-1521, *et seq.*)**

6 258. Plaintiff Christopher H. Schricker ("Plaintiff" for purposes of all claims brought
7 on behalf of the Arizona Subclass) incorporates by reference the allegations set forth above as if
8 set forth fully herein.

9 259. Plaintiff Schricker brings this claim on behalf of himself and the Arizona
10 Subclass.

11 260. Plaintiff and Volkswagen are each "persons" as defined by ARIZ. REV. STAT. §
12 44-1521(6). The Defeat Device Vehicles are "merchandise" as defined by ARIZ. REV. STAT.
13 § 44-1521(5).

14 261. The Arizona Consumer Fraud Act proscribes "[t]he act, use or employment by
15 any person of any deception, deceptive act or practice, fraud, false pretense, false promise,
16 misrepresentation, or concealment, suppression or omission of any material fact with intent that
17 others rely upon such concealment, suppression or omission, in connection with the sale or
18 advertisement of any merchandise whether or not any person has in fact been misled, deceived
19 or damaged thereby."

20 262. By failing to disclose and actively concealing that the Defeat Device Vehicles
21 were not EPA-compliant, Volkswagen engaged in deceptive business practices prohibited by
22 the Arizona Consumer Fraud Act, ARIZ. REV. STAT. § 44-1522(A), including (1) representing
23 that Defeat Device Vehicles have characteristics, uses, benefits, and qualities which they do not
24 have, (2) representing that Defeat Device Vehicles are of a particular standard, quality, and
25 grade when they are not, (3) advertising Defeat Device Vehicles with the intent not to sell them
26 as advertised, and (4) engaging in acts or practices which are otherwise unfair, misleading,
27 false, or deceptive to the consumer.
28

1 263. As alleged above, Volkswagen made numerous material statements about the
2 benefits and characteristics of the 2.0 liter and 3.0 liter TDI Clean Diesel engines that were
3 either false or misleading. Each of these statements contributed to the deceptive context of
4 Volkswagen's unlawful advertising and representations as a whole.

5 264. Volkswagen knew that the Defeat Device Vehicles were defectively designed or
6 manufactured, did not comply with EPA regulations, used a "defeat device," and were not
7 suitable for their intended use. Volkswagen nevertheless failed to warn Plaintiff about its use of
8 defeat devices despite having a duty to do so.

9 265. Volkswagen owed Plaintiff a duty to disclose the defective nature of the Defeat
10 Device Vehicles, because Volkswagen:

- 11 i) Possessed exclusive knowledge of the use of defeat devices rendering the
12 Defeat Device Vehicles illegal under EPA regulations;
- 13 ii) Intentionally concealed the defects associated with Defeat Device
14 Vehicles through its deceptive marketing campaigns and use of the
15 "defeat devices" that it designed to hide the defects in the Defeat Device
16 Vehicles; and/or
- 17 iii) Made incomplete representations and/or omissions about the
18 characteristics and performance of the Defeat Device Vehicles generally,
19 while purposefully withholding material facts from Plaintiffs that
20 contradicted these representations.

21 266. Volkswagen's unfair or deceptive acts or practices were likely to and did in fact
22 deceive reasonable consumers, including Plaintiff, about the true performance and
23 characteristics of the Defeat Device Vehicles.

24 267. Volkswagen's wanton and/or reckless actions, including the use of defeat
25 devices in multiple revisions of the 2.0 liter TDI Clean Diesel engine as well as the 3.0 liter TDI
26 Clean Diesel engine for the purpose of falsely indicating that the vehicles were compliant with
27
28

1 applicable federal and state emissions requirements demonstrates a reckless indifference to
2 others.

3 268. As a result of its violations of the Arizona Consumer Fraud Act detailed above,
4 Volkswagen caused actual damage to Plaintiff and, if not stopped, will continue to harm
5 Plaintiff.

6 269. Plaintiff currently owns or leases, or within the class period owned or leased, a
7 Defeat Device Vehicle that is defective. Defects associated with the Defeat Device Vehicles
8 have caused the value of the vehicle to decrease.

9 270. Plaintiff and the other members of the Arizona Subclass sustained damages as a
10 result of the Volkswagen's unlawful acts and are, therefore, entitled to damages and other relief
11 as provided under the Arizona Consumer Fraud Act.

12 271. Plaintiff also seeks punitive damages as provided under the Arizona Consumer
13 Fraud Act.

14 272. Plaintiff also seeks court costs and attorneys' fees as a result of Volkswagen's
15 violation of the Arizona Consumer Fraud Act as provided in ARIZ. REV. STAT. § 12-341.01.
16

17 **COUNT VIII**
18 **FRAUDULENT CONCEALMENT**
19 **(On Behalf of the Arizona Subclass)**

20 273. Plaintiff Schricker ("Plaintiff" for purposes of all claims brought on behalf of the
21 Arizona Subclass) incorporates by reference the allegations set forth above as if set forth fully
22 herein.

23 274. Plaintiff Schricker brings this claim on behalf of himself and the Arizona
24 Subclass. Volkswagen intentionally concealed that the 2.0 liter and 3.0 liter TDI Clean Diesel
25 engines were not EPA-compliant and used a defeat device, or acted with reckless disregard for
26 the truth, and denied Plaintiff and the other members of the Arizona Subclass information that is
27 highly relevant to their purchasing decision.
28

1 275. Volkswagen further affirmatively misrepresented to Plaintiff in advertising and
2 other forms of communication, including standard and uniform material provided with each car,
3 that the Defeat Device Vehicles it was selling were new, had no significant defects, complied
4 with EPA regulations and would perform and operate properly when driven in normal usage.

5 276. Volkswagen knew these representations were false when made.

6 277. The Defeat Device Vehicles purchased or leased by Plaintiff and the other
7 members of the Arizona Subclass were, in fact, defective, non-EPA compliant, unsafe, and
8 unreliable because the Defeat Device Vehicles contained faulty and defective 2.0 liter and 3.0
9 liter TDI Clean Diesel engines and emissions systems, as alleged herein.

10 278. Volkswagen had a duty to disclose that these Defeat Device Vehicles were
11 defective, unsafe, non-EPA compliant and unreliable in that certain crucial emissions functions
12 of the Defeat Device Vehicles would be rendered inoperative due to the inclusion of a defeat
13 device in them, because Plaintiff and the other members of the Arizona Subclass relied on
14 Defendants' material representations that the Defeat Device Vehicles they were purchasing were
15 safe, environmentally clean, efficient and free from defects.

16 279. The aforementioned concealment was material because, had it been disclosed,
17 Plaintiff and the other members of the Arizona Subclass would not have bought or leased the
18 Defeat Device Vehicles, or would not have bought or leased those Defeat Device Vehicles at
19 the prices they paid.

20 280. The aforementioned representations were material because they were facts that
21 would typically be relied on by a person purchasing or leasing a new motor vehicle. Defendants
22 knew or recklessly disregarded that its representations were false because Defendants knew that
23 use of the defeat devices was necessary for Defeat Device Vehicles to pass EPA emissions
24 requirements.

25 281. Defendants intentionally made the false statements in order to sell Defeat Device
26 Vehicles.

1 members of the Arizona Subclass would not have purchased or leased these Defeat Device
2 Vehicles, would not have purchased or leased these Defeat Device Vehicles at the prices they
3 paid, and/or would have purchased or leased less expensive alternative vehicles that did not
4 contain the 2.0 liter TDI Clean Diesel engine or 3.0 liter TDI Clean Diesel engine and which
5 were not marketed as including such a system. Accordingly, Plaintiff and the other members of
6 the Arizona Subclass overpaid for their Defeat Device Vehicles and did not receive the benefit
7 of their bargain.

8 288. Each and every sale or lease of a Defeat Device Vehicle constitutes a contract
9 between Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by
10 selling or leasing to Plaintiff and the other members of the Arizona Subclass defective Defeat
11 Device Vehicles and by misrepresenting or failing to disclose the existence of the 2.0 liter TDI
12 Clean Diesel engines or 3.0 liter TDI Clean Diesel engines defect and/or defective design,
13 including information known to Volkswagen rendering each Defeat Device Vehicle non EPA-
14 compliant, and thus less valuable, than vehicles not equipped with a 2.0 liter TDI Clean Diesel
15 engine or a 3.0 liter TDI Clean Diesel engine.

16 289. As a direct and proximate result of Volkswagen's breach of contract, Plaintiff
17 and the members of the Arizona Subclass have been damaged in an amount to be proven at trial,
18 which shall include, but is not limited to, all compensatory damages, incidental and
19 consequential damages, and other damages allowed by law.

20
21 **COUNT X**
22 **NEGLIGENT MISREPRESENTATION**
23 **(On Behalf of the Arizona Subclass)**

24 290. Plaintiff Schricker ("Plaintiff" for purposes of all claims brought on behalf of the
25 Arizona Subclass) incorporates by reference the allegations set forth above as if set forth fully
26 herein.
27
28

1 291. Plaintiff Schricker brings this claim on behalf of himself and the Arizona
2 Subclass.

3 292. Defendants had a duty to provide honest and accurate information to customers
4 so that customers could make informed decisions regarding the purchase or lease of
5 automobiles.

6 293. Defendants specifically and expressly misrepresented material facts to Plaintiff
7 and the other members of the Arizona Subclass, as set forth in detail above, including, but not
8 limited to representations that the Defeat Device Vehicles complied with federal and state
9 emissions laws, regulations and standards and possessed certain performance and fuel economy
10 characteristics.

11 294. Defendants knew, or in the exercise of reasonable diligence should have known,
12 that the ordinary consumer would be misled by these misrepresentations.

13 295. Plaintiff Schricker and the other members of the Arizona Subclass justifiably
14 relied on Defendants' misrepresentations and have been damaged thereby.

15
16 **D. Claims Brought on Behalf of the Arkansas Subclass**

17
18 **COUNT XI**
19 **VIOLATION OF THE ARKANSAS DECEPTIVE**
20 **TRADE PRACTICES ACT**

21 296. Plaintiffs Jeremy Hollis and Karla Merrow ("Plaintiffs" for purposes of all
22 claims brought on behalf of the Arkansas Subclass) incorporate by reference the allegations set
23 forth above as if fully set forth herein.

24 297. Plaintiffs bring this claim on behalf of themselves and the Arkansas subclass.

25 298. The Arkansas Deceptive Trade Practices Act prohibits unconscionable, false, and
26 deceptive acts or practices in business, commerce, or trade, including knowingly making false
27 representations as to the characteristics, ingredients, uses, benefits, alterations, source,
28 sponsorship, approval, or certification of goods or services or as to whether goods are original

1 or new or of a particular standard, quality, grade, style, or model and the omission of any
2 material fact in connection with the sale or advertising of goods with the intent that others rely
3 upon the omission. Ark. Stat. §§ 4-88-107; 4-88-108.

4 299. Plaintiffs and the other members of the Arkansas Subclass are consumers that
5 purchased or leased a Defeat Device Vehicle for end use and not for resale.

6 300. Volkswagen's conduct as described herein, in the conduct of trade and commerce
7 in Arkansas, in misrepresenting the capabilities and character of Defeat Device Vehicles and in
8 installing defeat devices designed to deceive members of the Class and regulators and to
9 conceal and suppress the actual quantity and quality of emissions, constitutes unconscionable,
10 false, and deceptive acts or practices likely to mislead a reasonable consumer.

11 301. A reasonable consumer would consider whether the vehicle satisfied federal
12 emission standards or had a defeat device a material consideration when purchasing a vehicle.
13 Had Plaintiffs or the other member of the Arkansas Subclass known that the Defeat Device
14 Vehicles failed to comply with emission standards or were equipped with an illegal defeat
15 device, they would not have purchased a Defeat Device Vehicle.

16 302. Volkswagen's unfair and deceptive acts or practices were the foreseeable and
17 actual cause of Plaintiffs and the other members' of the Arkansas Subclass damages on account
18 of overpaying for a car that did not conform to specifications. Moreover, if Volkswagen cures
19 the noncompliance with emission standards, the Defeat Device Vehicles will not possess the
20 same engine performance, and fuel efficiency as before. As a result, the Defeat Device
21 Vehicles will fail to conform to representations, specifications, and warranties even if
22 Volkswagen recalls the Defeat Device Vehicles and rectifies their noncompliance with emission
23 standards. In addition, the Defeat Device Vehicles will cost more to operate and maintain, and
24 their resale value will be substantially diminished.

COUNT XII
BREACH OF CONTRACT
(On Behalf of the Arkansas Subclass)

303. Plaintiffs Hollis and Merrow ("Plaintiffs" for purposes of all claims brought on behalf of the Arkansas Subclass) incorporate by reference the allegations set forth above as if fully set forth herein.

304. Plaintiffs bring this claim on behalf of themselves and the Arkansas subclass. Defendants breached this warranty or contract obligation by failing to repair or replace the defective emissions systems on the Defeat Device Vehicles.

305. The material terms of the contract also included the implied covenant of good faith and fair dealing, whereby Defendants promised that they would, in good faith and in the exercise of fair dealing, deal with Plaintiffs the other members of the Arkansas Subclass fairly and honestly and do nothing to impair, interfere with, hinder, or potentially injure Plaintiffs' and the other members of the Arkansas Subclass' rights and benefits under the contract.

306. Plaintiffs and the other members of the Arkansas Subclass have performed all conditions, covenants, and promises required by each of them on their part to be performed in accordance with the terms and conditions of the contract

307. Defendants breached the contract and the implied covenant of good faith and fair dealing by, *inter alia*, including a defeat device in the Defeat Device Vehicles, thus rendering these Defeat Device Vehicles out of compliance with federal and state emissions laws, regulations and standards.

308. As a direct and proximate result of Defendants' breach of contract or common law warranty, Plaintiffs and the other members of the Arkansas Subclass have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

COUNT XIII
FRAUDULENT CONCEALMENT
(Based on Arkansas law)

309. Plaintiffs Hollis and Merrow ("Plaintiffs" for purposes of all claims brought on behalf of the Arkansas Subclass) incorporate by reference the allegations set forth above as if fully set forth herein.

310. Plaintiffs bring this claim on behalf of themselves and the Arkansas subclass. Plaintiffs purchased Volkswagen Defeat Device Vehicles based upon representations and advertisements wherein Defendants stated that the Defeat Device Vehicles were "clean," fuel efficient, and compliant with federal and state emission laws, regulations, and standards.

311. As set forth in detail above, Defendants knew that the Defeat Device Vehicles were not "clean" and were not compliant with federal and state emission laws, regulations and standards.

312. Plaintiffs are informed and believe, and thereon allege, that Defendants undertook a systematic pattern of misrepresenting the true nature of the Defeat Device Vehicles, including but not limited to the true nature of their emissions. The exact misrepresentations made by Defendants are known exclusively by Defendants and the unidentified members of the Arkansas Subclass. This Complaint will be amended, if required, to specify each and every misrepresentation made by Defendants in their advertisements, sales and marketing materials, etc.

313. By misrepresenting the true nature of the Defeat Device Vehicles, Defendants misrepresented to Plaintiffs, members of the Arkansas Subclass, the EPA, CARB and other governmental agencies the actual amount of harmful emissions being placed into the environment by the Defeat Device Vehicles. Additionally, Plaintiffs and members of the Arkansas Subclass paid more for their vehicles than they otherwise would have paid for similar vehicles that did not purport to be "clean" and fuel efficient.

314. Plaintiffs are informed and believe, and thereon allege, that these types of misrepresentations concerning the environmental impact of the Defeat Device Vehicles were

1 commonly made by Defendants, caused by Defendants to be made and provided to Plaintiff and
2 other members of the Arkansas Subclass.

3 315. These common misrepresentations are material in that the amount paid by
4 Plaintiffs and other members of the Arkansas Subclass for the Defeat Device Vehicles were
5 inflated as a result of the misrepresentations. Defendants' representations concerning the true
6 nature of the Defeat Device Vehicles were, in fact, false and intentionally made to mislead
7 Plaintiffs and other members of the Arkansas Subclass.

8 316. The common representations made by Defendants regarding the Defeat Device
9 Vehicles were made with the intention to induce Plaintiffs and the other members of the
10 Arkansas Subclass to rely upon them in order to induce the purchase the vehicles.

11 317. Reliance by Plaintiffs and the other members of the Arkansas Subclass upon
12 Defendants' representations was reasonable and justified under the circumstances alleged
13 herein.

14 318. Reliance by Plaintiffs and the other members of the Arkansas Subclass upon
15 Defendants' representations was reasonable and justified given the fact that Defendants are a
16 highly-regulated automobile manufacturer and distributor, with a legal duty to accurately
17 calculate and report emission levels to the EPA and various state regulators. Plaintiffs and other
18 members of the Arkansas Subclass had a right to rely on Defendants to accurately represent the
19 information concerning the Defeat Device Vehicles.

20 319. Reliance by Plaintiffs and the other members of the Arkansas Subclass on
21 Defendants' representations was reasonable and justified given the belief by Plaintiffs and the
22 other members of the Arkansas Subclass that Defendants would act in good faith in reporting
23 information to the EPA and similar state regulators.

24 320. Plaintiffs and the other members of the Arkansas Subclass had no reason to
25 believe that the representations made to the EPA in Defendants' applications for certificates of
26 conformity for the Defeat Device Vehicles.

1 326. Defendants knew, or in the exercise of reasonable diligence should have known,
2 that the ordinary consumer would be misled by these misrepresentations.

3 327. Plaintiffs and the other members of the Arkansas Subclass justifiably relied on
4 Defendants' misrepresentations and have been damaged thereby.

5
6 **E. Claims Brought on Behalf of the California Subclass**

7
8 **COUNT XV**
9 **VIOLATION OF CALIFORNIA FALSE ADVERTISING LAW**
10 **(California Business & Professions Code §§ 17500, *et seq.*)**
11 **(On Behalf of the California Consumer Class)**

12 328. Plaintiffs Alex Reid, Matt Remnek and Adam Keller ("Plaintiffs" for the
13 purposes of all claims brought on behalf of the California Subclass) incorporate by reference the
14 allegations set forth above as if set forth fully herein.

15 329. Plaintiffs bring this claim on behalf of themselves and on behalf of the members
16 of the California Subclass.

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

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

1 330. Defendants caused to be made or disseminated through California and the United
2 States, through advertising, marketing and other publications, statements that were untrue or
3 misleading, including statements on the vehicle Monroney sticker and in nationally distributed
4 print and video advertisements that the Defeat Device Vehicles were "clean diesel." Defendants
5 also caused to be made or disseminated through California and the United States, through its
6 USA Warranty and Maintenance booklet, the misrepresentation that the Defeat Device Vehicles
7 were "designed, built and equipped so as to conform at the time of sale with all applicable
8 regulations of the United States Environmental Protection Agency (EPA), and [are] free from
9 Defeats in material and workmanship which causes the vehicle(s) to fail to conform with EPA
10 regulations." These statements were known, or which by the exercise of reasonable care should
11 have been known, to Defendants to be untrue and misleading to consumers, including Plaintiffs
12 and the other members of the California Subclass.

13 331. Defendants have violated section 17500 because the misrepresentations and
14 omissions regarding the safety, reliability, and functionality of the Defeat Device Vehicles as
15 set forth in this Complaint were material and likely to deceive a reasonable consumer.

16 332. Plaintiffs and the other members of the California Subclass have suffered an
17 injury in fact, including the loss of money or property, as a result of Defendants' unfair,
18 unlawful, and/or deceptive practices. In purchasing or leasing Defeat Device Vehicles, Plaintiffs
19 and the other members of the California Subclass relied on the misrepresentations and/or
20 omissions of Defendants with respect to the safety, reliability, and performance and fuel
21 economy characteristics of the Defeat Device Vehicles. Defendants' representations were not to
22 be true because the Defeat Device Vehicles were designed, manufactured, and distributed with a
23 defeat device designed solely to circumvent federal and state emissions laws, regulations and
24 standards. Had Plaintiffs and the other members of the California Subclass known this, they
25 would not have purchased or leased the Defeat Device Vehicles and/or paid as much for them.
26 Accordingly, Plaintiffs and other members of the California Subclass overpaid for their Defeat
27 Device Vehicles and did not receive the benefit of their bargain.

1 339. Defendants were fully aware of this issue, as evidenced by the fact that on
2 September 3, 2015, Volkswagen admitted to the EPA and CARB officials the existence of the
3 defeat device used in the 2.0 liter TDI Clean Diesel engine and as evidenced by subsequent
4 acknowledgements by Volkswagen executives as set forth in detail above.

5 340. Defendants were fully aware of this issue, as evidenced by the fact that in
6 November, 2015, Volkswagen admitted to the EPA and CARB officials the existence of the
7 defeat device used in the 3.0 liter TDI Clean Diesel engine and as evidenced by subsequent
8 acknowledgements by Volkswagen executives as set forth in detail above.

9 341. Plaintiffs and other members of the California Subclass have had sufficient direct
10 dealings with either Defendants or their agents (Authorized Dealerships) to establish privity of
11 contract between Plaintiffs and the other members of the California Subclass. Notwithstanding
12 this, privity is not required in this case because Plaintiffs and the other members of the
13 California Subclass are intended third-party beneficiaries of contracts between Defendants and
14 their Authorized Dealerships; specifically, they are the intended beneficiaries of Defendants'
15 implied warranties. The Authorized Dealerships were not intended to be the ultimate consumers
16 of the Defeat Device Vehicles and have no rights under the warranty agreements provided with
17 the Defeat Device Vehicles; the warranty agreements were designed for and intended to benefit
18 the ultimate consumers only. Finally, privity is also not required because the Defeat Device
19 Vehicles are dangerous instrumentalities due to the aforementioned defects.

20 342. As a direct and proximate result of Defendants' breach of the warranties of
21 merchantability, Plaintiffs and other members of the California Subclass have been damaged in
22 an amount to be proven at trial.
23
24
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COUNT XVII
VIOLATION OF CALIFORNIA CONSUMERS LEGAL REMEDIES ACT
(California Business & Professions Code §§ 1750, *et seq.*)

343. Plaintiffs Reid, Remnek and Keller ("Plaintiffs" for the purposes of all claims brought on behalf of the California Subclass) incorporate by reference the allegations set forth above as if set forth fully herein.

344. Plaintiffs bring this claim on behalf of themselves and on behalf of the members of the California Subclass.

345. California's Consumers Legal Remedies Act ("CLRA"), CAL. BUS. & PROF. 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."

346. The Defeat Device Vehicles are "goods" as defined in CAL. BUS. & PROF. CODE § 1761(a).

347. Plaintiffs and the other members of the California Subclass are "consumers" as defined in CAL. BUS. & PROF. CODE § 1761(d), and Plaintiffs, the other members of the California Subclass, and Volkswagen are "persons" as defined in CAL. BUS. & PROF. CODE § 1761(c).

348. As alleged above, Volkswagen made numerous representations concerning the benefits, efficiency, performance and safety features of the 2.0 liter TDI Clean Diesel engines and the 3.0 liter TDI Clean Diesel engines that were misleading.

349. In purchasing or leasing the Defeat Device Vehicles, Plaintiffs and the other members of the California Subclass were deceived by Volkswagen's failure to disclose that the Defeat Device Vehicles were equipped with engines and emissions systems that failed EPA and California emissions standards.

350. Volkswagen's conduct, as described hereinabove, was and is in violation of the CLRA. Volkswagen's conduct violates at least the following enumerated CLRA provisions:

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

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

352. Volkswagen knew, should have known, or was reckless in not knowing of the defective design and/or manufacture of the 2.0 liter and 3.0 liter TDI Clean Diesel engines, and that the Defeat Device Vehicles were not suitable for their intended use.

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

354. Plaintiffs have provided Volkswagen with notice of its violations of the CLRA pursuant to CAL. BUS. & PROF. CODE § 1782(a). Notice was transmitted to Volkswagen on behalf of plaintiff Alex Reid on October 6, 2015. Notice was transmitted to Volkswagen on

1 behalf of plaintiff Matt Remnek on November 16, 2015. Notice was transmitted to Volkswagen
2 on behalf of plaintiff Adam Keller on October 7, 2015.

3 355. Plaintiffs' and the other members of the California Subclass' injuries were
4 proximately caused by Volkswagen's fraudulent and deceptive business practices.

5 356. Therefore, Plaintiffs Reid, Remnek and Keller and the other members of the
6 California Subclass are entitled to equitable and monetary relief under the CLRA.

7
8 **COUNT XVIII**
9 **VIOLATION OF SONG-BEVERLY CONSUMER WARRANTY ACT FOR BREACH**
10 **OF EXPRESS WARRANTIES**
11 **(California Civil Code §§ 1791.2 and 1793.2)**
12 **(On Behalf of the California Consumer Class)**

13 357. Plaintiffs Reid, Remnek and Keller ("Plaintiffs" for the purposes of all claims
14 brought on behalf of the Alabama Subclass) incorporate by reference the allegations set forth
15 above as if set forth fully herein.

16 358. Plaintiffs bring this claim on behalf of themselves and on behalf of the members
17 of the California Subclass.

18 359. Plaintiffs and the other members of the Class who purchased or leased the Class
19 Vehicles in California are "buyers" within the meaning of California Civil Code § 1791(b).

20 360. The Defeat Device Vehicles are "consumer goods" within the meaning of
21 California Civil Code § 1791(a).

22 361. Defendants are "manufacturers" of the Defeat Device Vehicles within the
23 meaning of California Civil Code § 1791(j).

24 362. Plaintiffs and the other members of the California Subclass purchased or leased
25 new motor vehicles manufactured by Defendants.

26 363. Defendants made express warranties to Plaintiffs and the other members of the
27 California Subclass within the meaning of California Civil Code §§ 1791.2 and 1793.2, as
28 described above.

1 364. As set forth above, in the USA Warranty and Maintenance Booklet distributed
2 with each Defeat Device Vehicle, Defendants expressly warranted through the New Vehicle
3 Limited Warranty and through Federal Emissions Warranty that they would repair or replace
4 defects in material or workmanship free of charge if they became apparent during the warranty
5 period.

6 365. As set forth above in detail, the Defeat Device Vehicles are inherently defective
7 in that there are defects in the Defeat Device Vehicles' emissions system that render them out of
8 compliance with federal and state emissions standards. This defect was and continues to be
9 covered by Defendants' express warranties, and these defeat devices substantially impair the
10 use, value, functionality and safety of the Defeat Device Vehicles to reasonable consumers like
11 Plaintiffs and the California Subclass.

12 366. Defendants and their authorized repair facilities failed and continue to fail to
13 repair the Defeat Device Vehicles to match Defendants' written warranties after a reasonable
14 number of opportunities to do so.

15 367. Defendants and their authorized repair facilities refuse and have failed to replace
16 the defective emissions system, even when they represented to federal and state officials that
17 they were doing so.

18 368. Defendants did not promptly replace or buy back the Defeat Device Vehicles of
19 Plaintiffs and the California Subclass.

20 369. As a result of Defendants' breach of their express warranties, Plaintiffs and the
21 other members of the California Subclass received goods whose dangerous condition
22 substantially impairs their value to Plaintiffs and the other members of the California Subclass.
23 Plaintiffs and the other members of the California Subclass have been damaged as a result of the
24 diminished value of the Defeat Device Vehicles and/or the failure of the Defeat Device Vehicles
25 to possess the performance and/or fuel economy characteristics as advertised.

26 370. Pursuant to California Civil Code §§ 1793.2 & 1794, Plaintiffs and the other
27 members of the California Subclass are entitled to damages and other legal and equitable relief
28

1 including, at their election, the purchase price of their Defeat Device Vehicles, or the
2 overpayment or diminution in value of their Defeat Device Vehicles. Pursuant to California
3 Civil Code § 1794, Plaintiffs and the other members of the California Subclass are entitled to
4 costs and attorneys' fees.

5
6 **COUNT XIX**
7 **VIOLATION OF SONG-BEVERLY CONSUMER WARRANTY ACT FOR BREACH**
8 **OF IMPLIED WARRANTY OF MERCHANTABILITY**
9 **(California Civil Code §§ 1791.1 and 1792)**
10 **(On Behalf of the California Subclass)**

11 371. Plaintiffs Reid, Remnek and Keller ("Plaintiffs" for the purposes of all claims
12 brought on behalf of the Alabama Subclass) incorporate by reference the allegations set forth
13 above as if set forth fully herein.

14 372. Plaintiffs bring this claim on behalf of themselves and on behalf of the members
15 of the California Subclass.

16 373. Plaintiffs and the other members of the California Subclass who purchased or
17 leased the Defeat Device Vehicles in California are "buyers" within the meaning of California
18 Civil Code § 1791(b).

19 374. The Defeat Device Vehicles are "consumer goods" within the meaning of
20 California Civil Code § 1791(a).

21 375. Defendants are "manufacturers" of the Defeat Device Vehicles within the
22 meaning of California Civil Code § 1791(j).

23 376. Defendants impliedly warranted to Plaintiffs and the other members of the
24 California Subclass that their Defeat Device Vehicles were "merchantable" within the meaning
25 of California Civil Code §§ 1791.1(a) & 1792, however, the Defeat Device Vehicles do not
26 have the quality that a buyer would reasonably expect.

27 377. California Civil Code § 1791.1(a) states:
28

1 "Implied warranty of merchantability" or "implied warranty that goods are
2 merchantable" means that the consumer goods meet each of the following:

3 (1) Pass without objection in the trade under the contract description.

4 (2) Are fit for the ordinary purposes for which such goods are used.

5 (3) Are adequately contained, packaged, and labeled.

6 (4) Conform to the promises or affirmations of fact made on the container or label.

7 378. The Defeat Device Vehicles would not pass without objection in the automotive
8 trade because of the defeats in the Defeat Device Vehicles' emissions systems that cause them to
9 be out of compliance with state and federal emissions standards.

10 379. Because of the defeat devices in the Defeat Device Vehicles' emissions systems,
11 they are not safe to drive and not in compliance with federal and state laws, and thus not fit for
12 ordinary purposes.

13 380. The Defeat Device Vehicles are not adequately labeled because the labeling fails
14 to disclose the defeat devices included in the Defeat Device Vehicles' emissions systems.

15 381. Defendants breached the implied warranty of merchantability by manufacturing
16 and selling Defeat Device Vehicles containing defeats associated with the emissions systems.
17 Furthermore, these defeat devices have caused Plaintiffs and the other members of the
18 California Subclass to not receive the benefit of their bargain and have caused Defeat Device
19 Vehicles to depreciate in value.

20 382. As a direct and proximate result of Defendants' breach of the implied warranty of
21 merchantability, Plaintiffs and the other members of the California Subclass received goods
22 whose dangerous and dysfunctional condition substantially impairs their value to Plaintiffs and
23 the other members of the California Subclass. Plaintiffs and the other members of the California
24 Subclass have been damaged as a result of the diminished value of Defendants' products and the
25 products' malfunctioning.

26 383. Pursuant to California Civil Code §§ 1791.1(d) & 1794, Plaintiffs and the other
27 members of the California Subclass are entitled to damages and other legal and equitable relief
28

1 including, at their election, the purchase price of their Defeat Device Vehicles, or the
2 overpayment or diminution in value of their Defeat Device Vehicles.

3 384. Pursuant to California Civil Code § 1794, Plaintiffs and the other members of the
4 California Subclass are entitled to costs and attorneys' fees.

5
6 **COUNT XX**
7 **VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW**
8 **(California Business & Professions Code §§ 17200, *et seq.*)**
9 **(On Behalf of the California Subclass)**

10 385. Plaintiffs Reid, Remnek and Keller ("Plaintiffs" for the purposes of all claims
11 brought on behalf of the Alabama Subclass) incorporate by reference the allegations set forth
12 above as if set forth fully herein.

13 386. Plaintiffs bring this claim on behalf of themselves and on behalf of the members
14 of the California Subclass.

15 387. California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200,
16 *et seq.*, defines unfair business competition to include any "unfair," "unlawful," or "fraudulent"
17 business act or practice. The Act also provides for injunctive relief, restitution, and
18 disgorgement of profits for violations.

19 388. Defendants' unlawful, unfair, and fraudulent business acts and practices, as
20 described herein, were and are in violation of the UCL. Defendants' conduct violates the UCL in
21 the following ways:

- 22 i. By knowingly and intentionally concealing from Plaintiff and the other members
23 of the California Subclass that the Defeat Device Vehicles were designed and
24 manufactured with a defeat device that rendered the Defeat Device Vehicles out
25 of compliance with federal and state law and emissions standards while
26 obtaining money from Plaintiffs and the members of the California Subclass;
27 ii. By marketing the Defeat Device Vehicles as being "clean diesel" and complying
28 with federal and state emissions standards;

1 iii. By violating federal laws, including the Clean Air Act, 42 U.S.C. §§ 7522(a)(1),
2 7522(a)(3)(B), 7524(a), and 40 C.F.R. § 19.4; and the Magnuson-Moss Warranty
3 Act, 15 U.S.C. § 2301; and

4 iv. By violating other California laws, including California Civil Code §§ 1791.1,
5 1791.2, and 1792, *et seq.*, and California Commercial Code § 2314.

6 389. Defendants' misrepresentations and omissions alleged herein caused Plaintiffs
7 and the other members of the California Subclass to make their purchases or leases of their
8 Defeat Device Vehicles. Absent those misrepresentations and omissions, Plaintiffs and the other
9 members of the California Subclass would not have purchased or leased these Vehicles, would
10 not have purchased or leased these Defeat Device Vehicles at the prices they paid, and/or would
11 have purchased or leased alternative vehicles that complied with federal and state emissions
12 standards.

13 390. Defendants' practice is also unfair since it has no utility and, even if it did, any
14 utility is outweighed by the gravity of harm to Plaintiffs and the members of the California
15 Subclass.

16 391. Defendants' practice is also immoral, unethical, oppressive or unscrupulous and
17 causes injury to consumers which outweigh its benefits.

18 392. Accordingly, Plaintiffs and the members of the California Subclass have suffered
19 injury in fact, including lost money or property as a result of Defendants' actions,
20 misrepresentations, and omissions.

21 393. Plaintiffs seek to enjoin further unlawful, unfair, and/or fraudulent acts or
22 practices by Defendants, under California Business and Professions Code § 17200.

23 394. Plaintiffs request that this Court enter such orders or judgments as may be
24 necessary to enjoin Defendants from continuing their unfair, unlawful, and/or deceptive
25 practices and to restore to Plaintiffs and members of the California Subclass any money
26 Defendants acquired by unfair competition, including restitution and/or restitutionary
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1 disgorgement, as provided in California Business and Professions Code § 17203 and California
2 Civil Code § 3345; and for such other relief set forth below.

3
4 **COUNT XXI**
5 **FRAUD BY CONCEALMENT**
6 **(On Behalf of the California Subclass)**

7 395. Plaintiffs Reid, Remnek and Keller ("Plaintiffs" for the purposes of all claims
8 brought on behalf of the Alabama Subclass) incorporate by reference the allegations set forth
9 above as if set forth fully herein.

10 396. Plaintiffs bring this claim on behalf of themselves and on behalf of the members
11 of the California Subclass.

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

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

3 399. Volkswagen concealed and suppressed material facts concerning what is
4 evidently the true culture of Volkswagen – one characterized by an emphasis on profits and
5 sales above compliance with federal and state clean air law, and emissions regulations that are
6 meant to protect the public and consumers. It also emphasized profits and sales above the trust
7 that Plaintiffs and members of the California Subclass placed in Volkswagen's representations.

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

21 401. Volkswagen had a duty to disclose the emissions scheme it engaged in with
22 respect to the Defeat Device Vehicles because knowledge of the scheme and its details were
23 known and/or accessible only to Volkswagen, because Volkswagen had exclusive knowledge as
24 to implementation and maintenance of its scheme, and because Volkswagen knew the facts
25 were not known to or reasonably discoverable by Plaintiffs or members of the California
26 Subclass. Volkswagen also had a duty to disclose because it made general affirmative
27 representations about the qualities of its vehicles with respect to emissions standards, starting
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1 with references to them as *clean* diesel cars, or cars with *clean* diesel engines, which were
2 misleading, deceptive, and incomplete without the disclosure of the additional facts set forth
3 above regarding its emissions scheme, the actual emissions of its vehicles, its actual philosophy
4 with respect to compliance with federal and state clean air law and emissions regulations, and
5 its actual practices with respect to the vehicles at issue.

6 402. Having volunteered to provide information to Plaintiffs, Volkswagen had the
7 duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts
8 were material because they directly impact the value of the Defeat Device Vehicles purchased
9 or leased by Plaintiffs and members of the California Subclass. Whether a manufacturer's
10 products comply with federal and state clean air law and emissions regulations, and whether
11 that manufacturer tells the truth with respect to such compliance or non-compliance, are
12 material concerns to a consumer, including with respect to the emissions certifications testing
13 their vehicles must pass. Volkswagen represented to Plaintiffs and members of the California
14 Subclass that they were purchasing *clean* diesel vehicles, and certification testing appeared to
15 confirm this – except that, secretly, Volkswagen had subverted the testing process thoroughly.

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

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

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

6 406. Because of the concealment and/or suppression of the facts, Plaintiffs and
7 members of the California Subclass have sustained damage because they own Defeat Device
8 Vehicles that are diminished in value as a result of Volkswagen's concealment of the true
9 quality and quantity of those Defeat Device Vehicles' emissions and Volkswagen's failure to
10 timely disclose the actual emission qualities and quantities of millions of Defeat Device
11 Vehicles and the serious issues engendered by Volkswagen's corporate policies. Had Plaintiffs
12 and members of the California Subclass been aware of Volkswagen's emissions schemes with
13 regard to the Defeat Device Vehicles at issue, and the company's callous disregard for
14 compliance with applicable federal and state law and regulations, Plaintiffs and members of the
15 California Subclass who purchased or leased new or certified previously owned vehicles would
16 have paid less for their vehicles or would not have purchased or leased them at all.

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

23 408. Accordingly, Volkswagen is liable to Plaintiffs and members of the California
24 Subclass for damages in an amount to be proven at trial.

25 409. Volkswagen's acts were done wantonly, maliciously, oppressively, deliberately,
26 with intent to defraud, and in reckless disregard of Plaintiffs' and members of the California
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Subclass' rights and the representations that Volkswagen made to them, in order to enrich Volkswagen.

410. Volkswagen's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

COUNT XXII
BREACH OF CONTRACT/Common Law Warranty
(On Behalf of the California Subclass)

411. Plaintiffs Reid, Remnek and Keller ("Plaintiffs" for the purposes of all claims brought on behalf of the Alabama Subclass) incorporate by reference the allegations set forth above as if set forth fully herein.

412. Plaintiffs bring this claim on behalf of themselves and on behalf of the members of the California Subclass.

413. To the extent that Defendants' limited remedies are deemed not to be warranties under California's Commercial Code, Plaintiffs, individually and on behalf of the other members of the Class, plead in the alternative under common law warranty and contract law. Defendants limited the remedies available to Plaintiffs and the other members of the Class to repairs and adjustments needed to correct Defeats in materials or workmanship of any part supplied by Defendant and/or warranted the quality or nature of those services to Plaintiffs and the other members of the Class.

414. Defendants breached this warranty or contract obligation by failing to repair or replace the defective emissions systems on the Defeat Device Vehicles.

415. The material terms of the contract also included the implied covenant of good faith and fair dealing, whereby Defendants promised that they would, in good faith and in the exercise of fair dealing, deal with Plaintiffs the other members of the Class fairly and honestly

1 and do nothing to impair, interfere with, hinder, or potentially injure Plaintiffs' and the other
2 members of the California Subclass' rights and benefits under the contract.

3 416. Plaintiffs and the other members of the Class have performed all conditions,
4 covenants, and promises required by each of them on their part to be performed in accordance
5 with the terms and conditions of the contract

6 417. Defendants breached the contract and the implied covenant of good faith and fair
7 dealing by, *inter alia*, including a defeat device in the Defeat Device Vehicles, thus rendering
8 these Defeat Device Vehicles out of compliance with federal and state emissions laws,
9 regulations and standards.

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

14
15 **COUNT XXIII**
16 **NEGLIGENT MISREPRESENTATION**
17 **(On Behalf of the California Subclass)**

18 419. Plaintiffs Reid, Remnek and Keller ("Plaintiffs" for the purposes of all claims
19 brought on behalf of the Alabama Subclass) incorporate by reference the allegations set forth
20 above as if set forth fully herein.

21 420. Plaintiffs bring this claim on behalf of themselves and on behalf of the members
22 of the California Subclass.

23 421. Defendants had a duty to provide honest and accurate information to customers
24 so that customers could make informed decisions regarding the purchase or lease of
25 automobiles.

26 422. Defendants specifically and expressly misrepresented material facts to Plaintiffs
27 and the other members of the California Subclass, as set forth in detail above, including, but not
28

1 limited to representations that the Defeat Device Vehicles complied with federal and state
2 emissions laws, regulations and standards and possessed certain performance and fuel economy
3 characteristics.

4 423. Defendants knew, or in the exercise of reasonable diligence should have known,
5 that the ordinary consumer would be misled by these misrepresentations.

6 424. Plaintiffs and the other members of the California Subclass justifiably relied on
7 Defendants' misrepresentations and have been damaged thereby.

8
9 **F. Claims Brought on Behalf of the Florida Subclass**

10
11 **COUNT XXIV**
12 **VIOLATIONS OF THE FLORIDA DECEPTIVE &**
13 **UNFAIR TRADE PRACTICES ACT**
14 **(FLA. STAT. §§ 501.201, *et seq.*)**

15 425. Plaintiff Shane Ewart (“Plaintiff,” for purposes of all claims brought on behalf of
16 the Florida Subclass) incorporates by reference all the allegations set forth above as if set forth
17 fully herein.

18 426. Plaintiff Ewart brings this claim on behalf of himself and the Florida Subclass.

19 427. Plaintiff is a “consumer” within the meaning of Florida Unfair and Deceptive
20 Trade Practices Act, FLA. STAT. § 501.203(7).

21 428. Volkswagen engaged in “trade or commerce” within the meaning of FLA.
22 STAT. § 501.203(8).

23 429. The Deceptive and Unfair Trade Practices Act prohibits “[u]nfair methods of
24 competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the
25 conduct of any trade or commerce.” FLA. STAT. § 501.204(1). Volkswagen participated in
26 unfair and deceptive trade practices that violated the Florida Unfair and Deceptive Trade
27 Practices Act as described herein.
28

1 430. Volkswagen willfully failed to disclose and actively concealed that the Defeat
2 Device Vehicles were, by design and as a result of the inclusion of a defeat device, not
3 compliant with federal and state emissions standards. By the use of defeat devices in the Defeat
4 Device Vehicles, and by engaging in a pattern of false and misleading statements and
5 advertising regarding the nature, design, function, performance and fitness for a particular
6 purpose of the Defeat Device Vehicles, Volkswagen engaged in unfair methods of competition,
7 unconscionable acts or practices, and unfair or deceptive acts or practices as defined in FLA.
8 STAT. § 501.204(1).

9 431. Volkswagen's violations of the Florida Unfair and Deceptive Trade Practices Act
10 were compounded by its repeated efforts to gain necessary certifications for the Defeat Device
11 Vehicles from federal and state regulatory bodies. In the course of those repeated efforts,
12 Volkswagen submitted false statements and test results that were false as a result of the
13 inclusion of a defeat device in the Defeat Device Vehicles.

14 432. Volkswagen's unfair or deceptive acts or practices were likely to and did in fact
15 deceive reasonable consumers, including Plaintiff, about the true nature and performance of the
16 Defeat Device Vehicles.

17 433. Volkswagen intentionally and knowingly misrepresented material facts regarding
18 the Defeat Device Vehicles with the intent to mislead Plaintiff and members of the Florida
19 Subclass.

20 434. Volkswagen knew or should have known that its conduct violated the Florida
21 Unfair and Deceptive Trade Practices Act.

22 435. As alleged above, Volkswagen made material statements about the performance,
23 safety, cleanliness, efficiency and regulatory compliance of the Defeat Device Vehicles that
24 were either false or misleading.

25 436. Volkswagen owed Plaintiff and members of the Florida Subclass a duty to
26 disclose the true performance, safety, cleanliness, efficiency and failure to comply with
27 applicable federal and state regulations of the Defeat Device Vehicles. Volkswagen owed this
28

1 duty because it possessed exclusive knowledge regarding the use of defeat devices in the Defeat
2 Device Vehicles, possessed exclusive knowledge of the fact that, as designed and manufactured,
3 the Defeat Device Vehicles did not comply with applicable federal and state regulations;
4 possessed exclusive knowledge that, as designed and manufactured; and because Volkswagen
5 withheld these facts from Plaintiff and members of the Florida Subclass.

6 437. Because the Defeat Device Vehicles are not compliant with applicable federal
7 and state emissions regulations, and because any means of remedying the failure to comply with
8 applicable federal and state emissions regulations will likely diminish the performance and/or
9 the fuel economy of the vehicles, the Defeat Device Vehicles are worth substantially less than
10 they otherwise would be.

11 438. Absent Volkswagen's deceptive acts and misrepresentations, Plaintiff and
12 members of the Florida Subclass either would not have purchased or leased, or would have paid
13 substantially less than they did for the Defeat Device Vehicles. Thus, as a result of
14 Volkswagen's deceptive acts and misrepresentations, Plaintiff and the members of the Florida
15 Subclass have suffered an ascertainable loss.

16 439. Volkswagen had an ongoing duty Plaintiff, the members of the Florida Subclass
17 and to all Volkswagen, Audi, and Porsche customers to refrain from unfair and deceptive acts or
18 practices under the Florida Unfair and Deceptive Trade Practices Act. Volkswagen's deceptive
19 acts and misrepresentations present a continuing risk to Plaintiff, the members of the Florida
20 Subclass and the general public and thus affect the public interest.

21 440. As a direct and proximate result of Volkswagen's violations of the Florida Unfair
22 and Deceptive Trade Practices Act, Plaintiffs and the Florida Subclass have suffered injury-in-
23 fact and/or actual damage.

24 441. Volkswagen's actions as set forth above occurred in the conduct of trade or
25 commerce.

26 442. Plaintiff and the other Class members were injured, and have suffered injury-in-
27 fact and/or actual damage as a direct and proximate result of Volkswagen's conduct in violation
28

1 of the Florida Unfair and Deceptive Trade Practices Act because Plaintiff and members of the
2 Florida Subclass did not receive the benefit of their bargain, and their Defeat Device Vehicles
3 have suffered a diminution in value. These injuries are the direct and natural consequence of
4 Volkswagen's misrepresentations and omissions.

5
6 **COUNT XXV**
7 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
8 **(FLA. STAT. § 672.314)**

9 443. Plaintiff Ewart ("Plaintiff," for purposes of all claims brought on behalf of the
10 Florida Subclass) incorporates by reference all the allegations set forth above as if set forth fully
11 herein.

12 444. Plaintiff Ewart brings this claim on behalf of himself and the Florida Subclass
13 Defendants are and were at all relevant times merchants with respect to motor vehicles. A
14 warranty that the Defeat Device Vehicles were in merchantable condition was implied by law in
15 the instant transaction.

16 445. The Defeat Device Vehicles, when sold and at all times thereafter, were not in
17 merchantable condition and are not fit for the ordinary purpose for which cars are used.
18 Specifically, the Defeat Device Vehicles were defective in that they were equipped with a defeat
19 device, the sole purpose of which was to circumvent federal and state emissions standards.

20 446. Defendants were fully aware of this issue, as evidenced by the fact that on
21 September 3, 2015, Volkswagen admitted to the EPA and CARB officials the existence of the
22 defeat device used in the 2.0 liter TDI Clean Diesel engine and as evidenced by subsequent
23 acknowledgements by Volkswagen executives as set forth in detail above.

24 447. Defendants were fully aware of this issue, as evidenced by the fact that in
25 November, 2015, Volkswagen admitted to the EPA and CARB officials the existence of the
26 defeat device used in the 3.0 liter TDI Clean Diesel engine and as evidenced by subsequent
27 acknowledgements by Volkswagen executives as set forth in detail above.

1 engines' defect and/or defective design as alleged herein, caused Plaintiff and the other
2 members of the Florida Subclass to make their purchases or leases of their Defeat Device
3 Vehicles. Absent those misrepresentations and omissions, Plaintiff and the other members of
4 the Florida Subclass would not have purchased or leased these Defeat Device Vehicles, would
5 not have purchased or leased these Defeat Device Vehicles at the prices they paid, and/or would
6 have purchased or leased less expensive alternative vehicles that did not contain the TDI Clean
7 Diesel engines and which were not marketed as including such a system. Accordingly, Plaintiff
8 and the other members of the Florida Subclass overpaid for their Defeat Device Vehicles and
9 did not receive the benefit of their bargain.

10 454. Each and every sale or lease of a Defeat Device Vehicle constitutes a contract
11 between Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by
12 selling or leasing Plaintiff and the other members of the Florida Subclass defective Defeat
13 Device Vehicles and by misrepresenting or failing to disclose the existence of the TDI Clean
14 Diesel engines' defect and/or defective design, including information known to Volkswagen
15 rendering each Defeat Device Vehicle non EPA-compliant, and thus less valuable, than vehicles
16 not equipped with a TDI Clean Diesel engines.

17 455. As a direct and proximate result of Volkswagen's breach of contract, Plaintiff
18 and the Florida Subclass have been damaged in an amount to be proven at trial, which shall
19 include, but is not limited to, all compensatory damages, incidental and consequential damages,
20 and other damages allowed by law.

21
22 **COUNT XXVII**
23 **FRAUD BY CONCEALMENT**
24 **(On Behalf of the Florida Subclass)**

25 456. Plaintiff Ewart ("Plaintiff" for purposes of all claims brought on behalf of the
26 Florida Subclass) incorporates by reference the allegations set forth above as if set forth fully
27 herein.
28

1 457. Plaintiff brings this claim on behalf of himself and the Florida Subclass.

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

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

19 460. Volkswagen concealed and suppressed material facts concerning what is
20 evidently the true culture of Volkswagen—one characterized by an emphasis on profits and
21 sales above compliance with federal and state clean air law, and emissions regulations that are
22 meant to protect the public and consumers. It also emphasized profits and sales about the trust
23 that Plaintiff and the members of the Florida Subclass placed in its representations.

24 461. Necessarily, Volkswagen also took steps to ensure that its employees did not
25 reveal the details of its scheme to regulators or consumers, including Plaintiff and the members
26 of the Florida Subclass. Volkswagen did so in order to boost the reputations of its vehicles and
27 to falsely assure purchasers and lessors of its vehicles, including certified previously owned
28

1 vehicles, that Volkswagen is a reputable manufacturer that complies with applicable law,
2 including federal and state clean air law and emissions regulations, and that its vehicles likewise
3 comply with applicable law and regulations. Volkswagen's false representations were material
4 to consumers, both because they concerned the quality of the Defeat Device Vehicles, including
5 their compliance with applicable federal and state law and regulations regarding clean air and
6 emissions, and also because the representations played a significant role in the value of the
7 vehicles. As Volkswagen well knew, its customers, including Plaintiff and the members of the
8 Florida Subclass, highly valued that the vehicles they were purchasing or leasing were clean
9 diesel cars, and they paid accordingly.

10 462. Volkswagen had a duty to disclose the emissions scheme it engaged in with
11 respect to the vehicles at issue because knowledge of the scheme and its details were known
12 and/or accessible only to Volkswagen, because Volkswagen had exclusive knowledge as to
13 implementation and maintenance of its scheme, and because Volkswagen knew the facts were
14 not known to or reasonably discoverable by Plaintiff or the members of the Florida Subclass.
15 Volkswagen also had a duty to disclose because it made general affirmative representations
16 about the qualities of its vehicles with respect to emissions standards, starting with references to
17 them as clean diesel cars, or cars with clean diesel engines, which were misleading, deceptive,
18 and incomplete without the disclosure of the additional facts set forth above regarding its
19 emissions scheme, the actual emissions of its vehicles, its actual philosophy with respect to
20 compliance with federal and state clean air law and emissions regulations, and its actual
21 practices with respect to the vehicles at issue. Having volunteered to provide information to
22 Plaintiff, Volkswagen had the duty to disclose not just the partial truth, but the entire truth.
23 These omitted and concealed facts were material because they directly impact the value of the
24 Defeat Device Vehicles purchased or leased by Plaintiff and the members of the Florida
25 Subclass. Whether a manufacturer's products comply with federal and state clean air law and
26 emissions regulations, and whether that manufacturer tells the truth with respect to such
27 compliance or non-compliance, are material concerns to a consumer, including with respect to
28

1 the emissions certifications testing their vehicles must pass. Volkswagen represented to Plaintiff
2 and the members of the Florida Subclass that they were purchasing clean diesel vehicles, and
3 certification testing appeared to confirm this—except that, secretly, Volkswagen had subverted
4 the testing process thoroughly.

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

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

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

22 466. Because of the concealment and/or suppression of the facts, Plaintiff and the
23 members of the Florida Subclass have sustained damage because they own vehicles that are
24 diminished in value as a result of Volkswagen’s concealment of the true quality and quantity of
25 those vehicles’ emissions and Volkswagen’s failure to timely disclose the actual emission
26 qualities and quantities of hundreds of thousands of Defeat Device Vehicles and the serious
27 issues engendered by Volkswagen’s corporate policies. Had Plaintiff and the members of the
28

1 Florida Subclass been aware of Volkswagen's emissions schemes with regard to the vehicles at
2 issue, and the company's callous disregard for compliance with applicable federal and state law
3 and regulations, Plaintiff and the members of the Florida Subclass who purchased or leased new
4 or certified previously owned vehicles would have paid less for their vehicles or would not have
5 purchased or leased them at all.

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

12 468. Accordingly, Volkswagen is liable to Plaintiff and the members of the Florida
13 Subclass for damages in an amount to be proven at trial.

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

20
21 **COUNT XXVIII**
22 **NEGLIGENT MISREPRESENTATION**
23 **(On Behalf of the Florida Subclass)**

24 470. Plaintiff Ewart ("Plaintiff" for purposes of all claims brought on behalf of the
25 Florida Subclass) incorporates by reference the allegations set forth above as if set forth fully
26 herein.

27 471. Plaintiff brings this claim on behalf of himself and the Florida Subclass.
28

1 472. Defendants had a duty to provide honest and accurate information to customers
2 so that customers could make informed decisions regarding the purchase or lease of
3 automobiles.

4 473. Defendants specifically and expressly misrepresented material facts to Plaintiff
5 and the other members of the Florida Subclass, as set forth in detail above, including, but not
6 limited to representations that the Defeat Device Vehicles complied with federal and state
7 emissions laws, regulations and standards and possessed certain performance and fuel economy
8 characteristics.

9 474. Defendants knew, or in the exercise of reasonable diligence should have known,
10 that the ordinary consumer would be misled by these misrepresentations.

11 475. Plaintiff and the other members of the Florida Subclass justifiably relied on
12 Defendants' misrepresentations and have been damaged thereby.

13
14 **G. Claims Brought on behalf of the Georgia Subclass**

15
16 **COUNT XXIX**
17 **BREACH OF CONTRACT**
18 **(On Behalf of the Georgia Subclass)**

19 476. Plaintiff Sara Nicol Roberts ("Plaintiff" for purposes of all claims brought on
20 behalf of the Georgia Subclass) incorporates by reference the allegations set forth above as if set
21 forth fully herein.

22 477. Plaintiff brings this claim on behalf of himself and on behalf of the members of
23 the Georgia Subclass.

24 478. Volkswagen's misrepresentations and omissions alleged herein, including
25 Volkswagen's failure to disclose the existence of the 2.0 liter and 3.0 liter TDI Clean Diesel
26 engines' defect and/or defective design as alleged herein, caused Plaintiff and the other
27 members of the Georgia Subclass to make their purchases or leases of their Defeat Device
28 Vehicles. Absent those misrepresentations and omissions, Plaintiff and the other members of

1 the Georgia Subclass would not have purchased or leased these Defeat Device Vehicles, would
2 not have purchased or leased these Defeat Device Vehicles at the prices they paid, and/or would
3 have purchased or leased less expensive alternative vehicles that did not contain the TDI Clean
4 Diesel engines and which were not marketed as including such a system. Accordingly, Plaintiff
5 and the other members of the Georgia Subclass overpaid for their Defeat Device Vehicles and
6 did not receive the benefit of their bargain.

7 479. Each and every sale or lease of a Defeat Device Vehicle constitutes a contract
8 between Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by
9 selling or leasing Plaintiff and the other members of the Georgia Subclass defective Defeat
10 Device Vehicles and by misrepresenting or failing to disclose the existence of the TDI Clean
11 Diesel engines' defect and/or defective design, including information known to Volkswagen
12 rendering each Defeat Device Vehicle non EPA-compliant, and thus less valuable, than vehicles
13 not equipped with a TDI Clean Diesel engines.

14 480. As a direct and proximate result of Volkswagen's breach of contract, Plaintiff
15 and the Georgia Subclass have been damaged in an amount to be proven at trial, which shall
16 include, but is not limited to, all compensatory damages, incidental and consequential damages,
17 and other damages allowed by law.

18
19 **COUNT XXX**
20 **FRAUD BY CONCEALMENT**
21 **(On Behalf of the Georgia Subclass)**

22 481. Plaintiff Roberts ("Plaintiff" for purposes of all claims brought on behalf of the
23 Georgia Subclass) incorporates by reference the allegations set forth above as if set forth fully
24 herein.

25 482. Plaintiff brings this claim on behalf of himself and on behalf of the members of
26 the Georgia Subclass.

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

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

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

16 485. Volkswagen concealed and suppressed material facts concerning what is
17 evidently the true culture of Volkswagen—one characterized by an emphasis on profits and
18 sales above compliance with federal and state clean air law, and emissions regulations that are
19 meant to protect the public and consumers. It also emphasized profits and sales about the trust
20 that Plaintiff and the members of the Georgia Subclass placed in its representations.

21 486. Necessarily, Volkswagen also took steps to ensure that its employees did not
22 reveal the details of its scheme to regulators or consumers, including Plaintiff and the members
23 of the Georgia Subclass. Volkswagen did so in order to boost the reputations of its vehicles and
24 to falsely assure purchasers and lessors of its vehicles, including certified previously owned
25 vehicles, that Volkswagen is a reputable manufacturer that complies with applicable law,
26 including federal and state clean air law and emissions regulations, and that its vehicles likewise
27 comply with applicable law and regulations. Volkswagen’s false representations were material
28

1 to consumers, both because they concerned the quality of the Defeat Device Vehicles, including
2 their compliance with applicable federal and state law and regulations regarding clean air and
3 emissions, and also because the representations played a significant role in the value of the
4 vehicles. As Volkswagen well knew, its customers, including Plaintiff and the members of the
5 Georgia Subclass, highly valued that the vehicles they were purchasing or leasing were clean
6 diesel cars, and they paid accordingly.

7 487. Volkswagen had a duty to disclose the emissions scheme it engaged in with
8 respect to the vehicles at issue because knowledge of the scheme and its details were known
9 and/or accessible only to Volkswagen, because Volkswagen had exclusive knowledge as to
10 implementation and maintenance of its scheme, and because Volkswagen knew the facts were
11 not known to or reasonably discoverable by Plaintiff or the members of the Georgia Subclass.
12 Volkswagen also had a duty to disclose because it made general affirmative representations
13 about the qualities of its vehicles with respect to emissions standards, starting with references to
14 them as clean diesel cars, or cars with clean diesel engines, which were misleading, deceptive,
15 and incomplete without the disclosure of the additional facts set forth above regarding its
16 emissions scheme, the actual emissions of its vehicles, its actual philosophy with respect to
17 compliance with federal and state clean air law and emissions regulations, and its actual
18 practices with respect to the vehicles at issue. Having volunteered to provide information to
19 Plaintiff, Volkswagen had the duty to disclose not just the partial truth, but the entire truth.
20 These omitted and concealed facts were material because they directly impact the value of the
21 Defeat Device Vehicles purchased or leased by Plaintiff and the members of the Georgia
22 Subclass. 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
24 compliance or non-compliance, are material concerns to a consumer, including with respect to
25 the emissions certifications testing their vehicles must pass. Volkswagen represented to Plaintiff
26 and the members of the Georgia Subclass that they were purchasing clean diesel vehicles, and
27
28

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

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

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

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

20 491. Because of the concealment and/or suppression of the facts, Plaintiff and the
21 members of the Georgia Subclass have sustained damage because they own vehicles that are
22 diminished in value as a result of Volkswagen’s concealment of the true quality and quantity of
23 those vehicles’ emissions and Volkswagen’s failure to timely disclose the actual emission
24 qualities and quantities of hundreds of thousands of Defeat Device Vehicles and the serious
25 issues engendered by Volkswagen’s corporate policies. Had Plaintiff and the members of the
26 Georgia Subclass been aware of Volkswagen’s emissions schemes with regard to the vehicles at
27 issue, and the company’s callous disregard for compliance with applicable federal and state law
28

1 and regulations, Plaintiff and the members of the Georgia Subclass who purchased or leased
2 new or certified previously owned vehicles would have paid less for their vehicles or would not
3 have purchased or leased them at all.

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

10 493. Accordingly, Volkswagen is liable to Plaintiff and the members of the Georgia
11 Subclass for damages in an amount to be proven at trial.

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

18
19 **COUNT XXXI**
20 **NEGLIGENT MISREPRESENTATION**
21 **(On Behalf of the Georgia Subclass)**

22 495. Plaintiff Roberts ("Plaintiff" for purposes of all claims brought on behalf of the
23 Georgia Subclass) incorporates by reference the allegations set forth above as if set forth fully
24 herein.

25 496. Plaintiff brings this claim on behalf of himself and on behalf of the members of
26 the Georgia Subclass.
27
28

1 497. Defendants had a duty to provide honest and accurate information to customers
2 so that customers could make informed decisions regarding the purchase or lease of
3 automobiles.

4 498. Defendants specifically and expressly misrepresented material facts to Plaintiff
5 and the other members of the Georgia Subclass, as set forth in detail above, including, but not
6 limited to representations that the Defeat Device Vehicles complied with federal and state
7 emissions laws, regulations and standards and possessed certain performance and fuel economy
8 characteristics.

9 499. Defendants knew, or in the exercise of reasonable diligence should have known,
10 that the ordinary consumer would be misled by these misrepresentations.

11 500. Plaintiff and the other members of the Georgia Subclass justifiably relied on
12 Defendants' misrepresentations and have been damaged thereby.

13
14 **H. Claims Brought on Behalf of the Maryland Subclass**

15
16 **COUNT XXXII**
17 **VIOLATION OF MARYLAND CONSUMER PROTECTION ACT**
18 **(MD. COMMERCIAL LAW CODE, TITLE 13)**
19 **(On Behalf of the Maryland Subclass)**

20 501. Plaintiff Keith Kruse ("Plaintiff" for purposes of all claims brought on behalf of
21 the Maryland Subclass) incorporates by reference the allegations set forth above as if set forth
22 fully herein.

23 502. Plaintiff brings this claim on behalf of himself and the Maryland Subclass.

24 503. Maryland's Consumer Protection Act ("CPA") prohibits unfair and deceptive
25 trade practices in violation of § 13.303 of the Maryland CPA.

26 504. Volkswagen's conduct, as described herein, was and is in violation of the CPA at
27 least the following ways:
28

- i. By knowingly and intentionally concealing from Plaintiff and the members of the Maryland Subclass that the Defeat Device Vehicles suffer from a design defect while obtaining money from Plaintiffs;
- ii. By marketing Defeat Device Vehicles as possessing functional and defect-free engines and emissions systems;
- iii. By purposefully installing a defeat device in the Defeat Device Vehicles to fraudulently obtain EPA certification and cause Defeat Device Vehicles in order to pass emissions tests when in truth and fact they did not pass such tests;
- iv. By violating federal laws, including the Clean Air Act; and
- v. By violating other Maryland laws, including Maryland laws governing vehicle emissions and emission testing requirements.

505. Volkswagen's misrepresentations and omissions alleged herein caused Plaintiff to make their purchases of their Defeat Device Vehicles. Absent Defendants' misrepresentations and omissions, Plaintiff would not have purchased the Defeat Device Vehicles, would not have purchased the Defeat Device Vehicles at the price he paid, and/or would have purchased a less expensive alternative vehicles that did not contain the 2.0 liter or 3.0 liter TDI Clean Diesel engines that failed to comply with the EPA and Maryland emissions standards.

506. Accordingly, Plaintiff has suffered injury in fact including lost money or property as a result of Volkswagen's misrepresentations and omissions.

507. Plaintiff seeks to enjoin further unlawful, unfair, and/or fraudulent acts or practices by Volkswagen.

508. Plaintiff requests that this Court enter such orders or judgments as may be necessary to enjoin Volkswagen from continuing its unfair, unlawful, and/or deceptive practices and to restore to Plaintiff and members of the Maryland Subclass any money it acquired by

1 unfair competition, including restitution, restitutionary disgorgement, interests, costs, their
2 attorneys' fees, and other damages provided for under the Maryland CPA.

3
4 **COUNT XXXIII**
5 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
6 **(MD. CODE, COMMERCIAL LAW §§ 2-314 THROUGH 2-318)**
7 **(On Behalf of the Maryland Subclass)**

8 509. Plaintiff Keith Kruse ("Plaintiff" for purposes of all claims brought on behalf of
9 the Maryland Subclass) incorporates by reference the allegations set forth above as if set forth
10 fully herein.

11 510. Plaintiff brings this claim on behalf of himself and the Maryland Subclass.

12 511. Volkswagen is and was at all relevant times a merchant with respect to motor
13 vehicles.

14 512. A warranty that the Defeat Device Vehicles were in merchantable condition was
15 implied by law in the instant transaction, pursuant to Md. Code, Commercial, §§ 2-314 to 2-
16 318.

17 513. Defeat Device Vehicles, when sold and at all times thereafter, were not in
18 merchantable condition and are not fit for the ordinary purpose for which cars are used.
19 Specifically, Defeat Device Vehicles are inherently defective in that they do not comply with
20 federal and state emissions standards, rendering certain safety and emissions functions
21 inoperative; and neither the 2.0 liter TDI Clean Diesel engines nor the 3.0 liter TDI Clean
22 Diesel engines were adequately designed, manufactured, and tested.

23 514. Volkswagen was provided notice of these issues by the investigations of the EPA
24 and individual state regulators.

25 515. Plaintiff had sufficient direct dealings with either Volkswagen or their agents
26 (Authorized Dealerships) to establish privity of contract between Plaintiff and Volkswagen.
27 Notwithstanding this, privity is not required in this case because Plaintiff is an intended third-
28 party beneficiary of contracts between Volkswagen and its Authorized Dealerships; specifically,

1 he is the intended beneficiaries of Volkswagen's implied warranties. The Authorized
2 Dealerships were not intended to be the ultimate consumers of the Defeat Device Vehicles and
3 have no rights under the warranty agreements provided with the Defeat Device Vehicles; the
4 warranty agreements were designed for and intended to benefit the ultimate consumers only.
5 Finally, privity is also not required because the Defeat Device Vehicles are dangerous
6 instrumentalities due to the aforementioned defects and nonconformities.

7 516. As a direct and proximate result of Volkswagen's breach of the warranties of
8 merchantability, Plaintiff has been damaged in an amount to be proven at trial, at a minimum in
9 excess of \$75,000.

10
11 **COUNT XXXIV**
12 **BREACH OF CONTRACT**
13 **(On Behalf of the Maryland Subclass)**

14 517. Plaintiff Keith Kruse ("Plaintiff" for purposes of all claims brought on behalf of
15 the Maryland Subclass) incorporates by reference the allegations set forth above as if set forth
16 fully herein.

17 518. Plaintiff brings this claim on behalf of himself and the Maryland Subclass.

18 519. Volkswagen's misrepresentations and omissions alleged herein, including
19 Volkswagen's failure to disclose the existence of the 2.0 liter and 3.0 liter TDI Clean Diesel
20 engines' defect and/or defective design as alleged herein, caused Plaintiff and the other
21 members of the Maryland Subclass to make their purchases or leases of their Defeat Device
22 Vehicles. Absent those misrepresentations and omissions, Plaintiff and the other members of
23 the Maryland Subclass would not have purchased or leased these Defeat Device Vehicles,
24 would not have purchased or leased these Defeat Device Vehicles at the prices they paid, and/or
25 would have purchased or leased less expensive alternative vehicles that did not contain the TDI
26 Clean Diesel engines and which were not marketed as including such a system. Accordingly,
27 Plaintiff and the other members of the Maryland Subclass overpaid for their Defeat Device
28 Vehicles and did not receive the benefit of their bargain.

1 520. Each and every sale or lease of a Defeat Device Vehicle constitutes a contract
2 between Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by
3 selling or leasing Plaintiff and the other members of the Maryland Subclass defective Defeat
4 Device Vehicles and by misrepresenting or failing to disclose the existence of the TDI Clean
5 Diesel engines' defect and/or defective design, including information known to Volkswagen
6 rendering each Defeat Device Vehicle non EPA-compliant, and thus less valuable, than vehicles
7 not equipped with a TDI Clean Diesel engines.

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

12
13 **COUNT XXXV**
14 **FRAUD BY CONCEALMENT**
 (On Behalf of the Maryland Subclass)

15 522. Plaintiff Keith Kruse ("Plaintiff" for purposes of all claims brought on behalf of
16 the Maryland Subclass) incorporates by reference the allegations set forth above as if set forth
17 fully herein.

18 523. Plaintiff brings this claim on behalf of himself and the Maryland Subclass.

19 524. Volkswagen intentionally concealed and suppressed material facts concerning
20 the quality of the Defeat Device Vehicles. As alleged in this Complaint, notwithstanding
21 references in the very model names of the subject vehicles as "Clean Diesel," or to their engines
22 as "TDI Clean Diesel" engines, Volkswagen engaged in a secret scheme to evade federal and
23 state vehicle emissions standards by installing software designed to conceal its vehicles'
24 emissions of the pollutant nitrogen oxide, which contributes to the creation of ozone and smog.
25 The software installed on the vehicles at issue was designed nefariously to kick-in during
26 emissions certification testing, such that the vehicles would show far lower emissions than when
27 actually operating on the road. The result was what Volkswagen intended: vehicles passed
28

1 emissions certifications by way of deliberately induced false readings. Reportedly,
2 Volkswagen's deliberate, secret scheme resulted in noxious emissions from these vehicles at 40
3 times applicable standards.

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

9 526. Volkswagen concealed and suppressed material facts concerning what is
10 evidently the true culture of Volkswagen—one characterized by an emphasis on profits and
11 sales above compliance with federal and state clean air law, and emissions regulations that are
12 meant to protect the public and consumers. It also emphasized profits and sales about the trust
13 that Plaintiff and the members of the Maryland Subclass placed in its representations.

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

1 528. Volkswagen had a duty to disclose the emissions scheme it engaged in with
2 respect to the vehicles at issue because knowledge of the scheme and its details were known
3 and/or accessible only to Volkswagen, because Volkswagen had exclusive knowledge as to
4 implementation and maintenance of its scheme, and because Volkswagen knew the facts were
5 not known to or reasonably discoverable by Plaintiff or the members of the Maryland Subclass.
6 Volkswagen also had a duty to disclose because it made general affirmative representations
7 about the qualities of its vehicles with respect to emissions standards, starting with references to
8 them as clean diesel cars, or cars with clean diesel engines, which were misleading, deceptive,
9 and incomplete without the disclosure of the additional facts set forth above regarding its
10 emissions scheme, the actual emissions of its vehicles, its actual philosophy with respect to
11 compliance with federal and state clean air law and emissions regulations, and its actual
12 practices with respect to the vehicles at issue. Having volunteered to provide information to
13 Plaintiff, Volkswagen had the duty to disclose not just the partial truth, but the entire truth.
14 These omitted and concealed facts were material because they directly impact the value of the
15 Defeat Device Vehicles purchased or leased by Plaintiff and the members of the Maryland
16 Subclass. Whether a manufacturer's products comply with federal and state clean air law and
17 emissions regulations, and whether that manufacturer tells the truth with respect to such
18 compliance or non-compliance, are material concerns to a consumer, including with respect to
19 the emissions certifications testing their vehicles must pass. Volkswagen represented to Plaintiff
20 and the members of the Maryland Subclass that they were purchasing clean diesel vehicles, and
21 certification testing appeared to confirm this—except that, secretly, Volkswagen had subverted
22 the testing process thoroughly.

23 529. Volkswagen actively concealed and/or suppressed these material facts, in whole
24 or in part, to pad and protect its profits and to avoid the perception that its vehicles did not or
25 could not comply with federal and state laws governing clean air and emissions, which
26 perception would hurt the brand's image and cost Volkswagen money, and it did so at the
27 expense of Plaintiff and the members of the Maryland Subclass.
28

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

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

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

24 533. The value of Plaintiff’s and the members of the Maryland Subclass’ vehicles has
25 diminished as a result of Volkswagen’s fraudulent concealment of its emissions scheme, which
26 has greatly tarnished the Volkswagen and Audi brand names attached to Plaintiff’s and the
27 members of the Maryland Subclass’ vehicles and made any reasonable consumer reluctant to
28

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

3 534. Accordingly, Volkswagen is liable to Plaintiff and the members of the Maryland
4 Subclass for damages in an amount to be proven at trial.

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

11
12 **COUNT XXXVI**
13 **NEGLIGENT MISREPRESENTATION**
14 **(On Behalf of the Maryland Subclass)**

15 536. Plaintiff Keith Kruse ("Plaintiff" for purposes of all claims brought on behalf of
16 the Maryland Subclass) incorporates by reference the allegations set forth above as if set forth
17 fully herein.

18 537. Plaintiff brings this claim on behalf of himself and the Maryland Subclass.

19 538. Defendants had a duty to provide honest and accurate information to customers
20 so that customers could make informed decisions regarding the purchase or lease of
21 automobiles.

22 539. Defendants specifically and expressly misrepresented material facts to Plaintiff
23 and the other members of the Maryland Subclass, as set forth in detail above, including, but not
24 limited to representations that the Defeat Device Vehicles complied with federal and state
25 emissions laws, regulations and standards and possessed certain performance and fuel economy
26 characteristics.

27 540. Defendants knew, or in the exercise of reasonable diligence should have known,
28 that the ordinary consumer would be misled by these misrepresentations.

1 541. Plaintiff and the other members of the Maryland Subclass justifiably relied on
2 Defendants' misrepresentations and have been damaged thereby.

3
4 **I. Claims Brought on Behalf of the Mississippi Subclass**

5
6 **COUNT XXXVII**
7 **BREACH OF CONTRACT**
8 **(On Behalf of the Mississippi Subclass)**

9 542. Plaintiff Richardson Ayres Haxton ("Plaintiff" for purposes of all claims brought
10 on behalf of the Mississippi Subclass) incorporates by reference the allegations set forth above
11 as if set forth fully herein.

12 543. Plaintiff brings this claim on behalf of himself and the Mississippi Subclass.

13 544. Volkswagen's misrepresentations and omissions alleged herein, including
14 Volkswagen's failure to disclose the existence of the 2.0 liter and 3.0 liter TDI Clean Diesel
15 engines' defect and/or defective design as alleged herein, caused Plaintiff and the other
16 members of the Mississippi Subclass to make their purchases or leases of their Defeat Device
17 Vehicles. Absent those misrepresentations and omissions, Plaintiff and the other members of
18 the Mississippi Subclass would not have purchased or leased these Defeat Device Vehicles,
19 would not have purchased or leased these Defeat Device Vehicles at the prices they paid, and/or
20 would have purchased or leased less expensive alternative vehicles that did not contain the TDI
21 Clean Diesel engines and which were not marketed as including such a system. Accordingly,
22 Plaintiff and the other members of the Mississippi Subclass overpaid for their Defeat Device
23 Vehicles and did not receive the benefit of their bargain.

24 545. Each and every sale or lease of a Defeat Device Vehicle constitutes a contract
25 between Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by
26 selling or leasing Plaintiff and the other members of the Mississippi Subclass defective Defeat
27 Device Vehicles and by misrepresenting or failing to disclose the existence of the TDI Clean
28 Diesel engines' defect and/or defective design, including information known to Volkswagen

1 rendering each Defeat Device Vehicle non EPA-compliant, and thus less valuable, than vehicles
2 not equipped with a TDI Clean Diesel engines.

3 546. As a direct and proximate result of Volkswagen's breach of contract, Plaintiff
4 and the Mississippi Subclass have been damaged in an amount to be proven at trial, which shall
5 include, but is not limited to, all compensatory damages, incidental and consequential damages,
6 and other damages allowed by law.

7
8 **COUNT XXXVIII**
9 **FRAUDULENT CONCEALMENT**
10 **(On Behalf of the Mississippi Subclass)**

11 547. Plaintiff Haxton ("Plaintiff" for purposes of all claims brought on behalf of the
12 Mississippi Subclass) incorporates by reference the allegations set forth above as if set forth
13 fully herein.

14 548. Plaintiff brings this claim on behalf of himself and the Mississippi Subclass.

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

27 550. Plaintiff and the members of the Mississippi Subclass reasonably relied upon
28 Volkswagen's false representations. They had no way of knowing that Volkswagen's

1 representations were false and gravely misleading. As alleged herein, Volkswagen employed
2 extremely sophisticated methods of deception. Plaintiff and the members of the Mississippi
3 Subclass did not, and could not, unravel Volkswagen's deception on their own.

4 551. Volkswagen concealed and suppressed material facts concerning what is
5 evidently the true culture of Volkswagen—one characterized by an emphasis on profits and
6 sales above compliance with federal and state clean air law, and emissions regulations that are
7 meant to protect the public and consumers. It also emphasized profits and sales about the trust
8 that Plaintiff and the members of the Mississippi Subclass placed in its representations.

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

22 553. Volkswagen had a duty to disclose the emissions scheme it engaged in with
23 respect to the vehicles at issue because knowledge of the scheme and its details were known
24 and/or accessible only to Volkswagen, because Volkswagen had exclusive knowledge as to
25 implementation and maintenance of its scheme, and because Volkswagen knew the facts were
26 not known to or reasonably discoverable by Plaintiff or the members of the Mississippi
27 Subclass. Volkswagen also had a duty to disclose because it made general affirmative
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1 representations about the qualities of its vehicles with respect to emissions standards, starting
2 with references to them as clean diesel cars, or cars with clean diesel engines, which were
3 misleading, deceptive, and incomplete without the disclosure of the additional facts set forth
4 above regarding its emissions scheme, the actual emissions of its vehicles, its actual philosophy
5 with respect to compliance with federal and state clean air law and emissions regulations, and
6 its actual practices with respect to the vehicles at issue. Having volunteered to provide
7 information to Plaintiff, Volkswagen had the duty to disclose not just the partial truth, but the
8 entire truth. These omitted and concealed facts were material because they directly impact the
9 value of the Defeat Device Vehicles purchased or leased by Plaintiff and the members of the
10 Mississippi Subclass. Whether a manufacturer's products comply with federal and state clean
11 air law and emissions regulations, and whether that manufacturer tells the truth with respect to
12 such compliance or non-compliance, are material concerns to a consumer, including with
13 respect to the emissions certifications testing their vehicles must pass. Volkswagen represented
14 to Plaintiff and the members of the Mississippi Subclass that they were purchasing clean diesel
15 vehicles, and certification testing appeared to confirm this—except that, secretly, Volkswagen
16 had subverted the testing process thoroughly.

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

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

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

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

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

24 559. Accordingly, Volkswagen is liable to Plaintiff and the members of the
25 Mississippi Subclass for damages in an amount to be proven at trial.

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

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6 **COUNT XXXIX**
7 **NEGLIGENT MISREPRESENTATION**
8 **(On Behalf of the Mississippi Subclass)**

9 561. Plaintiff Haxton ("Plaintiff" for purposes of all claims brought on behalf of the
10 Mississippi Subclass) incorporates by reference the allegations set forth above as if set forth
11 fully herein.

12 562. Plaintiff brings this claim on behalf of himself and the Mississippi Subclass.

13 563. Defendants had a duty to provide honest and accurate information to customers
14 so that customers could make informed decisions regarding the purchase or lease of
15 automobiles.

16 564. Defendants specifically and expressly misrepresented material facts to Plaintiff
17 and the other members of the Mississippi Subclass, as set forth in detail above, including, but
18 not limited to representations that the Defeat Device Vehicles complied with federal and state
19 emissions laws, regulations and standards and possessed certain performance and fuel economy
20 characteristics.

21 565. Defendants knew, or in the exercise of reasonable diligence should have known,
22 that the ordinary consumer would be misled by these misrepresentations.

23 566. Plaintiff and the other members of the Mississippi Subclass justifiably relied on
24 Defendants' misrepresentations and have been damaged thereby.
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J. Claims Brought on Behalf of the Oregon Subclass

**COUNT XL
VIOLATION OF THE OREGON UNLAWFUL TRADE PRACTICES ACT
(OR. REV. STAT. §§ 646.605, *et seq.*)**

567. Plaintiff Chris Wobbe (“Plaintiff,” for purposes of all claims brought on behalf of the Oregon Subclass) incorporates by reference the allegations set forth above as if set forth fully herein.

568. Plaintiff brings this claim on behalf of himself and the Oregon Subclass.

569. Volkswagen is a person within the meaning of OR. REV. STAT. § 646.605(4).

570. The Defeat Device Vehicles at issue are “goods” obtained primarily for personal family or household purposes within the meaning of OR. REV. STAT. § 646.605(6).

571. The Oregon Unfair Trade Practices Act (“Oregon UTPA”) prohibits a person from, in the course of the person’s business, doing any of the following: “(e) Represent[ing] that ... goods ... have ... characteristics ... uses, benefits, ... or qualities that they do not have; (g) Represent[ing] that ... goods ... are of a particular standard [or] quality ... if they are of another; (i) Advertis[ing] ... goods or services with intent not to provide them as advertised;” and “(u) engag[ing] in any other unfair or deceptive conduct in trade or commerce.” OR. REV. STAT. § 646.608(1).

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

573. Volkswagen also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Defeat Device Vehicles.

1 574. Volkswagen's actions as set forth above occurred in the conduct of trade or
2 commerce.

3 575. Volkswagen has known of its use of the defeat device and the true nature of its
4 2.0 liter and 3.0 liter TDI Clean Diesel engines for at least six years, but concealed that
5 information until it was disclosed by third parties.

6 576. Volkswagen was also aware that it valued profits over environmental cleanliness,
7 efficiency, and lawfulness, and that it was manufacturing, selling and distributing Defeat Device
8 Vehicles throughout the United States that did not comply with EPA regulations. Volkswagen
9 concealed this information as well.

10 577. By failing to disclose and by actively concealing the defeat device and the true
11 emissions of the Defeat Device Vehicles, by marketing the Defeat Device Vehicles as safe,
12 reliable, environmentally clean, efficient, and of high quality, and by presenting itself as a
13 reputable manufacturer that valued safety, environmental cleanliness and efficiency, and stood
14 behind its vehicles after they were sold, Volkswagen engaged in deceptive business practices in
15 violation of the Oregon UTPA.

16 578. In the course of Volkswagen's business, it willfully failed to disclose and
17 actively concealed the use of defeat devices in the Defeat Device Vehicles and the serious
18 defects discussed above. Volkswagen compounded the deception by repeatedly asserting that
19 the Defeat Device Vehicles were safe, reliable, environmentally clean, efficient, and of high
20 quality, and by claiming to be a reputable manufacturer that valued safety, environmental
21 cleanliness and efficiency, and stood behind its vehicles once they are on the road.

22 579. Volkswagen's unfair or deceptive acts or practices were likely to and did in fact
23 deceive reasonable consumers, including Plaintiff, about the true cleanliness and efficiency of
24 the Defeat Device Vehicles, the quality of the Audi, Porsche and Volkswagen brands, the
25 devaluing of environmental cleanliness and integrity at Volkswagen, and the true value of the
26 Defeat Device Vehicles.

1 580. Volkswagen intentionally and knowingly misrepresented material facts regarding
2 the Defeat Device Vehicles with intent to mislead Plaintiff and the Oregon Subclass.

3 581. Volkswagen knew or should have known that its conduct violated the Oregon
4 UTPA.

5 582. As alleged above, Volkswagen made material statements about the safety,
6 cleanliness, efficiency and reliability of the Defeat Device Vehicles that were either false or
7 misleading.

8 583. Volkswagen owed Plaintiff a duty to disclose the true safety, cleanliness,
9 efficiency and reliability of the Defeat Device Vehicles, and the devaluing of environmental
10 cleanliness and integrity at Volkswagen, because Volkswagen:

- 11 a. Possessed exclusive knowledge that it valued profits
12 over environmental cleanliness, efficiency, and
13 lawfulness, and that it was manufacturing, selling and
14 distributing vehicles throughout the United States that
15 did not comply with EPA regulations;
- 16 b. Intentionally concealed the foregoing from Plaintiffs; and/or
- 17 c. Made incomplete representations about the safety,
18 cleanliness, efficiency and reliability of the Defeat
19 Device Vehicles generally, and the use of the defeat
20 device and true nature of the 2.0 liter and 3.0 liter TDI
21 Clean Diesel engines in particular, while purposefully
22 withholding material facts from Plaintiffs that
23 contradicted these representations.

24 584. Because Volkswagen fraudulently concealed the defeat device and the true
25 cleanliness and performance of the Defeat Device Vehicles, resulting in a raft of negative
26 publicity once the use of the defeat device and true characteristics of the 2.0 liter and 3.0 liter
27 TDI Clean Diesel engines finally began to be disclosed, the value of the Defeat Device Vehicles
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1 has greatly diminished. In light of the stigma attached to those vehicles by Volkswagen's
2 conduct, they are now worth significantly less than they otherwise would be.

3 585. Volkswagen's fraudulent use of the defeat device and its concealment of the true
4 characteristics of the 2.0 liter and 3.0 liter TDI Clean Diesel engines were material to Plaintiff
5 and the Oregon Subclass. A vehicle made by a reputable manufacturer of environmentally
6 friendly vehicles is worth more than an otherwise comparable vehicle made by a disreputable
7 and dishonest manufacturer of polluting vehicles that conceals the amount its cars pollutes
8 rather than make environmentally friendly vehicles.

9 586. Plaintiff and the Oregon Subclass suffered ascertainable loss caused by
10 Volkswagen's misrepresentations and its concealment of and failure to disclose material
11 information.

12 587. Volkswagen had an ongoing duty to all Audi, Porsche and Volkswagen customers
13 to refrain from unfair and deceptive acts or practices under the Oregon UTPA. All owners of
14 Defeat Device Vehicles suffered ascertainable loss in the form of the diminished value of their
15 vehicles as a result of Volkswagen's deceptive and unfair acts and practices that occurred in the
16 course of Volkswagen's business.

17 588. Volkswagen's violations present a continuing risk to Plaintiff as well as to the
18 general public. Volkswagen's unlawful acts and practices complained of herein affect the
19 public interest.

20 589. As a direct and proximate result of Volkswagen's violations of the Oregon
21 UTPA, Plaintiff and the Oregon Subclass have suffered injury-in-fact and/or actual damage.

22 590. Plaintiff and the Oregon Subclass are entitled to recover the greater of actual
23 damages or \$200 pursuant to OR. REV. STAT. § 646.638(1). Plaintiff and the Oregon Subclass
24 are also entitled to punitive damages because Volkswagen engaged in conduct amounting to a
25 particularly aggravated, deliberate disregard of the rights of others.
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COUNT XLI
BREACH OF CONTRACT
(On Behalf of the Oregon Subclass)

591. Plaintiff Wobbe (“Plaintiff” for purposes of all claims brought on behalf of the Oregon Subclass) incorporates by reference the allegations set forth above as if set forth fully herein.

592. Plaintiff brings this claim on behalf of himself and the Oregon Subclass.

593. Volkswagen’s misrepresentations and omissions alleged herein, including Volkswagen’s failure to disclose the existence of the 2.0 liter and 3.0 liter TDI Clean Diesel engines’ defect and/or defective design as alleged herein, caused Plaintiff and the other members of the Oregon Subclass to make their purchases or leases of their Defeat Device Vehicles. Absent those misrepresentations and omissions, Plaintiff and the other members of the Oregon Subclass would not have purchased or leased these Defeat Device Vehicles, would not have purchased or leased these Defeat Device Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the TDI Clean Diesel engines and which were not marketed as including such a system. Accordingly, Plaintiff and the other members of the Oregon Subclass overpaid for their Defeat Device Vehicles and did not receive the benefit of their bargain.

594. Each and every sale or lease of a Defeat Device Vehicle constitutes a contract between Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the other members of the Oregon Subclass defective Defeat Device Vehicles and by misrepresenting or failing to disclose the existence of the TDI Clean Diesel engines’ defect and/or defective design, including information known to Volkswagen rendering each Defeat Device Vehicle non EPA-compliant, and thus less valuable, than vehicles not equipped with a TDI Clean Diesel engines.

595. As a direct and proximate result of Volkswagen’s breach of contract, Plaintiff and the Oregon Subclass have been damaged in an amount to be proven at trial, which shall

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

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4 **COUNT XLII**
5 **FRAUD BY CONCEALMENT**
6 **(On Behalf of the Oregon Subclass)**

7 596. Plaintiff Wobbe (“Plaintiff” for purposes of all claims brought on behalf of the
8 Oregon Subclass) incorporates by reference the allegations set forth above as if set forth fully
9 herein.

10 597. Plaintiff brings this claim on behalf of himself and the Oregon Subclass.

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

23 599. Plaintiff and the members of the Oregon Subclass reasonably relied upon
24 Volkswagen’s false representations. They had no way of knowing that Volkswagen’s
25 representations were false and gravely misleading. As alleged herein, Volkswagen employed
26 extremely sophisticated methods of deception. Plaintiff and the members of the Oregon
27 Subclass did not, and could not, unravel Volkswagen’s deception on their own.
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1 600. Volkswagen concealed and suppressed material facts concerning what is
2 evidently the true culture of Volkswagen—one characterized by an emphasis on profits and
3 sales above compliance with federal and state clean air law, and emissions regulations that are
4 meant to protect the public and consumers. It also emphasized profits and sales about the trust
5 that Plaintiff and the members of the Oregon Subclass placed in its representations.

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

19 602. Volkswagen had a duty to disclose the emissions scheme it engaged in with
20 respect to the vehicles at issue because knowledge of the scheme and its details were known
21 and/or accessible only to Volkswagen, because Volkswagen had exclusive knowledge as to
22 implementation and maintenance of its scheme, and because Volkswagen knew the facts were
23 not known to or reasonably discoverable by Plaintiff or the members of the Oregon Subclass.
24 Volkswagen also had a duty to disclose because it made general affirmative representations
25 about the qualities of its vehicles with respect to emissions standards, starting with references to
26 them as clean diesel cars, or cars with clean diesel engines, which were misleading, deceptive,
27 and incomplete without the disclosure of the additional facts set forth above regarding its
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1 emissions scheme, the actual emissions of its vehicles, its actual philosophy with respect to
2 compliance with federal and state clean air law and emissions regulations, and its actual
3 practices with respect to the vehicles at issue. Having volunteered to provide information to
4 Plaintiff, Volkswagen had the duty to disclose not just the partial truth, but the entire truth.
5 These omitted and concealed facts were material because they directly impact the value of the
6 Defeat Device Vehicles purchased or leased by Plaintiff and the members of the Oregon
7 Subclass. Whether a manufacturer's products comply with federal and state clean air law and
8 emissions regulations, and whether that manufacturer tells the truth with respect to such
9 compliance or non-compliance, are material concerns to a consumer, including with respect to
10 the emissions certifications testing their vehicles must pass. Volkswagen represented to Plaintiff
11 and the members of the Oregon Subclass that they were purchasing clean diesel vehicles, and
12 certification testing appeared to confirm this—except that, secretly, Volkswagen had subverted
13 the testing process thoroughly.

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

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

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

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

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

21 608. Accordingly, Volkswagen is liable to Plaintiff and the members of the Oregon
22 Subclass for damages in an amount to be proven at trial.

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

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4 **COUNT XLIII**
5 **NEGLIGENT MISREPRESENTATION**
6 **(On Behalf of the Oregon Subclass)**

7 610. Plaintiff Wobbe (“Plaintiff” for purposes of all claims brought on behalf of the
8 Oregon Subclass) incorporates by reference the allegations set forth above as if set forth fully
9 herein.

10 611. Plaintiff brings this claim on behalf of himself and the Oregon Subclass.

11 612. Defendants had a duty to provide honest and accurate information to customers
12 so that customers could make informed decisions regarding the purchase or lease of
13 automobiles.

14 613. Defendants specifically and expressly misrepresented material facts to Plaintiff
15 and the other members of the Oregon Subclass, as set forth in detail above, including, but not
16 limited to representations that the Defeat Device Vehicles complied with federal and state
17 emissions laws, regulations and standards and possessed certain performance and fuel economy
18 characteristics.

19 614. Defendants knew, or in the exercise of reasonable diligence should have known,
20 that the ordinary consumer would be misled by these misrepresentations.

21 615. Plaintiff and the other members of the Oregon Subclass justifiably relied on
22 Defendants' misrepresentations and have been damaged thereby.
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K. Claims Brought on behalf of the Pennsylvania Subclass

**COUNT XLIV
BREACH OF CONTRACT
(On Behalf of the Pennsylvania Subclass)**

616. Plaintiff Erica Shoaf (“Plaintiff” for purposes of all claims brought on behalf of the Pennsylvania Subclass) incorporates by reference the allegations set forth above as if set forth fully herein.

617. Plaintiff brings this claim on behalf of himself and the Pennsylvania Subclass.

618. Volkswagen’s misrepresentations and omissions alleged herein, including Volkswagen’s failure to disclose the existence of the 2.0 liter and 3.0 liter TDI Clean Diesel engines’ defect and/or defective design as alleged herein, caused Plaintiff and the other members of the Pennsylvania Subclass to make their purchases or leases of their Defeat Device Vehicles. Absent those misrepresentations and omissions, Plaintiff and the other members of the Pennsylvania Subclass would not have purchased or leased these Defeat Device Vehicles, would not have purchased or leased these Defeat Device Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the TDI Clean Diesel engines and which were not marketed as including such a system. Accordingly, Plaintiff and the other members of the Pennsylvania Subclass overpaid for their Defeat Device Vehicles and did not receive the benefit of their bargain.

619. Each and every sale or lease of a Defeat Device Vehicle constitutes a contract between Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing Plaintiff and the other members of the Pennsylvania Subclass defective Defeat Device Vehicles and by misrepresenting or failing to disclose the existence of the TDI Clean Diesel engines’ defect and/or defective design, including information known to Volkswagen rendering each Defeat Device Vehicle non EPA-compliant, and thus less valuable, than vehicles not equipped with a TDI Clean Diesel engines.

1 extremely sophisticated methods of deception. Plaintiff and the members of the Pennsylvania
2 Subclass did not, and could not, unravel Volkswagen's deception on their own.

3 625. Volkswagen concealed and suppressed material facts concerning what is
4 evidently the true culture of Volkswagen—one characterized by an emphasis on profits and
5 sales above compliance with federal and state clean air law, and emissions regulations that are
6 meant to protect the public and consumers. It also emphasized profits and sales about the trust
7 that Plaintiff and the members of the Pennsylvania Subclass placed in its representations.

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

21 627. Volkswagen had a duty to disclose the emissions scheme it engaged in with
22 respect to the vehicles at issue because knowledge of the scheme and its details were known
23 and/or accessible only to Volkswagen, because Volkswagen had exclusive knowledge as to
24 implementation and maintenance of its scheme, and because Volkswagen knew the facts were
25 not known to or reasonably discoverable by Plaintiff or the members of the Pennsylvania
26 Subclass. Volkswagen also had a duty to disclose because it made general affirmative
27 representations about the qualities of its vehicles with respect to emissions standards, starting
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1 with references to them as clean diesel cars, or cars with clean diesel engines, which were
2 misleading, deceptive, and incomplete without the disclosure of the additional facts set forth
3 above regarding its emissions scheme, the actual emissions of its vehicles, its actual philosophy
4 with respect to compliance with federal and state clean air law and emissions regulations, and
5 its actual practices with respect to the vehicles at issue. Having volunteered to provide
6 information to Plaintiff, Volkswagen had the duty to disclose not just the partial truth, but the
7 entire truth. These omitted and concealed facts were material because they directly impact the
8 value of the Defeat Device Vehicles purchased or leased by Plaintiff and the members of the
9 Pennsylvania Subclass. Whether a manufacturer's products comply with federal and state clean
10 air law and emissions regulations, and whether that manufacturer tells the truth with respect to
11 such compliance or non-compliance, are material concerns to a consumer, including with
12 respect to the emissions certifications testing their vehicles must pass. Volkswagen represented
13 to Plaintiff and the members of the Pennsylvania Subclass that they were purchasing clean
14 diesel vehicles, and certification testing appeared to confirm this—except that, secretly,
15 Volkswagen had subverted the testing process thoroughly.

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

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

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

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

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

23 633. Accordingly, Volkswagen is liable to Plaintiff and the members of the
24 Pennsylvania Subclass for damages in an amount to be proven at trial.

25 634. Volkswagen’s acts were done wantonly, maliciously, oppressively, deliberately,
26 with intent to defraud, and in reckless disregard of Plaintiff’s and the members of the
27 Pennsylvania Subclass’ rights and the representations that Volkswagen made to them, in order
28

1 to enrich Volkswagen. To the extent permitted under applicable law, Volkswagen's conduct
2 warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the
3 future, which amount is to be determined according to proof.

4
5 **COUNT XLVI**
6 **NEGLIGENT MISREPRESENTATION**
7 **(On Behalf of the Pennsylvania Subclass)**

8 635. Plaintiff Shoaf ("Plaintiff" for purposes of all claims brought on behalf of the
9 Pennsylvania Subclass) incorporates by reference the allegations set forth above as if set forth
10 fully herein.

11 636. Plaintiff brings this claim on behalf of himself and the Pennsylvania Subclass.

12 637. Defendants had a duty to provide honest and accurate information to customers
13 so that customers could make informed decisions regarding the purchase or lease of
14 automobiles.

15 638. Defendants specifically and expressly misrepresented material facts to Plaintiff
16 and the other members of the Pennsylvania Subclass, as set forth in detail above, including, but
17 not limited to representations that the Defeat Device Vehicles complied with federal and state
18 emissions laws, regulations and standards and possessed certain performance and fuel economy
19 characteristics.

20 639. Defendants knew, or in the exercise of reasonable diligence should have known,
21 that the ordinary consumer would be misled by these misrepresentations.

22 640. Plaintiff and the other members of the Pennsylvania Subclass justifiably relied
23 on Defendants' misrepresentations and have been damaged thereby.
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L. Claims Brought on Behalf of the Texas Subclass

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

641. Plaintiff Robert Hewitt (“Plaintiff,” for purposes of all claims brought on behalf of the Texas Subclass) incorporates by reference the allegations set forth above as if set forth fully herein.

642. Plaintiff brings this claim on behalf of himself and the Texas Subclass.

643. Plaintiff intends to assert a claim under the Texas Deceptive Trade Practices Act (“TDTPA”), which makes it unlawful to commit “[f]alse, misleading, or deceptive acts or practices in the conduct of any trade or commerce.” TEX. BUS. & COM. CODE § 17.46. Plaintiffs will make a demand in satisfaction of TEX. BUS. & COM. CODE § 17.45(2), and may amend this Complaint to assert claims under the TDTPA once the required 60 days have elapsed. This paragraph is included for purposes of notice only and is not intended to actually assert a claim under the TDTPA.

**COUNT XLVIII
BREACH OF CONTRACT
(On Behalf of the Texas Subclass)**

644. Plaintiff Hewitt (“Plaintiff,” for purposes of all claims brought on behalf of the Texas Subclass) incorporates by reference the allegations set forth above as if set forth fully herein.

645. Plaintiff brings this claim on behalf of himself and the Texas Subclass.

646. Volkswagen’s misrepresentations and omissions alleged herein, including Volkswagen’s failure to disclose the existence of the 2.0 liter and 3.0 liter TDI Clean Diesel engines’ defect and/or defective design as alleged herein, caused Plaintiff and the other members of the Texas Subclass to make their purchases or leases of their Defeat Device Vehicles. Absent those misrepresentations and omissions, Plaintiff and the other members of

1 the Texas Subclass would not have purchased or leased these Defeat Device Vehicles, would
2 not have purchased or leased these Defeat Device Vehicles at the prices they paid, and/or would
3 have purchased or leased less expensive alternative vehicles that did not contain the TDI Clean
4 Diesel engines and which were not marketed as including such a system. Accordingly, Plaintiff
5 and the other members of the Texas Subclass overpaid for their Defeat Device Vehicles and did
6 not receive the benefit of their bargain.

7 647. Each and every sale or lease of a Defeat Device Vehicle constitutes a contract
8 between Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by
9 selling or leasing Plaintiff and the other members of the Texas Subclass defective Defeat Device
10 Vehicles and by misrepresenting or failing to disclose the existence of the TDI Clean Diesel
11 engines' defect and/or defective design, including information known to Volkswagen rendering
12 each Defeat Device Vehicle non EPA-compliant, and thus less valuable, than vehicles not
13 equipped with a TDI Clean Diesel engines.

14 648. As a direct and proximate result of Volkswagen's breach of contract, Plaintiff
15 and the Texas Subclass have been damaged in an amount to be proven at trial, which shall
16 include, but is not limited to, all compensatory damages, incidental and consequential damages,
17 and other damages allowed by law.

18
19 **COUNT XLIX**
20 **FRAUD BY CONCEALMENT**
 (On Behalf of the Texas Subclass)

21 649. Plaintiff Hewitt ("Plaintiff," for purposes of all claims brought on behalf of the
22 Texas Subclass) incorporates by reference the allegations set forth above as if set forth fully
23 herein.

24 650. Plaintiff brings this claim on behalf of himself and the Texas Subclass.

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

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

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

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

6 655. Volkswagen had a duty to disclose the emissions scheme it engaged in with
7 respect to the vehicles at issue because knowledge of the scheme and its details were known
8 and/or accessible only to Volkswagen, because Volkswagen had exclusive knowledge as to
9 implementation and maintenance of its scheme, and because Volkswagen knew the facts were
10 not known to or reasonably discoverable by Plaintiff or the members of the Texas Subclass.
11 Volkswagen also had a duty to disclose because it made general affirmative representations
12 about the qualities of its vehicles with respect to emissions standards, starting with references to
13 them as clean diesel cars, or cars with clean diesel engines, which were misleading, deceptive,
14 and incomplete without the disclosure of the additional facts set forth above regarding its
15 emissions scheme, the actual emissions of its vehicles, its actual philosophy with respect to
16 compliance with federal and state clean air law and emissions regulations, and its actual
17 practices with respect to the vehicles at issue. Having volunteered to provide information to
18 Plaintiff, Volkswagen had the duty to disclose not just the partial truth, but the entire truth.
19 These omitted and concealed facts were material because they directly impact the value of the
20 Defeat Device Vehicles purchased or leased by Plaintiff and the members of the Texas
21 Subclass. Whether a manufacturer's products comply with federal and state clean air law and
22 emissions regulations, and whether that manufacturer tells the truth with respect to such
23 compliance or non-compliance, are material concerns to a consumer, including with respect to
24 the emissions certifications testing their vehicles must pass. Volkswagen represented to Plaintiff
25 and the members of the Texas Subclass that they were purchasing clean diesel vehicles, and
26 certification testing appeared to confirm this—except that, secretly, Volkswagen had subverted
27 the testing process thoroughly.

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

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

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

18 659. Because of the concealment and/or suppression of the facts, Plaintiff and the
19 members of the Texas Subclass have sustained damage because they own vehicles that are
20 diminished in value as a result of Volkswagen's concealment of the true quality and quantity of
21 those vehicles' emissions and Volkswagen's failure to timely disclose the actual emission
22 qualities and quantities of hundreds of thousands of Defeat Device Vehicles and the serious
23 issues engendered by Volkswagen's corporate policies. Had Plaintiff and the members of the
24 Texas Subclass been aware of Volkswagen's emissions schemes with regard to the vehicles at
25 issue, and the company's callous disregard for compliance with applicable federal and state law
26 and regulations, Plaintiff and the members of the Texas Subclass who purchased or leased new
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1 666. Defendants specifically and expressly misrepresented material facts to Plaintiff
2 and the other members of the Texas Subclass, as set forth in detail above, including, but not
3 limited to representations that the Defeat Device Vehicles complied with federal and state
4 emissions laws, regulations and standards and possessed certain performance and fuel economy
5 characteristics.

6 667. Defendants knew, or in the exercise of reasonable diligence should have known,
7 that the ordinary consumer would be misled by these misrepresentations.

8 668. Plaintiff and the other members of the Texas Subclass justifiably relied on
9 Defendants' misrepresentations and have been damaged thereby.

10
11 **M. Claims Brought on behalf of the Tennessee Subclass**

12
13 **COUNT LI**
14 **BREACH OF CONTRACT**
15 **(On Behalf of the Tennessee Subclass)**

16 669. Plaintiff Frederick Rudolph ("Plaintiff" for purposes of all claims brought on
17 behalf of the Tennessee Subclass) incorporates by reference all allegations set forth above as if
18 set forth fully herein.

19 670. Plaintiff brings this claim on behalf of himself and the Tennessee Subclass.

20 671. Volkswagen's misrepresentations and omissions alleged herein, including
21 Volkswagen's failure to disclose the existence of the 2.0 liter and 3.0 liter TDI Clean Diesel
22 engines' defect and/or defective design as alleged herein, caused Plaintiff and the other
23 members of the Tennessee Subclass to make their purchases or leases of their Defeat Device
24 Vehicles. Absent those misrepresentations and omissions, Plaintiff and the other members of
25 the Tennessee Subclass would not have purchased or leased these Defeat Device Vehicles,
26 would not have purchased or leased these Defeat Device Vehicles at the prices they paid, and/or
27 would have purchased or leased less expensive alternative vehicles that did not contain the TDI
28 Clean Diesel engines and which were not marketed as including such a system. Accordingly,

1 Plaintiff and the other members of the Tennessee Subclass overpaid for their Defeat Device
2 Vehicles and did not receive the benefit of their bargain.

3 672. Each and every sale or lease of a Defeat Device Vehicle constitutes a contract
4 between Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by
5 selling or leasing Plaintiff and the other members of the Tennessee Subclass defective Defeat
6 Device Vehicles and by misrepresenting or failing to disclose the existence of the TDI Clean
7 Diesel engines' defect and/or defective design, including information known to Volkswagen
8 rendering each Defeat Device Vehicle non EPA-compliant, and thus less valuable, than vehicles
9 not equipped with a TDI Clean Diesel engines.

10 673. As a direct and proximate result of Volkswagen's breach of contract, Plaintiff
11 and the Tennessee Subclass have been damaged in an amount to be proven at trial, which shall
12 include, but is not limited to, all compensatory damages, incidental and consequential damages,
13 and other damages allowed by law.

14
15 **COUNT LII**
16 **FRAUDULENT CONCEALMENT**
 (On Behalf of the Tennessee Subclass)

17 674. Plaintiff Rudolph ("Plaintiff" for purposes of all claims brought on behalf of the
18 Tennessee Subclass) incorporates by reference all allegations set forth above as if set forth fully
19 herein.

20 675. Plaintiff brings this claim on behalf of himself and the Tennessee Subclass.

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

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

11 678. Volkswagen concealed and suppressed material facts concerning what is
12 evidently the true culture of Volkswagen—one characterized by an emphasis on profits and
13 sales above compliance with federal and state clean air law, and emissions regulations that are
14 meant to protect the public and consumers. It also emphasized profits and sales about the trust
15 that Plaintiff and the members of the Tennessee Subclass placed in its representations.

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

3 680. Volkswagen had a duty to disclose the emissions scheme it engaged in with
4 respect to the vehicles at issue because knowledge of the scheme and its details were known
5 and/or accessible only to Volkswagen, because Volkswagen had exclusive knowledge as to
6 implementation and maintenance of its scheme, and because Volkswagen knew the facts were
7 not known to or reasonably discoverable by Plaintiff or the members of the Tennessee Subclass.
8 Volkswagen also had a duty to disclose because it made general affirmative representations
9 about the qualities of its vehicles with respect to emissions standards, starting with references to
10 them as clean diesel cars, or cars with clean diesel engines, which were misleading, deceptive,
11 and incomplete without the disclosure of the additional facts set forth above regarding its
12 emissions scheme, the actual emissions of its vehicles, its actual philosophy with respect to
13 compliance with federal and state clean air law and emissions regulations, and its actual
14 practices with respect to the vehicles at issue. Having volunteered to provide information to
15 Plaintiff, Volkswagen had the duty to disclose not just the partial truth, but the entire truth.
16 These omitted and concealed facts were material because they directly impact the value of the
17 Defeat Device Vehicles purchased or leased by Plaintiff and the members of the Tennessee
18 Subclass. Whether a manufacturer's products comply with federal and state clean air law and
19 emissions regulations, and whether that manufacturer tells the truth with respect to such
20 compliance or non-compliance, are material concerns to a consumer, including with respect to
21 the emissions certifications testing their vehicles must pass. Volkswagen represented to Plaintiff
22 and the members of the Tennessee Subclass that they were purchasing clean diesel vehicles, and
23 certification testing appeared to confirm this—except that, secretly, Volkswagen had subverted
24 the testing process thoroughly.

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

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

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

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

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

5 686. Accordingly, Volkswagen is liable to Plaintiff and the members of the Tennessee
6 Subclass for damages in an amount to be proven at trial.

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

13
14 **COUNT LIII**
15 **NEGLIGENT MISREPRESENTATION**
16 **(On Behalf of the Tennessee Subclass)**

17 688. Plaintiff Rudolph ("Plaintiff" for purposes of all claims brought on behalf of the
18 Tennessee Subclass) incorporates by reference all allegations set forth above as if set forth fully
19 herein.

20 689. Plaintiff brings this claim on behalf of himself and the Tennessee Subclass.

21 690. Defendants had a duty to provide honest and accurate information to customers
22 so that customers could make informed decisions regarding the purchase or lease of
23 automobiles.

24 691. Defendants specifically and expressly misrepresented material facts to Plaintiff
25 and the other members of the Tennessee Subclass, as set forth in detail above, including, but not
26 limited to representations that the Defeat Device Vehicles complied with federal and state
27 emissions laws, regulations and standards and possessed certain performance and fuel economy
28 characteristics.

1 692. Defendants knew, or in the exercise of reasonable diligence should have known,
2 that the ordinary consumer would be misled by these misrepresentations.

3 693. Plaintiff and the other members of the Tennessee Subclass justifiably relied on
4 Defendants' misrepresentations and have been damaged thereby.

5
6 **N. Claims Brought on Behalf of the Virginia Subclass**

7
8 **COUNT LIV**
9 **VIOLATION OF THE CONSUMER PROTECTION ACT**
10 **(On Behalf of the Virginia Subclass)**

11 694. Plaintiff Brandon Kruse ("Plaintiff" for purposes of all claims brought on behalf
12 of the Virginia Subclass) incorporates by reference the allegations set forth above as if set forth
13 fully herein.

14 695. Plaintiff brings this claim on behalf of himself and the Virginia Subclass.

15 696. brings this action for relief under Virginia Code § 59-1-196, et seq., pursuant to
16 the Virginia Consumer Protection Act.

17 697. Under Virginia Code § 59-1-198 a "consumer transaction" is defined as "[t]he
18 advertisement, sale, lease, license or offering for sale, lease or license goods or services to be
19 used primarily for personal, family or household purposes." "Goods" is defines as "all real,
20 personal or mixed property, tangible or intangible."

21 698. The advertising marketing, soliciting, proffer or supply of the Defeat Device
22 Vehicles by Defendants constitutes acts by a supplier under the Virginia Consumer Protections
23 Act.

24 699. Virginia Code § 59.1-200.A. provides that: "[t]he following fraudulent acts or
25 practices committed by a supplier in connection with a consumer transaction are hereby
26 declared unlawful: . . . Misrepresenting that goods or services have certain quantities,
27 characteristics, ingredients, uses or benefits; [or] Misrepresenting that goods or services are of a
28 particular standard, quality, grade, style or model."

1 and the other members of the Virginia Subclass overpaid for their Defeat Device Vehicles and
2 did not receive the benefit of their bargain.

3 705. Each and every sale or lease of a Defeat Device Vehicle constitutes a contract
4 between Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by
5 selling or leasing Plaintiff and the other members of the Virginia Subclass defective Defeat
6 Device Vehicles and by misrepresenting or failing to disclose the existence of the TDI Clean
7 Diesel engines' defect and/or defective design, including information known to Volkswagen
8 rendering each Defeat Device Vehicle non EPA-compliant, and thus less valuable, than vehicles
9 not equipped with a TDI Clean Diesel engines.

10 706. As a direct and proximate result of Volkswagen's breach of contract, Plaintiff
11 and the Virginia Subclass have been damaged in an amount to be proven at trial, which shall
12 include, but is not limited to, all compensatory damages, incidental and consequential damages,
13 and other damages allowed by law.

14
15 **COUNT LVI**
16 **FRAUD BY CONCEALMENT**
(On Behalf of the Virginia Subclass)

17 707. Plaintiff Brandon Kruse ("Plaintiff" for purposes of all claims brought on behalf
18 of the Virginia Subclass) incorporates by reference the allegations set forth above as if set forth
19 fully herein.

20 708. Plaintiff brings this claim on behalf of himself and the Virginia Subclass.

21 709. Volkswagen intentionally concealed and suppressed material facts concerning
22 the quality of the Defeat Device Vehicles. As alleged in this Complaint, notwithstanding
23 references in the very model names of the subject vehicles as "Clean Diesel," or to their engines
24 as "TDI Clean Diesel" engines, Volkswagen engaged in a secret scheme to evade federal and
25 state vehicle emissions standards by installing software designed to conceal its vehicles'
26 emissions of the pollutant nitrogen oxide, which contributes to the creation of ozone and smog.
27 The software installed on the vehicles at issue was designed nefariously to kick-in during
28

1 emissions certification testing, such that the vehicles would show far lower emissions than when
2 actually operating on the road. The result was what Volkswagen intended: vehicles passed
3 emissions certifications by way of deliberately induced false readings. Reportedly,
4 Volkswagen's deliberate, secret scheme resulted in noxious emissions from these vehicles at 40
5 times applicable standards.

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

11 711. Volkswagen concealed and suppressed material facts concerning what is
12 evidently the true culture of Volkswagen—one characterized by an emphasis on profits and
13 sales above compliance with federal and state clean air law, and emissions regulations that are
14 meant to protect the public and consumers. It also emphasized profits and sales about the trust
15 that Plaintiff and the members of the Virginia Subclass placed in its representations.

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

3 713. Volkswagen had a duty to disclose the emissions scheme it engaged in with
4 respect to the vehicles at issue because knowledge of the scheme and its details were known
5 and/or accessible only to Volkswagen, because Volkswagen had exclusive knowledge as to
6 implementation and maintenance of its scheme, and because Volkswagen knew the facts were
7 not known to or reasonably discoverable by Plaintiff or the members of the Virginia Subclass.
8 Volkswagen also had a duty to disclose because it made general affirmative representations
9 about the qualities of its vehicles with respect to emissions standards, starting with references to
10 them as clean diesel cars, or cars with clean diesel engines, which were misleading, deceptive,
11 and incomplete without the disclosure of the additional facts set forth above regarding its
12 emissions scheme, the actual emissions of its vehicles, its actual philosophy with respect to
13 compliance with federal and state clean air law and emissions regulations, and its actual
14 practices with respect to the vehicles at issue. Having volunteered to provide information to
15 Plaintiff, Volkswagen had the duty to disclose not just the partial truth, but the entire truth.
16 These omitted and concealed facts were material because they directly impact the value of the
17 Defeat Device Vehicles purchased or leased by Plaintiff and the members of the Virginia
18 Subclass. Whether a manufacturer's products comply with federal and state clean air law and
19 emissions regulations, and whether that manufacturer tells the truth with respect to such
20 compliance or non-compliance, are material concerns to a consumer, including with respect to
21 the emissions certifications testing their vehicles must pass. Volkswagen represented to Plaintiff
22 and the members of the Virginia Subclass that they were purchasing clean diesel vehicles, and
23 certification testing appeared to confirm this—except that, secretly, Volkswagen had subverted
24 the testing process thoroughly.

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

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

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

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

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

5 719. Accordingly, Volkswagen is liable to Plaintiff and the members of the Virginia
6 Subclass for damages in an amount to be proven at trial.

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

13
14 **COUNT LVII**
15 **NEGLIGENT MISREPRESENTATION**
16 **(On Behalf of the Virginia Subclass)**

17 721. Plaintiff Brandon Kruse ("Plaintiff" for purposes of all claims brought on behalf
18 of the Virginia Subclass) incorporates by reference the allegations set forth above as if set forth
19 fully herein.

20 722. Plaintiff brings this claim on behalf of himself and the Virginia Subclass.

21 723. Defendants had a duty to provide honest and accurate information to customers
22 so that customers could make informed decisions regarding the purchase or lease of
23 automobiles.

24 724. Defendants specifically and expressly misrepresented material facts to Plaintiff
25 and the other members of the Virginia Subclass, as set forth in detail above, including, but not
26 limited to representations that the Defeat Device Vehicles complied with federal and state
27 emissions laws, regulations and standards and possessed certain performance and fuel economy
28 characteristics.

1 725. Defendants knew, or in the exercise of reasonable diligence should have known,
2 that the ordinary consumer would be misled by these misrepresentations.

3 726. Plaintiff and the other members of the Virginia Subclass justifiably relied on
4 Defendants' misrepresentations and have been damaged thereby.

5
6 **O. Claims Brought on Behalf of the Washington Subclass**

7
8 **COUNT LVIII**
9 **VIOLATION OF THE WASHINGTON CONSUMER PROTECTION ACT**
10 **(Wash. Rev. Code Ann. §§ 19.86.010, et seq.)**
11 **(On Behalf of the Washington Subclass)**

12 727. Plaintiff David Mason ("Plaintiff," for purposes of all claims brought on behalf
13 of the Washington Subclass) incorporates by reference the allegations set forth above as if set
14 forth fully herein.

15 728. Plaintiff brings this Count on behalf of the Washington Subclass.

16 729. The conduct of Volkswagen as set forth herein constitutes unfair or deceptive
17 acts or devices" and non-EPA compliant TDI Clean Diesel engines, which Volkswagen failed to
18 adequately investigate, disclose and remedy. Further, Volkswagen knew about these defects
19 prior to the sale of the Defeat Device Vehicles but did not disclose the existence of these defects
20 to Plaintiff and the members of the Washington Subclass. Volkswagen also made
21 misrepresentations and omissions regarding the safety, cleanliness, efficiency and reliability of
22 the Defeat Device Vehicles.

23 730. Volkswagen's actions as set forth above occurred in the conduct of trade or
24 commerce.

25 731. Volkswagen's actions constituted a generalized course of deception that impacts
26 the public interest because Plaintiff and the members of the Washington Subclass were injured
27 in exactly the same way as millions of others purchasing and/or leasing the Defeat Device
28 Vehicles and that the failure to follow the practices pertaining to motor vehicle warranties in

1 Wash. Rev. Code § 19.18 is recognized by statute as matters vitally affecting the public interest.
2 All of the wrongful conduct alleged herein occurred, and continues to occur, in the conduct of
3 Volkswagen's business and has the potential for repetition.

4 732. Volkswagen's actions as set forth above induced Plaintiff and the members of
5 the Washington Subclass to purchase Defeat Device Vehicles and/or pay a higher price for
6 Defeat Device Vehicles than they otherwise would have.

7 733. Plaintiffs and the members of the Washington Subclass were injured as a result
8 of Volkswagen's conduct. Due to Volkswagen's deceptive or unfair conduct, Plaintiff and the
9 members of the Washington Subclass overpaid for Defeat Device Vehicles and did not receive
10 the benefit of their bargain. Their vehicles have also suffered a diminution in value.

11 734. Volkswagen's conduct proximately caused the injuries to Plaintiff and the
12 members of the Washington Subclass.

13 735. Volkswagen is liable to Plaintiff and the members of the Washington Subclass
14 for damages in amounts to be proven at trial, including attorneys' fees, costs, and treble
15 damages.

16 736. Pursuant to Wash. Rev. Code § 19.86.095, Plaintiff will serve the Washington
17 Attorney General with a copy of this Complaint as Plaintiff and the members of the Washington
18 Subclass seek injunctive relief.

19
20 **COUNT LIX**
21 **BREACH OF CONTRACT**
22 **(On Behalf of the Washington Subclass)**

23 737. Plaintiff Mason ("Plaintiff," for purposes of all claims brought on behalf of the
24 Washington Subclass) incorporates by reference the allegations set forth above as if set forth
25 fully herein.

26 738. Plaintiff brings this Count on behalf of the Washington Subclass.

27 739. Volkswagen's misrepresentations and omissions alleged herein, including
28 Volkswagen's failure to disclose the existence of the 2.0 liter and 3.0 liter TDI Clean Diesel

1 engines' defect and/or defective design as alleged herein, caused Plaintiff and the other
2 members of the Washington Subclass to make their purchases or leases of their Defeat Device
3 Vehicles. Absent those misrepresentations and omissions, Plaintiff and the other members of
4 the Washington Subclass would not have purchased or leased these Defeat Device Vehicles,
5 would not have purchased or leased these Defeat Device Vehicles at the prices they paid, and/or
6 would have purchased or leased less expensive alternative vehicles that did not contain the TDI
7 Clean Diesel engines and which were not marketed as including such a system. Accordingly,
8 Plaintiff and the other members of the Washington Subclass overpaid for their Defeat Device
9 Vehicles and did not receive the benefit of their bargain.

10 740. Each and every sale or lease of a Defeat Device Vehicle constitutes a contract
11 between Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by
12 selling or leasing Plaintiff and the other members of the Washington Subclass defective Defeat
13 Device Vehicles and by misrepresenting or failing to disclose the existence of the TDI Clean
14 Diesel engines' defect and/or defective design, including information known to Volkswagen
15 rendering each Defeat Device Vehicle non EPA-compliant, and thus less valuable, than vehicles
16 not equipped with a TDI Clean Diesel engines.

17 741. As a direct and proximate result of Volkswagen's breach of contract, Plaintiff
18 and the Washington Subclass have been damaged in an amount to be proven at trial, which shall
19 include, but is not limited to, all compensatory damages, incidental and consequential damages,
20 and other damages allowed by law.

21
22 **COUNT LX**
23 **FRAUD BY CONCEALMENT**
24 **(On Behalf of the Washington Subclass)**

25 742. Plaintiff Mason ("Plaintiff," for purposes of all claims brought on behalf of the
26 Washington Subclass) incorporates by reference the allegations set forth above as if set forth
27 fully herein.

28 743. Plaintiff brings this Count on behalf of the Washington Subclass.

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

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

18 746. Volkswagen concealed and suppressed material facts concerning what is
19 evidently the true culture of Volkswagen—one characterized by an emphasis on profits and
20 sales above compliance with federal and state clean air law, and emissions regulations that are
21 meant to protect the public and consumers. It also emphasized profits and sales about the trust
22 that Plaintiff and the members of the Washington Subclass placed in its representations.

23 747. Necessarily, Volkswagen also took steps to ensure that its employees did not
24 reveal the details of its scheme to regulators or consumers, including Plaintiff and the members
25 of the Washington Subclass. Volkswagen did so in order to boost the reputations of its vehicles
26 and to falsely assure purchasers and lessors of its vehicles, including certified previously owned
27 vehicles, that Volkswagen is a reputable manufacturer that complies with applicable law,
28

1 including federal and state clean air law and emissions regulations, and that its vehicles likewise
2 comply with applicable law and regulations. Volkswagen's false representations were material
3 to consumers, both because they concerned the quality of the Defeat Device Vehicles, including
4 their compliance with applicable federal and state law and regulations regarding clean air and
5 emissions, and also because the representations played a significant role in the value of the
6 vehicles. As Volkswagen well knew, its customers, including Plaintiff and the members of the
7 Washington Subclass, highly valued that the vehicles they were purchasing or leasing were
8 clean diesel cars, and they paid accordingly.

9 748. Volkswagen had a duty to disclose the emissions scheme it engaged in with
10 respect to the vehicles at issue because knowledge of the scheme and its details were known
11 and/or accessible only to Volkswagen, because Volkswagen had exclusive knowledge as to
12 implementation and maintenance of its scheme, and because Volkswagen knew the facts were
13 not known to or reasonably discoverable by Plaintiff or the members of the Washington
14 Subclass. Volkswagen also had a duty to disclose because it made general affirmative
15 representations about the qualities of its vehicles with respect to emissions standards, starting
16 with references to them as clean diesel cars, or cars with clean diesel engines, which were
17 misleading, deceptive, and incomplete without the disclosure of the additional facts set forth
18 above regarding its emissions scheme, the actual emissions of its vehicles, its actual philosophy
19 with respect to compliance with federal and state clean air law and emissions regulations, and
20 its actual practices with respect to the vehicles at issue. Having volunteered to provide
21 information to Plaintiff, Volkswagen had the duty to disclose not just the partial truth, but the
22 entire truth. These omitted and concealed facts were material because they directly impact the
23 value of the Defeat Device Vehicles purchased or leased by Plaintiff and the members of the
24 Washington Subclass. Whether a manufacturer's products comply with federal and state clean
25 air law and emissions regulations, and whether that manufacturer tells the truth with respect to
26 such compliance or non-compliance, are material concerns to a consumer, including with
27 respect to the emissions certifications testing their vehicles must pass. Volkswagen represented
28

1 to Plaintiff and the members of the Washington Subclass that they were purchasing clean diesel
2 vehicles, and certification testing appeared to confirm this—except that, secretly, Volkswagen
3 had subverted the testing process thoroughly.

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

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

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

21 752. Because of the concealment and/or suppression of the facts, Plaintiff and the
22 members of the Washington Subclass have sustained damage because they own vehicles that
23 are diminished in value as a result of Volkswagen’s concealment of the true quality and quantity
24 of those vehicles’ emissions and Volkswagen’s failure to timely disclose the actual emission
25 qualities and quantities of hundreds of thousands of Defeat Device Vehicles and the serious
26 issues engendered by Volkswagen’s corporate policies. Had Plaintiff and the members of the
27 Washington Subclass been aware of Volkswagen’s emissions schemes with regard to the
28

1 vehicles at issue, and the company's callous disregard for compliance with applicable federal
2 and state law and regulations, Plaintiff and the members of the Washington Subclass who
3 purchased or leased new or certified previously owned vehicles would have paid less for their
4 vehicles or would not have purchased or leased them at all.

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

11 754. Accordingly, Volkswagen is liable to Plaintiff and the members of the
12 Washington Subclass for damages in an amount to be proven at trial.

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

19
20 **COUNT LXI**
21 **NEGLIGENT MISREPRESENTATION**
22 **(On Behalf of the Washington Subclass)**

23 756. Plaintiff Mason ("Plaintiff," for purposes of all claims brought on behalf of the
24 Washington Subclass) incorporates by reference the allegations set forth above as if set forth
25 fully herein.

26 757. Plaintiff brings this Count on behalf of the Washington Subclass.
27
28

1 758. Defendants had a duty to provide honest and accurate information to customers
2 so that customers could make informed decisions regarding the purchase or lease of
3 automobiles.

4 759. Defendants specifically and expressly misrepresented material facts to Plaintiff
5 and the other members of the Washington Subclass, as set forth in detail above, including, but
6 not limited to representations that the Defeat Device Vehicles complied with federal and state
7 emissions laws, regulations and standards and possessed certain performance and fuel economy
8 characteristics.

9 760. Defendants knew, or in the exercise of reasonable diligence should have known,
10 that the ordinary consumer would be misled by these misrepresentations.

11 761. Plaintiff and the other members of the Washington Subclass justifiably relied on
12 Defendants' misrepresentations and have been damaged thereby.

13
14 **P. Claims Brought on Behalf of the West Virginia Subclass**

15
16 **COUNT LXII**
17 **Violation of the West Virginia Consumer Credit and Protection Act**
18 **(West Virginia Code § 46A-6-101, et seq.)**
19 **(On Behalf of the West Virginia Subclass)**

20 762. Plaintiff Jaclyn Foster ("Plaintiff" for purposes of all claims brought on behalf of
21 the West Virginia Subclass) incorporates by reference the allegations set forth above as if set
22 forth fully herein.

23 763. Plaintiff brings this claim on behalf of herself and the West Virginia Subclass.

24 764. Plaintiff intends to assert a claim under the West Virginia Consumer Credit and
25 Protection Act ("WVCCPA"), which makes it unlawful to engage in any "[u]nfair methods of
26 competition and unfair or deceptive acts or practices in the conduct of any trade or commerce."
27 WV Code § 46A-6-104. In satisfaction of WV Code § 46A-6-106(c), Plaintiffs will inform
28 Defendants in writing and by certified mail, return receipt requested, of Defendants' violation of

1 the WVCCPA. Plaintiffs may amend this Complaint to assert claims under the WVCCPA once
2 Defendants' statutory opportunity to make a cure offer has expired.

3 765. This and the three preceding paragraphs are included for the purpose of notice
4 only and are not intended to assert a claim under the WVCCPA at this time.

5
6 **COUNT LXIII**
7 **Breach of Implied Warranty of Merchantability**
8 **(West Virginia Code § 46-2-314)**
9 **(On Behalf of the West Virginia Subclass)**

10 766. Plaintiff Foster ("Plaintiff" for purposes of all claims brought on behalf of the
11 West Virginia Subclass) incorporates by reference the allegations set forth above as if set forth
12 fully herein.

13 767. Plaintiff brings this claim on behalf of herself and the West Virginia Subclass.

14 768. Defendant is and was at all relevant times a "merchant" with respect to motor
15 vehicles under West Virginia Code §§ 46-2-104(1) and 314(1).

16 769. The Defeat Device Vehicles are and were at all relevant times "goods" within the
17 meaning of West Virginia Code §§ 46-2-105(1) and 314(2).

18 770. A warranty that the Defeat Device Vehicles were in merchantable condition and
19 fit for the ordinary purposes for which cars are used was implied by law pursuant to West
20 Virginia Code § 46-2-314.

21 771. The Defeat Device Vehicles, when sold and at all times thereafter, were not in
22 merchantable condition and are not fit for the ordinary purpose for which cars are used for the
23 reasons specified above and below.

24 772. Defendant was provided notice of the relevant defects by its own knowledge of
25 these issues, by their own development of the defeat device software, by the WVU study, by
26 communications with the EPA, by the instant Complaint, and by numerous press releases and
27 other communications before or within a reasonable amount of time after issues related to the
28 emissions of the Defeat Device Vehicles became public. Additional notice would be futile

1 because there is no effective repair for the defect that will maintain the performance qualities
2 (including horsepower and fuel efficiency) of the Defeat Device Vehicles.

3 773. Plaintiff and members of the West Virginia Subclass have had sufficient direct
4 dealings with either the Defendant or their agents (Authorized Dealerships) to establish privity
5 of contract between Plaintiffs and members of the West Virginia Subclass, on the one hand, and
6 Defendant, on the other hand. Notwithstanding this, privity is not required in this case because
7 Plaintiff and members of the West Virginia Subclass are intended third-party beneficiaries of
8 contracts between the Defendant and its Authorized Dealerships. Specifically, Plaintiff and the
9 members of the West Virginia Subclass are the intended beneficiaries of Defendants' implied
10 warranties with their Authorized Dealerships. Volkswagen Authorized Dealerships were not
11 intended to be the ultimate consumers of the Defeat Device Vehicles and have no rights under
12 the warranty agreements provided with the Defeat Device Vehicles; the warranty agreements
13 were designed for and intended to benefit the ultimate consumers only. Finally, privity is also
14 not required because Plaintiff's and members' of the West Virginia Subclass Defeat Device
15 Vehicles spew noxious emissions that constitute a substantial danger to public health and
16 therefore are dangerous instrumentalities.

17 774. As a direct and proximate result of Defendant's breach of the warranties of
18 merchantability, Plaintiff and members of the West Virginia Subclass have been damaged in an
19 amount to be proven at trial.

20
21 **COUNT LXIV**
22 **Violation of the Consumer Protection – New Motor Vehicle Warranties**
23 **(West Virginia “Lemon Law”)**
24 **(West Virginia Code § 46A-6A-1 et seq.)**
25 **(On Behalf of the West Virginia Subclass)**

26 775. Plaintiff Foster ("Plaintiff" for purposes of all claims brought on behalf of the
27 West Virginia Subclass) incorporates by reference the allegations set forth above as if set forth
28 fully herein.

1 776. Plaintiff brings this claim on behalf of herself and the West Virginia Subclass.

2 777. The members of the Class who purchased or leased the Defeat Device Vehicles
3 in West Virginia are “consumers” within the meaning of West Virginia Code § 46A-6A-2(1).

4 778. Defendants are “manufacturers” of the Defeat Device Vehicles within the
5 meaning of West Virginia Code § 46A-6A-2(2).

6 779. The Defeat Device Vehicles are “motor vehicles” as defined by West Virginia
7 Code § 46A-6A-2(4).

8 780. Additional notice of the defect from the consumer to the manufacturer pursuant
9 to W.Va. Code §§ 46A-6A-3(a) and 5(c) is not required since the EPA has notified Volkswagen
10 on behalf of the consumers through the recall process, and in fact the Defendants are required
11 by federal law to notify the members of the Class of the defect. Moreover, additional notice
12 would be futile because there is no effective repair for the defect that will maintain the
13 performance qualities (including horsepower and fuel efficiency) of the Defeat Device Vehicles.

14 781. The emissions defect in the Defeat Device Vehicles existed from the date of the
15 original sale of the new vehicle to the consumer but could not be detected by a reasonable
16 consumer exercising reasonable care and diligence. Therefore, applicable express warranties
17 for the Defeat Device Vehicles containing the defeat device software would be extended.
18 Further extension of the express warranty period is now required because of the difficulties
19 Volkswagen may have in executing a massive recall of more than 500,000 Defeat Device
20 Vehicles in the United States.

21 782. As a direct and proximate result of Defendants’ breaches of their duties under
22 West Virginia’s Lemon Law, the members of the West Virginia Subclass received goods whose
23 defect substantially impairs their value to the members of the Class. The members of the West
24 Virginia Subclass have been damaged by the diminished market value of the vehicles along
25 with the compromised functioning and/or non-use of their Defeat Device Vehicles.

26 783. The Defendants have a duty under § 46A-6A-3 to make all repairs necessary to
27 correct the defect herein described, so as to bring the Defeat Device Vehicles back into
28

conformity with all written warranties. In the event that the Defendants cannot affect such repairs, they have a duty to replace each Defeat Device Vehicle with a comparable new motor vehicle that conforms to the warranty.

784. As a result of Defendant's breaches, the Plaintiff and the members of the West Virginia Subclass are entitled to the following:

- a. Revocation of acceptance and refund of the purchase price, including, but not limited to, sales tax, license and registration fees, and other reasonable expenses incurred for the purchase of the new motor vehicle, or if there be no such revocation of acceptance, damages for diminished value of the motor vehicle;
- b. Damages for the cost of repairs reasonably required to conform the motor vehicle to the express warranty;
- c. Damages for the loss of use, annoyance or inconvenience resulting from the nonconformity, including, but not limited to, reasonable expenses incurred for replacement transportation during any period when the vehicle is out of service by reason of the nonconformity or by reason of repair; and
- d. Reasonable attorney fees. W.Va. Code § 46A-6A-4(b)(1)-(4).

**COUNT LXV
BREACH OF CONTRACT
(On Behalf of the West Virginia Subclass)**

785. Plaintiff Foster ("Plaintiff" for purposes of all claims brought on behalf of the West Virginia Subclass) incorporates by reference the allegations set forth above as if set forth fully herein.

786. Plaintiff brings this claim on behalf of herself and the West Virginia Subclass.

787. Volkswagen's misrepresentations and omissions alleged herein, including Volkswagen's failure to disclose the existence of the 2.0 liter and 3.0 liter TDI Clean Diesel engines' defect and/or defective design as alleged herein, caused Plaintiff and the other members of the West Virginia Subclass to make their purchases or leases of their Defeat Device

1 Vehicles. Absent those misrepresentations and omissions, Plaintiff and the other members of
2 the West Virginia Subclass would not have purchased or leased these Defeat Device Vehicles,
3 would not have purchased or leased these Defeat Device Vehicles at the prices they paid, and/or
4 would have purchased or leased less expensive alternative vehicles that did not contain the TDI
5 Clean Diesel engines and which were not marketed as including such a system. Accordingly,
6 Plaintiff and the other members of the West Virginia Subclass overpaid for their Defeat Device
7 Vehicles and did not receive the benefit of their bargain.

8 788. Each and every sale or lease of a Defeat Device Vehicle constitutes a contract
9 between Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by
10 selling or leasing Plaintiff and the other members of the West Virginia Subclass defective
11 Defeat Device Vehicles and by misrepresenting or failing to disclose the existence of the TDI
12 Clean Diesel engines' defect and/or defective design, including information known to
13 Volkswagen rendering each Defeat Device Vehicle non EPA-compliant, and thus less valuable,
14 than vehicles not equipped with a TDI Clean Diesel engines.

15 789. As a direct and proximate result of Volkswagen's breach of contract, Plaintiff
16 and the West Virginia Subclass have been damaged in an amount to be proven at trial, which
17 shall include, but is not limited to, all compensatory damages, incidental and consequential
18 damages, and other damages allowed by law.

19
20 **COUNT LXVI**
21 **FRAUD BY CONCEALMENT**
22 **(On Behalf of the West Virginia Subclass)**

23 790. Plaintiff Foster ("Plaintiff" for purposes of all claims brought on behalf of the
24 West Virginia Subclass) incorporates by reference the allegations set forth above as if set forth
25 fully herein.

26 791. Plaintiff brings this claim on behalf of herself and the West Virginia Subclass.

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

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

11 793. Plaintiff and the members of the West Virginia Subclass reasonably relied upon
12 Volkswagen’s false representations. They had no way of knowing that Volkswagen’s
13 representations were false and gravely misleading. As alleged herein, Volkswagen employed
14 extremely sophisticated methods of deception. Plaintiff and the members of the West Virginia
15 Subclass did not, and could not, unravel Volkswagen’s deception on their own.

16 794. Volkswagen concealed and suppressed material facts concerning what is
17 evidently the true culture of Volkswagen—one characterized by an emphasis on profits and
18 sales above compliance with federal and state clean air law, and emissions regulations that are
19 meant to protect the public and consumers. It also emphasized profits and sales about the trust
20 that Plaintiff and the members of the West Virginia Subclass placed in its representations.

21 795. Necessarily, Volkswagen also took steps to ensure that its employees did not
22 reveal the details of its scheme to regulators or consumers, including Plaintiff and the members
23 of the West Virginia Subclass. Volkswagen did so in order to boost the reputations of its
24 vehicles and to falsely assure purchasers and lessors of its vehicles, including certified
25 previously owned vehicles, that Volkswagen is a reputable manufacturer that complies with
26 applicable law, including federal and state clean air law and emissions regulations, and that its
27 vehicles likewise comply with applicable law and regulations. Volkswagen’s false
28

1 representations were material to consumers, both because they concerned the quality of the
2 Defeat Device Vehicles, including their compliance with applicable federal and state law and
3 regulations regarding clean air and emissions, and also because the representations played a
4 significant role in the value of the vehicles. As Volkswagen well knew, its customers, including
5 Plaintiff and the members of the West Virginia Subclass, highly valued that the vehicles they
6 were purchasing or leasing were clean diesel cars, and they paid accordingly.

7 796. Volkswagen had a duty to disclose the emissions scheme it engaged in with
8 respect to the vehicles at issue because knowledge of the scheme and its details were known
9 and/or accessible only to Volkswagen, because Volkswagen had exclusive knowledge as to
10 implementation and maintenance of its scheme, and because Volkswagen knew the facts were
11 not known to or reasonably discoverable by Plaintiff or the members of the West Virginia
12 Subclass. Volkswagen also had a duty to disclose because it made general affirmative
13 representations about the qualities of its vehicles with respect to emissions standards, starting
14 with references to them as clean diesel cars, or cars with clean diesel engines, which were
15 misleading, deceptive, and incomplete without the disclosure of the additional facts set forth
16 above regarding its emissions scheme, the actual emissions of its vehicles, its actual philosophy
17 with respect to compliance with federal and state clean air law and emissions regulations, and
18 its actual practices with respect to the vehicles at issue. Having volunteered to provide
19 information to Plaintiff, Volkswagen had the duty to disclose not just the partial truth, but the
20 entire truth. These omitted and concealed facts were material because they directly impact the
21 value of the Defeat Device Vehicles purchased or leased by Plaintiff and the members of the
22 West Virginia Subclass. Whether a manufacturer's products comply with federal and state
23 clean air law and emissions regulations, and whether that manufacturer tells the truth with
24 respect to such compliance or non-compliance, are material concerns to a consumer, including
25 with respect to the emissions certifications testing their vehicles must pass. Volkswagen
26 represented to Plaintiff and the members of the West Virginia Subclass that they were
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28

1 purchasing clean diesel vehicles, and certification testing appeared to confirm this—except that,
2 secretly, Volkswagen had subverted the testing process thoroughly.

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

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

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

21 800. Because of the concealment and/or suppression of the facts, Plaintiff and the
22 members of the West Virginia Subclass have sustained damage because they own vehicles that
23 are diminished in value as a result of Volkswagen’s concealment of the true quality and quantity
24 of those vehicles’ emissions and Volkswagen’s failure to timely disclose the actual emission
25 qualities and quantities of hundreds of thousands of Defeat Device Vehicles and the serious
26 issues engendered by Volkswagen’s corporate policies. Had Plaintiff and the members of the
27 West Virginia Subclass been aware of Volkswagen’s emissions schemes with regard to the
28

1 vehicles at issue, and the company's callous disregard for compliance with applicable federal
2 and state law and regulations, Plaintiff and the members of the West Virginia Subclass who
3 purchased or leased new or certified previously owned vehicles would have paid less for their
4 vehicles or would not have purchased or leased them at all.

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

11 802. Accordingly, Volkswagen is liable to Plaintiff and the members of the West
12 Virginia Subclass for damages in an amount to be proven at trial.

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

19
20 **COUNT LXVII**
21 **NEGLIGENT MISREPRESENTATION**
22 **(On Behalf of the West Virginia Subclass)**

23 804. Plaintiff Foster ("Plaintiff" for purposes of all claims brought on behalf of the
24 West Virginia Subclass) incorporates by reference the allegations set forth above as if set forth
25 fully herein.

26 805. Plaintiff brings this claim on behalf of herself and the West Virginia Subclass.
27
28

7. For costs;
8. For interest;
9. For attorneys' fees under applicable law; and
10. For such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial for all claims so triable.

DATED: December 17, 2015

Respectfully submitted,

/s/ STEPHEN R. BASSER
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