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 10  
 11 **UNITED STATES DISTRICT COURT**  
 12 **NORTHERN DISTRICT OF CALIFORNIA**  
 13

14 **MATTHEW W. SMITH and BERNADETTE**  
 15 **MEYLER, individually, and on behalf of all**  
 16 **others similarly situated,**

17 **Plaintiffs,**

18 **v.**

19 **VOLKSWAGEN GROUP OF**  
**AMERICA, INC.,**

20 **VOLKSWAGEN**  
**AKTIENGESELLSCHAFT,**

21 **AUDI AG**

22 **Defendants.**

Case No. \_\_\_\_\_

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

1. Violation of Magnuson-Moss Warranty Act;
2. Violation of California Consumers Legal Remedies Act;
3. Violation of California B&P § 17200
4. Violations of California B&P § 17500
5. Common Law Fraud
6. Breach of Implied Warranty
7. Breach of Express Warranty

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1 Plaintiffs MATTHEW W. SMITH and BERNADETTE MEYLER (collectively,  
2 “Plaintiffs”), by and through their attorneys, bring this action on behalf of themselves and all  
3 others similarly situated against Volkswagen AG, Volkswagen Group of America, Inc.  
4 (hereinafter, “Volkswagen”). Plaintiffs allege the following upon information and belief, except  
5 as to those allegations that pertain to the named Plaintiffs:

6 **I. NATURE OF THE ACTION**

7 1. “Volkswagen AG CEO Martin Winterkorn touted his company’s efforts on  
8 Monday [July 19, 2010] to grow to be the world’s biggest car maker, including an expansion of  
9 its new car lab in the Bay Area. ‘We want to take Volkswagen to the top of the industry by  
10 2018,’ Volkswagen CEO Martin Winterkorn told reporters at the company’s Electronics Research  
11 Laboratory in Palo Alto.”<sup>1</sup> This statement followed Volkswagen’s pronouncements in its 2009  
12 Sustainability Report that: “We aim to be the most eco-friendly automaker in the world” and  
13 “For Volkswagen, ‘green mobility’ means setting new ecological standards in automobile  
14 manufacturing in order to put the cleanest, most economical and at the same time most fascinating  
15 cars on the road.”<sup>2</sup>

16 2. By 2015, Volkswagen seemed poised on its way to meet these goals. As the  
17 Executive Director of Volkswagen Group of America, Electronics Research Laboratory, Ewald  
18 Groessmann emphasized in a June 29, 2015 Press Release issued from **Belmont, California**  
19 regarding test results on alternative fuels: “Evaluations like this are part of Volkswagen’s broader  
20 holistic environmental strategy which underscores the company’s commitment to the environment  
21 by deploying a comprehensive approach which addresses carbon reduction and sustainability at  
22 each part of the vehicle lifecycle.”

23 3. By September 2015, however, the truth came out. Volkswagen had, since model  
24 year 2009, developed a scheme to evade compliance with United States emissions standards by

25  
26 <sup>1</sup> Silicon Valley/San Jose *Business Journal* (July 20, 2010).

27 <sup>2</sup>2009 Volkswagen 2009 Sustainability Report found at  
28 [http://www.volkswagenag.com/content/vwcorp/info\\_center/en/publications/2009/09/sustainability\\_report0.bin.html/binarystorageitem/file/VW\\_Sustainability\\_Report\\_2009.pdf](http://www.volkswagenag.com/content/vwcorp/info_center/en/publications/2009/09/sustainability_report0.bin.html/binarystorageitem/file/VW_Sustainability_Report_2009.pdf)

1 the installation of software deliberately designed to fool testing devices and conceal the fact that  
2 certain models of their diesel vehicles released emissions up to 40 times higher than what was  
3 legally permitted under normal driving conditions. These harmful emissions of the pollutant  
4 nitrogen oxide (hereinafter, “NOx”), which contributes to the creation of ozone and smog. The  
5 pollutants are known to be linked to numerous debilitating respiratory diseases.

6 4. Volkswagen’s brand has been severely tarnished and the value of its cars has  
7 plummeted. CEO Winterkorn was forced to state: “Millions of people all over the world trust  
8 our brand, our cars, and our technology. I am deeply sorry we have broken this trust. I would like  
9 to make a formal apology to our customers, to the authorities, and to the general public for this  
10 misconduct.” On September 23, 2015, Winterkorn resigned as CEO of Volkswagen, stating that  
11 *“[a]bove all, I am stunned that misconduct on such a scale was possible in the Volkswagen*  
12 *Group.”*<sup>3</sup>

13 5. Plaintiffs, on behalf of themselves and on behalf of a class of California residents  
14 who purchased or leased Class Vehicles<sup>4</sup> (hereinafter, “**Class Members**”), bring this action  
15 challenging Volkswagen’s deceptive representations and omissions regarding the emissions  
16 standards compliance and environmental-friendliness of nearly 500,000 U.S. vehicles in the 2009  
17 to 2015 model years. As part of Volkswagen’s broad-based media advertising campaign designed  
18 to capitalize on public concern over human-induced climate change, Volkswagen utilized high-  
19 impact television, the Internet, and print advertisements that misleadingly touted the fuel  
20 economy, power, and “green” credentials of Volkswagen’s supposedly “clean” diesel vehicles.  
21 *Volkswagen claimed that the vehicles met or exceeded federal emissions standards when to the*  
22 *contrary – the vehicles were built with sophisticated software designed to cheat environmental*  
23 *pollution standards.*

24 6. Volkswagen’s scheme may have succeeded except for investigations, started in  
25 2014 by the California Air Resources Board and the Environmental Protection Agency. On or

26 <sup>3</sup> See Fox Business’s “Volkswagen CEO Resigns Amid Emissions Scandal” by Matthew Rocco, September 23, 2015.  
27 <http://www.foxbusiness.com/business-leaders/2015/09/23/volkswagen-ceo-resigns-amid-emissions-scandal/>.

28 <sup>4</sup> See definition in Paragraph 79, *supra*.



1 about September 18, 2015, the Obama Administration's (hereinafter, "**Administration**") issued a  
2 recall order that Volkswagen intentionally manipulated the emissions systems of approximately  
3 500,000 U.S. vehicles over multiple model years. Exhibit 1. The Administration exposed  
4 Volkswagen's illegal conduct by directing Volkswagen to recall all diesel-power vehicles in  
5 which Volkswagen automaker had illegally placed software in an effort to bypass requisite  
6 standards for reducing smog.

7 7. Specifically, Volkswagen knowingly and intentionally manipulated its vehicles'  
8 emissions systems to deceitfully operate by installing so-called "*defeat devices*"<sup>5</sup> designed to  
9 evade mandatory periodic state emissions testing. Equipped with these devices, Volkswagen's  
10 vehicles emit significantly less harmful emissions during testing than during normal driving  
11 conditions. During *regular* operation of Volkswagen's supposedly environmentally-friendly  
12 vehicles, the vehicles in fact emit *up to 40 times*<sup>6</sup> *the standard permitted* by United States laws  
13 and regulations. The defeat devices in Volkswagen's vehicles operate by concealing the vehicles'  
14 emission of the pollutant NO<sub>x</sub>, which contributes to the creation of ozone and smog. The  
15 pollutants are known to be linked to numerous debilitating respiratory diseases including asthma  
16 attacks, bronchitis, and emphysema. Other correlated health ailments include lung damage  
17 premature death.<sup>7</sup>

18 8. Volkswagen's deliberate scheme impacted at least the vehicles listed in the below  
19 table (hereinafter, the "**Class Vehicles**"). Further investigation may uncover additional vehicle  
20 models and model years affected by Volkswagen's illegal ploy.

22 \_\_\_\_\_  
23 <sup>5</sup> The United States Environmental Protection Agency ("EPA") announced on September 18, 2015 that the "software  
24 produced by Volkswagen is a 'defeat device,' as defined by the Clean Air Act." See  
<http://yosemite.epa.gov/opa/admpress.nsf/a883dc3da7094f97852572a00065d7d8/dfc8e33b5ab162b985257ec40057813b!OpenDocument>.

25 <sup>6</sup> See  
26 <http://yosemite.epa.gov/opa/admpress.nsf/a883dc3da7094f97852572a00065d7d8/dfc8e33b5ab162b985257ec40057813b!OpenDocument>.

27 <sup>7</sup> See U.S. National Library of Medicine's Tox Town (Environmental health concerns and toxic chemicals where you  
28 live, work, and play): "Nitrogen Oxides" at [http://toxtown.nlm.nih.gov/text\\_version/chemicals.php?id=19](http://toxtown.nlm.nih.gov/text_version/chemicals.php?id=19). Last  
accessed September 22, 2015.

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

9. As a result of Volkswagen's illegal conduct, every proposed Class Vehicle was deceitfully sold to consumers based on knowingly false representations concerning the actual environmental friendliness, fuel efficiency and performance of the vehicle. Volkswagen's widespread advertising based on these same factors for the Vehicle Class was also false and misleading.

10. Volkswagen's misrepresentations and omissions regarding the Class Vehicles' environmental credentials, fuel efficiency and performance in their advertising, public statements, and marketing information were material factors in inducing Plaintiffs and Class Members to purchase the Class Vehicles. As a result of Volkswagen's scam, *nearly 11 million conscientious consumers* worldwide purchased the Class Vehicles based on misleading and downright false claims of the vehicle's attributes. Had Plaintiffs and Class Members known that the Class Vehicle's appealing combination of high fuel mileage and performance, with low emissions, were but a calculated scheme by Volkswagen to stealthily defeat environmental protection standards, Plaintiffs and Class Members would not have purchased or leased their respective Class Vehicles, or Plaintiffs and Class Members would have paid significantly less for the vehicles than they did.

11. This lawsuit seeks to remedy Volkswagen's premediated scheme to defraud the public.

1 **II. THE PARTIES**

2 **A. Plaintiff Matthew Smith**

3 12. Plaintiff Matthew Smith is an Associate Professor of German Studies and Theater  
4 & Performance Studies at Stanford University in Palo Alto, California. In 2013, he and his wife  
5 purchased a Model Year 2013 VW Passat TDI. Smith purchased the Passat specifically because it  
6 was advertised as being a “clean,” environmentally-friendly vehicle that also provided excellent  
7 power, performance, and fuel mileage. Smith and his wife conducted extensive research on the  
8 Passat, and competing vehicles, before purchasing the vehicle. Smith would not have purchased  
9 the vehicle but for VW’s representations regarding the “clean” emissions characteristics of the  
10 Passat TDI.

11 **B. Plaintiff Bernadette Meyler**

12 13. Plaintiff Bernadette Meyler is a Professor of Law at the Stanford University  
13 School of Law in Palo Alto, California. In 2013, she and her husband purchased a Model Year  
14 2013 VW Passat TDI. Meyler purchased the Passat specifically because it was advertised as  
15 being a “clean,” environmentally-friendly vehicle that also provided excellent power,  
16 performance, and fuel mileage. Meyler and her husband conducted extensive research on the  
17 Passat, and competing vehicles, before purchasing the vehicle. Meyler would not have purchased  
18 the vehicle but for VW’s representations regarding the “clean” emissions characteristics of the  
19 Passat TDI.

20 **C. Defendant Volkswagen Aktiengesellschaft**



21  
22  
23  
24  
25 14. Established in 1937, Defendant Volkswagen Aktiengesellschaft (hereinafter,  
26 “Volkswagen AG”) is a German car corporation organized and existing under the laws of  
27 Germany, with its principal place of business located in Wolfsburg, Germany. Volkswagen AG is  
28 the parent company of Volkswagen Group of America, Inc., also named as a Defendant in this



1 Complaint. All three Defendants (Volkswagen AG, Audi, and Volkswagen Group of America,  
2 Inc.) are collectively referred to in this complaint as “Volkswagen.”

3 **D. Defendant Audi AG**



17 15. In 1964, Volkswagen AG acquired Auto Union, and in 1969, Volkswagen AG  
18 acquired NSU Motorenwerke AG. Volkswagen AG merged Auto Union and NSU to create Audi  
19 AG (hereinafter, “Audi”), which has since been developed into Volkswagen’s luxury vehicle  
20 brand. Audi is a German automobile manufacturer that designs, engineers, produces, markets, and  
21 distributes luxury automobiles, and is a majority owned (99.55%) subsidiary of Volkswagen  
22 Group. Since 2007, Audi has used the slogan “Truth in Engineering,” and is among the best-  
23 selling luxury automobiles in the world.

24 **E. Defendant Volkswagen Group of America, Inc.**



1 16. Founded in 1955, Defendant Volkswagen Group of America, Inc. (hereinafter,  
 2 “VWoA”) is a wholly owned subsidiary of Volkswagen AG, a corporation organized and in  
 3 existence under the laws of the State of New Jersey and registered with the Secretary of State to  
 4 conduct business in California. VWoA is one of the world’s largest producers of passenger cars  
 5 and Europe’s largest automaker. VWoA sells the Beetle, Beetle Convertible, CC, Eos, e-Golf,  
 6 Golf, Golf GTI, Golf R, Golf SportWagen, Jetta, Passat, Tiguan, and Touareg vehicles through  
 7 approximately 652 independent U.S. dealers. VWoA’s operations in the United States include  
 8 research and development; parts and vehicle processing; parts distribution centers; sales,  
 9 marketing and service offices; financial service centers; and its state-of-the-art manufacturing  
 10 facility in Chattanooga, Tennessee (the Volkswagen Chattanooga Assembly Plant, which opened  
 11 in 2011 and currently has over 3,200 Volkswagen employees and over 9,500 indirect supplier  
 12 employees).



25 *Source:* <http://www.volkswagengroupamerica.com/locations.html>.



1 17. Volkswagen also operates an Electronics Research Laboratory in *Belmont,*  
 2 *California.* The Volkswagen **Electronic Research Laboratory** (hereinafter, “VERL”) is located  
 3 at 500 Clipper Drive, Belmont, CA, 94002. VERL is part of the global research and development  
 4 network that supports Volkswagens’ brands including, Audi, Bentley, Bugatti, Lamborghini and  
 5 VW. The VERL is a subsidiary of the Volkswagen Group of America, Inc., with the parent  
 6 company being Volkswagen Group. *The VERL was touted as Volkswagen’s largest research*  
 7 *facility outside of Germany, and takes advantage of its proximity to Silicon Valley to cultivate*  
 8 *numerous partnerships to enhance the knowledge of Volkswagen Group.*



18  
19 18. During the Class Period, each Defendant acted as an agent, servant, employee,  
 20 and/or joint venture of the other Defendants and in doing the things alleged acted within the  
 21 course of such agency, employment, and/or in furtherance of the joint venture to accomplish the  
 22 scheme. Each of the Defendant’s acts alleged herein was done with the permission and consent  
 23 of each of the other Defendants. While each of the Defendants are separate legal entities, each  
 24 Defendant works together under a common identity as portrayed to the public and there is  
 25 sufficient unity of interest and control between each Defendant such that the acts of one are for  
 26 the benefit and can be imputed to the acts of the other.

27 19. During the Class Period, Volkswagen was engaged in the business of designing,  
 28 manufacturing, constructing, assembling, marketing, advertising, promoting, distributing, and/or

1 selling automobiles and other motor vehicles and motor vehicle components throughout the  
2 United States.

3  
4 **III. JURISDICTION AND VENUE**

5 20. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d). The  
6 matter in controversy exceeds \$5,000,000 exclusive of interest and costs, and this matter is a class  
7 action in which certain class members are citizens of States other than each Defendant's state of  
8 citizenship. The Court also has jurisdiction pursuant to 28 U.S.C. § 1331 because Plaintiffs and  
9 the Class have brought a claim pursuant to 15 U.S.C. § 2301 et seq. This Court also has  
10 supplemental jurisdiction pursuant to 28 U.S.C. §1367(a).

11 21. This Court has personal jurisdiction over Plaintiffs because Plaintiffs reside in  
12 County of Santa Clara, California, and submit to the Court's jurisdiction. This Court has personal  
13 jurisdiction over Volkswagen because Volkswagen has conducted and continues to conduct  
14 substantial business in California, and has sufficient minimum contacts with California in that: (1)  
15 Volkswagen's Electronics Research Laboratory is located in *Belmont, California*; (2) its Test  
16 Center California is located in *Oxnard, California*; (3) its Design Center is located in *Santa*  
17 *Monica, California*; (4) its Pacific Region Office is located in *Westlake Village, California*; and  
18 (5) its Parts Distribution Center is located in *Ontario, California*.

19 22. Venue is proper in this Court under 28 U.S.C. § 1391 because Volkswagen sells a  
20 substantial amount of automobiles in this District, have dealerships in this District, maintain and  
21 operate a Test Center, Design Center, Western Regional Headquarters, and Parts Distribution  
22 Center within this District, and many of Volkswagen's acts complained of herein occurred within  
23 this District. Furthermore, a substantial part of the events alleged in this Complaint, giving rise to  
24 Plaintiffs' claims, including the false and misleading advertising alleged herein, occurred in,  
25 emanated from and/or were directed from this District. Venue is also proper in this Court because  
26 Volkswagen caused harm to Class Members residing in this District.



1 **IV. FACTUAL ALLEGATIONS**

2 **A. Federal and State Regulations Regarding Vehicle Emissions**

3 23. In 1970, Congress enacted the first major Clean Air Act, which act has been  
4 amended. The Clean Air Act required a 90% reduction in emissions from new automobiles by  
5 1975. In 1970, Congress also established the Environmental Protection Agency (“EPA”), which  
6 has broad responsibility for regulating motor vehicle pollution.

7 24. Congress’ purpose in creating the Clean Air Act, in part, was “to protect and  
8 enhance the quality of the Nation’s air resources so as to promote the public health and welfare  
9 and the productive capacity of its population,” and “to initiate and accelerate a national research  
10 and development program to achieve the prevention and control of air pollution.” 42 U.S.C. §  
11 7401(b)(1)-(2).

12 25. The Clean Air Act requires vehicle manufacturers to certify to EPA that their  
13 products will meet applicable federal emission standards to control air pollution. The EPA  
14 administers a certification program to ensure that every vehicle introduced into United States  
15 commerce satisfies applicable emission standards. Under this standard, the EPA issues  
16 certificates of conformity (hereinafter, “COC”) and approves the introduction of vehicles  
17 satisfying the standards into United States commerce. **Every vehicle sold in the United States**  
18 **must be covered by an EPA-issued certificate of conformity.**<sup>8</sup> This includes light-duty motor  
19 vehicles such as the Class Vehicles at issue in this Complaint; the Class Vehicles needed to  
20 satisfy emission standards for certain air pollutants, including nitrogen oxide (hereinafter,  
21 “NOx”). 40 C.F.R. § 86.1811-04. Clean Air Act § 101(b)(1) - (2), 42 U.S.C. § 7401(b)(1)-(2).

22 26. California, through the California Air Resources Board (“CARB”) also regulates  
23 emissions standards for vehicles. California’s Low Emission Vehicle Regulations have emission  
24 reduction standards for automobiles.

25  
26  
27  
28 <sup>8</sup> *Id.*

1           **B. By the Early 1990s, Japanese Automakers Had Overtaken Volkswagen in Car**  
2           **Sales and Volkswagen Looked for Ways to Increase Sales and Used a Santa**  
3           **Clara County, California Laboratory for Research.**

4           27. In 1949, Volkswagen introduced in the United States the “VW Bug” and since  
5 then more than 5.5 million of this iconic car have been sold in this country.<sup>9</sup> For many years,  
6 Volkswagen was the top selling foreign car in the United States, but by the early 1990s, Japanese  
7 imports had completely overtaken Volkswagen and other European imports. Since then,  
8 Volkswagen has tried, mostly, without success to increase its sales in the United States. By the  
9 mid-2000s, Volkswagen sought to diversify its car lineup, including designing vehicles for the  
10 United States market.<sup>10</sup>

11           28. Volkswagen increased its research and development budget, spending over \$10  
12 billion in 2010. Volkswagen greatly relied on its Electronics Research Laboratory. Volkswagen  
13 opened this electronics research laboratory in Sunnyvale, California in 1998 with three  
14 employees. In 2002, the lab moved to Palo Alto. In July of 2010, Volkswagen’s CEO Martin  
15 Winterkorn visited the Palo Alto lab and announced: “We want to take Volkswagen to the top of  
16 the industry by 2018.”

17           29. In May of 2011, Volkswagen moved Electronics Research Laboratory to a 157,000  
18 square foot office building in Belmont. “The Electronics Research Laboratory represents the  
19 entire Volkswagen Group in applied research and development.”<sup>11</sup>

20           ““The Electronics Research Laboratory is another example of Volkswagen Group of America’s  
21 investment in the U.S., [Volkswagen Group of America President and CEO Jonathan] Browning  
22 said, adding that Volkswagen Group has made a significant multi-million dollar investment in  
23 the new facility. ‘The commitment of the ERL teams to automotive innovation will benefit  
24 drivers through safer, more eco-friendly driving experiences, prompted by the technological

25 \_\_\_\_\_  
26 <sup>9</sup> <https://media.vw.com/release/672/>

27 <sup>10</sup> <http://www.cheatsheet.com/automobiles/volkswagens-big-north-american-problem.html/?a=viewall>

28 <sup>11</sup> *PR News Wire*, “Researchers Showcase Latest Automotive Innovation for the Next Generation of Mobility, April 29, 2011.

1 heartbeat of Silicon Valley. I am excited to help showcase the next generation of mobility  
2 today.”<sup>12</sup>

3 30. The research and innovation by Volkswagen through Electronics Research  
4 Laboratory and other labs was but one part of Volkswagen’s plan. Indeed, as revealed by  
5 Volkswagen’s EU Group’s promotional brochures touting its Global Research activities, their  
6 Electronic Research Lab in Belmont appears to have been a focal point of the scheme to defraud  
7 the public. (See Exhibit 2) In addition, as part of its business plan to increase sales and market  
8 share, Volkswagen increased its emphasis on diesel cars and engaged in an extensive marketing  
9 campaign to sell more cars in the United States.

10 31. One focus of Volkswagen’s plan was to increase sales of its diesel vehicles.  
11 Volkswagen knew that consumers wanted environmentally friendly cars while still having fuel  
12 efficiency and powerful cars. Volkswagen implemented a plan to increase sales of its diesel cars.

13  
14 C. **Volkswagen Extensively Marketed Its Diesel Cars as Having Less Greenhouse  
15 Gas Emissions than Other Cars While Having Greater Fuel Efficiency and  
16 Performance.**

17 32. Advertising has been a key part of Volkswagen’s business plan. For the period  
18 2011-2013, Volkswagen spend over \$2.9 billion per year world-wide on advertising.<sup>13</sup>

19 33. As explained by Volkswagen’s marketing chief, Tim Ellis in *USA Today*, even  
20 though 2008 was a tough ad year for Volkswagen, its ad expenditures would be the same in  
21 2009.<sup>14</sup>

22 34. In 2009, Volkswagen introduced a campaign called ‘Meet the Volkswagens.’  
23 “Five ads running over eight weeks will promote fuel efficiency, green credentials, cost of  
24 ownership and safety by highlighting VW’s performance compared with rival brands.”<sup>15</sup> “Part  
25 of the big plan is for Volkswagen to grow the brand in the U.S.,” says Ellis. ‘As part of that

26 <sup>12</sup> *Id.*

27 <sup>13</sup> <http://www.statista.com/statistics/286537/volkswagen-advertising-spending-worldwide/>

28 <sup>14</sup> <http://abcnews.go.com/Business/story?id=7493781>

<sup>15</sup> *Id.*

1 strategy, we can no longer afford to be a small, quirky niche brand here.”<sup>16</sup> The marketing  
 2 included Volkswagen using Facebook with a link to a blog, tdi.vw.com/tdi to raise awareness of  
 3 VW’s TDI clean diesel model.

4 35. Part of its campaign was the slogan that “Today’s diesel-powered automobiles  
 5 aren’t your father’s diesel-powered automobiles.” “VW had a simple message in each instances:  
 6 its autos are fuel-efficient, green and safe vehicles that won’t break the bank.”<sup>17</sup>

## 7 **This ain’t your daddy’s** 8 **diesel.**

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

- 12 • Engineered to burn low-sulfur diesel fuel
- 13 • “Common Rail” direct injection system

14 [View key fuel efficiency info](#)



15  
 16  
 17  
 18 Source: <https://web.archive.org/web/20150816221300/http://www.vw.com/features/clean-diesel/>.

19 36. “*This ain’t your daddy’s diesel,*” boldly declared Volkswagen, an international  
 20 automotive conglomerate, in its sleek advertising campaign on their main webpage.<sup>18</sup>

21 37. Another example of Volkswagen’s advertising touting its diesel cars

22  
 23  
 24  
 25 <sup>16</sup> *Id.*

26 <sup>17</sup> <http://www.edmunds.com/autoobserver-archive/2009/05/volkswagen-playing-truth-or-dare-to-market-its-diesel-vehicles.html>

27 <sup>18</sup> See <https://web.archive.org/web/20150816221300/http://www.vw.com/features/clean-diesel/>. Last accessed  
 28 September 22, 2015.



## Efficiency. Now available without compromise.

Hybrids aren't the only game in town. TDI® Clean Diesel engines offer up impressive efficiency numbers too. Take the Passat TDI for starters. It can go up to 814 miles uninterrupted. Now that's a game changer.

- Seven efficient models to choose from
- Efficiency from up to 29 to 46 hwy mpg
- Ranges from up to 594 to 814 hwy miles on a single tank of fuel

[View key fuel efficiency and range info](#)



*This advertisement has since been removed from Defendant's webpage. Source: <https://web.archive.org/web/20150816221300/http://www.vw.com/features/clean-diesel/>.*

38. The Class Vehicles, as VWoA's Mark Barnes once boasted were "fantastic power train[s]" that give[] very good fuel economy." Yet "[i]t's also good for the environment because it puts out 25% less greenhouse gas emission than what a gasoline engine would. *And thanks to the uniqueness of the TDI motor, it cuts out the particulate emissions by 90% and the emissions of nitrous oxide are cut by 95%. So a very very clean running engine. Clean enough to be certified in all 50 states.*"<sup>19</sup>

39. From television to print advertisements to interviews to social media, Volkswagen represented the environmental-friendliness, fuel efficiencies of the Class Vehicles to the public.

40. The advertising and promotion paid off as auto critics starting praising Volkswagen's diesel cars and sales increased.

<sup>19</sup> See Business Insider's "Volkswagen: Our Diesel Cars Whup the Prius and Other Hybrids," by Gayathri Vaidyanathan, October 9, 2009. <http://www.businessinsider.com/volkswagen-preps-for-a-diesel-revolution-2009-10>.

1           41.       In 2008, Jeep, Mercedes-Benz and Volkswagen were the only manufacturers  
2 selling diesels in light-duty vehicles in the United States.<sup>20</sup> Edmunds, a highly regarded vehicle  
3 analyst, however, did not recommend any Volkswagen diesel cars as its top recommended.  
4 Instead, it recommended: “If you want more options, we’d advise waiting until 2009 when the  
5 ever popular Volkswagen Jetta TDI is slated to return to the U.S. as a 50-state vehicle.”<sup>21</sup>

6           42.       Those recommendations began changing in 2009. In 2009, Edmunds made one of  
7 its top recommended the 2009 Jetta, stating: “Though the majority of diesel engines are sold in  
8 heavy-duty vehicles, the most anticipated of the new clean diesels coming out this year are a  
9 sedan (and a wagon): the 2009 Volkswagen Jetta TDI. If you’re shopping for a compact sedan or  
10 wagon, it’s the only diesel game in town. Starting at just a shade under \$22,000 for the sedan and  
11 \$23,600 for the base Sportwagen, the new clean Jetta TDI brings with it the German premium  
12 sedan feel without the premium sedan price. The Jetta TDI also qualifies for a \$1,300 alternative  
13 motor vehicle federal tax credit, which can help offset the small premium you pay for diesel  
14 efficiency.”<sup>22</sup>

15           43.       In 2010, Edmunds recommended the Jetta as one of its top recommended diesels  
16 and stated: “The Volkswagen Jetta TDI, for example, enters its second year on the market as one  
17 of the most sought-after Jetta models, accounting for more than a third of stateside Jetta sales.  
18 Starting at about \$23,000 for the sedan and \$25,000 for the SportWagen, the Jetta TDI provides  
19 sprightly performance and a premium feel, along with the kind of fuel economy that only  
20 gasoline-electric hybrids can match. It’s a bit pricey, but its unique collection of virtues makes it  
21 an Edmunds staff favorite — and an interesting alternative to green machines like the Ford  
22 Escape Hybrid and Toyota Prius.”<sup>23</sup>

23  
24  
25 <sup>20</sup> <http://www.edmunds.com/diesel/2008/buying-guide.html>

26 <sup>21</sup> *Id.*

27 <sup>22</sup> <http://www.edmunds.com/diesel/2009/buying-guide.html>

28 <sup>23</sup> <http://www.edmunds.com/diesel/2010/buying-guide.html>

1           44.       In 2011, Edmunds recommended the Golf as one of its top recommended diesels  
2 and stated: “Our favorite is the Volkswagen Golf TDI, which exploits the traditional fuel-  
3 efficiency of its turbocharged four-cylinder diesel engine for truly frugal motoring when it comes  
4 to fuel cost per mile.”<sup>24</sup>

5           45.       In 2012 Edmunds included the Golf as one of its top recommended diesels and  
6 stated: “Our favorite is the Volkswagen Golf TDI, which we feel offers a well-rounded package.  
7 It has the premium interior of a more upscale vehicle, is easy to load cargo in thanks to its  
8 hatchback, has a sporty suspension and is still capable of up to 42 mpg on the highway. The  
9 Volkswagen Jetta TDI offers the same engine/transmission combination, but the car’s complete  
10 redesign for 2011 left us wholly unimpressed. If you are looking for a larger sedan, consider the  
11 more refined Volkswagen Passat TDI instead.”<sup>25</sup>

12           46.       In 2013, Edmunds recommended both the Golf and the Passat as top  
13 recommended diesels: “While the Volkswagen Golf TDI is one of the best-selling cars in  
14 Europe, it hasn’t yet taken U.S. buyers by storm. Part of the reason is its price, since the TDI is  
15 the top trim for the Golf. Still, we feel that the car is worth it because it offers a well-rounded  
16 package that few cars in its class can match. The Golf has the premium interior of a more  
17 upscale vehicle, is easy to load cargo in thanks to its hatchback, has a sporty suspension and is  
18 still capable of up to 42 mpg on the highway. [¶] The Volkswagen Passat TDI offers the same  
19 engine/transmission combination as the Golf TDI, but in a roomier midsize sedan body. The  
20 Passat earned top honors in our last 40 MPG Challenge, when it surpassed its own EPA numbers  
21 in real-world driving conditions. It is an excellent alternative to the Toyota Camry Hybrid or the  
22 Ford Fusion Hybrid.”<sup>26</sup>

23           47.       In the first half of 2015, Volkswagen passed Toyota as the world’s largest  
24 automaker. Volkswagen AG sold 5.4 million vehicles, including 295,000 in the United States, to  
25

26 <sup>24</sup> <http://www.edmunds.com/diesel/2011/buying-guide.html>

27 <sup>25</sup> <http://www.edmunds.com/diesel/2012/buying-guide.html>

28 <sup>26</sup> <http://www.edmunds.com/diesel/2013/buying-guide.html>



1 Toyota's 5.02 million vehicles.<sup>27</sup> Volkswagen's projection of being the largest automaker in  
2 the world by 2018 appeared to be coming true and meeting the goal three years early

3  
4 **D. The Truth Is Revealed: Volkswagen Admits to a Scheme to Knowingly and**  
5 **Intentionally Manipulating Class Vehicle's Emission Systems and the Class**  
6 **Vehicles Were Actually Emitting Up to 40 Times the Legal Limit**

7 48. In fact, the Class Vehicles were not environmentally friendly with fuel efficiency  
8 and power, but Volkswagen had knowingly and intentionally manipulated the Class Vehicle's  
9 emission system. The true facts were that the vehicles were actually emitting up to 40 times the  
10 legal limit. Volkswagen had hidden its scheme for over six (6) years, but it was finally revealed  
11 to the public in September of 2015.

12 49. CARB and the EPA were first alerted to emissions problems with the Class  
13 Vehicles in May 2014 when the West Virginia University's (hereinafter, "WVU") Center for  
14 Alternative Fuels, Engines & Emissions published results of a study that found significantly  
15 higher in-use emissions from two of Volkswagen's light-duty diesel vehicles.

16 50. Over the course of the year, Volkswagen continued to assert to both the CARB and  
17 the EPA that the increased emission from these vehicles could be attributed to various technical  
18 issues and unexpected in-use conditions. Volkswagen issued a voluntary recall in December  
19 2014 to address the issue. CARB, in coordination with the EPA, conducted follow up testing of  
20 these vehicles both in the laboratory and during normal road operation to confirm the efficacy of  
21 the recall. When the testing showed only a limited benefit to the recall, the CARB broadened the  
22 tested vehicles to pinpoint the exact technical nature of the vehicles' poor performance, and to  
23 investigate why the vehicles' onboard diagnostic system was not detecting the increased  
24 emissions.<sup>28</sup>

25 51. None of the potential technical issues suggested by Volkswagen explained the  
26 higher test results consistently confirmed during the CARB's testing and it became clear that the

27 <sup>27</sup> <http://www.latimes.com/business/la-fi-hy-vw-toyota-20150728-story.html>

28 <sup>28</sup> See United States Environmental Protection Agency Notice of Violation (Volkswagen);  
<http://www3.epa.gov/otaq/cert/violations.htm>.



1 CARB and the EPA would not approve certificates of conformity for Volkswagen's 2016 model  
2 year diesel vehicles until Volkswagen could adequately explain the anomalous emissions and  
3 ensure that the 2016 model year vehicles would not have similar issues. Only then did  
4 Volkswagen admit it had designed and installed a defeat device in these vehicles in the form of a  
5 sophisticated software algorithm that detected when a vehicle was undergoing emission testing.<sup>29</sup>

6  
7 **E. Volkswagen's Admission to Fraudulently and Intentionally Evading Federal  
and State Clean Air Emissions Standards.**

8  
9 52. On September 18, 2015, the EPA issued a notice of violation (hereinafter, "NOV")  
10 of the Clean Air Act, 42 U.S.C. §§ 7401 – 7671(q), and its implementing regulations to  
11 Volkswagen. Exhibit 1. Amongst other allegations, the NOV alleges that four-cylinder  
12 Volkswagen diesel cars from model years 2009-2015 contained software "manufactured and  
13 installed" by Volkswagen to deliberately circumvent EPA emissions standards for certain air  
14 pollutants.<sup>30</sup> "Therefore, VW violated section 203(a)(3)(B) of the Clean Air Act, 42 U.S.C. §  
15 7522(a)(3)(B)."<sup>31</sup> CARB also issued its own letter regarding Volkswagen's violations. Exhibit 3.

16 53. Defeat devices bypass, defeat, or render inoperative elements of a vehicles'  
17 emission control system that exist to comply with Clean Air Act emission standards. Defeat  
18 devices, such as those installed in Volkswagen's Class Vehicles, sense whether the vehicle is  
19 being tested for compliance with EPA emission standards based on various inputs including the  
20 position of the steering wheel, vehicle speed, the duration of the engine's operation, and  
21 barometric pressure. These inputs precisely track the parameters of the federal test procedure  
22 used for emission testing for EPA certification purposes.

23  
24  
25 <sup>29</sup> See United States Environmental Protection Agency Notice of Violation (Volkswagen):  
<http://www3.epa.gov/otaq/cert/violations.htm>.

26 <sup>30</sup> See United States Environmental Protection Agency Notice of Violation (Volkswagen):  
<http://www3.epa.gov/otaq/cert/violations.htm>.

27 <sup>31</sup> See NOV from the United States Environmental Protection Agency, dated September 18, 2015.  
28



An example of Volkswagen's "clean" diesel engine. Source: <http://www.automobilemag.com/features/news/volkswagen-cheating-scandal-expands-to-11-million-diesels-worldwide/>.

54. Due to the existence of the defeat systems in Volkswagen's Class Vehicles, the Class Vehicles do not conform in all material respects to the vehicle specifications described in the applications for the COCs that purportedly cover them. Therefore, Volkswagen also violated section 203(a)(1) of the Clean Air Act, 42 U.S.C. § 7522(a)(1), by selling, offering for sale, introducing into commerce, delivering for introduction into commerce, or importing these vehicles, or for causing any of the foregoing acts.

55. By making and selling vehicles with defeat devices that allowed for higher levels of air emissions than they certified to EPA, Volkswagen violated the Clean Air Act. ***"Using [these] defeat devices in cars to evade clean air standards is illegal and a threat to public health,"*** said Cynthia Giles, Assistant Administrator for the Office of Enforcement and Compliance Assurance.<sup>32</sup>

<sup>32</sup> See United States Environmental Protection Agency News Release: "EPA, California Notify Volkswagen of Clean Air Act Violations." <http://yosemite.epa.gov/opa/admpress.nsf/6424ac1caa800aab85257359003f5337/dfc8e33b5ab162b985257ec40057813b!OpenDocument>. Last accessed September 22, 2015.



1           56.     Indeed, *Volkswagen AG's CEO Martin Winterkorn acknowledged as much and*  
 2 *admitted to Volkswagen's illegal misconduct* as news of the 7-year-long scandal broke:  
 3 "Millions of people all over the world trust our brand, our cars, and our technology. I am deeply  
 4 sorry we have broken this trust. I would like to make a formal apology to our customers, to the  
 5 authorities, and to the general public for this misconduct." On September 23, 2015, Mr.  
 6 Winterkorn resigned as CEO of Volkswagen, stating that "*[a]bove all, I am stunned that*  
 7 *misconduct on such a scale was possible in the Volkswagen Group.*"<sup>33</sup>

8           57.     Michael Horn, the head of Volkswagen in the United States, also admitted that  
 9 Volkswagen has "totally screwed up." "Let's be clear about this, our company was dishonest  
 10 with the [EPA] and the California air resources board [*sic*], and with all of you."<sup>34</sup>

11           58.     As a result of Volkswagen's admitted scandal, Volkswagen's brand and reputation  
 12 have been irreparably damaged, as evidenced by Volkswagen's ever-tanking stock price in the  
 13 hours and days following the EPA's NOV. The Administration's forced recall has also damaged  
 14 Volkswagen's brand and reputation; re-sale values. Volkswagen recognizes the damage to their  
 15 brand and reputation, setting aside \$7.2 billion to pay for their emissions cheating scheme.<sup>35</sup>  
 16 "'The Volkswagen brand is at risk,' Mike Jackson, CEO of Auto Nation, told CNBC today  
 17 [September 23, 2015]."<sup>36</sup>

18           59.     The following shows how investors reacted to the disclosure of the scheme:  
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 20  
 21

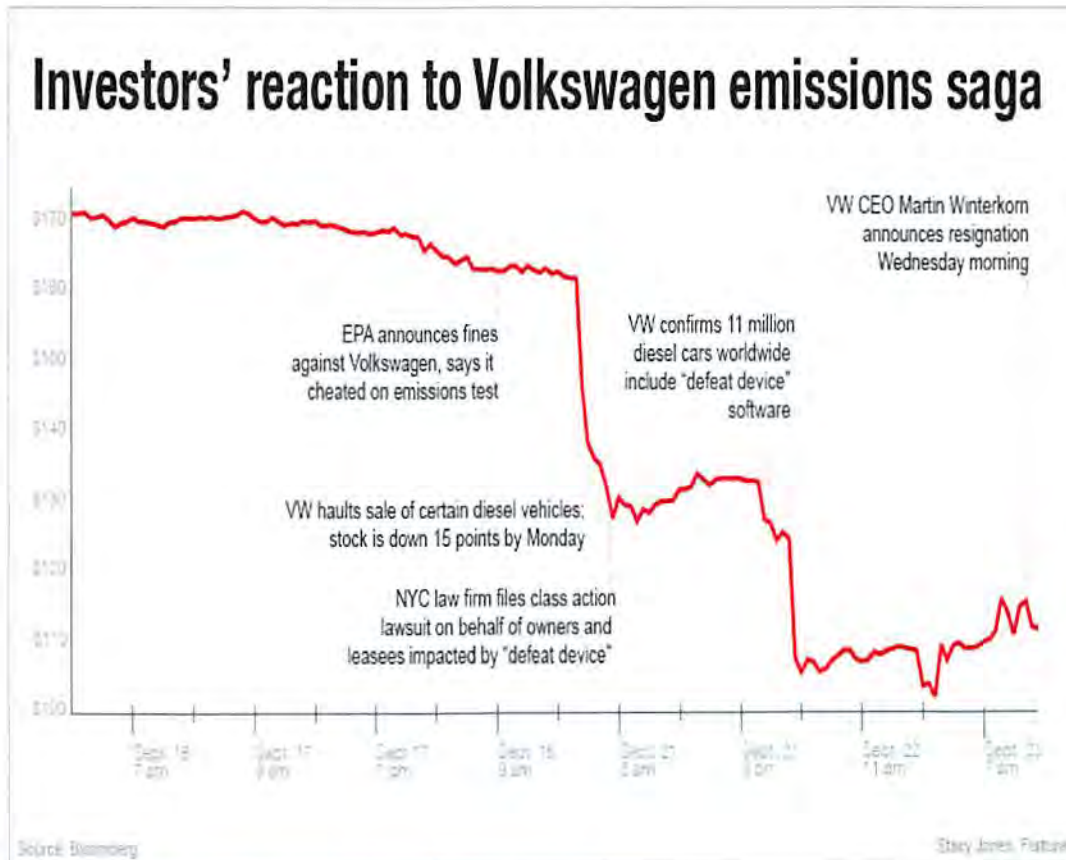
22 \_\_\_\_\_  
 23 <sup>33</sup> See Fox Business's "Volkswagen CEO Resigns Amid Emissions Scandal" by Matthew Rocco, September 23,  
 2015. <http://www.foxbusiness.com/business-leaders/2015/09/23/volkswagen-ceo-resigns-amid-emissions-scandal/>.

24 <sup>34</sup> See CNN Money's "Volkswagen scandal widens" by Mark Thompson and Ivana Kottasova, September 22, 2015.  
 25 <http://money.cnn.com/2015/09/22/news/vw-recall-diesel/>.

26 <sup>35</sup> See Volkswagen Sets Aside \$7.2 Billion to Pay for Emissions Cheating Scandal," by Paul A. Eisenstein, NBC  
 27 News, September 22, 2015. <http://www.nbcnews.com/business/autos/volkswagen-sets-aside-7-2-billion-pay-emissions-cheating-scandal-n431456>.

28 <sup>36</sup> <http://www.timesfreepress.com/news/business/aroundregion/story/2015/sep/23/biggest-vw-dealer-says-volkswagen-brand-risk/326700/>

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Source: <http://fortune.com/2015/09/23/volkswagen-stock-drop/>.

60. Internal investigations revealed that Volkswagen’s “misconduct,” originally thought by U.S. regulators to involve some 500,000 vehicles, in fact could involve nearly 11 million vehicles worldwide.<sup>37</sup> *Over 77,000 of these Class Vehicles were sold in California alone.*

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<sup>37</sup> See CNN Money’s “Volkswagen scandal widens” by Mark Thompson and Ivana Kottasova, September 22, 2015. <http://money.cnn.com/2015/09/22/news/vw-recall-diesel/>.



1  
2 F. Volkswagen's Defeat Devices Were Sophisticated Devices Intentionally  
3 Manufactured and Installed In Class Vehicles In Violation of U.S. Law.



16 An example of one of the Class Vehicles (2010 Volkswagen Golf TDI) containing a "defeat device," as defined by  
17 the Clean Air Act. Source: [http://wheels.blogs.nytimes.com/2009/12/30/thrift-and-thrills-with-vw-golf-tdi-and-gti/?\\_r=0](http://wheels.blogs.nytimes.com/2009/12/30/thrift-and-thrills-with-vw-golf-tdi-and-gti/?_r=0).

18 61. Volkswagen's Class Vehicles were equipped with a sophisticated software  
19 algorithm that was designed to detect when the vehicle was undergoing official emissions testing.  
20 Full emissions controls were turned on only during these mandated tests. *During all other times*  
21 *of normal driving, the effectiveness of the Class Vehicles' pollution emissions control devices*  
22 *was manipulated by Volkswagen to be greatly reduced.*<sup>38</sup>

23 62. Specifically, during EPA emission testing, the Class Vehicles' electronic control  
24 module (hereinafter, "ECM") ran software which produced compliant emission results under an  
25

26 <sup>38</sup> See United States Environmental Protection Agency News Release: "EPA, California Notify Volkswagen of Clean  
27 Air Act Violations."  
28 <http://yosemite.epa.gov/opa/admpress.nsf/6424ac1caa800aab85257359003f5337/dfc8e33b5ab162b985257ec40057813b!OpenDocument>. Last accessed September 22, 2015.

1 ECM calibration that Volkswagen referred to as the “dyno calibration” (referring to the  
2 dynamometer, the equipment used in emissions testing). At all other times during normal vehicle  
3 operation, the software was activated and the Class Vehicle’s ECM software ran a separate “road  
4 calibration” which reduced the effectiveness of the emission control system. As a result,  
5 emissions of NOx increased by a factor of 10 to 40 times above the EPA compliant levels,  
6 depending on the type of drive cycle.

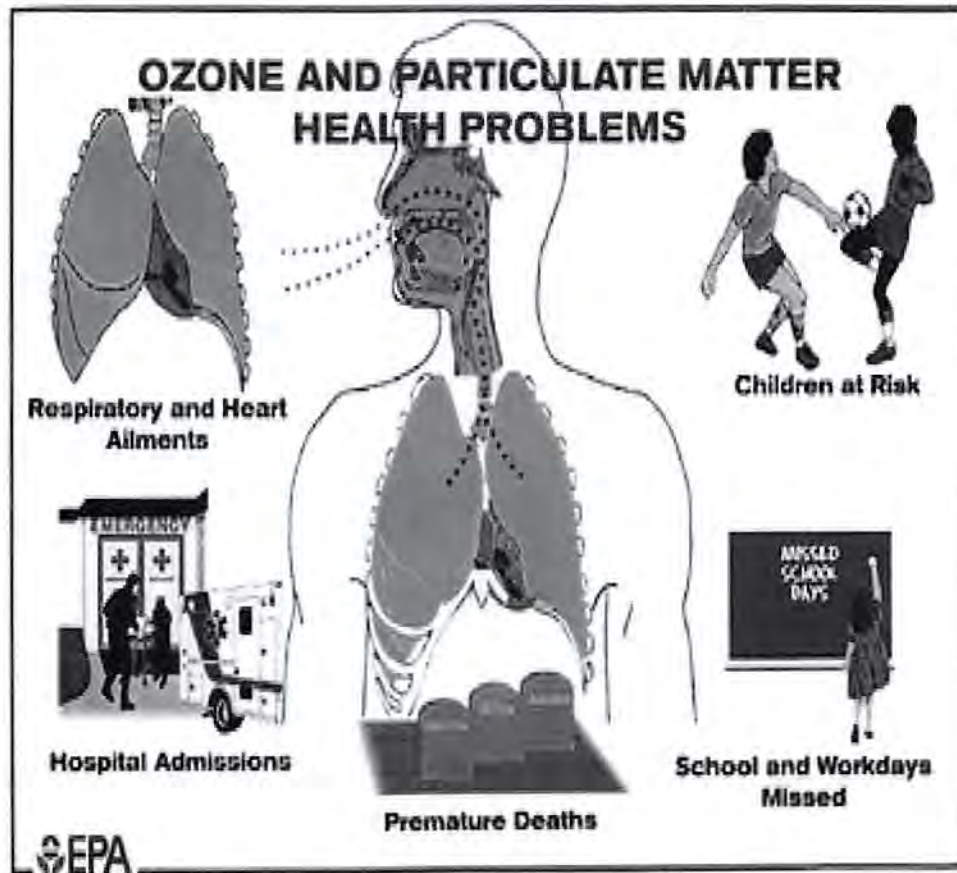
7 63. Based on the design of Volkswagen’s defeat devices, it is clear that Volkswagen  
8 knew that its devices would bypass, defeat, or render inoperative elements of the vehicle related  
9 to compliance with the Clean Air Act emission standards because “the software was designed to  
10 track the parameters of the federal test procedure and *cause emission control system to*  
11 *underperform when the software determined that the vehicle was not undergoing the federal*  
12 *test procedure.*”<sup>39</sup>

13 64. Put simply, Volkswagen’s defeat device results in cars that meet emissions  
14 standards in the laboratory or testing station, but during everyday operation, the device is  
15 programmed in such a manner that emits nitrogen oxides (hereinafter, “NOx”) at up to *40 times*  
16 *the standard permitted* by U.S. health regulations.

17  
18 **G. The Defeat Devices Installed by Volkswagen in the Class Vehicles Emit**  
19 **Pollutants Known to Cause Serious Health Problems.**

20 65. The Clean Air Act and the regulations promulgated thereunder aim to protect  
21 human health and the environment by reducing emissions of NOx and other pollutants from  
22 mobile sources of air pollution. NOx pollution generates nitrogen dioxide, and contributes to  
23 ground-level ozone and fine particulate matter.

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27 \_\_\_\_\_  
28 <sup>39</sup> See United States Environmental Protection Agency News Release: “EPA, California Notify Volkswagen of Clean  
Air Act Violations.”



16 *A photo on the American Lung Association ® website provided by the EPA*

17 Source: <http://www.cleanairstandards.org/about-this-website/>.

18 66. Exposure to these pollutants has been associated with a range of serious health  
19 effects, including increased asthma attacks and other respiratory illnesses. Exposure to ozone and  
20 particulate matter – which causes cancer<sup>40</sup> – have been linked with an increased risk of heart  
21 attacks, strokes, and premature death due to respiratory-related or cardiovascular-related effects.  
22 Recent studies have shown that not only can nitrogen dioxides cause or exacerbate a number of  
23 health conditions, but exposure to these toxins are correlated with lower birth weight and smaller  
24 head circumference in babies.<sup>41</sup> Particularly at risk for health effects of these pollutants are the  
25 children, the elderly, and people with pre-existing respiratory disease.<sup>42</sup>

26 <sup>40</sup> See BBC's "Diesel cars: Is it time to switch to a cleaner fuel?" Richard Anderson, BBC News, July 16, 2015.  
27 <http://www.bbc.com/news/business-33254803>.

28 <sup>41</sup> "Review of evidence on health aspects of air pollution – REVIHAAP Project," World Health Organization,  
Regional Office for Europe, World Health Organization 2013.



1           **H. By Engaging in this Scheme, Volkswagen Maintained Its Dominance in the**  
 2           **Diesel Vehicle Industry At the Detriment of Consumers and the Environment.**

3           67. Both the United States and California governments have encouraged the use of  
 4 diesel engines to meet fuel efficiency and greenhouse gas targets. As a result, the largest selling  
 5 factor for diesel cars is their fuel economy and low carbon emissions as compared to standard  
 6 gasoline engines. Diesel fuel also contains more energy density than petrol. These characteristics  
 7 result in anywhere from 20% to 40% better fuel economy, and is also known for giving vehicles  
 8 more powerful hauling capacity. “Some of the diesel cars can go 600, 700 miles on a single fill-  
 9 up. That’s a very high value for many consumers,” says Allen Schaeffer, executive director of the  
 10 Diesel Technology Forum.

11           68. However, this appealing combination comes at a price – diesel cars emit far more  
 12 nitrogen dioxide than standard gasoline engines.<sup>43</sup> As Volkswagen has admitted, Class Vehicles  
 13 contained software designed to falsify emissions test results, spewing out nitrogen oxide levels up  
 14 to 40 times higher than what is detected by the emissions tests.

15           69. Diesel engines also cost consumers substantially more upfront when purchasing  
 16 the vehicles. Class Members paid a significant premium for their Class Vehicles, purportedly  
 17 designed to be “[e]fficien[t]. Now available without compromise.”<sup>44</sup> “Feel the fun, torque-y,  
 18 turbocharged power of a TDI Clean Diesel engine and you’ll almost forget it’s efficient.”<sup>45</sup> This  
 19 representations and the others detailed, *supra*, were false.

20  
 21 [http://www.euro.who.int/\\_data/assets/pdf\\_file/0004/193108/REVIHAAP-Final-technical-report-final-version.pdf?ua=1](http://www.euro.who.int/_data/assets/pdf_file/0004/193108/REVIHAAP-Final-technical-report-final-version.pdf?ua=1)

22 <sup>42</sup> See United States Environmental Protection Agency News Release: “EPA, California Notify Volkswagen of Clean  
 23 Air Act Violations.”

24 <http://yosemite.epa.gov/opa/admpress.nsf/6424ac1caa800aab85257359003f5337/dfc8e33b5ab162b985257ec40057813b!OpenDocument>. Last accessed September 22, 2015.

25 <sup>43</sup> “Volkswagen boss quits over diesel scandal.” Andreas Cremer, Reuters Business News, September 23, 2015.  
<http://www.reuters.com/article/2015/09/23/us-usa-volkswagen-idUSKCN0RL0II20150923>.

26 <sup>44</sup> See <https://web.archive.org/web/20150816221300/http://www.vw.com/features/clean-diesel/> for Defendant’s  
 27 advertisement describing their “fun-fueled” diesel engines. Defendant’s advertisement has since been removed.

28 <sup>45</sup> See <https://web.archive.org/web/20150816221300/http://www.vw.com/features/clean-diesel/> for Defendant’s  
 advertisement describing their “fun-fueled” diesel engines. Defendant’s advertisement has since been removed.



1           70. Volkswagen's defeat devices also had associated "benefits" (to Volkswagen) other  
2 than allowing their Class Vehicles to pass by emissions tests unnoticed: experts in automotive  
3 technology explained that by disengaging the pollution controls on a diesel-fueled car can yield  
4 better performance, including increased torque and acceleration. These features increased the  
5 Class Vehicles' selling appeal. "When the pollution controls are functioning on these vehicles,  
6 there's a trade-off between performance and emissions," said Drew Kodjak, executive director of  
7 the International Council on Clean Transportation, a research group. "This is cutting corners."<sup>46</sup>

8           71. While hiding from the public that they were intentionally disregarding United  
9 States regulations put in place to protect consumers and the environment, Volkswagen dominated  
10 the U.S. diesel-car market. Indeed, Volkswagen's sales of diesel vehicles in the United States in  
11 2013 comprised of 78% of all light-vehicle diesel deliveries nationwide.<sup>47</sup>

12           72. According to an analysis of federal incentives, as a result of Volkswagen's  
13 scheme, United States taxpayers were also tricked into shelling out \$51 million in green subsidies  
14 for "clean" Class Vehicles due to \$1,300 tax credits available to buyers of about 39,500 Jetta and  
15 Jetta Sportwagen models sold in 2009.<sup>48</sup>

16           73. As Oliver Schmidt, manager of VWoA's U.S. environmental office boasted in  
17 2013, VW first offered a diesel car in the U.S. in 1976 and has dominated the niche ever since.  
18 As such, Schmidt continued, "[t]he Volkswagen Groups is a leader in clean-diesel technology."<sup>49</sup>  
19 ***What Schmidt neglected to disclose was that Volkswagen's solid dominance in the diesel niche***  
20 ***involved stealthily circumventing the United States emissions laws by tampering their vehicles***  
21 ***with hidden software programmed to specifically do so.***

22  
23 <sup>46</sup> See "VW Is Said to Cheat on Diesel Emissions; U.S. to Order Big Recall," Coral Davenport and Jack Ewing, The  
24 New York Times, September 18, 2015.

25 <sup>47</sup> See 2013 CAR Management Briefing Seminars, "VW Details New Diesel Engine for 2014" by Drew Winter,  
26 August 6, 2013. <http://wardsauto.com/vehicles-amp-technology/vw-details-new-diesel-engine-2014>.

27 <sup>48</sup> "U.S. taxpayers duped into shelling out \$51 million in green subsidies for 'clean' VW vehicles" by Jerry Hirsch,  
28 Los Angeles Times, September 21, 2015.

<sup>49</sup> See 2013 CAR Management Briefing Seminars, "VW Details New Diesel Engine for 2014" by Drew Winter,  
August 6, 2013. <http://wardsauto.com/vehicles-amp-technology/vw-details-new-diesel-engine-2014>.

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**I. Volkswagen Dominated the Diesel Vehicle Industry At the Cost of Well-Meaning Consumers Who Paid A Substantial Premium Price for Class Vehicles That Were Not In Fact “Clean.”**

74. To perpetuate their fraudulent scheme of overcoming consumer perceptions of “dirty” diesel vehicles, Volkswagen charged a substantial premium on their “clean” diesel vehicles – which Volkswagen ironically marketed under the term “Clean Diesel.”

75. Volkswagen proclaimed that “[l]ong range without sacrifice is the promise of TDI Clean Diesel. And Volkswagen has sold more diesel cars in the U.S. than every other brand combined. Promise kept.” This promise was not kept, and millions of conscientious consumers worldwide were reasonably duped into believing Volkswagen’s “Clean Diesel” ploy – and paid thousands of dollars more for the diesel “benefits” that Volkswagen knew did not in fact exist.

76. As seen by the three charts below, Volkswagen charged a significant premium on all Class Vehicles in which Volkswagen installed its “defeat device.” **Table 1** lists the prices of standard, non-clean diesel vehicle models. **Table 2** lists the prices of Clean Diesel models; a substantial price increase can be compared between Table 2 and Table 1. **Table 3** calculates and compares the difference – the unsubstantiated premium consumers paid as a result of Volkswagen’s unfair, deceptive, and fraudulent business practices.

**TABLE 1: Prices of Standard Non-Clean Diesel Models\***

<b><i>Model</i></b>	<b><i>Base Price</i></b>	<b><i>Mid-Level Price</i></b>	<b><i>Top-Line Price</i></b>
VW Jetta	\$18,780	\$19,775	\$20,095
VW Jetta SportWagen	\$21,265	\$27,025	\$29,385
VW Beetle	\$20,695	\$23,605	\$25,885
VW Golf (2-Door)	\$18,495	N/A	\$19,575
VW Golf (4-Door)	\$20,175	\$22,625	\$25,225
VW Passat	\$21,340	\$24,375	\$23,995
Audi A3**	\$30,900	\$33,600	\$39,750



1 **TABLE 2: Prices of Clean Diesel Models\***

<i>Model</i>	<i>Base Price</i>	<i>Mid-Level Price</i>	<i>Top-Line Price</i>
VW Jetta	\$21,640	\$24,075	\$26,410
VW Jetta SportWagen	\$24,575	\$28,025	\$30,385
VW Beetle	\$25,330	N/A	\$28,525
VW Golf (2-Door)	\$21,975	N/A	N/A
VW Golf (4-Door)	\$22,575	\$26,225	\$28,425
VW Passat	\$27,095	\$29,125	\$30,850
Audi A3**	\$33,200	\$35,900	\$42,050

8 **TABLE 3: Clean Diesel Price Premiums\***

<b>Model</b>	<b>Base PREMIUM</b>	<b>Mid-Level PREMIUM</b>	<b>Top-Line PREMIUM</b>
VW Jetta	\$2,860	\$4,300	\$6,315
VW Jetta SportWagen	\$3,310	\$1,000	\$1,000
VW Beetle	\$4,635	N/A	\$2,640
VW Golf (2-Door)	\$3,480	N/A	N/A
VW Golf (4-Door)	\$2,400	\$3,600	\$3,200
VW Passat	\$5,755	\$4,750	\$6,855
Audi A3**	\$2,300	\$2,300	\$2,300

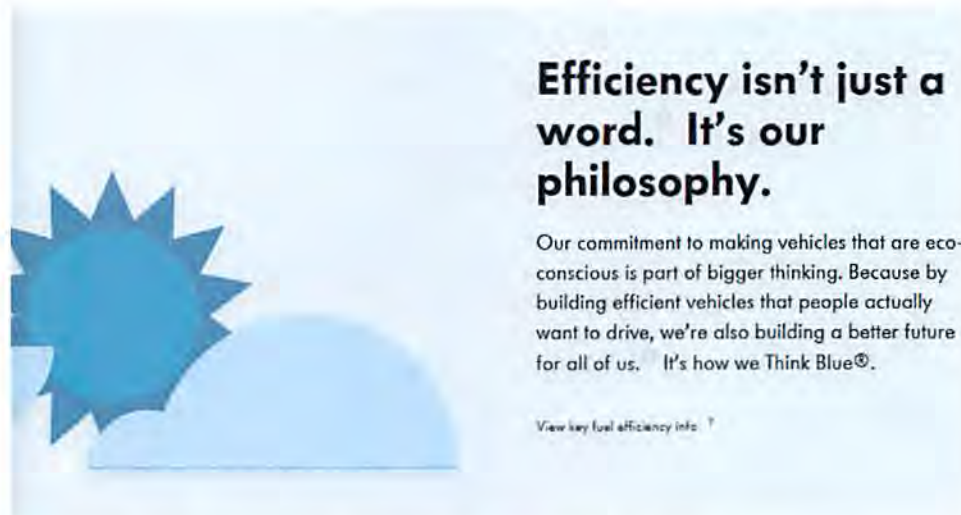
15 \*All VW pricing gathered from “Wayback Machine” and is dated September 17, 2015. All TDI  
16 models have since been removed from Volkswagen’s current website.

17 \*\*Audi pricing taken from Volkswagen’s current website.

18 77. “Because by building efficient vehicles that people actually want to drive, we’re  
19 also building a better future for all of us,” stated Volkswagen proudly on its main webpage just a  
20 few days ago – which has since disappeared.<sup>50</sup> *As it turns out, the only future Volkswagen was  
21 building was a future for themselves – at the cost of and to the detriment of nearly 11 million  
22 conscientious consumers worldwide.*

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28 <sup>50</sup> See <https://web.archive.org/web/20150816221300/http://www.vw.com/features/clean-diesel/>.

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*Volkswagen's fraudulent advertisement, now since removed from their webpage. Source: <https://web.archive.org/web/20150816221300/http://www.vw.com/features/clean-diesel/>.*

**V. PLAINTIFFS AND THE CLASS WERE HARMED BY VOLKSWAGEN'S ACTIONS**

78. As a result of Volkswagen's actions, Plaintiffs and the Class have been harmed. Members of the Plaintiff Class would never have purchased the Class Vehicles, and/or would have paid substantially less for their vehicle. The Class Vehicles have lost value because of Defendants' actions and are not worth as much in a trade or sale as if the vehicle had been as warranted. There is this actual harm and also the harm to the brand, all which decreases the value of the Class Vehicles.

79. It is likely that the Class Vehicles will be recalled and Plaintiffs and the Class will lose the use of their vehicles. Further, after the Class Vehicles are remediated, the vehicles will have reduced fuel economy and reduced acceleration during real world use in order that the vehicles can comply with federal emission standards. Accordingly, the Plaintiff Class has sustained incidental and consequential damages as herein alleged.



1 **VI. CLASS ACTION ALLEGATIONS**

2 80. Plaintiffs bring this action as a class action pursuant to Federal Rule of Civil  
3 Procedure 23 on behalf of themselves and all others similarly situated. Plaintiffs seek to  
4 represent a Class (hereinafter, the “Class”) initially defined as:

5 All current and former owners of Class Vehicles who reside in the  
6 State of California and/or who purchased or leased Class Vehicles  
7 in California. Expressly excluded from the Class are Defendants  
8 and their subsidiaries, affiliates, officers, directors, and employees.

9 81. Certification of the Class is appropriate pursuant to Fed. R. Civ. P. 23(a), 23(b),  
10 23(b)(2), or 23(b)(3). The proposed Class is composed of tens of thousands of persons dispersed  
11 throughout California and joinder is impracticable. The precise number and identity of Class  
12 Members are unknown to Plaintiffs at this time, but can be obtained from Volkswagen’s internal  
13 records.

14 82. There are questions of law and fact common to the members of the Class, which  
15 predominate over questions affecting only individual Class members, *inter alia*:

- 16 • Whether the Volkswagen misrepresented the environmental friendliness,  
17 emission standards compliance and credentials, fuel efficiency and/or performance of the  
18 Class Vehicles;
- 19 • Whether the Volkswagen misrepresented the emissions levels, fuel  
20 efficiency and/or performance that the Class Vehicles could achieve under normal driving  
21 conditions;
- 22 • Whether Volkswagen publicized and advertised the environmental  
23 friendliness, fuel emission compliance, fuel efficiency and/or performance of the Class  
24 Vehicles;
- 25 • Whether Volkswagen’s publicity and advertising regarding the  
26 environmental friendliness, fuel emission compliance, fuel efficiency and/or performance  
27 of the Class Vehicles was misleading;
- 28

- 1           •       Whether Volkswagen has engaged in unlawful, unfair or fraudulent  
2 business practices;
- 3           •       Whether Volkswagen’s misrepresentations and omissions regarding the  
4 compliance with emissions levels, environmental friendliness, fuel efficiency and/or  
5 performance of the Class Vehicles has deceived or is likely to have deceived Plaintiffs  
6 and the Class;
- 7           •       Whether Volkswagen’s conduct violated the Magnuson-Moss Warranty  
8 Act;
- 9           •       Whether Volkswagen’s conduct violated the California Consumer Legal  
10 Remedies Act;
- 11          •       Whether Volkswagen’s conduct violated California Business and  
12 Professions Code § 17200, *et seq.*;
- 13          •       Whether Volkswagen’s conduct violated California False Advertising Law  
14 (Business and Professions Code § 17500, *et seq.*);
- 15          •       Whether Volkswagen breach express and/or implied warranties;
- 16          •       Whether Volkswagen’s unlawful, unfair or deceptive practices have  
17 harmed Plaintiffs and the class members;
- 18          •       Whether Plaintiffs and the members of the class are entitled to equitable or  
19 injunctive relief and,
- 20          •       Whether Plaintiffs and the members of the Class are entitled to damages,  
21 including punitive damages.

22       83.   Plaintiffs are members of the Class and Plaintiffs’ claims are typical of the claims  
23 of the Class.

24       84.   Plaintiffs are willing and prepared to serve the Court and the proposed Class in a  
25 representative capacity. Plaintiffs will fairly and adequately protect the interests of the Class and  
26 have no interests adverse to or which conflict with the interests of the other members of the  
27 Class.

28





1 95. Plaintiffs and the Class received written warranties as defined in 15 U.S.C.  
2 §2301(6)(A) and/or (B), which Defendants have breached.

3 96. Plaintiffs and the Class are “consumers” as defined in 15 U.S.C. § 2301(3). They  
4 are consumers because they bought a Class Vehicle, they are entitled under California law to  
5 enforce both written and implied warranties.

6 97. Pursuant to 15 U.S.C. § 2310(e), Plaintiffs and the Class are not required to  
7 provide Defendants notice of this class action and an opportunity to cure until the time the Court  
8 determines the representative capacity of Plaintiffs pursuant to F.R.Civ.P. 23.

9 98. Defendants are liable to Plaintiffs and the Class pursuant to 15 U.S.C. § 2310(d)(1)  
10 because they breached their written warranties.

11 99. Further, in connection with the sale of the Class Vehicles, Defendants gave an  
12 implied warranty under the Act. As part of that implied warranty, Defendants warranted that the  
13 Class Vehicle complied with all applicable federal and state regulations, including emission  
14 regulations. Defendants breached the implied warranty of merchantability.

15 100. Plaintiffs and the Class are entitled to damages caused by Defendants’ breaches of  
16 the warranties, including economic damages based upon either a return of Plaintiff Class  
17 Members purchase price; and/or the difference between the price paid for the Class Vehicle as  
18 warranted and the actual value of the Class Vehicle as delivered, and consequential damages.

19 101. In addition, Plaintiffs and the Class are entitled to reasonable attorneys’ fees and  
20 costs as determined by the Court.

21 WHEREFORE, Plaintiffs and the Class pray for relief as set forth below.

22 **SECOND CLAIM**

23 **Violations of the Consumers Legal Remedies Act,**

24 **California Civil Code § 1750, et seq.**

25 **(On Behalf of Plaintiffs and the Class)**

26 102. Plaintiffs incorporate by reference each of the paragraphs set forth above as though  
27 fully set forth hereinafter.  
28

1           103. This cause of action is brought pursuant to the California Consumers Legal  
2 Remedies Act (“CLRA”), Civil Code section 1750, *et seq.* Plaintiffs bring this action on their  
3 own behalf and on behalf of the Class members, all of whom are similarly situated consumers  
4 within the meaning of Civil Code section 1781.

5           104. The acts and practices described in this Complaint were intended to result in the  
6 sale of goods, specifically a motor vehicle, in consumer transactions. Volkswagen has violated,  
7 and continue to violate, the CLRA, Civil Code section 1770, subdivisions (a)(9), (a)(7), (a)(16),  
8 and (a)(5) by:

- 9           • Representing to consumers purchasing the Class Vehicles that these vehicles’  
10 emissions, fuel efficiency and high performance are as advertised and publicized.
- 11           • Representing in their advertising emissions, environmental, fuel efficiency and  
12 performance characteristics for the Class Vehicles that are false.

13           105. Plaintiffs and the Class members have suffered harm as a result of these violations.

14           106. Plaintiffs have suffered as a result of Volkswagen’s unlawful conduct because they  
15 purchased the Class Vehicles believing, based on Volkswagen’s representations, that the  
16 Vehicles had certain characteristics that made them environmentally friendly, fuel efficient and  
17 with high performance, when in fact these vehicles can have these fuel efficient and performance  
18 standards because their emissions do not comply with governmental regulations. These  
19 misrepresentations also resulted in higher purchase prices for the Class Vehicles and the  
20 subsequent revelation concerning the “defeat devices” will result in lower resale value.

21           107. Volkswagen concealed from Plaintiffs accurate information concerning the  
22 emissions standards, fuel efficiency and performance of the Class Vehicles.

23           108. Volkswagen’s misrepresentations and omissions described in the preceding  
24 paragraphs were intentional, or alternatively, made without the use of reasonable procedures  
25 adopted to avoid such errors.

26           109. Volkswagen, directly or indirectly, has engaged in substantially similar conduct  
27 with respect to Plaintiffs and to each member of the Class.  
28

1 110. Unless Volkswagen is enjoined from engaging in such wrongful actions and  
2 conduct in the future, members of the consuming public will be further damaged by  
3 Volkswagen's conduct.

4 111. Plaintiffs and the Class are entitled to equitable relief on behalf of the members of  
5 the Class in the form of an order, pursuant to Civil Code section 1780, subdivision (a)(2)-(5),  
6 prohibiting Volkswagen from continuing to engage in the above-described violations of the  
7 CLRA. Plaintiffs and the Class further seek reasonable attorneys' fees under Civil Code section  
8 1780(e).

9 WHEREFORE, Plaintiffs and the Class pray for relief as set forth below.

10 **THIRD CLAIM**

11 **Violation of California Business and Professions Code § 17200, *et seq.***

12 **Unlawful Business Acts and Practices**

13 **(On Behalf of Plaintiffs and the Class)**

14 112. Plaintiffs incorporate by reference each of the paragraphs set forth above as though  
15 fully set forth hereinafter.

16 113. Business & Professions Code section 17200, *et seq.* prohibits acts of "unfair  
17 competition" which is defined by Business & Professions Code section 17200 as including any  
18 "any unlawful, unfair or fraudulent business act or practice . . . ."

19 114. Volkswagen has violated and continue to violate Business & Professions Code  
20 section 17200's prohibition against engaging in "unlawful" business acts or practices, by, *inter*  
21 *alia*, the following:

- 22 • Violating the CLRA, Civil Code section 1750, *et seq.* (as alleged herein);  
23 • Violating federal environmental laws, including the Clean Air Act; and  
24 • Violating Business & Professions Code section 17500, *et seq.* (as further alleged  
25 herein).

26 115. Volkswagen also acted fraudulently and unfairly for purposes of section 17200.  
27 Volkswagen's misrepresentations and omissions regarding the Class Vehicles' emissions,  
28 environmental standards, fuel efficiency, and performance in their advertising, public statements



1 and marketing were a material factor in inducing Plaintiffs to purchase their Class Vehicle.  
2 Plaintiffs suffered injury in fact and lost money and/or property as a result of Volkswagen's  
3 unlawful business acts and practices and Class members have suffered harm when each was  
4 required to pay a purchase price for their Class Vehicles which they never would have purchased  
5 if the true facts were known; or paid a price in excess of what a Class member would have paid if  
6 Volkswagen had accurately disclosed the Class Vehicles' characteristics and in the form of  
7 decreased resale value of the Vehicles.

8 116. As a result of Volkswagen's violations of the Business & Professions Code section  
9 17200, *et seq.*, Plaintiffs and Class are entitled to equitable relief in the form of full restitution for  
10 the inflated sale price of the Vehicles.

11 117. Plaintiffs and the Class also seek an order enjoining Volkswagen from continuing  
12 their unlawful business practices and from such future conduct.

13 WHEREFORE, Plaintiffs and the Class pray for relief as set forth below.

14 **FOURTH CLAIM**

15 **For Violations of the California False Advertising Law,**

16 **Bus. & Prof. Code § 17500, *et seq.***

17 **(On Behalf of Plaintiffs and the Class)**

18 118. Plaintiffs incorporate by reference each of the paragraphs set forth above as though  
19 fully set forth hereinafter.

20 119. Volkswagen violated California's False Advertising Law, Business & Professions  
21 Code section 17500, *et seq.* by using false and misleading messages regarding the environmental  
22 friendliness, emissions, fuel efficiency and performance of the Class Vehicles in television, print,  
23 and Internet advertising.

24 120. These representations and/or omissions have deceived and are likely to deceive  
25 Plaintiffs, the Class, and consumers across the country in connection with their decision to  
26 purchase Class Vehicles. Volkswagen's representations and/or omissions were material and  
27 were a substantial and material factor in Plaintiffs' decision to purchase their Class Vehicle. Had  
28 Plaintiffs known the actual facts, they would not have purchased the Class Vehicles and/or paid

1 more than they would have had Volkswagen accurately disclosed the Class Vehicles'  
2 characteristics.

3 121. Volkswagen directly and indirectly, has engaged in substantially similar conduct  
4 with respect to each Plaintiff and to each member of the Class.

5 122. Plaintiffs suffered injury in fact and lost money and/or property as a result of  
6 Volkswagen's false and misleading advertising and Class members suffered harm when each  
7 was required to pay a purchase price in excess of what a Class member would have paid if  
8 Volkswagen had accurately disclosed the Class Vehicles' characteristics and in the form of  
9 decreased resale value of the Class Vehicles.

10 123. As a result of Volkswagen's violations, Plaintiffs and Class are entitled to  
11 equitable relief in the form of full restitution of all monies paid for the sales price of the  
12 Vehicles, diminished value of the Class Vehicles, and/or disgorgement of the profits derived  
13 from Volkswagen's false and misleading advertising.

14 124. Plaintiffs also seek an order enjoining Volkswagen from such future conduct.  
15 WHEREFORE, Plaintiffs and the Class pray for relief as set forth below.

16 **FIFTH CLAIM**

17 **For Common Law Fraud**

18 **(On Behalf of Plaintiffs and the Class)**

19 125. Plaintiffs incorporate by reference each of the paragraphs set forth above as though  
20 fully set forth hereinafter.

21 126. Volkswagen misrepresented, omitted and concealed important facts from Plaintiffs  
22 as alleged in the Complaint, including the following:

- 23 • Representing to consumers purchasing the Class Vehicles that these vehicles'  
24 emissions, fuel efficiency and performance are as advertised and publicized.  
25 • Representing in their advertising emissions and environmental characteristics for the  
26 Class Vehicles that are false.

27 127. Plaintiffs and the Class members have suffered harm as a result of these violations.  
28

1           128. Volkswagen's misrepresentations and omissions regarding the Vehicles'  
2 emissions, environmental standards, fuel efficiency and performance in their advertising, public  
3 statements and marketing were a material factor in inducing Plaintiffs to purchase their Class  
4 Vehicle. Plaintiffs suffered injury in fact and lost money and/or property as a result of  
5 Volkswagen's unlawful business acts and practices and Class members have suffered harm when  
6 each was required to pay a purchase price for their Class Vehicle in excess of what a Class  
7 member would have paid if Volkswagen had accurately disclosed the Class Vehicles'  
8 characteristics and in the form of decreased resale value of the Vehicles.

9           129. Volkswagen concealed from Plaintiffs accurate information concerning the  
10 emissions, environmental friendliness, fuel efficiency and performance of the Vehicles.

11           130. Volkswagen either knew that the representations were false when they made them,  
12 or they made the representations recklessly and without regard for their truth.

13           131. Volkswagen had a duty to disclose the true characteristics of the Class Vehicles  
14 due to their superior knowledge as well as due to their affirmative misrepresentations regarding  
15 the environmental friendliness of the vehicles.

16           132. Volkswagen intended Plaintiffs to rely on their representations. Volkswagen  
17 intended to induce Plaintiffs and the Class to: (a) purchase Class Vehicles; and (b) to purchase  
18 Class Vehicles at a higher purchase price, than they would have absent Volkswagen's  
19 misrepresentations and concealment.

20           133. Plaintiffs reasonably relied upon Volkswagen's representations regarding the  
21 characteristics of the Class Vehicles. Plaintiffs' reasonable reliance upon Volkswagen's  
22 representations was a substantial factor in causing the Plaintiffs' harm.

23           134. As a direct and proximate result of Volkswagen's fraud, Plaintiffs have sustained  
24 damages in an amount to be determined at trial.

25           135. The aforementioned acts of Defendants, and each of them, were done maliciously,  
26 oppressively, and fraudulently, and Plaintiffs are entitled to punitive and exemplary damages in  
27 an amount be shown according to proof at trial.

28           WHEREFORE, Plaintiffs and the Class pray for relief as set forth below.



**SIXTH CLAIM**

**(Breach of Implied Warranty)**

**(On behalf of Plaintiffs and the Class)**

1  
2  
3  
4 136. Plaintiffs incorporate by reference each of the paragraphs set forth above as though  
5 fully set forth hereinafter.

6 137. Volkswagen impliedly warranted to persons purchasing the Class Vehicles that  
7 these vehicles were what they were represented to be.

8 138. These implied warranties induced the community in general and Plaintiffs and  
9 other Class members in particular to purchase the Class Vehicles from Volkswagen. These  
10 implied warranties were both directly and indirectly believed and relied upon by Plaintiffs and  
11 Class members and induced them to choose Volkswagen's Class Vehicles. This reliance was  
12 justified by Volkswagen's skill, expertise, and judgment in the design, manufacturing, testing,  
13 labeling, distribution, or sale of such products.

14 139. At the time of the sale, Volkswagen had knowledge of the purpose for which its  
15 Class Vehicles were purchased and impliedly warranted the same to be, in all respects, fit and  
16 proper for this purpose.

17 140. Volkswagen breached its aforesaid warranties in that the Class Vehicles were not  
18 fit for the purpose for which they were intended and used; rather Volkswagen sold to Plaintiffs a  
19 product which was not fit for use as represented. The defect in the Class Vehicles existed prior  
20 to the delivery of the products to Plaintiffs and the Class.

21 141. Plaintiffs and the Class have suffered injury in fact and have suffered an economic  
22 loss by, inter alia: (a) leasing or purchasing a product they never would have leased or  
23 purchased; (b) leasing and/or purchasing an inferior product whose nature and characteristics  
24 render it of a lesser value than represented, (c) incurring costs for diminished resale value of the  
25 Class Vehicles purchased, (d) leasing and/or purchasing a product that poses a danger to the  
26 health and safety of the public, (e) incurring increased costs to repair the Class Vehicles  
27 purchased, and (f) incurring costs for loss of use. Accordingly, the Court must issue an  
28 injunction restraining and enjoining Volkswagen from sending or transmitting false and

1 misleading advertising to individuals or entities concerning the purported safety and quality of  
2 the Class Vehicles from Volkswagen.

3 WHEREFORE, Plaintiffs and the Class pray for judgment as set forth below.

4 **SEVENTH CLAIM**

5 **(Breach of Express Warranty)**

6 **(On behalf of Plaintiffs and the Class)**

7 142. Plaintiffs incorporate by reference each of the paragraphs set forth above as though  
8 fully set forth hereinafter.

9 143. Volkswagen expressly warranted to persons purchasing the Class Vehicles that  
10 they were what they were represented to be.

11 144. These express warranties induced the community, in general, and Plaintiffs and  
12 members of the Class, in particular, to use and purchase Volkswagen's products. These express  
13 warranties were both directly and indirectly believed and relied upon by Plaintiffs and the Class  
14 and induced Plaintiffs and the Class to choose the Class Vehicles.

15 145. Volkswagen breached its aforesaid warranties in that its products were not fit for  
16 the use and purpose expressly warranted by Volkswagen.

17 146. Plaintiffs and the Class have suffered injury in fact and have suffered an economic  
18 loss by, inter alia: (a) leasing or purchasing a product they never would have leased or  
19 purchased; (b) leasing and/or purchasing an inferior product whose nature and characteristics  
20 render it of a lesser value than represented, (c) incurring costs for diminished resale value of the  
21 products purchased, (d) leasing and/or purchasing a product that poses a danger to the health and  
22 safety of not only the purchaser but also the public, (e) incurring increased costs to repair the  
23 products purchased, and (f) incurring costs from loss of use. Accordingly, the Court must issue  
24 an injunction restraining and enjoining Volkswagen from sending or transmitting false and  
25 misleading advertising to individuals or entities concerning the purported safety and quality of  
26 vehicles from Volkswagen.

27 WHEREFORE, Plaintiffs and the Class pray for judgment as set forth below.  
28

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs, on their own behalf and on behalf of the Class, pray for relief as follows:

1. An Order appointing Plaintiffs to represent the proposed Class pursuant to Fed. R. Civ. P. 23(a) and designating their counsel as Class Counsel;
2. An Order enjoining Volkswagen from future violations of the CLRA, 16 C.F.R. section 259.2, Business & Professions Code section 17200, *et seq.*, Business & Professions Code section 17500, *et seq.*, as alleged herein;
3. An Order awarding Plaintiffs and the Class restitution and/or disgorgement;
4. An order awarding Plaintiffs and the Class compensatory damages;
5. An Order awarding Plaintiffs and the Class punitive damages;
6. An Order awarding Plaintiffs attorney’s fees, expert witness fees and other costs, including pre-judgment and post-judgment interest thereon to the extent allowed by law; and
7. Such other relief as the Court deems proper.

**Respectfully submitted,**

**COTCHETT, PITRE & McCARTHY, LLP**

Dated: September 25, 2015

By: /S/ NANCY L. FINEMAN  
 NANCY L. FINEMAN  
 840 Malcolm Road  
 Burlingame, CA 94010  
 Tel: (650) 697-6000 / Fax: (650) 692-3606  
 Attorneys for Plaintiffs





# **EXHIBIT 1**



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

SEP 18 2015

OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE ASSURANCE

*VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED*

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

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

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

Re: Notice of Violation

Dear Mr. Geanacopoulos and Mr. Johnson:

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



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

### Law Governing Alleged Violations

This NOV arises under Part A of Title II of the CAA, 42 U.S.C. §§ 7521–7554, and the regulations promulgated thereunder. In creating the CAA, Congress found, in part, that “the increasing use of motor vehicles . . . has resulted in mounting dangers to the public health and welfare.” CAA § 101(a)(2), 42 U.S.C. § 7401(a)(2). Congress’ purpose in creating the CAA, in part, was “to protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare and the productive capacity of its population,” and “to initiate and accelerate a national research and development program to achieve the prevention and control of air pollution.” CAA § 101(b)(1)–(2), 42 U.S.C. § 7401(b)(1)–(2). The CAA and the regulations promulgated thereunder aim to protect human health and the environment by reducing emissions of nitrogen oxides (NO<sub>x</sub>) and other pollutants from mobile sources of air pollution. Nitrogen oxides are a family of highly reactive gases that play a major role in the atmospheric reactions with volatile organic compounds (VOCs) that produce ozone (smog) on hot summer days. Breathing ozone can trigger a variety of health problems including chest pain, coughing, throat irritation, and congestion. Breathing ozone can also worsen bronchitis, emphysema, and asthma. Children are at greatest risk of experiencing negative health impacts from exposure to ozone.

The EPA’s allegations here concern light-duty motor vehicles for which 40 C.F.R. Part 86 sets emission standards and test procedures and section 203 of the CAA, 42 U.S.C. § 7522, sets compliance provisions. Light-duty vehicles must satisfy emission standards for certain air pollutants, including NO<sub>x</sub>. 40 C.F.R. § 86.1811-04. The EPA administers a certification program to ensure that every vehicle introduced into United States commerce satisfies applicable emission standards. Under this program, the EPA issues certificates of conformity (COCs), and thereby approves the introduction of vehicles into United States commerce.

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

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

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

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

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

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

### Alleged Violations

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

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

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

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

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

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



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

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

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

### Enforcement

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

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

<sup>[1]</sup> \$2,750 for violations occurring prior to January 13, 2009.

<sup>[2]</sup> \$32,500 for violations occurring prior to January 13, 2009.

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

Meetu Kaul  
U.S. EPA, Air Enforcement Division  
1200 Pennsylvania Avenue, NW  
William Jefferson Clinton Federal Building  
Washington, DC 20460  
(202) 564-5472  
kaul.meetu@epa.gov

Sincerely,

A handwritten signature in blue ink, appearing to read "Phillip A. Brooks".

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

Copy:

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

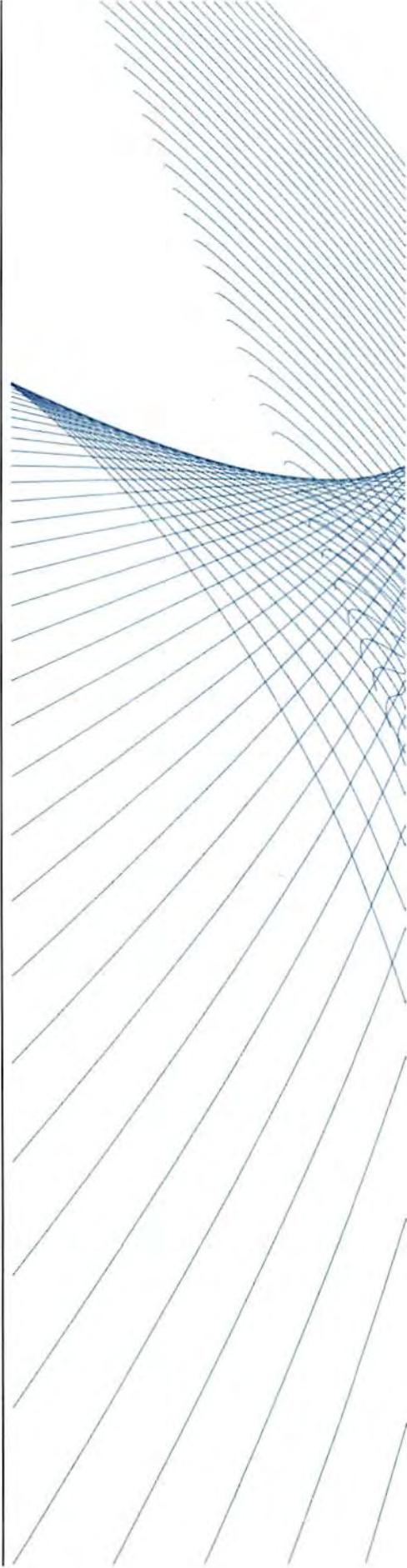
# **EXHIBIT 2**



**VOLKSWAGEN**

AKTIENGESELLSCHAFT

GROUP EU REPRESENTATION/VGS



# **The Volkswagen Group – “Forschungsweltmeister”**

**Julian Herwig, Environment & Technical Affairs**

**Volkswagen Group EU Representation**

**29 January 2015**

# Global Research Activities



# **EXHIBIT 3**



9/24/2015

www.arb.ca.gov/newsrel/in\_use\_compliance\_letter.htm



**Matthew Rodriguez**  
Secretary for  
Environmental Protection

## Air Resources Board

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



**Edmund G. Brown Jr.**  
Governor

Reference No. IUC-2015-007

September 18, 2015

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

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

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

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

Dear Mr. Geanacopoulos and Mr. Johnson:

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

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California Environmental Protection Agency

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

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

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

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

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

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

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

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

Sincerely,



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

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

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

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

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