

Robin Greenwald
rgreenwald@weitzlux.com
William Walsh
wwalsh@weitzlux.com
Maja Lukic
mlukic@weitzlux.com
WEITZ & LUXENBERG P.C.
700 Broadway
New York, NY 10003
Telephone: (212) 558-5500
Facsimile: (212) 344-5461

Donald Slavik
dslavik@slavik.us
SLAVIK LAW
2955 Village Drive, Suite 16
Steamboat Springs, CO 80487
Telephone: (970) 457-1011
Facsimile:

Attorneys for the Plaintiffs

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

BENJAMIN CLINTON and HANNAH ROSE
SCHONWALD, individually and on behalf of
others similarly situated,

Plaintiffs,

v.

VOLKSWAGEN GROUP OF AMERICA, INC.,

Defendant.

Civil Action No. _____

CLASS ACTION COMPLAINT

**FOR INJUNCTIVE RELIEF,
EQUITABLE RELIEF, AND
DAMAGES**

JURY TRIAL DEMANDED

NATURE OF CLAIM

Plaintiffs Benjamin Clinton and Hannah Rose Schonwald (collectively, “Plaintiffs”), individually and on behalf of all other members of the below-defined nationwide class and the statewide subclasses they respectively seek to represent for their Class Action Complaint (the “Complaint”) allege against Volkswagen Group of America, Inc. (“Volkswagen”), upon personal knowledge as to themselves and their own acts, and as to all other matters upon information and belief, based upon the investigation made by the undersigned attorneys, as follows:

1. Plaintiffs bring this consumer class action for themselves and on behalf of all persons similarly situated who purchased or leased certain vehicles with diesel engines manufactured, distributed, and/or sold by defendant Volkswagen and/or its related subsidiaries, successors, or affiliates with a built-in emission Defeat Device (defined below) system that conceals the vehicles’ actual emission of nitrogen oxide (NOx).

2. The Defeat Device in the Class Vehicles is an algorithm that controls all or certain emission controls. Based on this program, the Class Vehicles utilize their full emissions control system solely when the cars’ computer system detects the performance of emissions testing on the vehicle. The Defeat Device thus allows the vehicles to detect when the car is being tested for emissions controls but otherwise disable full emissions controls under normal driving conditions, causing the vehicles to emit far more NOx than advertised—in fact, up to 40 times the federal standard. Nitrogen oxide contributes to ozone, smog and increases the risks of human health effects from the vehicles’ emissions.

3. As used in this complaint, “Class Vehicles” refers to the Volkswagen vehicles sold in the United States equipped at the time of sale with software designed to conceal

emissions of NOx in excess of emissions standards established by the Clean Air Act (“Defeat Device”), sharing a common, uniform, and defective design, including, but not limited to, the following makes and model years:

- 2009-2015 Jetta
- 2009-2014 Jetta Sportwagen
- 2012-2015 Beetle
- 2012-2015 Beetle Convertible
- 2010-2015 Audi A3
- 2010-2015 Golf
- 2015 Golf Sportwagen
- 2012-2015 Passat

4. All persons in the United States who have purchased or leased a Class Vehicle equipped with the Defeat Device are herein referred to as Class Members (“Class Members”).

5. On September 18, 2015, at the direction of the U.S. Environmental Protection Agency (EPA), Volkswagen recalled eight vehicle models it manufactures with Turbo Diesel Ignition (“TDI[®]”) Clean Diesel engines.

6. The recall arises from Volkswagen’s brazen inclusion and deliberate concealment of the Defeat Device and a long series of fraudulent representations and other deceits to consumers and the purchasers of these vehicles.

7. Volkswagen willfully misrepresented, through a national marketing campaign, the environmental benefits of its TDI[®] Clean Diesel engines in an effort to promote their vehicles. Volkswagen specifically misrepresented to the purchasers of these vehicles that its Clean Diesel

technology substantially reduced NOx emissions and, as a result, created less smog. Symbolic of these representations, Volkswagen released a television commercial showing an elderly woman holding a white scarf to the exhaust pipe, keeping it there and then lifting up the still pristine white scarf to demonstrate the environmental benefits of its new diesel engines. Relying on these and many other representations, Plaintiffs and other Class Members purchased Volkswagen's diesel cars, paying an added cost, in order to take advantage of the vehicles' decreased environmental impact.

8. Volkswagen's purported environmental benefits from its diesel engines were a fabrication. As sold to Class Members, the Class Vehicles could not meet federal or state emission standards during normal operations. To conceal this fact, Volkswagen installed an algorithm within the vehicles' system, the Defeat Device, which permits the cars to pass emissions testing.

9. In April 2015, Volkswagen deceived Class Members yet another time. Although under federal investigation at the time and fully aware of the Defeat Device within the Class Vehicles, Volkswagen sent a letter to Class Members reiterating the Company's ongoing commitment to the environment and advising vehicle owners of a system improvement that Volkswagen would perform, free of charge, in order to optimize their vehicles' efficient operation. This carefully crafted service notice letter did not inform Class Members that their vehicles were equipped with the Defeat Device and, thus, not in compliance with relevant state and federal emission standards, and it failed to inform Class Members that, without responding to the service notice, their vehicles could not pass emission standards. Once again, Volkswagen knowingly hid the Class Vehicles' utilization of a Defeat Device from Class Members, and

continued to promote Volkswagen as a company compliant with and dedicated to environmental issues.

10. An estimated five hundred thousand vehicles were sold in the United States equipped with the Defeat Device.

11. Volkswagen has represented that it sold 11 million diesel engine vehicles worldwide that contain the Defeat Device.

12. The Defeat Device is not an automotive component that reasonable consumers expect to be installed on their vehicles.

13. All Class Members were injured from the time they purchased their vehicles. The Defeat Device precludes all Class Members from operating their vehicles in compliance with the Clean Air Act. However, no Class Members knew, or could reasonably have discovered, the Defeat Device prior to the recall because it is designed to conceal the device when the vehicle undergoes emission testing.

14. Upon information and belief, prior to the sale of the Class Vehicles, Volkswagen knew of the Defeat Device but did not disclose it to the Environmental Protection Agency, state agencies charged with mobile source compliance under the Clean Air Act, and/or consumers. A reasonable manufacturer would not have sold a vehicle with a Defeat Device.

15. Reasonable consumers who knew about the Defeat Device would not have purchased the Class Vehicles due to their unlawful emission of NOx.

16. As a result of Volkswagen's alleged misconduct, Plaintiffs and Class Members were harmed and suffered actual damages, in that the Class Vehicles are unfit for their ordinary and intended use and cannot be operated in compliance with CAA emission standards. Plaintiffs

and the Class did not receive the benefit of their bargain as purchasers and lessees, received vehicles that were of a lesser standard, grade, and quality than represented, and did not receive vehicles that met ordinary and reasonable consumer expectations.

17. As a result, all purchasers of the Class Vehicles overpaid for their cars at the time of purchase. Furthermore, the recent disclosure about the Defeat Device has further caused the value of the Class Vehicles to diminish materially. Without the benefit of superior fuel efficiency, which on information and belief will be substantially reduced without the Defeat Device, the continued use of Class Vehicles will require Class Members to purchase clean diesel, at a substantially higher price than conventional gasoline, without the attendant fuel efficiency benefits touted by Volkswagen of diesel fuel. Accordingly, purchasers or lessees of the Class Vehicles paid more, either through a higher purchase price or higher lease payments, than they would have had Volkswagen disclosed the Defeat Device and will continue to have to incur additional sums of money by operating their vehicles.

18. Further, and in spite of Volkswagen's belated recall of the Class Vehicles, litigation is necessary in order to ensure that Class Members receive full and fair compensation, under the auspices of court order, for their injuries.

PARTIES

Plaintiffs

19. Plaintiff Benjamin Clinton is a citizen of the state of New York. He resides in Brooklyn, New York. Mr. Clinton owns a 2011 Volkswagen Golf TDI[®]. He purchased it in May 2011 from Koelll Volkswagen in Queens, New York. Mr. Clinton's Volkswagen Golf was manufactured, sold, distributed, advertised, marketed, and warranted by Volkswagen. Mr.

Clinton purchased his vehicle primarily for his personal, family, and household use. He uses his vehicle every weekend and sometimes during the week. Mr. Clinton also uses the vehicle for long distance weekend and longer trips. Mr. Clinton specifically purchased the Volkswagen Golf because Volkswagen advertised it as a fuel efficient and environmentally “clean” car.

20. Plaintiff Hannah Rose Schonwald is a citizen of the State of Arizona. She resides in Tempe, Arizona. Ms. Schonwald owns a 2013 Volkswagen Beetle TDI[®]. She purchased it in July 2013, in Chandler, Arizona, from a Lexus Dealership. Ms. Schonwald’s Beetle was manufactured, sold, distributed, advertised, marketed, and warranted by Volkswagen. Ms. Schonwald purchased her vehicle primarily for driving to and from work and for personal use. Ms. Schonwald uses her vehicle on a nearly daily basis. Ms. Schonwald specifically purchased the Volkswagen Beetle because Volkswagen advertised it as a fuel efficient and environmentally “clean” car.

Defendant

21. Defendant Volkswagen Group of America, Inc. (“Volkswagen”) is a New Jersey corporation with principal place of business at 2200 Ferdinand Porsche Dr., Herndon, Virginia 20171. Volkswagen does business in every U.S. state and the District of Columbia. At all times relevant to this action, Volkswagen manufactured, distributed, sold, leased, and warranted the Class Vehicles at issue under the Jetta, Beetle, Audi, Golf, and Passat brand names throughout the United States. Volkswagen and/or its agents designed the Clean Diesel engines and engine controls systems in the Class Vehicles, including the Defeat Device. Volkswagen also developed and disseminated the owners’ manuals and warranty booklets, advertisements and other promotional materials relating to the Class Vehicles.

JURISDICTION AND VENUE

22. Jurisdiction is proper in this Court pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d)(2). The matter in controversy, exclusive of interest and costs, exceeds the sum or value of \$5,000,000 and is a class action in which members of the Class (as defined below) are citizens of states different from Defendant. Further, greater than two-thirds of the members of the Class reside in states other than the states in which Defendant is a citizen. In addition, under 28 U.S.C. § 1367, this Court may exercise supplemental jurisdiction over the state law claims because all of the claims are derived from a common nucleus of operative facts and are such that plaintiffs would ordinarily expect to try them in one judicial proceeding.

23. Venue lies within this judicial district under 28 U.S.C. § 1391 because Volkswagen conducts substantial business in this this District, has caused harm to Class Members residing in this District, and Plaintiff Clinton resides and purchased his vehicle in this District such that a substantial part of the events and omissions giving rise to the claims asserted in this Complaint occurred within this District.

FACTUAL ALLEGATIONS

24. Volkswagen's utilization of a Defeat Device permitted the Class Vehicles to circumvent federal and state emissions requirements. As a result, the vehicles do not comply with emission requirements arising from the Clean Air Act during regular road operation.

25. Volkswagen deliberately promoted the Class Vehicles as utilizing a "clean" diesel engine in order to pass off the cars as environmentally friendly and charged purchasers thousands of dollars more for the addition of the 2.0 litre TDI[®] Clean Diesel engine.

26. Class Members had no knowledge of the Defeat Device prior to the EPA's disclosure of its presence on September 18, 2015.

Background on the Clean Air Act

27. Congress enacted the Clean Air Act (CAA) to establish a comprehensive federal law that regulates air emissions from stationary and mobile sources.

28. When President George H. W. Bush signed the Clean Air Act Amendments of 1990 (CAAA), EPA Director William K. Reilly noted that the "benefits of the bill are enormous. Acid rain emissions will be cut almost in half; 30 million tons of toxic chemicals will be prevented from fouling the air every year; and all areas of the country will finally have the means to attain air quality standards on a realistic schedule. As a result, air toxics risk will be slashed by three-quarters and health problems will be reduced significantly, including cancer risk, respiratory disease, heart ailments and reproductive disorders."

29. In conjunction with the CAAA, the EPA finalized rules in February 2007, to reduce hazardous air pollutants from mobile sources.

30. The EPA estimated that the Control of Hazardous Air Pollutants from Mobile Source Rules, *see* 40 CFR Parts 59, 80, 85 and 86; 72 Fed Reg. 8428-8570 (Feb. 26, 2007), would reduce total emissions of mobile source air toxics by 330,000 tons and VOC emissions by over 1 million tons by 2030.

31. The EPA has also initiated a national clean diesel campaign to reduce diesel emissions.

32. All of these efforts necessitate compliance with the federal laws and programs.

33. To help insure compliance, 42 U.S.C. § 7522(a)(3)(B) prohibits “any person to manufacture or sell, or offer to sell, or install, any part or component intended for use with, or as part of, any motor vehicle or motor vehicle engine, where a principal effect of the part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this subchapter, and where the person knows or should know that such part or component is being offered for sale or installed for such use or put to such use.”

34. Similarly, federal regulations prohibit equipping a passenger vehicle with a Defeat Device. *See* 40 CFR § 86.1809-12. This regulation was promulgated to provide the EPA with authority to enjoin the automobile and truck industry from past use of Defeat Devices to circumvent emission requirements.

35. In 1998, the EPA announced a record penalty against seven truck manufacturers, including Caterpillar and Volvo Truck Corp., arising from the inclusion of a computer device in heavy duty diesel engines. That device allowed the engine to pass EPA emission standards, but would switch off emission controls during highway driving. Under the resulting settlement, the seven companies agreed to spend more than one billion dollars to resolve federal claims.

36. That same year, the EPA and Department of Justice settled charges against American Honda Motor Co. for \$267 million and Ford Motor Company for \$7.8 million for selling vehicles with a device that defeated emission control devices.

Volkswagen’s Actions

37. In a bid to expand into North American markets, Volkswagen announced its new generation of redesigned Volkswagen Jetta vehicles at the 2005 Los Angeles Auto Show. This

was only the second time Volkswagen debuted a product in the United States. The Jetta was available with either a standard gasoline engine or with a TDI[®] diesel engine.

38. The TDI[®]-equipped Jetta fell into the least restrictive bin for motor vehicles as established by the EPA under the Clean Air Act. When it was introduced, the Jetta Mark 5 was available in all but five States. These five States followed California's strict LEV emissions standards; standards that were more stringent than the federal emission standards at the time.

39. At the end of 2006, the EPA removed the two least restrictive bins for passenger cars. With this change in standard, Volkswagen's TDI[®] diesel engines no longer met federal standards and Volkswagen was forced to remove the Jetta TDI[®] from all U.S. markets for over an entire year.

40. On January 4, 2007, in response to the new regulations, Volkswagen announced "the cleanest ever TDI[®] engine" in a press release. This brand new "2.0 liter Common Rail diesel engine" utilized a "nitrogen oxide reservoir catalytic converter" to remove pollutants from the exhaust.

41. "The central theme of the entire concept," according to Volkswagen, was "the reduction of nitrogen oxide." Volkswagen claimed that its new system would reduce nitrogen oxide emissions by "up to 90%." Further, Volkswagen boasted that their new technology was able to meet the stringent Tier II/Bin 5 EPA emissions standards without the use of urea injection, the standard method of NO_x emission reduction. But Volkswagen had not in fact resolved the excessive emissions in its TDI[®] models. In a November 2007 letter to dealerships,

Volkswagen delayed the release date of the 2009 2.0 TDI[®] Clean Diesel Jetta by six months, from April 2008 to August 2008.¹

42. Volkswagen attributed the delay to “a technical issue” with the new technology. Volkswagen assured its dealerships that the “first priority is to ensure that the integrity and quality of the new technology is not compromised.”

43. This substantial delay was attributed to “a technical issue” with the new technology. Volkswagen assured its dealerships that the “first priority is to ensure that the integrity and quality of the new technology is not compromised.”

44. Following the reintroduction of the TDI[®]-equipped Jetta in August 2008, Volkswagen rapidly added the TDI[®] Clean Diesel system to several more of Volkswagen’s models. The VW Golf and Audi A3, for example, were added for the model 2010 year.

45. Upon their release, and based upon representations by Volkswagen about the TDI[®] vehicles’ stringent emission controls, various environmental groups hailed these diesel-powered vehicles for their perceived, reduced environmental impact.

46. The Green Car Journal named the 2009 Jetta TDI[®] and the 2010 Audi A3 TDI[®] as the recipients of the Green Car of the Year Award in 2009 and 2010, respectively.

47. Volkswagen claims that environmental sustainability is “at the core of [its] operating philosophy.” Further, it states a goal of “becoming the world’s most environmentally sustainable automaker by 2018.”²

¹ Volkswagen, Volkswagen unveiled the cleanest ever TDI engine, Jan 4, 2007. Available at https://www.volkswagen-media-services.com/en/detailpage/-/detail/Volkswagen-unveiled-the-cleanest-ever-TDI-engine/view/93238/7a3c3d3e53277ddf9a63b244e18a6ce?p_p_auth=9jHcUFKo.

² See Volkswagen Group America Homepage, <http://www.volkswagengroupamerica.com/environment.html> (last visited Sept. 22, 2015).

48. Low emissions from the TDI[®] Clean Diesel engines are at the cornerstone of Volkswagen's environmental marketing campaign. Stating "[t]his ain't your daddy's diesel," Volkswagen has represented to the public through its advertising and marketing material that the "old diesel realities no longer apply." Instead of producing cars that are "stinky, smoky and sluggish" the TDI[®] Clean Diesel technology has "ushered in a new era of diesel."³

49. On its website, Volkswagen cites a 96 percent reduction in NOx emissions since 1990. It continues that "with Clean Diesel technology . . . we'll generate a lot less smog in the air."⁴

50. Volkswagen also maintains that its Clean Diesel technology makes its vehicles, on average, 18 percent more fuel efficient than corresponding gasoline models.

51. Audi's webpage titled "Clean Diesel Technology," claims that its systems reduce Nitrogen Oxide Emissions by 95 percent when compared to gasoline.⁵

52. Volkswagen's green feature came with an added cost. The inclusion of a TDI[®] Clean Diesel engine results in a higher sticker price of approximately \$4,000 per model to the purchaser of the car.

53. Running on diesel, the owner of the vehicle also incurs an additional cost per gallon of fuel, which is sometimes substantial, reflecting the difference in the price per gallon between gasoline and diesel.

³ See www.vw.com/features/clean-diesel (last visited Sept. 21, 2015). This page is no longer available as of September 22, 2015.

⁴ See www.clearlybetterdiesel.org (last visited Sept. 22, 2015).

⁵ See www.audiusa.com/technology/efficiency/tdi (last visited Sept. 22, 2015).

54. Volkswagen, however, marketed the car to emphasize fuel economy and its reduced impact on the environment. But environmentally-conscious vehicle purchasers were willing to absorb the additional costs to reap the environmental benefits

Discovery of Fraud

55. The EPA announced on Friday, September 18, 2015, that Volkswagen intentionally skirted clean air laws in at least five model vehicles over a seven year period.

56. The models and model years implicated in the announcement are 2009-2015 Jetta, 2009-2014 Jetta Sportwagen, 2012-2015 Beetle, 2012-2015 Beetle Convertible, 2010-2015 Audi A3, 2010-2015 Golf, 2015 Golf Sportwagen, and 2012-2015 Passat vehicles.

57. The EPA stated that Volkswagen used a piece of software as a Defeat Device that resulted in the Class Vehicles emitting fewer smog-causing pollutants only during an emission test.

58. Volkswagen developed, manufactured and installed an algorithm in the electronic control module (ECM) of the Class Vehicles that is able to detect when a service station or other entity conducts an emission inspection on the vehicle.

59. The algorithm triggers the use of emission controls during the inspection. Upon information and belief, at all other times, the Class Vehicles operate without the engagement of some or all of the emission controls.

60. The algorithm makes this determination based on various inputs, including the position of the steering wheel, vehicle speed, the duration of the vehicle's engine's operation and barometric pressure, according to the EPA.

61. During emission testing, the Class Vehicles' ECM run software which produces compliant emission results under an ECM calibration.

62. When Class Vehicles are in use, however, their emissions of NOx actually increase by a factor of 10 to 40 times above EPA compliance levels, depending on driving circumstances (*e.g.*, highway or city driving).

63. Volkswagen CEO Martin Winterkorn essentially admitted Volkswagen's actions in a statement released on September 20, 2015: "I personally am deeply sorry that we have broken the trust of our customers and the public."

64. Herr Winterkorn also announced that Volkswagen would conduct an internal investigation.

65. On September 21, 2015, the chief executive of Volkswagen's U.S. operations, Michael Horn, stated: "Let's be clear about this: Our company was dishonest with the EPA and the California Air Resources Board and with all of you." He continued, "In my German words, we have totally screwed up."⁶

66. Volkswagen withdrew its ads for its diesel cars following the EPA's announcement and, upon information and belief, directed its dealers to stop selling 2015 diesel cars with 2.0-liter engines.

Previous Fraudulent Notice

67. Volkswagen not only defrauded Class Members at the time of purchase, but it also defrauded Class Members again the spring of 2015 in connection with the Defeat Device.

⁶ See VW Emissions cheating affects 11 million cars worldwide, Washington Post, Sept. 22, 2015. http://www.washingtonpost.com/business/economy/vw-emissions-cheating-affects-11-million-cars-worldwide/2015/09/22/30f59bca-6126-11e5-9757-e49273f05f65_story.html.

68. In or around April 2015, Volkswagen sent a letter to Class Vehicle owners offering a free update of the ECM software in the vehicle.

69. Volkswagen opened its letter announcing its “ongoing commitment to the environment” and stating that it was acting “in cooperation with the United States Environmental Protection Agency” in order to “conduct an emissions service action”

70. Volkswagen, rather than identifying the existence of the Defeat Device on Class Vehicles or any existing problem with its vehicles, instead stated that the “vehicle’s engine management system has been improved to assure your vehicle’s tailpipe emissions are optimized and operating efficiently.”

71. In offering an explanation for the upgrade, Volkswagen asserted that “[u]nder certain operating conditions, the earlier strategy may have increased the chance of the vehicles MIL light illuminating. If the MIL light illuminates for any reason, your vehicle will not pass an IM emission inspection in some regions.”

72. Coincidentally, at this time, Volkswagen released a set of commercials promoting the cleanliness of its diesel fuel engines.

73. Upon information and belief, Volkswagen was fully aware of the EPA’s investigation of the company and the presence of a Defeat Device in its diesel engines at the time that it nationally promoted its vehicles with the TDI[®] engines.

Continuing Concerns About the Defeat Device

74. The subsequent revelation that VW rigged its exhaust system raises a number of additional concerns to Class Members.

75. Upon information and belief, Volkswagen would not include a Defeat Device within the Class Vehicles unless it was necessary for the performance of the vehicles. Thus, the TDI[®] engines, once made to comply with national and state fuel emission standards will not, on information and belief, meet their listed EPA estimated miles per gallon. This will significantly raise fuel costs for Class Members.

76. Thus, on information and belief, , without the Defeat Device, the Clean Diesel 2.0 litre TDI[®] engine cannot meet emission standards in any state for any sustained period.

TOLLING OF THE STATUTE OF LIMITATIONS

Fraudulent Concealment Tolling

77. Upon information and belief, Volkswagen has known of the Defeat Device in the vehicles since at least 2009, and certainly well before Plaintiffs and Class Members purchased the Class Vehicles, and has concealed from or failed to notify Plaintiffs, Class Members, and the public of the full and complete nature of the Defeat Device.

78. Because of the nature of the software in the emission tail pipe that conceals the Defeat Device, and because the Defeat Device specifically operated to conceal the nitrate oxide emissions violations during mandatory vehicle emissions tests, it was impossible for Plaintiffs, Class Members and the public to know about the Defect Device.

79. Volkswagen's knowledge, active concealment, and denial of the facts alleged herein, which behavior is ongoing, tolled any applicable statute of limitations.

Estoppel

80. Volkswagen was and is under a continuous duty to disclose to Plaintiffs and Class Members the true character, quality, and nature of the vehicles. Volkswagen actively concealed

the true character, quality, and nature of the vehicles and knowingly made misrepresentations about the quality, reliability, characteristics, and performance of, and emissions from, the vehicles. Plaintiffs and Class Members reasonably relied upon Volkswagen's knowing and affirmative misrepresentations and/or active concealment of these facts. Based on the foregoing, Volkswagen is estopped from relying on any statutes of limitation in defense of this action.

Discovery Rule

81. The causes of action alleged herein did not accrue until Plaintiffs and Class Members discovered that their vehicles had the Defeat Device.

82. However, Plaintiffs and Class Members had no realistic ability to discern that the vehicles were defective until—at the earliest—after the existence of the Defeat Device was public disclosed.

83. Thus Plaintiffs and Class Members were not reasonably able to discover the Defeat Device until after they had purchased the vehicles, despite their exercise of due diligence, and their causes of action did not accrue until they discovered that the Defeat Device caused their vehicles to suddenly lose power.

CLASS ACTION ALLEGATIONS

84. Plaintiffs bring this lawsuit as a class action on their own behalf and on behalf of all other persons similarly situated as members of the proposed Class pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3) and/or (b)(2) and/or c(4). This action satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of those provisions.

85. The proposed nationwide class that Plaintiffs seek to represent (the “Class”) is defined as follows:

All residents of the United States who currently or formerly owned or leased a Subject Vehicle equipped with a Defeat Device. Excluded from the Class are Volkswagen’s officers, directors, and employees (the “**Nationwide Class**”).

86. Plaintiffs also bring this action on behalf of a statewide class of all persons who purchased or leased a Class Vehicle in the State of New York:

All persons who currently or formerly owned or leased a Subject Vehicle equipped with a Defeat Device in the State of New York. Excluded from the Class are Volkswagen’s officers, directors, and employees (the “**New York Subclass**”).

87. Plaintiffs also bring this action on behalf of a statewide class of all persons who purchased or leased a Class Vehicle in the State of Arizona:

All persons who currently or formerly owned or leased a Subject Vehicle equipped with a Defeat Device in the State of Arizona. Excluded from the Class are Volkswagen’s officers, directors, and employees (the “**Arizona Subclass**”).

88. Excluded from the Class are: (1) Defendants, any entity or division in which Defendants have a controlling interest, and their legal representatives, officers, directors, assigns, and successors; (2) the Judge to whom this case is assigned; and (3) governmental entities. Plaintiffs reserve the right to amend the Class definition if discovery and further investigation reveal that the Class should be expanded, divided into additional subclasses, or modified in any other way.

Numerosity and Ascertainability

89. The nationwide and statewide classes are each too numerous for individual joinder of all their members to be practicable; Volkswagen’s recall now includes nearly 500,000

vehicles. Although the exact number of Class Members is uncertain and can only be ascertained through appropriate discovery, the number is great enough such that joinder is impracticable. The disposition of the claims of these Class Members in a single action will provide substantial benefits to all parties and to the Court. Class Members are readily identifiable from information and records in Volkswagen's possession, custody, or control.

Typicality

90. The claims of the representative Plaintiffs are typical of the claims of the Class in that the representative Plaintiffs, like all Class Members, purchased or leased a Volkswagen Class Vehicle designed, manufactured, and distributed by Defendant. The representative Plaintiffs, like all Class Members, have been damaged by Defendant's misconduct in that they have incurred costs relating to the Defeat Device. Furthermore, the factual bases of Defendant's misconduct are common to all Class Members and represent a common thread of misconduct resulting in injury to all Class Members.

Adequate Representation

91. Plaintiffs will fairly and adequately represent and protect the interests of the Class. Plaintiffs have retained counsel with substantial experience in prosecuting consumer class actions, including actions involving defective products generally and defective vehicles particularly.

92. Plaintiffs and their counsel are committed to vigorously prosecuting this action on behalf of the Class, and have the financial resources to do so. Neither Plaintiffs nor their counsel have interests adverse to those of the Class.

Predominance of Common Issues

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

- a. whether the Class Vehicles suffer from the Defeat Device;
- b. whether Volkswagen knew about the Defeat Device, and, if yes, how long it has known of the Device;
- c. whether the presence of the Defeat Device in the Class Vehicles constitutes a material fact reasonable consumers would have considered in deciding whether to purchase a Volkswagen Vehicle;
- d. whether Volkswagen had a duty to disclose the Defeat Device in the Vehicles to Plaintiffs and Class Members;
- e. whether Volkswagen omitted and failed to disclose material facts about the Vehicles;
- f. whether Volkswagen's concealment of the Defeat Device in the Class Vehicles induced Plaintiffs and Class Members to act to their detriment by purchasing the Vehicles;
- g. whether Volkswagen again concealed the existence of the Defeat Device when it sent an emissions service action letter to Class Vehicle owners in April 2015;
- h. whether Volkswagen violated state consumer protection statutes, including, *inter alia*, §§ 349-350 of the New York General Business Law, and § 44-1521 of the Arizona Consumer Fraud Act, and if so, what remedies are available by law;

i. whether the Class Vehicles were fit for their ordinary and intended use, in violation of the implied warranty of merchantability;

j. whether Plaintiffs and Class Members are entitled to a declaratory judgment stating that the Defeat Device in the Class Vehicles is not merchantable;

k. whether Plaintiffs and Class Members are entitled to equitable relief, including, but not limited to, a preliminary and/or permanent injunction;

l. whether Volkswagen should be declared responsible for notifying all Class Members of the Defeat Device and ensuring that all Volkswagen vehicles with the Defeat Device are recalled and repaired;

m. what aggregate amounts of statutory penalties are sufficient to punish and deter Defendant and to vindicate statutory and public policy, and how such penalties should most equitably be distributed among Class members; and

n. whether the Class Vehicles can be made to comply with the EPA standards, and if so whether such modifications can be made to the Class Vehicles without substantially degrading the Class Vehicles' efficiency and performance.

Superiority

94. Plaintiffs and Class Members have all suffered and will continue to suffer harm and damages as a result of Defendant's unlawful and wrongful conduct. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

95. Absent a class action, most Class Members would likely find the cost of litigating their claims prohibitively high and would therefore have no effective remedy at law. Because of the relatively small size of the individual Class Members' claims, it is likely that only a few

Class Members could afford to seek legal redress for Defendant's misconduct. Absent a class action, Class Members will continue to incur damages, and Defendant's misconduct will continue without remedy.

96. Class treatment of common questions of law and fact would also be a superior method to multiple individual actions or piecemeal litigation in that class treatment will conserve the resources of the courts and the litigants, and will promote consistency and efficiency of adjudication.

97. Classwide declaratory, equitable, and injunctive relief is appropriate under Rule 23(b)(1) and/or (b)(2) because Defendant has acted on grounds that apply generally to the class, and inconsistent adjudications with respect to the Defendant's liability would establish incompatible standards and substantially impair or impede the ability of Class Members to protect their interests. Classwide relief assures fair, consistent, and equitable treatment and protection of all Class Members, and uniformity and consistency in Defendant's discharge of their duties to perform corrective action regarding the Defeat Device.

98. Plaintiffs are not aware of any difficulty which will be encountered in the management of this litigation which should preclude its maintenance as a class action.

CLAIMS ALLEGED

A. Asserted On Behalf of the National Class

CLAIM I

VIOLATION OF MAGNUSON-MOSS WARRANTY ACT (15 U.S.C. § 2301, *et seq.*)

99. Plaintiffs hereby incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

100. Plaintiffs bring this Count on behalf of the Nationwide Class (“Class,” for the purposes of this Count).

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

102. Plaintiffs is a “consumer” within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(3).

103. Volkswagen is a “supplier” and “warrantor” within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(4)–(5).

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

105. 15 U.S.C. § 2310(d)(1) provides a cause of action for any consumer who is damaged by the failure of a warrantor to comply with a written or implied warranty.

106. Volkswagen’s express warranties are written warranties within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(6). The Class Vehicles’ implied warranties are covered under 15 U.S.C. § 2301(7).

107. Volkswagen breached these warranties as described in more detail above. Without limitation, the Class Vehicles are equipped with a Defeat Device, that is, a sophisticated software algorithm that allows the vehicles to detect when the car is being tested for emissions, drastically reducing emissions during testing only but otherwise circumventing full emissions controls under normal driving conditions. The Class Vehicles all share this feature such that the vehicles fail to operate as represented by Volkswagen and emit far more NOx than represented.

108. Plaintiffs and each of the other Nationwide Class members have had sufficient direct dealings with either Volkswagen or its agents (dealerships and technical support) to establish privity of contract between Volkswagen, on one hand, and Plaintiffs and each of the other Nationwide Class members on the other hand. Nonetheless, privity is not required here because Plaintiffs and each of the other Nationwide Class members are intended third-party beneficiaries of contracts between Volkswagen and its dealers, and specifically, of Volkswagen's implied warranties. The dealers were not intended to be the ultimate consumers of the Class Vehicles and have no rights under the warranty agreements provided with the Class Vehicles; the warranty agreements were designed for and intended to benefit the consumers only.

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

110. Affording Volkswagen a reasonable opportunity to cure its breach of written warranties would be unnecessary and futile here. At the time of sale or lease of each Subject Vehicle, Volkswagen knew, should have known, or was reckless in not knowing of its misrepresentations and omissions concerning the Class Vehicles' inability to perform as warranted, but nonetheless failed to rectify the situation and/or disclose the true nature of the Clean Diesel engine system, including the existence and nature of the Defeat Device. Under the circumstances, the remedies available under any informal settlement procedure would be inadequate and any requirement that Plaintiffs and Class Members resort to an informal dispute

resolution procedure and/or afford Volkswagen a reasonable opportunity to cure its breach of warranties is excused and thereby deemed satisfied.

111. Plaintiffs and other Nationwide Class members would suffer economic hardship if they returned their Class Vehicles but did not receive the return of all payments made by them.

112. The amount in controversy of Plaintiffs' individual claims meets or exceeds the sum of \$25. The amount in controversy of this action exceeds the sum of \$50,000, exclusive of interest and costs, computed on the basis of all claims to be determined in this lawsuit. Plaintiff, individually and on behalf of the other Nationwide Class members, seeks all damages permitted by law, including the additional sums paid for the TDI[®] engines and diminution in value of the Class Vehicles, in an amount to be proven at trial.

B. Claims on Behalf of the New York Subclass

CLAIM II

**DECEPTIVE ACTS OR PRACTICES
(N.Y. GEN. BUS. LAW § 349)**

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

114. This claim is brought only on behalf of Class members who are New York residents (the "New York Subclass").

115. Plaintiffs and New York Subclass members are "persons" within the meaning of New York General Business Law ("New York GBL"), N.Y. Gen. Bus. Law § 349(h).

116. Volkswagen is a "person," "firm," "corporation," and "association" within the meaning of N.Y. Gen. Bus. Law § 349.

117. The New York GBL makes unlawful “[d]eceptive acts or practices in the conduct of any business, trade or commerce.” N.Y. Gen. Bus. Law § 349. Volkswagen’s conduct, as described herein, constitutes “deceptive acts or practices” because it is “likely to mislead a reasonable consumer acting reasonably under the circumstances.” *Id.*

118. In the course of its business, Volkswagen willfully failed to disclose and actively concealed the true nature of the Clean Diesel engine systems, including the existence and nature of the Defeat Device, in the Class Vehicles as alleged above. Volkswagen compounded the deception by heavy marketing efforts that repeatedly represented the Class Vehicles as safe for the environment without sacrificing efficiency or high performance.

119. By failing to disclose, and by actively concealing the true nature of Volkswagen-branded diesel vehicles, marketing its vehicles as efficient, reliable, and safe for the environment, and presenting itself as a reputable manufacturer that valued environmental and health concerns, Volkswagen engaged in deceptive business practices in violation of the New York GBL.

120. Volkswagen’s deceptive acts were likely to, and did, in fact, deceive reasonable consumers, including Plaintiffs and the New York Subclass, about the true nature and reliability of the Class Vehicles, the quality of the Volkswagen brand, and the true value of the Class Vehicles.

121. As alleged above, Volkswagen made material statements about the performance and environmental safety of the Class Vehicles that were either false or misleading.

122. Volkswagen’s information concerning the Clean Diesel engine systems in the Class Vehicles was material to Plaintiffs and the New York Subclass. The supposed

environmental safety and high performance of the Class Vehicles were worth more to Plaintiffs and the Class than comparable vehicles that did not have similar environmental benefits.

123. Volkswagen's deceptive acts and practices as set forth above occurred in the conduct of business, trade or commerce in the state of New York.

124. Accordingly, Volkswagen engaged in acts and practices violating N.Y. Gen. Bus. Law § 349 including representing that Class Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Class Vehicles are of a particular standard and quality when they are not; advertising Class Vehicles with the intent not to sell them as advertised; and otherwise engaging in conduct likely to deceive.

125. As a direct and proximate result of Volkswagen's violations of N.Y. Gen. Bus. Law § 349, Plaintiffs and the other New York Subclass members have been harmed and they seek actual damages (or fifty dollars per violation, whichever is greater), treble damages for Volkswagen's willful and/or knowing violations of this statute, and reasonable attorney's fees, pursuant to N.Y. Gen. Bus. Law § 349(h).

126. Plaintiffs and the New York Subclass also seek an order enjoining Volkswagen's unfair, unlawful, and/or deceptive practices, and any other just and proper relief available under N.Y. Gen. Bus. Law §§ 349–350.

CLAIM III

FALSE ADVERTISING (N.Y. GEN. BUS. LAW § 350)

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

128. Volkswagen was and is engaged in the “conduct of business, trade or commerce” within the meaning of N.Y. Gen. Bus. Law § 350.

129. N.Y. Gen. Bus. Law § 350 makes unlawful “[f]alse advertising in the conduct of any business, trade or commerce.” False advertising includes “advertising, including labeling, of a commodity . . . if such advertising is misleading in a material respect,” taking into account “the extent to which the advertising fails to reveal facts material in light of . . . representations [made] with respect to the commodity[.]” N.Y. Gen. Bus. Law § 350-a.

130. Volkswagen caused to be made or disseminated through New York, through advertising, marketing and other publications, statements that were untrue or misleading, and that were known, or which by the exercise of reasonable care should have been known to Volkswagen, to be untrue and misleading to consumers, Plaintiffs and the New York Subclass.

131. Volkswagen has violated § 350 because the misrepresentations and omissions regarding the emissions of its diesel vehicles, and Volkswagen’s systemic devaluation of environmental safety and public health, as set forth above, were material and likely to deceive a reasonable consumer.

132. Plaintiffs and the New York Subclass members have suffered an injury, including the loss of money or property, as a result of Volkswagen’s false advertising. In purchasing or leasing their vehicles, Plaintiffs and the New York Subclass relied on the misrepresentations and/or omissions of Volkswagen with respect to the performance and emissions of the Class Vehicles. Volkswagen’s representations were false and/or misleading because the concealed facts seriously undermine the value of the Class Vehicles. Had Plaintiffs and the New York

Subclass known this, they would not have purchased or leased their Class Vehicles and/or paid as much for them.

133. Under N.Y. Gen. Bus. Law § 350(e), Plaintiffs and the New York Subclass seek monetary relief against Volkswagen, measured as the greater of (a) actual damages in an amount to be determined at trial and (b) statutory damages in the amount of \$500 each for New York Subclass member. Because Volkswagen's conduct was committed willfully and knowingly, Plaintiffs and the New York Subclass are entitled to recover three times actual damages, up to \$10,000, for each New York Subclass member.

134. Plaintiffs and the New York Subclass also seek an order enjoining Volkswagen's unfair, unlawful, and/or deceptive practices, attorneys' fees, and any other just and proper relief available under N.Y. Gen. Bus. Law §§ 349–350.

CLAIM IV

FRAUDULENT CONCEALMENT (UNDER NEW YORK LAW)

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

136. This claim is brought only on behalf of the New York Subclass.

137. Volkswagen intentionally concealed the above-described material performance and emissions information and denied Plaintiffs and the New York Subclass information that was material to their purchasing and leasing decisions.

138. Volkswagen intentionally misrepresented to Plaintiffs and the New York Subclass in advertising and in other forms of communication, including standard and uniform material

provided with each car, that the Subject Vehicle it was selling were capable of high performance and low emissions under normal driving conditions.

139. Volkswagen knew these representations were false when made or recklessly disregarded their veracity.

140. Volkswagen omitted from its advertisements, sales brochures, and other forms of public communication that the vehicles were equipped with a Defeat Device, a software algorithm that allowed the vehicles to detect when the vehicle was undergoing emissions testing and activate full emissions controls for the duration of testing but otherwise suspend full emissions controls under normal driving conditions. This undisclosed feature caused the vehicles to emit far more NOx than advertised.

141. The undisclosed information regarding the Class Vehicles' performance and lack of compliance with emissions standards is material information because any reasonable person's leasing, purchasing, or repair decisions would be materially affected by the knowledge of the vehicles' true nature.

142. Volkswagen had the duty to disclose this feature to the EPA, and by extension and implication to the public. Moreover, Volkswagen had a duty to disclose this information to the public because Volkswagen was in a vastly superior position of knowledge about the nature of the Class Vehicles.

143. Volkswagen had and has an ongoing duty to disclose and has yet to discharge that duty with a full accounting of the nature of the Clean Diesel engine system, including the Defeat Device in the Class Vehicles.

144. Plaintiffs and the New York Subclass reasonably relied to their detriment upon Volkswagen's material misrepresentations, and omissions of material fact, in making their purchasing and leasing decisions. Plaintiffs and the New York Subclass were led to believe, by Volkswagen's fraudulent concealment, that the Class Vehicles were environmentally safe and that their emissions controls systems would function as advertised under normal driving conditions.

145. By way of this fraud, Volkswagen induced purchasers and lessees of Class Vehicles to pay inflated values for the Class Vehicles.

146. As a direct and proximate result of Volkswagen's fraudulent concealment, Plaintiffs and the other New York Subclass members have been harmed and they seek all damages permitted by law, including diminution in value of the Class Vehicles, in an amount to be determined at trial.

CLAIM V

UNJUST ENRICHMENT (UNDER NEW YORK LAW)

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

148. This claim is brought only on behalf of the New York Subclass.

149. Volkswagen has received and retained a benefit from Plaintiffs and the Class, resulting in inequity.

150. Volkswagen has benefitted from selling and leasing vehicles whose value was artificially inflated by Volkswagen's concealment of the vehicles' performance and emissions

problems for far more than they were worth, at a profit. Plaintiffs and members of the Class have overpaid for these vehicles.

151. Volkswagen has further benefitted by avoiding the costs of a recall and other lawsuits, and has benefitted from its statements about the success of Volkswagen diesel vehicles.

152. Thus, all New York Unjust Enrichment Class Members have conferred a benefit on Volkswagen.

153. It is inequitable for Volkswagen to retain these benefits.

154. Plaintiffs were not aware of the true facts of Volkswagen-branded diesel vehicles and did not benefit from Volkswagen's conduct.

155. Volkswagen knowingly accepted the benefits of its unjust conduct.

156. As a result of Volkswagen's conduct, the amount of its unjust enrichment should be disgorged, in an amount to be determined at trial.

C. Claims Brought on Behalf of the Arizona Subclass

CLAIM VI

**VIOLATION OF THE ARIZONA CONSUMER FRAUD ACT
(ARIZ. REV. STAT. § 44-1521, et seq.)**

157. Plaintiffs reallege and incorporate all paragraphs as though fully set forth herein.

158. This claim is brought only on behalf of the Arizona Subclass.

159. Volkswagen, Plaintiffs, and the Arizona Subclass are "persons" within the meaning of the Arizona Consumer Fraud Act ("Arizona CFA"), ARIZ. REV. STAT. § 44-1521(6).

160. The Class Vehicles are "merchandise" within the meaning of ARIZ. REV. STAT. § 44-1521(5).

161. The Arizona CFA provides that “[t]he act, use or employment by any person of any deception, deceptive act or practice, fraud, . . . misrepresentation, 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 any merchandise whether or not any person has in fact been misled, deceived or damaged thereby, is declared to be an unlawful practice.” ARIZ. REV. STAT. § 44-1522(A).

162. In the course of its business, Volkswagen systemically promoted the environmental benefits of its Clean Diesel engines but concealed the existence of the Defeat Device as described herein and otherwise engaged in activities with a tendency or capacity to deceive. 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 Class Vehicles.

163. By failing to disclose and by actively concealing the Defeat Device in Volkswagen-branded vehicles, as alleged above, by marketing its vehicles as environmentally safe and of high quality, and by presenting itself as an environmentally responsible company, Volkswagen engaged in deceptive business practices in violation of the Arizona CFA.

164. Volkswagen compounded its deception by heavy national marketing campaigns that repeatedly proclaimed the environmental safety of Volkswagen-branded vehicles and Clean Diesel engines.

165. Volkswagen's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs, about the environmental safety and quality of Volkswagen-branded vehicles and Clean Diesel, and the true value of Class Vehicles.

166. Volkswagen intentionally and knowingly misrepresented material facts regarding the Class Vehicles with intent to mislead Plaintiffs and the Arizona Subclass.

167. Volkswagen knew or should have known that its conduct violated the Arizona CFA.

168. As alleged above, Volkswagen made material statements about the environmental safety of the Class Vehicles and the Volkswagen Clean Diesel engine that were either false or misleading.

169. Volkswagen owed Plaintiffs a duty to disclose the true facts about the Class Vehicles because Volkswagen possessed exclusive knowledge concerning the Defeat Device in the Class Vehicles, and Volkswagen actively concealed the true character, quality, and nature of the vehicles and knowingly made misrepresentations about the quality, reliability, characteristics, and performance of, and emissions from, the vehicles.

170. Because of Volkswagen's intentional concealment of the existence of the Defeat Device in Class Vehicles, the revelations of the true facts about the Class Vehicles and the accompanying negative publicity have greatly diminished the value of the Class Vehicles. In light of the stigma attached to those vehicles by Volkswagen's conduct, they are now worth significantly less than they otherwise would be.

171. The existence and nature of the Defeat Device in Class Vehicles was material to Plaintiffs and the Arizona Subclass. Had Plaintiffs known about the existence of the Defeat Device, they would have paid less for their vehicles or would not have purchased or leased them.

172. Plaintiffs and the Arizona Subclass have suffered ascertainable losses caused by Volkswagen's misrepresentations and its concealment of and failure to disclose material information.

173. As a direct and proximate result of Volkswagen's violations of the Arizona CFA, Plaintiffs and the Arizona Subclass have suffered injury-in-fact and/or actual damage.

174. Plaintiffs and the Arizona Subclass seek monetary relief against Volkswagen in an amount to be determined at trial. Plaintiffs and the Arizona Subclass also seek punitive damages because Volkswagen engaged in aggravated and outrageous conduct.

175. Plaintiffs further seek an order enjoining Volkswagen's unfair, unlawful and/or deceptive practices, attorneys' fees, and any other just and proper relief available under the Arizona CFA.

CLAIM VII

FRAUDULENT CONCEALMENT (UNDER ARIZONA LAW)

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

177. This claim is brought only on behalf of the Arizona Subclass.

178. Volkswagen intentionally concealed the above-described material performance and emissions information and denied Plaintiffs and the Arizona Subclass information that was material to their purchasing and leasing decisions.

179. Volkswagen intentionally misrepresented to Plaintiffs and the Arizona Subclass in advertising and in other forms of communication, including standard and uniform material provided with each car, that the Subject Vehicle it was selling were capable of high performance and low emissions under normal driving conditions.

180. Volkswagen knew these representations were false when made or recklessly disregarded their veracity.

181. Volkswagen omitted from its advertisements, sales brochures, and other forms of public communication that the vehicles were equipped with a Defeat Device, a software algorithm that allowed the vehicles to detect when the vehicle was undergoing emissions testing and activate full emissions controls for the duration of testing but otherwise suspend full emissions controls under normal driving conditions. This undisclosed feature caused the vehicles to emit far more NOx than advertised.

182. The undisclosed information regarding the Class Vehicles' performance and lack of compliance with emissions standards is material information because any reasonable person's leasing, purchasing, or repair decisions would be materially affected by the knowledge of the vehicles' true nature.

183. Volkswagen had the duty to disclose this feature to the EPA, and by extension and implication to the public. Moreover, Volkswagen had a duty to disclose this information to the public because Volkswagen was in a vastly superior position of knowledge about the nature of the Class Vehicles.

184. Volkswagen had and has an ongoing duty to disclose and has yet to discharge that duty with a full accounting of the nature of the Clean Diesel engine system, including the Defeat Device in the Class Vehicles.

185. Plaintiffs and the Arizona Subclass reasonably relied to their detriment upon Volkswagen's material misrepresentations, and omissions of material fact, in making their purchasing and leasing decisions. Plaintiffs and the Arizona Subclass were led to believe, by Volkswagen's fraudulent concealment, that the Class Vehicles were environmentally safe and that their emissions controls systems would function as advertised under normal driving conditions.

186. By way of this fraud, Volkswagen induced purchasers and lessees of Class Vehicles to pay inflated values for the Class Vehicles.

187. As a direct and proximate result of Volkswagen's fraudulent concealment, Plaintiffs and the other Arizona Subclass members have been harmed and they seek all damages permitted by law, including diminution in value of the Class Vehicles, in an amount to be determined at trial.

CLAIM VIII

UNJUST ENRICHMENT (UNDER ARIZONA LAW)

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

189. This claim is brought only on behalf of the Arizona Subclass.

190. Volkswagen has received and retained a benefit from Plaintiffs and the Class, resulting in inequity.

191. Volkswagen has benefitted from selling and leasing vehicles whose value was artificially inflated by Volkswagen's concealment of the vehicles' performance and emissions problems for far more than they were worth, at a profit. Plaintiffs and members of the Class have overpaid for these vehicles.

192. Volkswagen has further benefitted by avoiding the costs of a recall and other lawsuits, and has benefitted from its statements about the success of Volkswagen diesel vehicles.

193. Thus, all Arizona Unjust Enrichment Class Members have conferred a benefit on Volkswagen.

194. It is inequitable for Volkswagen to retain these benefits.

195. Plaintiffs were not aware of the true facts of Volkswagen-branded diesel vehicles and did not benefit from Volkswagen's conduct.

196. Volkswagen knowingly accepted the benefits of its unjust conduct.

197. As a result of Volkswagen's conduct, the amount of its unjust enrichment should be disgorged, in an amount to be determined at trial.

REQUEST FOR RELIEF

WHEREFORE Plaintiffs pray for judgment as follows:

A. For an order certifying the proposed classes and appointing Plaintiffs and their counsel to represent the classes;

B. For an order awarding Plaintiffs and the members of the classes actual, statutory, punitive or any other form of damages provided by and pursuant to the statutes cited above;

C. For an order awarding Plaintiffs and the members of the classes restitution, disgorgement or other equitable relief provided by and pursuant to the statutes cited above or as the Court deems proper;

D. For an order requiring Volkswagen to adequately disclose and remedy the Defeat Device in its diesel vehicles and an order enjoining Volkswagen from incorporating a Defeat Device in its vehicles in the future;

E. For an order awarding Plaintiffs and the members of the classes pre-judgment and post-judgment interest;

F. For an order awarding Plaintiffs and the members of the classes reasonable attorney fees and costs of suit, including expert witness fees; and;

G. For an order awarding such other and further relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs demand a trial by jury of any and all issues in this action so triable of right.

Dated: September 22, 2015

WEITZ & LUXENBERG P.C.

By:

/s/ William Walsh

Robin L. Greenwald

rgreenwald@weitzlux.com

William Walsh

wwalsh@weitzlux.com

Maja Lukic

mlukic@weitzlux.com

700 Broadway

New York, NY 10003

Telephone: (212)-558-5500

Facsimile: (212) 344-5466

Donald Slavik

dslavik@slavik.us

SLAVIK LAW

2955 Village Drive, Suite 16

Steamboat Springs, CO 80487

Telephone: (970) 457-1011

Attorneys for the Plaintiffs