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13 themselves and all others similarly situated

14 UNITED STATES DISTRICT COURT  
15 CENTRAL DISTRICT OF CALIFORNIA  
16

17 ANELA KELANI DE BRITZ,  
VARTKES HARTOONIAN, DEVAN  
18 ALO, GINA WILLIS ALO and NICOLE  
STEVENS, on behalf of themselves and  
19 all others similarly situated,

20 Plaintiffs,

v.

21 VOLKSWAGEN GROUP OF  
22 AMERICA, INC., VOLKSWAGEN OF  
AMERICA, INC., and VOLKSWAGEN  
23 AG,

24 Defendants.

) NO. 2:15-CV-08815  
) CLASS ACTION COMPLAINT  
)  
) JURY TRIAL DEMANDED

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1 **I. NATURE AND SUMMARY OF THE ACTION**

2 1. This is a nationwide class action brought on behalf of hundreds of  
3 thousands of consumers who purchased or leased “clean diesel” automobiles  
4 manufactured and sold by Volkswagen between 2009 and 2015.

5 2. For more than six years, Volkswagen touted the “extreme efficiency”  
6 and “ultra-low-sulfur” technology of its automobiles equipped with 2.0L, four-  
7 cylinder “clean diesel” engines that purportedly met the federal Environmental  
8 Protection Agency (“EPA”) and even more rigorous California Air Resources Board  
9 (“CARB”) emission standards while delivering superior performance and fuel  
10 efficiency.

11 3. This action is one of several hundred class action complaints filed  
12 throughout the nation against Volkswagen. There is currently pending an MDL  
13 proceeding bearing number 2672 before the United States Judicial Panel on Multi-  
14 District Litigation. It is anticipated that this action will be designated a tag-along  
15 action in MDL number 2672. Upon decision by the panel, this action may either  
16 continue to pend in the Central District of California or be transferred to another  
17 district.

18 4. Plaintiffs bring this suit on behalf of themselves and proposed  
19 nationwide and California classes to obtain damages (both actual and punitive),  
20 restitution, and to enjoin Volkswagen from continuing to deceive consumers.

21 **II. JURISDICTION AND VENUE**

22 5. Jurisdiction is proper in this Court pursuant to the Class Action Fairness  
23 Act, 28 U.S.C. § 1332(d) because members of the proposed Classes are citizens of  
24 states different from defendants’ home state or country, there are more than 100 class  
25 members nationwide and the aggregate amount in controversy exceeds \$5 million  
26 exclusive of interest and costs.

27 6. This Court has personal jurisdiction over plaintiffs because plaintiffs  
28 either reside in Los Angeles County or submit to the Court’s jurisdiction. This Court

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1 has personal jurisdiction over defendants because they have conducted and continue  
2 to conduct substantial business in the district, and because they have committed acts  
3 and omissions complained of herein in the district, including the marketing and  
4 leasing of clean diesel vehicles to certain of the plaintiffs in the district.

5 7. Venue is proper in this District under 28 U.S.C. § 1391 because a  
6 substantial part of the events or omissions giving rise to the claims occurred and/or  
7 emanated from this District (including the marketing, advertisement, sale, and  
8 leasing of affected vehicles), and Volkswagen has caused harm to Class members  
9 residing in this district.

### 10 III. PARTIES

#### 11 A. Plaintiffs

12 8. Plaintiff Anela Kelani De Britz (“De Britz”) is a resident and citizen of  
13 California, residing in the Central District. In July 2012, De Britz purchased a 2012  
14 Volkswagen Jetta from Antelope Valley Volkswagen in Palmdale, California. The  
15 automobile is powered by a 2.0L TDI diesel engine.

16 9. Plaintiff Vartkes Hartoonian (“Hartoonian”) is a resident and citizen of  
17 California, residing in the Central District. In October 2012, Hartoonian purchased a  
18 2013 Volkswagen Passat SETDI from Volkswagen Alhambra, in Alhambra,  
19 California. The automobile has the 2.0L TDI diesel engine.

20 10. Plaintiff DeVan Alo (“Alo”) is a resident and citizen of California,  
21 residing in the Central District. The Alo family in March 2012, purchased a 2012  
22 Volkswagen Jetta SportWagen TDI automobile from Pacific Volkswagen in  
23 Hawthorne, California. The automobile has a 2.0L TDI diesel engine.

24 11. Plaintiff Gina Willis Alo (“Alo”) is a resident and citizen of California,  
25 residing in the Central District. The Alo family in March 2012, purchased a 2012  
26 Volkswagen Jetta SportWagen TDI automobile from Pacific Volkswagen in  
27 Hawthorne, California. The automobile has a 2.0L TDI diesel engine.

28 ///

1           12. Plaintiff Nicole Stevens (“Stevens”) is a resident and citizen of  
2 Nebraska. In December 2012, Stevens purchased a 2011 Volkswagen Passat TDI  
3 SEL automobile from Pacific Volkswagen in Hawthorne, California, while residing  
4 in California. In October 2013, she traded it in for her current vehicle, a 2013  
5 Volkswagen Jetta Sportwagen TDI automobile leased from Emich Volkswagen, in  
6 Denver, Colorado. Each automobile has a 2.0 TDI turbocharged diesel engine.

7           13. Each of the plaintiffs purchased a car powered by a 2.0L TDI  
8 turbocharged diesel engine with a defect and in a transaction where Volkswagen did  
9 not disclose material facts related to the vehicles’ emission of pollutants far in excess  
10 of allowed levels. As a result, each plaintiff did not receive the benefit of their  
11 bargain and/or overpaid for their vehicles.

12           14. More specifically, at the time each of the plaintiffs purchased their  
13 vehicles, the vehicles were equipped with a defeat device installed by Volkswagen  
14 that permitted the vehicles to pass applicable federal and state emissions tests and  
15 obtain unwarranted emissions certifications, including from the EPA. The device  
16 controlled emissions from the vehicles during emissions tests, but at all other times  
17 the vehicles were in operation they emitted pollutants that significantly exceeded the  
18 allowed level of pollutants (including NOx), by up to 40 times.

19           15. Plaintiffs purchased their vehicles, in whole or in part, due to the  
20 CleanDiesel engine system advertised and marketed by Volkswagen as both fuel  
21 efficient and environmentally friendly. However, none of the advertisements and  
22 marketing materials provided to plaintiffs, nor representations received by plaintiffs  
23 from Volkswagen or its agents, dealers, or other representatives, made any mention  
24 or disclosure related to the defeat device that Volkswagen secretly installed on these  
25 vehicles. If Volkswagen had disclosed that its class of CleanDiesel vehicles actually  
26 emitted up to 40 times (or more) the allowable levels of NOx pollutants, plaintiffs  
27 would not have purchased their vehicles. Plaintiffs have suffered ascertainable  
28 losses as a result of Volkswagen’s omissions and/or misrepresentations associated

1 with the CleanDiesel engine system, including but not limited to, out-of-pocket loss  
2 and future attempted repairs, future additional fuel costs, and diminished value of  
3 their vehicles.

4 **B. Defendants**

5 16. Defendant Volkswagen Group of America, Inc. (“VGA”) is a  
6 corporation doing business in all 50 states (including the District of Columbia) and is  
7 organized under the laws of the State of New Jersey, with its principal place of  
8 business located at 2200 Ferdinand Porsche Drive, Herndon, Virginia.

9 17. Defendant Volkswagen of America, Inc., (“VOA”) is a corporation  
10 incorporated in the State of New Jersey, with its principal place of business located at  
11 2200 Ferdinand Porsche Drive, Herndon, Virginia. Based on information and belief,  
12 it is an operating unit of Volkswagen Group of America, Inc.

13 18. Defendant Volkswagen Aktiengesellschaft, doing business as  
14 Volkswagen Group and/or Volkswagen AG (“VW AG”), is a corporation organized  
15 and existing under the laws of Germany, with its principal place of business located  
16 in Wolfsburg, Germany. VW AG is the parent corporation of Volkswagen Group of  
17 America, Inc.

18 19. At all times relevant to this action, VGA, VOA and VW AG  
19 (collectively “Volkswagen”) manufactured, distributed, sold, leased, and warranted  
20 the Affected Vehicles (defined below) throughout the United States under the  
21 Volkswagen and Audi brand names. Volkswagen and/or its agents designed,  
22 manufactured, and installed the CleanDiesel engine systems in the Affected  
23 Vehicles, which included the defeat device. Volkswagen has developed and  
24 disseminated the owner’s manuals and warranty booklets, advertisements, and other  
25 promotional materials relating to the Affected Vehicles.

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1 **IV. VOLKSWAGEN’S VIOLATIONS OF FEDERAL AND STATE**  
2 **EMISSIONS STANDARDS**

3 **A. Company Background**

4 20. Volkswagen is a German automotive company that manufactures and  
5 sells vehicles under the Volkswagen, Audi, Porsche and other brand names with  
6 operations in approximately 150 countries, including the United States. In the first  
7 half of 2015, Volkswagen surpassed Toyota as the world’s largest automaker by  
8 sales, selling 5.04 million vehicles in the first six months of the year. By July 2015,  
9 Volkswagen ranked eighth on the Fortune Global 500 list of the world’s largest  
10 companies.

11 21. Despite Volkswagen’s ascension to become the world’s biggest  
12 automaker, a position the Company had long coveted, Volkswagen has struggled in  
13 the United States. According to a July 28, 2015 article in USA Today titled “VW  
14 surpasses Toyota as world’s largest automaker in first half of 2015,” industry experts  
15 attribute Volkswagen’s comparatively lower sales in the lucrative U.S. market to the  
16 brand’s lack of “selection” and “lag on quality.” In the 2015 J.D. Power and  
17 Associates Initial Quality Study, which examines new vehicles, Volkswagen’s  
18 namesake brand ranked 24th out of thirty-three brands sold in the U.S. Accordingly,  
19 Volkswagen has focused on making its brand a stronger player in the United States  
20 by touting the performance and reliability of its vehicles and the Company’s  
21 environmental leadership, while reining in costs and increasing profitability. For  
22 example, the Company’s 2013 Annual Report emphasizes at the very beginning of its  
23 “Goals and Strategies” section that “Volkswagen intends to become the global  
24 economic and environmental leader among automobile manufactures by 2018” and  
25 that “[w]e are focusing in particular on the environmentally friendly orientation and  
26 profitability of our vehicle projects.”



1 **B. The Emissions Of Volkswagen Vehicles Are Strictly Regulated Under U.S.**  
2 **Federal And State Laws**

3 22. The Clean Air Act (“CAA”), enacted in 1970, is a comprehensive  
4 federal law that regulates air emissions from stationary and mobile sources. 42  
5 U.S.C. § 7401, et seq. (1970). In creating the CAA, Congress determined that “the  
6 increasing use of motor vehicles . . . has resulted in mounting dangers to the public  
7 health and welfare.” CAA § 101(a)(2), 42 U.S.C. § 7401(a)(2). The CAA and the  
8 regulations promulgated thereunder are designed to reduce the emission of NOx and  
9 other pollutants, thereby protecting human health and the environment.

10 23. Under the CAA, light-duty vehicles must satisfy emission standards for  
11 certain air pollutants, including NOx. NOx pollution can result in a variety of  
12 harmful effects on human health and the environment. NOx contributes to nitrogen  
13 dioxide, ground-level ozone, and fine particulate matter. When humans are exposed  
14 to nitrogen dioxide, they may be at a greater risk for serious health dangers,  
15 including asthma attacks and other respiratory illness requiring hospitalization.  
16 Ozone and particulate matter exposure have been associated with premature death  
17 due to respiratory-related or cardiovascular-related effects. Children, the elderly, and  
18 people with pre-existing respiratory illness are at an elevated risk for suffering  
19 adverse health consequences associated with these pollutants.

20 24. Under the CAA, vehicle manufacturers are required to certify to the  
21 EPA that vehicles sold in the United States meet the applicable federal emissions  
22 standards. Through this program, the EPA issues certificates of conformity (“COC”)  
23 to vehicles that are deemed to satisfy applicable emission standards. These  
24 emissions standards are designed to control air pollution. In order to be sold in the  
25 United States, a vehicle must be issued a COC by the EPA.

26 25. To obtain a COC, the manufacturer of a light-duty vehicle must submit  
27 a COC application to the EPA for each test group of vehicles that it intends to place  
28 into the stream of commerce in the United States. This application must disclose a

1 list of all auxiliary emission control devices (“AECD”) installed on the vehicles.

2 26. The CAA makes it a violation for “any person to manufacture or sell, or  
3 offer to sell, or install, any part or component intended for use with, or as part of, any  
4 motor vehicle or motor vehicle engine, where a principal effect of the part or  
5 component is to bypass, defeat, or render inoperative any device or element of design  
6 installed on or in a motor vehicle or motor vehicle engine in compliance with  
7 regulations under this subchapter, and where the person knows or should know that  
8 such part or component is being offered for sale or installed for such use or put to  
9 such use.”

10 27. An AECD is defined as “any element of design which senses  
11 temperature, vehicle speed, engine RPM, transmission gear, manifold vacuum, or  
12 any other parameter for the purpose of activating, modulating, delaying, or  
13 deactivating the operation of any part of the emission control system.” 40 C.F.R. §  
14 86.1803-01. The COC application must include “a justification for each AECD, the  
15 parameters they sense and control, a detailed justification of each AECD that results  
16 in a reduction in effectiveness of the emission control system, and [a] rationale for  
17 why it is not a defeat device.” 40 C.F.R. § 86.1844-01(d)(11).

18 28. In particular, the CAA defines a “defeat device” as an AECD “that  
19 reduces the effectiveness of the emission control system under conditions which may  
20 reasonably be expected to be encountered in normal vehicle operation use.” When a  
21 defeat device is in place, it can bypass, defeat, or render inoperative elements of the  
22 vehicle’s emission control system that are put in place to ensure compliance with the  
23 CAA. Motor vehicles that are equipped with defeat devices cannot be certified by the  
24 EPA.

25 29. California has emission standards that are similar in structure to the  
26 EPA requirements, but are more stringent. The development of California emission  
27 standards has included Tier 1/Low Emission Vehicles (“LEV”) standards extended  
28 through 2003, LEV II regulations phased-in through model years 2004-2010, and

1 LEV III regulations, which were phased-in through model years 2015-2025. The  
2 LEV standards applicable in California include the following classes of vehicles:  
3 Tier 1; Transitional Low Emission Vehicles (TLEV); LEV; Ultra Low Emission  
4 Vehicles (ULEV); and Zero Emission Vehicles (ZEV). Under these standards, car  
5 manufacturers are required to produce a certain percentage of vehicles pursuant to  
6 increasingly more stringent emission categories.

7 30. In California, these same stringent standards for the emission of gaseous  
8 pollutants apply to diesel-powered vehicles.

9 31. In November 1998, the CARB adopted LEV II emission standards  
10 which were phased-in between 2004 and 2010. These standards set forth three even  
11 more stringent classes: LEV, ULEV, and Super Ultra Low Emission Vehicles  
12 (“SULEV”). The LEV II emission standards allowed for significantly less emissions  
13 of NOx and particulate matter than was allowable under Tier 1/LEV. These stricter  
14 standards apply equally to vehicles powered by gasoline and diesel. As a result of  
15 these standards, diesel-powered vehicles could only pass in the presence of  
16 particulate filters and NOx reduction catalysts.

17 32. In January 2012, the LEV III emission standards were adopted. These  
18 standards will be phased-in over the 2015-2025 model years, but manufacturers may  
19 certify vehicles to the higher standards prior to model year 2015. The new standards  
20 have tightened particulate matter standards; the stringent standards were enacted in  
21 part to ensure that particulate filters be used on all diesel engines.

22 33. Through its LEV program, California has adopted emissions standards  
23 even stricter than the EPA. Similar to the EPA, the CARB implements California’s  
24 vehicle regulations through a certification process, in-use compliance, and  
25 enforcement actions.

26 34. As part of the certification process, CARB tests vehicles to ensure that  
27 their emissions performance is as expected throughout the useful life of the vehicle.  
28 A number of states have adopted California’s strict emissions standards, including

1 Oregon, New York, Rhode Island, Washington, New Jersey, Massachusetts, Maine,  
2 Connecticut, Pennsylvania, Vermont, New Mexico, Maryland, and Florida.

3 **C. Volkswagen’s Marketing Of Its “CleanDiesel” Vehicles**

4 35. Since 2008, Volkswagen has manufactured and sold a line of diesel-fuel  
5 vehicles known as “CleanDiesel.” Vehicles marketed as “CleanDiesel” are powered  
6 by the Company’s 2.0L turbo diesel four-cylinder engines. Volkswagen’s  
7 advertisements assured customers that its vehicles were the cleanest diesel engines  
8 and the most environmentally friendly.

9 36. Since introducing its 2.0L TDI CleanDiesel engine in 2008,  
10 Volkswagen has touted it as a “fantastic power train” that “gives very good fuel  
11 economy” and “is also good for the environment because it puts out 25% less  
12 greenhouse gas emissions than what a gasoline engine would . . . cuts out the  
13 particulate emissions by 90% and the emissions of nitrous oxide are cut by 95% . . .  
14 [and is] clean enough to be certified in all 50 states.”

15 37. “TDI” stands for “Turbocharged Direct Injection.” The TDI engines are  
16 turbocharged and directly inject fuel into each cylinder via fuel injectors. With  
17 respect to its TDI engines, Volkswagen has stated, “[t]he superior qualities of the  
18 2.0L TDI engine with common rail injection systems are oriented towards future  
19 challenges in acoustics, comfort, and exhaust gas after-treatment . . . confirming  
20 Volkswagen’s role as a pioneer in diesel technology.”

21 38. At all relevant times herein, Volkswagen represented that the TDI  
22 engine satisfies current emissions standards due to its unique after-treatment system,  
23 which features a diesel particulate filter, upstream oxidation catalyst, and low and  
24 high pressure Exhaust Gas Recirculation (“EGR”). According to Volkswagen, “[t]he  
25 most effective measure to reduce nitrous oxides (NOx) with an internal combustion  
26 engine is by introducing very high exhaust gas recirculation rates into the  
27 combustion chamber.”

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1           39. The exhaust chamber of the TDI engine contains four components, each  
2 serving a different purpose: 1) oxidation catalytic converter; 2) particulate filter; 3)  
3 NOx filter; and 4) H2S catalytic converter.

4           40. In order to comply with strict emissions regulations enacted in 2008,  
5 many manufacturers of diesel cars began outfitting their vehicles with tanks of a  
6 urea-based solution known as “AdBlue”. This solution is thought to reduce emissions  
7 of NOx. According to Volkswagen, however, its small vehicles powered by the 2.0L  
8 TDI engine did not require AdBlue in order to reduce NOx emissions.

9           41. Volkswagen began aggressively marketing its CleanDiesel vehicles  
10 beginning no later than the 2009 model year. This marketing strategy was intended to  
11 solidify Volkswagen’s market power for diesel powered vehicles in the United  
12 States.

13           42. In fact, in marketing its CleanDiesel vehicles, Volkswagen has relied  
14 heavily on its purported compliance with emissions regulations. In 2008,  
15 Volkswagen marketed the CleanDiesel vehicles as having the “world’s cleanest  
16 diesel engines” that comply with the world’s “most demanding emissions laws.”  
17 Volkswagen brochures distributed to customers and members of the Class touted that  
18 its “Clean diesel vehicles meet the strictest EPA standards in the U.S. Plus, TDI  
19 technology helps reduce sooty emissions by up to 90%, giving you a fuel-efficient  
20 and eco-conscious vehicle.” As discussed below, the vehicles listed in these  
21 brochures - the Volkswagen Jetta TDI, the Volkswagen Jetta SportWagen TDI, the  
22 Volkswagen Golf TDI, the Volkswagen Passat TDI, and the Volkswagen Beetle TDI  
23 — have all since been found to be grossly noncompliant with EPA standards.

24           43. In an October 2009 interview with Business Insider, when asked  
25 “[w]hat is the advantage of a diesel over a hybrid,” VW of America’s Chief  
26 Operating officer, Mark Barnes, stated: “It’s also good for the environment because  
27 it puts out 25% less greenhouse gas emissions than what a gasoline engine would.  
28 And thanks to the uniqueness of the TDI motor, it cuts out the particulate emissions

1 by 90% and the emissions of nitrous oxide are cut by 95%. So, a very very clean  
2 running engine. Clean enough to be certified in all 50 states.”

3 44. Volkswagen Group’s Jetta and Audi A3 diesels won the 2009 and 2010  
4 Green Car of the Year awards given by auto trade publication Green Car Journal.

5 45. Throughout the relevant period, Volkswagen repeatedly touted the  
6 reduced emissions of its 2.0L TDI clean diesel engines to U.S. consumers. For  
7 example, Volkswagen claimed that the system runs on ultra-low-sulfur diesel,  
8 helping reduce sooty emissions by up to 90% compared to previous diesel engines.

9 46. Volkswagen also emphasized the fuel efficiency of the TDI Clean  
10 Diesel along with its cleanliness. For example, in a marketing brochure for the 2014  
11 VW Jetta TDI Clean Diesel, Volkswagen not only claimed that the car had a greater  
12 range on a single tank of gas than did the Honda Civic Hybrid, Mazda 3, Toyota  
13 Prius and Ford Focus SFE, but also claimed that “The Jetta TDI has lower CO2  
14 emissions compared to 90% of other vehicles engines. So every getaway you make  
15 will be a cleaner one.”

16 47. Volkswagen also touted the performance characteristics of the TDI  
17 Clean Diesel, claiming that clean emission technology did not sacrifice its 236 lbs/ft  
18 of torque and turbocharged clean diesel engine. In a recent 2015 Volkswagen Golf  
19 sales brochure, Volkswagen stated “With the 2.0L TDI engine, you’ll appreciate  
20 every fuel-efficient mile with the EPA-estimated 45 hwy mpg. But that’s only half  
21 the story. Step on the pedal and feel the 236 lb ft of torque and let the performance  
22 tell the other half.”

23 48. Volkswagen also claimed that TDI Clean Diesel models “typically have  
24 a higher resale value versus comparable gasoline vehicles.”

25 49. Volkswagen touted its CleanDiesel vehicles as a fun-to-drive alternative  
26 to other fuel-efficient and environmentally friendly cars, claiming that the diesel cars  
27 can achieve hybrid-like fuel mileage, but greater torque and horsepower than hybrid

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1 vehicles. Marketing efforts by Volkswagen emphasized the benefits to a consumer of  
2 choosing a diesel vehicle over a hybrid.

3 50. Volkswagen attempted to boost sales of these TDI vehicles through  
4 mass-advertisements aimed at the average consumer, by raising awareness of what it  
5 called its “TDI Clean Diesel Technology.” Advertisements also praised the fuel  
6 efficiency of TDI CleanDiesel engines, along with the higher resale values enjoyed  
7 by those models.

8 51. Sales of Volkswagen TDI CleanDiesel vehicles rose steadily. In 2008,  
9 Volkswagen sold 12,000 units of these vehicles in North America. In 2013,  
10 Volkswagen sold 100,000 units of these vehicles in North America, a nearly tenfold  
11 increase. With a 78% share of the North American diesel automobile market,  
12 Volkswagen sold more diesel cars in the United States than every other brand  
13 combined.

14 **D. Volkswagen Charged A Premium For Its “CleanDiesel” Vehicles**

15 52. Volkswagen charged consumers a substantial premium for its  
16 supposedly environmentally-friendly CleanDiesel models.

17 **E. Volkswagen’s Express Warranties**

18 53. In connection with the purchase or lease of each one of its new vehicles,  
19 Volkswagen provides an express New Vehicle Limited Warranty (“NVLW”) for a  
20 period of three years or 36,000 miles, whichever occurs first. This NVLW exists to  
21 cover “any repair to correct a manufacturing defect or materials or workmanship.”

22 54. The CAA requires manufacturers of light-duty vehicles to provide two  
23 federal emission control warranties: a “Performance Warranty” and a “Design and  
24 Defect Warranty.”

25 55. The EPA requires vehicle manufacturers to provide a Performance  
26 Warranty with respect to the vehicles’ emissions systems. Thus, Volkswagen also  
27 provides an express warranty for its vehicles through a Federal Emissions  
28 Performance Warranty. The Performance Warranty required by the EPA applies to

1 repairs that are required during the first two years or 24,000 miles, whichever occurs  
2 first, when a vehicle fails an emissions test. Under this warranty, certain major  
3 emission control components are covered for the first eight years or 80,000 miles,  
4 whichever comes first. These major emission control components subject to the  
5 longer warranty include the catalytic converters, the electronic emissions control unit  
6 (ECU), and the onboard emissions diagnostic device or computer.

7 56. The EPA requires vehicle manufacturers to issue Defect Warranties  
8 with respect to their vehicles' emissions systems. Thus, Volkswagen also provides  
9 an express warranty to its vehicles through a Federal Emissions Control System  
10 Defect Warranty. The Design and Defect Warranty required by the EPA covers  
11 repair of emission control or emission related parts which fail to function or function  
12 improperly due to a defect in materials or workmanship. This warranty provides  
13 protection for two years or 24,000 miles, whichever comes first, or, for the major  
14 emissions control components, for eight years or 80,000 miles, whichever comes  
15 first.

16 57. As a manufacturer of light-duty vehicles, Volkswagen was required to  
17 provide these warranties to purchasers of its CleanDiesel TDI vehicles.

18 58. Plaintiffs and the Class members experienced defects within the  
19 warranty period. Despite the existence of warranties, Volkswagen failed to inform  
20 plaintiffs and class members that the Affected Vehicles were intentionally designed  
21 and manufactured to be out of compliance with applicable state and federal  
22 emissions laws, and failed to fix the defective emissions components free of charge.

23 **F. Volkswagen Failed To Meet Applicable Emissions Standards And**  
24 **Employed A "Defeat Device" To Evade The Standards**

25 59. Volkswagen knew that its CleanDiesel vehicles could not pass  
26 applicable state and federal emissions standards. To evade this difficulty,  
27 Volkswagen intentionally installed a defeat device in the engines of its CleanDiesel  
28 class of vehicles. Volkswagen perpetrated this misconduct for years, until



1 experiments conducted by a clean air non-profit group and a university alerted state  
2 and federal officials to the nefarious scheme. In total, Volkswagen's deceitful  
3 practice has impacted approximately 500,000 vehicles in the United States, and 11  
4 million vehicles worldwide.

5 **1. The International Council For Clean Transportation/West**  
6 **Virginia University Study**

7 60. The International Council on Clean Transportation ("ICCT") is an  
8 independent nonprofit organization founded to provide first-rate, unbiased research  
9 and technical and scientific analysis to environmental regulators. According to the  
10 ICCT's website (www.theicct.org), its mission is "to improve the environmental  
11 performance and energy efficiency of road . . . transportation, in order to benefit  
12 public health and mitigate climate change." Peter Mock, the European managing  
13 director of the ICCT, and John German, his American counterpart, noted the  
14 discrepancies between the performances of Volkswagen CleanDiesel vehicles in  
15 Europe compared with the United States. Mock and German then replicated the tests  
16 in the United States, and discovered that Volkswagen CleanDiesel vehicles were, in  
17 fact, not clean.

18 61. In late 2013, the ITTC enlisted assistance from the West Virginia  
19 University ("WVU"), using equipment provided by the school's Center for  
20 Alternative Fuels, Engines and Emissions ("CAFEE"). Using a Portable Emissions  
21 Measurement System, ("PEMS"), the ICCT and WVU conducted on-road testing of  
22 three light-duty diesel vehicles, including a 2012 Volkswagen Jetta and a 2013  
23 Volkswagen Passat, both equipped with a 2.0L TDI CleanDiesel engine. The PEMS  
24 testing measured emissions of NOx, carbon monoxide, THC, and carbon dioxide.

25 62. The results of this experiment, which measured tailpipe emissions over  
26 a 1,300 mile journey, were "shocking." According to German, "[w]e were astounded  
27 when we saw the numbers." The study showed that the Volkswagen vehicles  
28 exceeded the U.S. NOx emissions standards by up to 35 times. However, the NOx

1 emissions for these same two vehicles were below the EPA standards when subjected  
2 to chassis dynamometer testing performed pursuant state and federal emissions  
3 regulations.

4 63. The ICCT and WVU brought their concerns and the results of their  
5 study to the attention of CARB and the EPA.

6 **2. The EPA And CARB Investigations And Volkswagen's**  
7 **Private Admission**

8 64. The CARB and EPA began an investigation into Volkswagen's  
9 CleanDiesel vehicles in May 2014. In conjunction with their investigations, both the  
10 EPA and CARB engaged in discussions with Volkswagen to determine the reason  
11 for the high discrepancy between NOx emissions given off by TDI vehicles in the  
12 on-road study performed by ICCT and WVU and the passing levels given off by  
13 these same vehicles in federally mandated emissions tests.

14 65. After CARB began its investigation, Volkswagen initiated testing to  
15 replicate the ICCT/WVU testing and attempted to explain away the reasons for the  
16 high on-road emissions. In correspondence with the CARB and EPA, Volkswagen  
17 maintained that the high on-road emissions were due to a software or technical error,  
18 or unexpected in-use conditions.

19 66. In December 2014, Volkswagen released the results of its own  
20 investigation to the EPA and CARB, and proposed a voluntary recall of nearly  
21 500,000 CleanDiesel cars in December 2014, presumably to implement a software  
22 patch and recalibration that Volkswagen claimed would solve the problem. The EPA  
23 and CARB agreed to this recall, but continued to perform tests to determine whether  
24 recall would sufficiently address the problem.

25 67. Despite Volkswagen's assurances, CARB continued to test Volkswagen  
26 cars. CARB tested Volkswagen vehicles in on-road conditions using PEMS and in  
27 the laboratory. In so doing, the CARB developed a special dynamometer cycle,  
28 which when run, resulted in "uncontrolled NOx emissions." While CARB noted that

1 the on-road testing revealed a slight reduction in emissions following the  
2 Volkswagen recall, the NOx emissions were still much higher than expected, and not  
3 in compliance with California and EPA standards. Thus, through its testing of  
4 Volkswagen CleanDiesel vehicles, CARB determined that NOx emissions were still  
5 in violation of California and U.S. laws. The CARB then shared its finding with the  
6 EPA and with Volkswagen on July 8, 2015.

7 68. Finding that “none of the potential technical issues suggested by  
8 [Volkswagen] explained” the discrepancies, the EPA and CARB demanded  
9 Volkswagen to explain the disparity. The EPA told Volkswagen that it would  
10 withhold certification that Volkswagen’s 2016 diesel vehicles complied with U.S.  
11 emissions standard, which would make those vehicles unsaleable in the United  
12 States. Discussions between Volkswagen and CARB ensued, spanning several  
13 months.

14 69. In September 2015, the discussions culminated when Volkswagen  
15 admitted to CARB that it had employed a defeat device to circumvent CARB and the  
16 EPA emission test procedures since 2008.

17 70. During meetings between Volkswagen officials and CARB and EPA  
18 employees, Volkswagen privately admitted, after months of denials and excuses, that  
19 “these vehicles were designed and manufactured with a defeat device to bypass,  
20 defeat, or render inoperative elements of the vehicles’ emissions control system.”

21 **3. The EPA And CARB Announce A Notice Of Violation And**  
22 **In-Use Compliance Letter**

23 71. On September 18, 2015, the EPA issued a NOV against Volkswagen. In  
24 it, the EPA revealed that Volkswagen admitted that “it had designed and installed a  
25 defeat device in these vehicles in the form of a sophisticated software algorithm that  
26 detected when a vehicle was undergoing emissions testing.”

27 72. According to the EPA NOV, software that Volkswagen admitted to  
28 installing “was designed to track the parameters of the federal test procedure and

1 cause emission control systems to underperform when the software determined that  
2 the vehicle was not undergoing the federal test procedure.”

3 73. Also on September 18, 2015, California issued an In-Use Compliance  
4 Letter to Volkswagen.<sup>9</sup> The EPA and CARB both announced the initiation of  
5 investigations based on Volkswagen’s alleged actions. As stated by Cynthia Giles,  
6 Assistant Administrator for the Office of Enforcement and Compliance Assurance at  
7 the EPA: Using a defeat device in cars to evade clean air standards is illegal and a  
8 threat to public health. Ms. Giles, expressed the gravity of the situation as follows:  
9 “These violations are very serious, not only because illegal defeat devices result in  
10 excess emissions many times the allowable standard, but also because VW was  
11 concealing the facts from the EPA, the State of California, and consumers.” She  
12 summed up the sentiments of many consumers when she said “[w]e expected better  
13 from VW.”

14 74. As detailed in the EPA’s NOV, Defendant Volkswagen installed  
15 sophisticated software in Volkswagen and Audi diesel vehicles it sells in the United  
16 States. This software, which the EPA officially recognized as a defeat device as  
17 defined by the Clean Air Act, is able to detect the conditions when a vehicle is  
18 undergoing official emissions testing and engages full emissions controls only while  
19 the testing is underway. By measuring such factors as the position of the steering,  
20 the vehicle’s speed, and the vehicle’s barometric pressure, the software is able to  
21 detect the times at which the vehicle is being subjected to emissions tests. When the  
22 vehicle is not undergoing emissions testing, the software does not act to reduce  
23 emissions. In other words, while the car is operating on the open road as part of its  
24 normal use, the emissions controls are suppressed. This results in cars that meet  
25 emissions standards in the laboratory or state testing station, but during normal  
26 operation emit nitrogen oxides (NOx) at up to 40 times the standard allowed under  
27 United States laws and regulations.

28 ////

1           75. According to the EPA NOV, Volkswagen installed its defeat device in  
2 the diesel models of at least the following vehicles (the “Affected Vehicles”):

- 3           ● VW Jetta: 2009-2015 Model Years
- 4           ● VW Jetta SportWagen: 2009-2015 Model Years
- 5           ● VW Beetle: 2009-2015 Model Years
- 6           ● VW Beetle Convertible: 2012-2015 Model Years
- 7           ● VW Golf: 2014-2015 Model Years
- 8           ● VW Passat: 2012-2015 Model Years
- 9           ● Audi A3: 2009-2015 Model Years

10           76. Following the EPA’s NOV, it was widely reported in the media,  
11 including by The Los Angeles Times, The New York Times, CNN, Bloomberg, and  
12 Reuters, that Volkswagen’s use of the defeat device impacts approximately 482,000  
13 Volkswagen and Audi diesel vehicles in the United States. Industry publications also  
14 widely covered the revelation, referring to it as a “catastrophe” and stating “[t]here’s  
15 no other way to describe the allegations from the Environmental Protection Agency  
16 that Volkswagen cheated on their emissions tests with nearly a half a million TDI  
17 diesel cars.”

18           **4. Volkswagen Admits To Using Defeat Devices To Cheat On**  
19           **Emissions Tests And Announces That It Would Suspend Sales**  
20           **Of CleanDiesel Vehicles**

21           77. On September 20, 2015, Martin Winterkorn, Volkswagen’s Chief  
22 Executive Officer, issued a public apology concerning the emissions cheating  
23 scandal, acknowledging that the Company had “broken the trust of our customers  
24 and the public.” Winterkorn added that “Volkswagen has ordered an external  
25 investigation of this matter” and claimed that it would “do everything necessary in  
26 order to reverse the damage this has caused.”

27           78. Winterkorn further stated that “hide do not and will not tolerate  
28 violations of any kind of our internal rules or of the law.” Winterkorn promised that

1 Volkswagen would cooperate fully with the EPA investigation and ordered “an  
2 external investigation of this matter.”

3 79. Also on September 20, 2015, a Volkswagen representative declared,  
4 “We have admitted to it to the regulator. It is true. We are actively cooperating with  
5 the regulator.”

6 80. On September 20, 2015, Volkswagen instructed its U.S. dealers to stop  
7 selling Affected Vehicles from model years 2015 and 2016.

8 81. On September 21, 2015, at the New York unveiling of the new Passat,  
9 Michael Horn, the head of Volkswagen’s U.S. division, said, “[1]et’s be clear about  
10 this. Our company was dishonest. With the EPA, and the California Air Resources  
11 Board, with all of you. And in my German words, we have totally screwed up.”

12 82. Also on September 21, 2015, the German government announced its  
13 intention to begin an inquiry to ensure that Volkswagen was complying with all laws  
14 on auto emissions.

15 83. On September 22, 2015, Volkswagen announced that its evasion of  
16 emissions standards was not limited to the United States and that as many as eleven  
17 million vehicles world-wide could be affected by software allegedly used to cheat  
18 emissions tests.

19 84. Finally, Volkswagen Chief Executive Officer Winterkorn issued a video  
20 on September 22, 2015, further apologizing for the Company’s misconduct. In the  
21 video message, Winterkorn declared that he was “endlessly sorry” that the Company  
22 had squandered worldwide trust in the brand. “Millions of people across the world  
23 trust our brands, our cars and our technology . . . I am endlessly sorry that we have  
24 disappointed this trust. I apologize in every way to our customers, our authorities and  
25 the whole public for the wrongdoing.” He concluded that “manipulation at  
26 Volkswagen must never happen again.”

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1           85. Following Volkswagen’s startling admissions and apologies, reports  
2 surfaced that the United States Department of Justice launched a criminal  
3 investigation into Volkswagen’s misconduct.

#### 4                           **V. TOLLING OF THE STATUTE OF LIMITATIONS**

5           86. Any applicable statute of limitation has been tolled by defendants’  
6 knowledge, active concealment, and denial of the facts alleged herein throughout the  
7 time period relevant to this action. Plaintiffs and the other Class members did not  
8 discover, and could not have discovered through the exercise of reasonable diligence,  
9 the true, defective nature of the Affected Vehicles until shortly before this litigation  
10 commenced, well within the time period of any applicable statutes of limitation.  
11 Volkswagen was intent on concealing its illicit behavior and flagrant disregard of  
12 state and federal law from regulators and consumers. The truth was not revealed  
13 until at least September 18, 2015, when the EPA and the CARB released the results  
14 of their investigation into Volkswagen’s use of a defeat device in its CleanDiesel  
15 vehicles. As the EPA stated in its September 18, 2015 NOV, “only [when  
16 confronted by regulators] did Volkswagen admit it had designed and installed a  
17 defeat device in these vehicles in the form of a sophisticated software algorithm that  
18 detected when a vehicle was undergoing emissions testing.” Defendants are further  
19 estopped from relying on any statute of limitation because of their concealment of  
20 the defective nature of the Affected Vehicles and their engines.

#### 21                           **VI. CLASS ALLEGATIONS**

22           87. Plaintiffs bring this action under Fed. R. Civ. P. 23(b)(2) and 23(b)(3)  
23 on behalf of themselves and a nationwide plaintiff class (the “Nationwide Class”)  
24 consisting of all persons or entities in the United States who purchased, leased or  
25 own a Volkswagen or Audi vehicle equipped with a 2.0L TDI CleanDiesel engine.

26           88. Plaintiffs also bring this action both on behalf of themselves and as a  
27 class action under Fed. R. Civ. P. 23(b)(2) and 23(b)(3) on behalf of the following  
28 second class (the “California Class”) consisting of all persons or entities in the State

1 of California who purchased, leased or own a Volkswagen or Audi vehicle equipped  
2 with a 2.0L TDI CleanDiesel engine.

3 89. Excluded from the Classes are individuals who have personal injury  
4 claims resulting from the “defeat device” in an Affected Vehicle. Also excluded  
5 from the Classes are defendants, their parents, subsidiaries, and affiliates; all officers,  
6 directors, employees, and agents of the defendants; governmental entities; and any  
7 agent or employee of any federal or state government acting in their official capacity.  
8 Plaintiffs reserve the right to revise the Class definition based upon subsequently  
9 discovered information.

10 90. Plaintiffs do not know the exact number of Class members because such  
11 information is in the exclusive control of defendants. Upon information and belief,  
12 plaintiffs believe that there are hundreds of thousands of Class members,  
13 geographically dispersed throughout California and the United States, such that  
14 joinder of all Class members is impracticable.

15 91. There are questions of law and fact common to the Classes that  
16 predominate over individual issues, including but not limited to the following:

17 (a) Whether defendants participated in the conduct alleged herein;

18 (b) Whether defendants designed, manufactured, advertised,  
19 marketed, distributed, leased, sold, or otherwise placed Affected Vehicles into the  
20 stream of commerce in the United States;

21 (c) Whether defendants designed, manufactured, advertised,  
22 marketed, distributed, leased, sold, or otherwise placed Affected Vehicles into the  
23 stream of commerce in the United States knowing that the Affected Vehicles did not  
24 comply with the applicable state and federal emissions standards;

25 (d) Whether the Volkswagen CleanDiesel engine system contains a  
26 defeat device;

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1 (e) Whether Volkswagen knew, or should have known, that the  
2 presence of a defeat device in the CleanDiesel vehicles constituted a violation of the  
3 CAA and applicable state standards;

4 (f) Whether the CleanDiesel engine system contained in the Affected  
5 Vehicles can be modified to comply with the EPA standards; and whether such  
6 modification will result in substantial degradation of performance or efficiency of the  
7 Affected Vehicles; and/or a diminution of value of the Affected Vehicles;

8 (g) Whether Volkswagen was aware that the Affected Vehicles  
9 contained a defeat device, and if so, how long Volkswagen was aware;

10 (h) Whether Volkswagen's conduct violates consumer protection  
11 statutes, warranty laws, and other laws as asserted herein;

12 (i) Whether plaintiffs and other Class members overpaid for their  
13 Affected Vehicles as a result of the defects alleged herein;

14 (j) Whether plaintiffs and other Class members have been harmed by  
15 a diminution in value as a result of the defects alleged herein;

16 (k) Whether plaintiffs and other Class members are entitled to  
17 equitable relief, including, but not limited to, restitution or injunctive relief; and

18 (l) Whether plaintiffs and other Class members are entitled to  
19 damages and other monetary relief, and if so, in what amount.

20 92. Plaintiffs' claims are typical of the claims of the Classes. As alleged  
21 herein, plaintiffs and members of the Classes all sustained damages arising out of the  
22 defendants' same course of unlawful conduct.

23 93. Plaintiffs are adequate representatives who have selected competent  
24 counsel fully qualified to represent the Classes. Plaintiffs intend to vigorously  
25 prosecute this action.

26 94. A class action is superior to all other available methods for the fair and  
27 efficient adjudication of this controversy. In contrast, the interest of Class members  
28 in individually controlling the prosecution of separate actions is not practical.

1 Further, individual litigation creates a potential for inconsistent or contradictory  
2 judgments, and increases the delay and expense to all parties and the courts.  
3 Moreover, even if the individual Class members could afford to conduct individual  
4 litigation, the burden on the court system would be too great. The class device  
5 presents far fewer management difficulties, and provides the benefits of single  
6 adjudication, economy of scale, and comprehensive supervision by a single court.  
7 Plaintiffs anticipate no difficulty in the management of this matter as a class action.

8 95. Certification is also warranted under Fed. R. Civ. P. 23(b)(2) because  
9 Volkswagen has acted or refused to act on grounds generally applicable to the  
10 Classes, thereby making final injunctive relief and declaratory relief appropriate with  
11 respect to the Classes as a whole.

12 **VII. CLAIMS FOR RELIEF**

13 **COUNT I**

14 **VIOLATIONS OF THE MAGNUSON-MOSS WARRANTY ACT, 15 U.S.C. §**

15 **2301, et seq.**

16 **(On Behalf Of The Nationwide Class)**

17 96. Plaintiffs repeat and reallege each and every allegation above as if fully  
18 set forth herein.

19 97. This claim is brought by all plaintiffs on behalf of the Nationwide Class.

20 98. This Court has jurisdiction to decide claims brought under 15 U.S.C. §  
21 2301 by virtue of 28 U.S.C. § 1332 (a)-(d).

22 99. Plaintiffs are “consumers” within the meaning of the Magnuson-Moss  
23 Warranty Act, 15 U. S .C. § 2301(3).

24 100. Defendants are “supplier[s]” and “warrantor[s]” within the meaning of  
25 the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(4)-(5).

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

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1           102. 15 U.S.C. § 2310(d)(1) provides a cause of action for any consumer  
2 who is damaged by the failure of a warrantor to comply with a written or implied  
3 warranty.

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

7           104. Volkswagen breached these warranties as described in more detail  
8 above. Without limitation, the Affected Vehicles share a common design defect in  
9 that they are equipped with a defeat device intended to circumvent applicable state  
10 and federal emissions standards and U.S. pollution laws. As a result, the Affected  
11 Vehicles emit unsafe levels of dangerous NOx. Volkswagen has admitted that the  
12 Affected Vehicles are defective in admissions to the EPA and CARB that  
13 Volkswagen deliberately installed a defeat device in order to cheat emissions  
14 certification tests.

15           105. Plaintiffs and each of the other members of the Nationwide Class have  
16 had sufficient direct dealings with either Volkswagen or its agents (dealerships) to  
17 establish privity of contract between Volkswagen, on the one hand, and plaintiffs and  
18 each of the other Nationwide Class members, on the other hand. Nonetheless, privity  
19 is not required here because plaintiffs and each of the other Class members are  
20 intended third-party beneficiaries of contracts between Volkswagen and its dealers,  
21 and specifically, of Volkswagen's implied warranties. In such a case as this, the  
22 dealers were not intended to be the ultimate consumers of the Affected Vehicles;  
23 instead, the warranty agreements were designed for and intended to benefit the  
24 consumers only. Thus, the dealers have no rights under the warranty agreements  
25 provided with the Affected Vehicles. Finally, privity is also not required because the  
26 Affected Vehicles are dangerous instrumentalities due to the defects and  
27 nonconformities described above.

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1 106. Affording Volkswagen the opportunity to cure its breach of written  
2 warranties would be unnecessary and futile in this case. At the time of sale or lease  
3 of each Affected Vehicle, Volkswagen knew, should have known, or was reckless in  
4 not knowing, of its misrepresentations concerning the Affected Vehicles' inability to  
5 perform as warranted. Despite this, Volkswagen nonetheless failed to rectify the  
6 situation and/or disclose the defective design. Under the circumstances, the remedies  
7 available under any informal settlement procedure would be inadequate and any  
8 requirement that plaintiffs resort to an informal dispute resolution procedure and/or  
9 afford Volkswagen a reasonable opportunity to cure its breach of warranties is  
10 excused and thereby deemed satisfied.

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

14 108. The amount in controversy of plaintiffs' individual claims meets or  
15 exceeds the sum of \$25. The amount in controversy of this action exceeds the sum  
16 of \$50,000, exclusive of interest and costs, computed on the basis of all claims to be  
17 determined in this lawsuit. Plaintiffs, individually and on behalf of the other  
18 Nationwide Class members, seek all damages permitted by law, including diminution  
19 in value of their vehicles, in an amount to be proven at trial.

20 **COUNT II**

21 **BREACH OF CONTRACT**

22 **(On Behalf Of The Nationwide Class)**

23 109. Plaintiffs repeat and reallege each and every allegation above as if fully  
24 set forth herein.

25 110. This claim for common law breach of contract is brought by all  
26 plaintiffs on behalf of the Nationwide Class.

27 111. Volkswagen breached contractual obligations by tendering to plaintiffs  
28 and the Nationwide Class vehicles equipped with a "defeat device" designed to

1 reduce the effectiveness of the vehicle’s emission control system, causing the  
2 Affected Vehicles to emit pollutants at up to 40 times the EPA emission standards.

3 112. The “defeat device” present in the Affected Vehicles did not constitute a  
4 minor breach, as the existence of the “defeat devices” caused the Affected Vehicles  
5 to emit pollutants at a substantially higher rate than Volkswagen warranted and in  
6 violation of federal and state emission standards. As such, plaintiffs and the  
7 Nationwide Class would not have purchased or leased the Affected Vehicles at the  
8 price they paid, or at all, had they known of the presence of the “defeat device.”

9 113. As a direct and proximate result of Defendants’ breach of contract or  
10 warranty, plaintiffs and the Nationwide Class have suffered damages.

11 **COUNT III**

12 **FRAUDULENT CONCEALMENT AND FRAUDULENT**

13 **MISREPRESENTATION**

14 **(On Behalf Of The Nationwide Class)**

15 114. Plaintiffs repeat and reallege each and every allegation above as if fully  
16 set forth herein.

17 115. This claim is brought by all plaintiffs on behalf of the Nationwide Class.

18 116. As detailed above, Volkswagen made material omissions and  
19 affirmative misrepresentations regarding the Affected Vehicles.

20 117. Volkswagen knew these representations were false when made.

21 118. The vehicles plaintiffs and the Nationwide Class purchased or leased  
22 were defective because the vehicles were subject to a “defeat device” that would  
23 reduce the effectiveness of the Affected Vehicles’ emission control system as well as  
24 their road performance.

25 119. Volkswagen had a duty to disclose that these vehicles were defective in  
26 that the vehicles were subject to a “defeat device” that would reduce the  
27 effectiveness of the vehicles’ emission control system.

28 ////

1 120. Defendants' concealment was material because if it had been disclosed  
2 plaintiffs and the Nationwide Class would not have purchased or leased the vehicles  
3 at the price they paid, or would not have purchased or leased the vehicles at all.

4 121. Similarly, defendants' representations were material because they were  
5 facts that would typically be relied upon by an individual purchasing or leasing an  
6 automobile, and in particular, vehicles sold under a Clean Diesel marketing  
7 campaign. Volkswagen knew or recklessly disregarded that its representations as to  
8 the Affected Vehicles were false and or omitted material information. Volkswagen  
9 intentionally made the false statements in order to induce plaintiffs and the  
10 Nationwide Class to purchase or lease the Affected Vehicles.

11 122. Plaintiffs and Nationwide Class members relied upon defendants'  
12 representations and omissions in purchasing or leasing the Affected Vehicles.

13 123. As a result of their reliance, plaintiffs and other members of the  
14 Nationwide Class have been injured in an amount to be proven at trial, including, but  
15 not limited to, their lost benefit of the bargain and overpayment at the time of  
16 purchase and/or the diminished value of their vehicles.

17 124. Volkswagen's acts were done wantonly, maliciously, oppressively,  
18 deliberately, with intent to defraud, and in reckless disregard of plaintiffs' and  
19 Nationwide Class members' rights and the representations that Volkswagen made to  
20 them, in order to enrich Volkswagen. Volkswagen's conduct warrants an assessment  
21 of punitive damages in an amount sufficient to deter such conduct in the future,  
22 which amount is to be determined according to proof.

23 **COUNT IV**

24 **UNJUST ENRICHMENT**

25 **(On Behalf Of The Nationwide Class)**

26 125. Plaintiffs repeat and reallege each and every allegation above as if fully  
27 set forth herein.

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1 126. This claim is brought by all plaintiffs on behalf of the Nationwide Class.

2 127. Plaintiffs and the Nationwide Class paid the value of vehicles that have  
3 fully operational emission control systems that comply with federal and state  
4 emission standards, would not be compromised by the need for repairs, and could be  
5 legally operated, but were provided with vehicles that are defective, needed repairs,  
6 and could not be legally operated.

7 128. As such, plaintiffs and other members of the Nationwide Class  
8 conferred a windfall upon Volkswagen, which knew of the windfall and has unjustly  
9 retained such benefits.

10 129. As a direct and proximate result of Volkswagen's unjust enrichment,  
11 plaintiffs and the Nationwide Class have suffered and continue to suffer various  
12 damages, including, but not limited to, restitution of all amounts by which defendants  
13 were enriched through its misconduct.

14 **COUNT V**

15 **VIOLATIONS OF STATE CONSUMER PROTECTION AND UNFAIR**

16 **COMPETITION STATUTES**

17 **(On Behalf Of The Nationwide Class)**

18 130. Plaintiffs repeat and reallege each and every allegation above as if fully  
19 set forth herein.

20 131. This claim is brought by all plaintiffs on behalf of the Nationwide Class.

21 132. Volkswagen engaged in unfair competition or unfair, unconscionable,  
22 deceptive, or fraudulent acts or practices with respect to the sale of the Affected  
23 Vehicles in violation of consumer protection and unfair competition statutes in every  
24 (or nearly every) state, including: Alaska Stat. § 45-50-471, *et seq.*; Ariz. Rev. Stat. §  
25 44-1521, *et seq.*; Arkansas Code § 4-88-101, *et seq.*; Cal. Civ. Code § 1770, *et seq.*,  
26 Cal. Bus. & Prof. Code § 17200, *et seq.*, and Cal. Bus. & Prof. Code § 17070; Colo.  
27 Rev. Stat. § 6-1-101, *et seq.*; Conn. Gen. Stat. § 42-110A, *et seq.*; 6 Del. Code §  
28 2513, *et seq.* and 6 Del. Code § 2532, *et seq.*; D.C. Code Ann. § 28-3901, *et seq.*,

1 Florida Stat. § 501.201, *et seq.*; Ga. Code Ann. § 10-1-370, *et seq.*; Haw. Rev. Stat.  
 2 Ann. § 481A-3; Idaho Code § 48-601, *et seq.*; 815 Ill. Comp. Stat. 505/1, *et seq.* and  
 3 815 Ill. Comp. Stat. 510/1, *et seq.*; Ind. Code § 24-5-0.5-3; Iowa Code § 714H.1, *et*  
 4 *seq.*; Kan. Stat. Ann. § 50-623, *et seq.*; Ky. Rev. Stat. § 367.110, *et seq.*; Me. Rev.  
 5 Stat. Ann. Tit. 5 § 205-A, *et seq.*; Md. Code Corn. Law § 13-101, *et seq.*; Mass. Gen.  
 6 Laws chapter 93A § 1, *et seq.*; Mich. Comp. Laws § 445.901; Minn. Stat. § 325F.69,  
 7 *et seq.* and Minn. Stat. § 325D.43, *et seq.*; Mo. Ann. Stat. 407.020; Neb. Rev. Stat. §  
 8 87-302 and Neb. Rev. Stat. § 59-1601, *et seq.*; Nev. Rev. Stat. § 598.0903, *et seq.*;  
 9 New Hampshire Rev. Stat. § 358-A:1, *et seq.*; N.J. Stat. Ann. § 56:8-1, *et seq.*; New  
 10 Mexico Stat. Ann. § 57-12-1, *et seq.*; N.Y. Gen. Bus. Law § 349, *et seq.*; North  
 11 Carolina Gen. Stat. § 75-1.1, *et seq.*; N.D. Cent. Code § 51-15-02; Ohio Rev. Code  
 12 Ann. § 1345.01, *et seq.* and Ohio Rev. Code Ann. § 4165.01, *et seq.*; Okla. Stat. Tit.  
 13 15 § 751, *et seq.* and 78 Okla. Stat. Ann. § 51, *et seq.*; Or. Rev. Stat. § 646.605, *et*  
 14 *seq.*; 73 Pa. Stat. § 201-1, *et seq.*; Rhode Island Gen. Laws § 6-13.1-1, *et seq.*; S.D.  
 15 Codified Laws § 37-24-6, *et seq.*; Tex. Bus. & Com. Code § 17.41, *et seq.*; Utah  
 16 Code Ann. § 13-11-1, *et seq.*; Vt. Stat. Ann. Tit. 9, § 2451, *et seq.*; Va. Code Ann.  
 17 59.1-200, *et seq.*; Rev. Code Wash. Ann. § 19.86.010, *et seq.*; W. Va. Code § 46A-  
 18 1-101, *et seq.*; Wisc. Stat. § 100.18, *et seq.*; and Wyo. Stat. § 45-12-105, *et seq.*

19 133. Volkswagen's misrepresentations and omissions regarding the emission  
 20 compliance of its vehicles as detailed above were likely to deceive a reasonable  
 21 consumer, and the information would be material to a reasonable consumer.

22 134. Volkswagen's intentional and purposeful acts, described above, were  
 23 intended to and did cause plaintiffs and the Class to pay artificially inflated prices for  
 24 Affected Vehicles purchased or leased in the states (and the District of Columbia)  
 25 listed above.

26 135. As a direct and proximate result of Volkswagen's unlawful conduct,  
 27 plaintiffs and Nationwide Class members have been injured in their business and

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1 property in that they paid more for the Affected Vehicles than they otherwise would  
2 have paid in the absence of Volkswagen’s unlawful conduct.

3 136. All of the wrongful conduct alleged herein occurred in the conduct of  
4 Volkswagen’s business. Defendants’ wrongful conduct is part of a pattern or  
5 generalized course of conduct that was perpetrated nationwide.

6 137. Plaintiffs and other members of the Nationwide Class members are  
7 therefore entitled to all appropriate relief as provided for by the laws of the states  
8 listed above, including but not limited to, actual damages, injunctive relief, attorneys’  
9 fees, and equitable relief, such as restitution and/or disgorgement of all revenues,  
10 earnings, profits, compensation, and benefits which may have been obtained by  
11 Defendants as a result of their unlawful conduct.

12 **COUNT VI**

13 **VIOLATION OF SONG-BEVERLY CONSUMER WARRANTY ACT, CAL.**

14 **CIV. CODE §§ 1791.1 & 1792**

15 **(On Behalf Of The California Class)**

16 138. Plaintiffs repeat and reallege each and every allegation above as if fully  
17 set forth herein.

18 139. This claim is brought by plaintiffs (the “California Plaintiffs”) on behalf  
19 of the California Class.

20 140. Plaintiffs and other California Class members who purchased or leased  
21 the Affected Vehicles in California are “buyers” within the meaning of Cal. Civ.  
22 Code § 1791(b).

23 141. The Affected Vehicles are “consumer goods” within the meaning of  
24 Cal. Civ. Code § 1791(a).

25 142. Volkswagen is a “manufacturer” of the Affected Vehicles within the  
26 meaning of Cal. Civ. Code § 1791(j).

27 143. Volkswagen impliedly warranted to California Plaintiffs and the other  
28 California Class members that its Affected Vehicles were “merchantable” within the

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1 meaning of Cal. Civ. Code §§ 1791.1(a) & 1792; however, the Affected Vehicles do  
2 not have the quality that a buyer would reasonably expect.

3 144. Cal. Civ. Code § 1791.1(a) states:

4 (a) “Implied warranty of merchantability” or “implied warranty that  
5 goods are merchantable” means that the consumer goods meet  
6 each of the following:

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

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

16 146. Because the “defeat device” falsely causes Affected Vehicles to obtain  
17 EPA certification and pass emissions tests when in fact they omit 40 times the  
18 permitted level of NO<sub>x</sub>, they are not safe to drive and thus not fit for ordinary  
19 purposes.

20 147. The Affected Vehicles are not adequately labeled because the labeling  
21 fails to disclose the “defeat device” that causes emissions systems of the Affected  
22 Vehicles to become inoperative during normal use.

23 148. Volkswagen breached the implied warranty of merchantability by  
24 manufacturing and selling Affected Vehicles containing the “defeat device.”  
25 Furthermore, Volkswagen’s fraudulent use of the “defeat device” has caused  
26 California Plaintiffs and the other California Class members to not receive the  
27 benefit of their bargain and have caused Affected Vehicles to depreciate in value.

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1 149. As a direct and proximate result of Volkswagen's breach of the implied  
2 warranty of merchantability, California Plaintiffs and the other California Class  
3 members received goods whose dysfunctional condition substantially impairs their  
4 value to California Plaintiffs and the other California Class members. California  
5 Plaintiffs and the other Class members have been damaged as a result of the  
6 diminished value of Volkswagen's products, the products' malfunctioning, and the  
7 nonuse of their Affected Vehicles.

8 150. Pursuant to Cal. Civ. Code §§ 1791.1(d) & 1794, California Plaintiffs  
9 and the other California Class members are entitled to damages and other legal and  
10 equitable relief including, at their election, the purchase price of their Affected  
11 Vehicles, or the overpayment or diminution in value of their Affected Vehicles.

12 151. Pursuant to Cal. Civ. Code § 1794, California Plaintiffs and the other  
13 California Class members are entitled to costs and attorneys' fees.

14 **COUNT VII**

15 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY,**

16 **CAL. COM. CODE § 2314**

17 **(On Behalf Of The California Class)**

18 152. Plaintiffs repeat and reallege each and every allegation above as if fully  
19 set forth herein.

20 153. This claim is brought by the California Plaintiffs on behalf of the  
21 California Class.

22 154. Volkswagen is and was at all relevant times a merchant with respect to  
23 motor vehicles under Cal. Corn. Code § 2104.

24 155. A warranty that the Affected Vehicles were in merchantable condition  
25 was implied by law in the instant transaction, pursuant to Cal. Com. Code § 2314.

26 156. These Affected Vehicles, when sold and at all times thereafter, were not  
27 in merchantable condition and are not fit for the ordinary purpose for which cars are  
28 used. Specifically, the Affected Vehicles are inherently defective in that they do not

1 comply with federal and state emissions standards, rendering certain safety and  
2 emissions functions inoperative; and the CleanDiesel engine system was not  
3 adequately designed, manufactured, and tested.

4 157. Volkswagen was provided notice of these issues by the investigations of  
5 the EPA and individual state regulators.

6 158. California Plaintiffs and each California Class member has had  
7 sufficient direct dealings with either Volkswagen or its agents (dealerships) to  
8 establish privity of contract between Volkswagen, on the one hand, and California  
9 Plaintiffs and each of the other California Class members, on the other hand.  
10 Nonetheless, privity is not required here because California Plaintiffs and each of the  
11 other Class members are intended third-party beneficiaries of contracts between  
12 Volkswagen and its dealers, and specifically, of Volkswagen's implied warranties.  
13 In such a case as this, the dealers were not intended to be the ultimate consumers of  
14 the Affected Vehicles; instead, the warranty agreements were designed for and  
15 intended to benefit the consumers only. Thus, the dealers have no rights under the  
16 warranty agreements provided with the Affected Vehicles.

17 159. As a direct and proximate result of Volkswagen's breach of the  
18 warranties of merchantability, California Plaintiffs and the other California Class  
19 members have been damaged in an amount to be proven at trial.

20 **COUNT VIII**

21 **BREACH OF CONTRACT**

22 **(On Behalf Of The California Class)**

23 160. Plaintiffs repeat and reallege each and every allegation above as if fully  
24 set forth herein.

25 161. California Plaintiffs plead this count pursuant to the laws of California  
26 on behalf of all members of the California Class.

27 162. Volkswagen's misrepresentations and omissions alleged herein,  
28 including Volkswagen's failure to disclose the existence of the "defeat device"

1 and/or defective design as alleged herein, caused California Plaintiffs and the other  
2 California Class members to make their purchases or leases of their Affected  
3 Vehicles. Absent those misrepresentations and omissions, California Plaintiffs and  
4 the other California Class members would not have purchased or leased these  
5 Affected Vehicles, would not have purchased or leased these Affected Vehicles at  
6 the prices they paid, and/or would have purchased or leased less expensive  
7 alternative vehicles that did not contain the CleanDiesel engine system and the  
8 “defeat device.” Accordingly, California Plaintiffs and the other California Class  
9 members overpaid for their Affected Vehicles and did not receive the benefit of their  
10 bargain.

11 163. Each and every sale or lease of an Affected Vehicle constitutes a  
12 contract between Volkswagen and the purchaser or lessee. Volkswagen breached  
13 these contracts by selling or leasing California Plaintiffs and the other California  
14 Class members’ defective Affected Vehicles and by misrepresenting or failing to  
15 disclose the existence of the “defeat device” and/or defective design, including  
16 information known to Volkswagen rendering each Affected Vehicle less safe and  
17 emissions compliant, and thus less valuable, than vehicles not equipped with  
18 CleanDiesel engine systems and “defeat devices.”

19 164. As a direct and proximate result of Volkswagen’s breach of contract,  
20 California Plaintiffs and the California Class have been damaged in an amount to be  
21 proven at trial, which shall include, but is not limited to, all compensatory damages,  
22 incidental and consequential damages, and other damages allowed by law.

23 **COUNT IX**

24 **VIOLATIONS OF CALIFORNIA UNFAIR COMPETITION LAW, CAL.**

25 **BUS. & PROF. CODE § 17200, et seq.**

26 **(On Behalf Of The California Class)**

27 165. Plaintiffs repeat and reallege each and every allegation above as if fully  
28 set forth herein.

1           166. This claim is brought by the California Plaintiffs on behalf of the  
2 California Class.

3           167. California’s Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code  
4 § 17200, et seq, proscribes acts of unfair competition, including “any unlawful,  
5 unfair or fraudulent business act or practice and unfair, deceptive, untrue or  
6 misleading advertising.”

7           168. Volkswagen’s conduct, as described herein, was and is in violation of  
8 the UCL. Volkswagen’s conduct violates the UCL in at least the following ways:

9                   (a) By knowingly and intentionally concealing from plaintiffs and the  
10 other California Class members that the Affected Vehicles suffer from a design  
11 defect while obtaining money from plaintiffs and the Class;

12                   (b) By marketing Affected Vehicles as possessing functional and  
13 defect-free, EPA compliant CleanDiesel engine systems;

14                   (c) By purposefully installing an illegal “defeat device” in the  
15 Affected Vehicles to fraudulently obtain EPA certification and cause Affected  
16 Vehicles to pass emissions tests when in truth and fact they did not pass such tests;

17                   (d) By violating federal laws, including the CAA; and

18                   (e) By violating other California laws, including California laws  
19 governing vehicle emissions and emission testing requirements.

20           169. Volkswagen’s misrepresentations and omissions alleged herein caused  
21 the California Plaintiffs and other members of the California Class members to  
22 purchase or lease their Affected Vehicles. Absent those misrepresentations and  
23 omissions, plaintiffs and the other California Class members would not have  
24 purchased or leased these vehicles, would not have purchased or leased these  
25 Affected Vehicles at the prices they paid, and/or would have purchased or leased less  
26 expensive alternative vehicles that did not contain CleanDiesel engine systems that  
27 failed to comply with EPA and California emissions standards.

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**COUNT X**  
**VIOLATIONS OF CALIFORNIA CONSUMERS LEGAL REMEDIES ACT,**  
**CAL. CIV. CODE § 1750, et seq.**  
**(On Behalf Of The California Class)**

170. Plaintiffs repeat and reallege each and every allegation above as if fully set forth herein.

171. This claim is brought by the California Plaintiffs on behalf of the California Class.

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

173. The Affected Vehicles are “goods” as defined in Cal. Civ. Code § 1761(a).

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

175. As alleged above, Volkswagen made numerous representations concerning the benefits, efficiency, performance and safety features of CleanDiesel engine systems that were misleading.

176. In purchasing or leasing the Affected Vehicles, plaintiffs and the other California Class members were deceived by Volkswagen’s failure to disclose that the Affected Vehicles were equipped with defective CleanDiesel engine systems that failed EPA and California emissions standards.

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

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

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

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

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

9 178. The California Plaintiffs and the other California Class members have  
10 suffered injury in fact and actual damages resulting from Volkswagen's material  
11 omissions and misrepresentations because they paid an inflated purchase or lease  
12 price for the Affected Vehicles. Their vehicles will be subject to a diminution in  
13 value, and the owners and lessors will be required to pay additional fuel costs if and  
14 when their Affected Vehicles are made to comply with emissions standards.

15 179. Volkswagen knew, should have known, or was reckless in not knowing  
16 of the defective design and/or manufacture of the CleanDiesel engine systems, and  
17 that the Affected Vehicles were not suitable for their intended use.

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

25 181. Volkswagen has been provided with notice of its violations of the  
26 CLRA pursuant to Cal. Civ. Code § 1782(a).

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1 182. California Plaintiffs and the other California Class members' injuries  
2 were proximately caused by Volkswagen's fraudulent and deceptive business  
3 practices.

4 183. California Plaintiffs and the other California Class members' injuries  
5 were proximately caused by Volkswagen's fraudulent and deceptive business  
6 practices.

7 184. Therefore, plaintiffs and the other California Class members are entitled  
8 to equitable and monetary relief under the CLRA.

9 **COUNT XI**  
10 **VIOLATIONS OF CALIFORNIA FALSE ADVERTISING LAW, CAL. BUS.**  
11 **& PROF. CODE § 17500, et seq.**  
12 **(On Behalf Of The California Class)**

13 185. Plaintiffs repeat and reallege each and every allegation above as if fully  
14 set forth herein.

15 186. This claim is brought by the California Plaintiffs on behalf of the  
16 California Class.

17 187. Cal. Bus. & Prof. Code § 17500 states:

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

27 188. Volkswagen caused to be made or disseminated through California and  
28 the United States, through advertising, marketing and other publications, statements

1 that were untrue or misleading, and which were known, or which by the exercise of  
2 reasonable care should have been known to Volkswagen, to be untrue and misleading  
3 to consumers, including the California Plaintiffs and the other California Class  
4 members.

5 189. Volkswagen has violated Cal. Bus. & Prof. Code § 17500 because the  
6 misrepresentations and omissions regarding the safety, reliability, and functionality  
7 of Affected Vehicles as set forth in this complaint were material and likely to deceive  
8 a reasonable consumer.

9 190. California Plaintiffs and the other California Class members have  
10 suffered an injury in fact, including the loss of money or property, as a result of  
11 Volkswagen's unfair, unlawful, and/or deceptive practices. In purchasing or leasing  
12 their Affected Vehicles, California Plaintiffs and the other California Class members  
13 relied on the misrepresentations and/or omissions of Volkswagen with respect to the  
14 safety, performance and reliability of the Affected Vehicles. Volkswagen's  
15 representations turned out not to be true because the Affected Vehicles are  
16 distributed with faulty and defective CleanDiesel engine systems, rendering certain  
17 safety and emissions functions inoperative. Had California Plaintiffs and the other  
18 California Class members known this, they would not have purchased or leased their  
19 Affected Vehicles and/or paid as much for them. Accordingly, California Plaintiffs  
20 and the other California Class members overpaid for their Affected Vehicles and did  
21 not receive the benefit of their bargain.

22 191. All of the wrongful conduct alleged herein occurred in the conduct of  
23 Volkswagen's business. Defendants' wrongful conduct is part of a pattern or  
24 generalized course of conduct that was perpetrated in California.

25 192. California Plaintiffs, individually and on behalf of the other California  
26 Class members, request that this Court enter such orders or judgments as may be  
27 necessary to enjoin Volkswagen from continuing their unfair, unlawful, and/or  
28 deceptive practices and to restore to California Plaintiffs and the other California

1 Class members any money Volkswagen acquired by unfair competition, including  
2 restitution and/or restitutionary disgorgement, and for such other relief set forth  
3 below.

4 **COUNT XII**

5 **FRAUDULENT CONCEALMENT**

6 **(On Behalf Of The California Class)**

7 193. Plaintiffs repeat and reallege each and every allegation above as if fully  
8 set forth herein.

9 194. California Plaintiffs plead this count pursuant to the laws of California  
10 on behalf of all members of the California Class.

11 195. Volkswagen intentionally concealed and suppressed material facts  
12 concerning the quality of the Affected Vehicles. As alleged in this complaint,  
13 Volkswagen enacted a surreptitious plan to install a software program in its  
14 CleanDiesel vehicles, the sole purpose of which was to hide the fact that the vehicles  
15 emitted high levels of NOx. The use of this “defeat device” allowed Volkswagen  
16 Affected Vehicles to circumvent federal and state vehicle emissions standards.  
17 Specifically, the “defeat device” was designed to recognize the conditions present  
18 during emissions certification testing, and activate under those conditions such that  
19 the vehicles would appear to give off low levels of emissions. However, when the  
20 vehicles were not in emissions certification testing, but were actually operating on  
21 the road, the vehicles in fact gave off emissions over 40 times greater than the  
22 applicable standards. Through this deliberate plan on the part of Volkswagen,  
23 Affected Vehicles were able to pass emissions certifications by way of deliberately  
24 induced false readings.

25 196. California Plaintiffs and the California Class members reasonably relied  
26 on Volkswagen’s false representations. They were unaware of, and had no ability to  
27 discover, Volkswagen’s extremely sophisticated plan to evade state and federal  
28 emissions standards through the use of a ‘defeat device.

1           197. Volkswagen concealed and suppressed material facts about its utter  
2 disregard for compliance with federal and state clean air law, and emissions  
3 regulations that are meant to protect the public and consumers. In flagrant fashion,  
4 Volkswagen instead chose to emphasize profits and sales over these principles.

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

20           199. Volkswagen had a duty to disclose the emissions scheme it engaged in  
21 with respect to the vehicles at issue because knowledge of the scheme and its details  
22 were known and/or accessible only to Volkswagen. Volkswagen had exclusive  
23 knowledge regarding the installation of the defeat device in the Affected Vehicles.  
24 In addition, Volkswagen had a duty to disclose because it knew the facts were not  
25 known to or reasonably discoverable by plaintiffs or California Class members.

26           200. Volkswagen also had a duty to disclose the deficiencies of the Affected  
27 Vehicles' safety, quality, functionality, and reliability because it consistently made  
28 affirmative representations about the qualities of its vehicles with respect to

1 emissions standards and fuel efficiency. Volkswagen repeatedly referred to these  
2 Affected Vehicles as clean diesel cars, or cars with clean diesel engines. These  
3 statements and representations were misleading, deceptive, and incomplete without  
4 the disclosure of the additional facts set forth above regarding the use of a defeat  
5 device and the actual emissions of the Affected Vehicles.

6 201. Once Volkswagen made representations to the public about the quality,  
7 reliability, and emissions of its Affected Vehicles, Volkswagen had the duty to  
8 disclose the entire truth and not omit crucial facts. These omitted and concealed  
9 facts were material because they directly impact the value of the Affected Vehicles  
10 purchased or leased by California Plaintiffs and California Class members. Whether  
11 a manufacturer's products comply with federal and state clean air law and emissions  
12 regulations, and whether that manufacturer tells the truth with respect to such  
13 compliance or non-compliance, are material concerns to a consumer.

14 202. Volkswagen actively concealed and/or suppressed these material facts,  
15 in whole or in part, to increase its profits and to induce California Plaintiffs and the  
16 other California Class members to purchase the Affected Vehicles at a higher price  
17 than warranted by the Affected Vehicles' true value.

18 203. Volkswagen actively concealed and/or suppressed these material facts,  
19 in whole or in part, to maintain its reputation in the marketplace as a maker of  
20 vehicles complying with federal and state laws governing clean air and emissions.

21 204. On information and belief, Volkswagen has still not made full and  
22 adequate disclosures, and continues to defraud plaintiffs and California Class  
23 members by concealing material information regarding the emissions qualities of  
24 Affected Vehicles and the use of a defeat device.

25 205. California Plaintiffs and California Class members were unaware of the  
26 omitted material facts referenced herein. If California Plaintiffs and the California  
27 Class members had been made aware of the concealed and/or omitted facts, they  
28 would not have acted as they did. California Plaintiffs and California Class

1 members' actions were justified. Volkswagen was in exclusive control of the  
2 material facts, and such facts were not known to the public, California Plaintiffs, or  
3 California Class members.

4       206. As a result of Volkswagen's actions, California Plaintiffs and California  
5 Class members have sustained damage. The value of vehicles owned by California  
6 Plaintiffs and the California Class members has been diminished due to  
7 Volkswagen's concealment of the true quality and quantity of those vehicles'  
8 emissions. Volkswagen's failure to disclose the use of a defeat device to circumvent  
9 state and federal emissions standards has damaged the brand reputation of  
10 Volkswagen and Audi, causing California Plaintiffs and the California Class  
11 members' vehicles to decrease in value. If California Plaintiffs and the California  
12 Class members had been aware of Volkswagen's emissions scheme and the  
13 Company's deliberate disregard for applicable state and federal emissions laws, they  
14 would have either paid less for their vehicles, or chosen not to purchase or lease the  
15 Affected Vehicles.

16       207. Accordingly, Volkswagen is liable to California Plaintiffs and  
17 California Class members for damages in an amount to be proven at trial.

18       208. Volkswagen's acts were done wantonly, maliciously, oppressively, and  
19 deliberately, with intent to defraud, and in reckless disregard of California Plaintiffs  
20 and California Class members' rights and the representations that Volkswagen made  
21 to them, in order to enrich Volkswagen. Volkswagen's conduct warrants an  
22 assessment of punitive damages in an amount sufficient to deter such conduct in the  
23 future, which amount is to be determined according to proof.

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**PRAYER FOR RELIEF**

WHEREFORE, plaintiffs, individually and on behalf of members of the Nationwide Class and California Class, respectfully request that the Court enter judgment in their favor and against Volkswagen, as follows:

- 1. Certification of the proposed Nationwide Class and California Class, including appointment of plaintiffs’ counsel as Class Counsel;
- 2. An order temporarily and permanently enjoining Volkswagen from continuing the unlawful, deceptive, fraudulent, and unfair business practices alleged in this complaint;
- 3. Costs, restitution, damages, including punitive damages, and disgorgement in an amount to be determined at trial;
- 4. An order requiring Volkswagen to pay both pre- and post-judgment interest on any amounts awarded;
- 5. An award of costs and attorneys’ fees; and
- 6. For such other or further relief as may be appropriate.

Dated: November 12, 2015

KNAPP, PETERSEN & CLARKE

By: /s/ André E. Jardini  
 André E. Jardini  
 K.L. Myles  
 Attorneys for Plaintiffs  
 ANELA KELANI DE BRITZ,  
 VARTKES HARTOONIAN,  
 DEVAN ALO, GINA WILLIS ALO  
 and NICOLE SIMONE, on behalf of  
 themselves and all others similarly  
 situated

**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a trial by jury in this matter.

KNAPP,  
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& CLARKE

1 Dated: November 12, 2015

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By: /s/ André E. Jardini

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André E. Jardini

5

K.L. Myles

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8

VARTKES HARTOONIAN,

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DEVAN ALO, GINA WILLIS ALO

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and NICOLE SIMONE, on behalf of

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