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16 UNITED STATES DISTRICT COURT  
17 CENTRAL DISTRICT OF CALIFORNIA

18 GREGORY GIAUQUE and GREGORY  
19 DEANGELO, individually and on behalf  
20 of all others similarly situated,

21 Plaintiffs,

22 v.

23 VOLKSWAGEN GROUP OF  
24 AMERICA, INC., a New Jersey  
25 Corporation

26 Defendants.

Case No.

CLASS ACTION COMPLAINT

**JURY TRIAL DEMANDED**

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**TABLE OF CONTENTS**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
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27  
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**I. FACTUAL ALLEGATIONS** ..... 1

**A. Regulatory Framework** ..... 1

**B. Discovery of the Volkswagen’s “Defeat Device” by the EPA and California Air and Resources Board (“CARB”)** ..... 2

**C. Description of Volkswagen’s Defeat Device and Affected Vehicles** ..... 6

**D. Volkswagen Purposefully Installed the Defeat Device to Evade Applicable Emission Standards in the United States** ..... 7

**E. Volkswagen Charged a Premium for the Affected Vehicles, Which it Marketed and Advertised as Clean, Fuel Efficient, and Powerful** ..... 9

**F. The Defeat Device and Other Defects Diminish the Value of the Affected Vehicles** ..... 11

**II. JURISDICTION AND VENUE** ..... 12

**III. PARTIES** ..... 13

**A. Plaintiffs** ..... 13

**B. Defendant** ..... 14

**IV. CLASS ALLEGATIONS** ..... 15

**V. VIOLATIONS ALLEGED** ..... 18

**A. Violations Alleged on Behalf of the Nationwide Class** ..... 18

        COUNT I: Violation of the Magnuson-Moss Warranty Act ..... 18

        COUNT II: Fraud by Concealment ..... 20

        COUNT III: Breach of Contract ..... 22

**B. Violations Alleged on Behalf of the California Subclass** ..... 23

        COUNT IV: Violation of the California Unfair Competition Law ..... 23

        COUNT V: Violation of the California Consumer Legal Remedies Act ..... 25

        COUNT VI: Violation of the California False Advertising Law ..... 27

        COUNT VII: Fraud by Concealment (Pursuant to California Law) ..... 29

        COUNT VIII: Breach of Contract (Pursuant to California Law) ..... 32

1  
2  
3  
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**C. Violations Alleged on Behalf of the Texas Subclass**.....33

    COUNT IX: Violations of the Deceptive Trade Practices Act .....33

    COUNT X: Fraud by Concealment (Pursuant to Texas Law) .....33

    COUNT XI:Breach of Contract (Purusant to Texas Law) .....36

**VI. TOLLING OF THE STATUTES OF LIMITATIONS** .....37

    A. Tolling Pursuant to the Discovery Rule .....37

    B. Tolling Pursuant to Defendant’s Fraudulent Concealment.....38

    C. Defendant is Estopped from Relying on any Statutes of Limitation .....38

**REQUEST FOR RELIEF**.....39

**DEMAND FOR JURY TRIAL** .....40

1 Plaintiffs GREGORY GIAQUE and GREGORY DEANGELO, individually  
2 and on behalf of all others similarly situated, allege the following:

3 **I. FACTUAL ALLEGATIONS**

4 **A. Regulatory Framework**

5 1. The United States Government has numerous laws designed to protect  
6 United States citizens from pollution, including regulations passed by the  
7 Environmental Protection Agency (“EPA”). The Clean Air Act, 42 U.S.C. § 7401 *et*  
8 *seq.*, has strict emissions standards for all vehicles introduced into the United States  
9 for commerce. All automobile manufacturers must abide by these laws and must  
10 adhere to EPA rules and regulations.

11 2. Under the Clean Air Act, the EPA administers a certification program to  
12 ensure that every vehicle introduced into the United States for commerce satisfies the  
13 applicable admission standards. These include admissions standards for the pollutant  
14 nitrogen oxide. Vehicle manufacturers must submit an application for a certificate or  
15 conformity to the EPA for each group of vehicles it intends to enter into United  
16 States commerce. *See* 40 C.F.R. § 86.1843-01. The EPA issues a certificate of  
17 conformity to all vehicles approved for introduction into United States commerce.

18 3. An application for a certificate of conformity must include a list of all  
19 auxiliary emissions control devices installed on vehicles. A “defeat device,” as  
20 defined by the EPA, is an auxiliary emission control device “that reduces the  
21 effectiveness of the emission control system under conditions which may reasonably  
22 be expected to be encountered in normal vehicle operation and use,” unless a specific  
23 exception applies. *See* 40 C.F.R. § 86.1803-01. Motor vehicles equipped with defeat  
24 devices, (such as the vehicles at issue here, as alleged herein), which reduce the  
25 effectiveness of the emission control system during normal driving conditions,  
26 cannot be issued a certificate of conformity, and therefore may not be introduced into  
27 the United States for commerce.

28

1           **B. Discovery of the Volkswagen’s “Defeat Device” by the EPA and**  
2           **California Air and Resources Board (“CARB”)**

3           4. In May 2014, West Virginia University’s Center for Alternative Fuel,  
4 Engines & Emissions (“CAFEE”) published the results of a study commissioned by  
5 the International Council for Clean Transportation (“ICCT”). CAFEE and ICCT  
6 tested the emission levels of certain diesel vehicles while driving in “major United  
7 States population centers in the state of California,” including Los Angeles, San  
8 Diego and San Francisco,<sup>1</sup> and found that the levels of nitrogen oxide emissions by  
9 two of Volkswagen’s diesel models, the 2012 Volkswagen Jetta, and the 2013  
10 Volkswagen Passat, were significantly higher than permitted by federal regulation.<sup>2</sup>  
11 The study was presented in San Diego, CA.<sup>3</sup>

12           5. Below are image from the CAFEE report showing the routes used by  
13 CAFEE and ICCT to test emission levels<sup>4</sup>:

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20 <sup>1</sup> See Gregory J. Thompson, *In-Use Emission Testing of Light-Duty Diesel Vehicles*  
21 *in the United States*, CENTER FOR ALTERNATIVE FUELS ENGINES & EMISSIONS,  
22 WEST VIRGINIA UNIVERSITY (May, 15, 2014) at 1, 11.

23 <sup>2</sup> See Ltr. From Phillip A. Brooks, Environmental Protection Agency, to David  
24 Geanacopouluos and Stuart Johnson, Volkswagen Group of America, Inc. (Sept. 18,  
25 2015) at 4 (*available at* <http://www3.epa.gov/otaq/cert/documents/vw-nov-cao-09-18-15.pdf>).

26 <sup>3</sup> “How Two Dogged Clear Air Sleuths Exposed Massive VW Deceit,”  
27 ENVIRONMENTAL WORKING GROUP (*available at*  
<http://www.ewg.org/enviroblog/2015/09/how-two-dogged-clear-air-sleuths-exposed-massive-vw-deceit>.)

28 <sup>4</sup> See Thompson, *supra*, at 14, 16-17.

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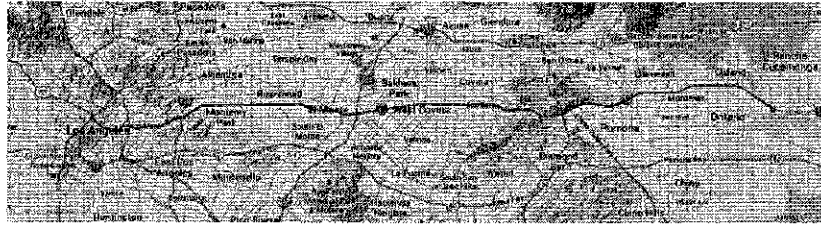


Figure 3.1: Topographic map of Route 1, highway driving between Ontario and downtown L.A.

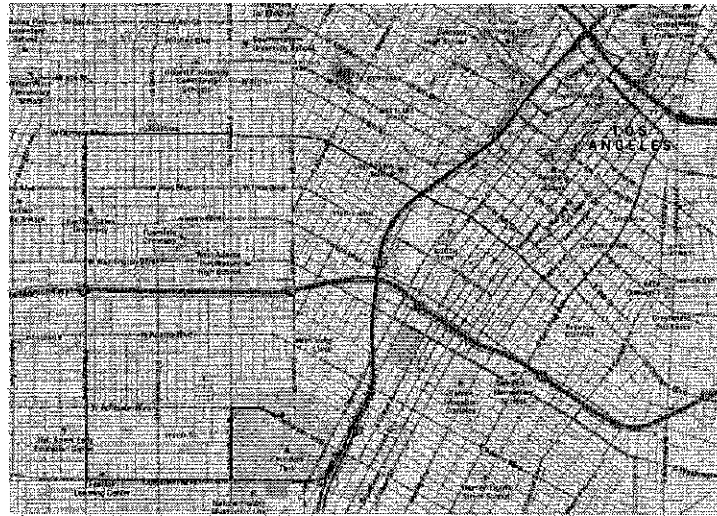


Figure 3.2: Topographic map of Route 2, urban driving downtown Los Angeles

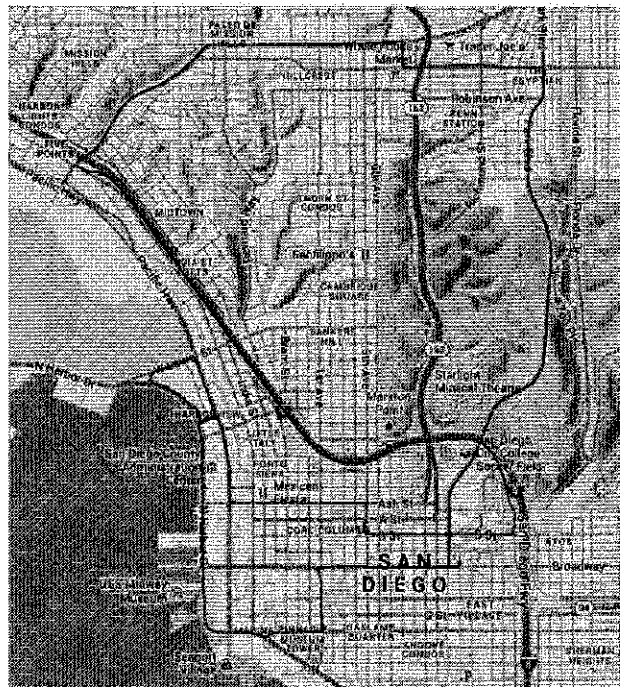


Figure 3.4: Topographic map of Route 4, urban driving downtown San Diego

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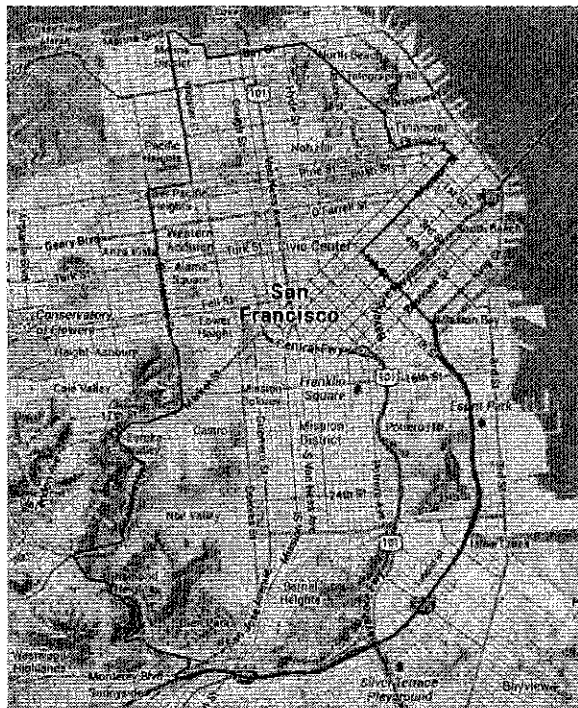


Figure 3.5: Topographic map of Route 5, urban driving downtown San Francisco

6. Below is a table from the CAFE report showing that the emission levels of nitrogen oxide measured by and ICCT were well above the standard permitted by the EPA:

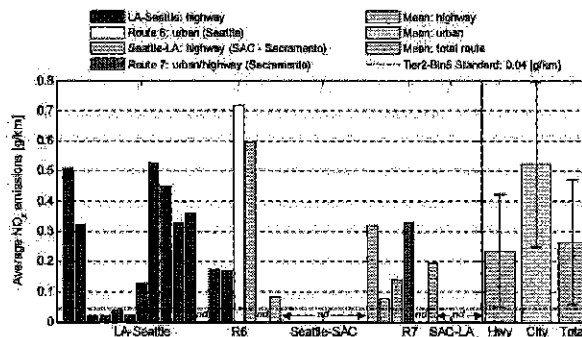


Figure 4.17: Average NO<sub>x</sub> emissions of test vehicle over cross-multi-state driving route portions compared to US-EPA Tier2-Bin5 emissions standard; repeat test variations are presented as ±1σ, 'R' designates segments including a DPF regeneration event, 'nd' - no data available

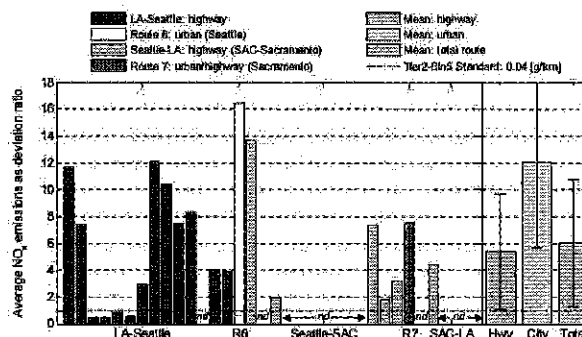


Figure 4.18: Average NO<sub>x</sub> emissions of test vehicle over cross-multi-state driving route portions expressed as deviation ratio; repeat test variations are presented as ±1σ, 'R' designates segments including a DPF regeneration event, 'nd' - no data available

1           7.     CAFEE and ICCT notified both the EPA and CARB of its results,  
2 which prompted CARB to initiate discussions with Defendant Volkswagen Group of  
3 America (“Volkswagen”), and conduct an investigation into the reasons behind the  
4 elevated nitrogen oxide emissions.<sup>5</sup>

5           8.     Over the course of the year, Volkswagen asserted to CARB and the  
6 EPA that the increased emissions were attributed to various technical issues and  
7 unexpected in-use conditions. Volkswagen issued a recall in December 2014 to  
8 address the issue.<sup>6</sup>

9           9.     On May 6, 2015, CARB, in coordination with the EPA, commenced  
10 confirmatory testing to determine the efficacy of the recall. Testing performed in  
11 both laboratory settings and during normal vehicle operation revealed that the recall  
12 showed only a limited benefit. Among other findings, CARB’s testing of the diesel  
13 vehicles “resulted in the vehicle failing the NOx [nitrogen oxide] standard,” showed  
14 that nitrogen-oxide emissions were “significantly higher than expected,” and  
15 “resulted in uncontrolled NOx emissions.”<sup>7</sup>

16           10.    None of the potential technical issues suggested by VW explained the  
17 consistently higher test results recorded during CARB’s testing.<sup>8</sup> Ultimately,  
18 Volkswagen admitted to CARB and the EPA that its vehicles “were designed and  
19 manufactured with a *defeat device* to bypass, defeat, or render inoperative elements  
20 of the vehicles’ control system.”<sup>9</sup>

21 //

22 //

23 <sup>5</sup> See Ltr. from Annette Hebert, California Environmental Protection Agency, to  
24 David Geanacopoulos and Stuart Johnson, Volkswagen Group of America (Sept. 18,  
25 2015) at 1-2 (*available at*  
*[http://www.arb.ca.gov/newsrel/in\\_use\\_compliance\\_letter.htm](http://www.arb.ca.gov/newsrel/in_use_compliance_letter.htm)*.)

26 <sup>6</sup> See Ltr. From Phillip A. Brooks, *supra*, at 4.

27 <sup>7</sup> See Ltr. from Anette Heber, *supra*, at 2.

28 <sup>8</sup> See Ltr. from Phillip A. Brooks, *supra*, at 4.

<sup>9</sup> See Ltr. from Anette Heber, *supra*, at 3.



1           **C. Description of Volkswagen’s Defeat Device and Affected Vehicles**

2           11. The “defeat device” that Volkswagen admittedly installed on certain of  
3 its diesel-model vehicles contains a sophisticated software algorithm that detects  
4 when the vehicle is undergoing official emissions testing. The software senses  
5 whether the vehicle is being tested based on various inputs including the position of  
6 the steering wheel, vehicle speed, duration of the engine’s operation, and barometric  
7 pressure. These inputs precisely track the parameters of the federal test procedure  
8 used by the EPA during emission testing for certification purposes.<sup>10</sup>

9           12. The software turns full emissions controls on only during official  
10 testing. During testing, the software produces emission results that comply with  
11 federal standards.<sup>11</sup>

12           13. At all other times that the vehicle is running, the effectiveness of the  
13 vehicles’ pollution-emissions-control devices is reduced. Therefore, the vehicles  
14 meet emissions standards in the laboratory or state testing station, but emit nitrogen  
15 oxides between 10 to 40 times the standard allowed under United States laws and  
16 regulations (depending on the type of drive cycle) at all other times, including  
17 normal operation on public roads.<sup>12</sup>

18           14. Nitrogen oxide contributes to nitrogen dioxide, ground-level ozone, and  
19 fine particulate matter. These pollutants have been linked to serious health risks,  
20 such as severe respiratory illness. Ozone and particulate matter exposure have been  
21 associated with respiratory-related or cardiovascular-related effects.<sup>13</sup>

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23 <sup>10</sup> See Ltr. from Phillip A. Brooks, *supra*, at 3-4.

24 <sup>11</sup> See *id.*

25 <sup>12</sup> See Release, EPA, *California Notify Volkswagen of Clean Air Act Violation*,  
26 United States Environmental Protection Agency (available at  
27 <http://yosemite.epa.gov/opa/admpress.nsf/21b8983ffa5d0e4685257dd4006b85e2/dfc8e33b5ab162b985257ec40057813b!OpenDocument>); Ltr. from Phillip A. Brooks,  
*supra*, at 4.

28 <sup>13</sup> See EPA, *California Notify Volkswagen of Clean Air Act Violation*, *supra*.

1           15. According to the EPA’s September 18, 2015 Press Release,  
2 Volkswagen installed its Defeat Device in at least the following diesel models of its  
3 vehicles (hereinafter, “Affected Vehicles”):

- 4           - 2009 – 2015 Volkswagen Jetta;
- 5           - 2009 – 2014 Volkswagen Jetta Sportwagen;
- 6           - 2012 – 2015 Volkswagen Beetle;
- 7           - 2012 – 2015 Volkswagen Beetle Convertible;
- 8           - 2010 – 2015 Audi A3;
- 9           - 2010 – 2015 Volkswagen Golf;
- 10          - 2015 Volkswagen Golf Sportwagen;
- 11          - 2012 – 2015 Volkswagen Passat.<sup>14</sup>

12           16. According to Volkswagen itself, the Defeat Device that allows  
13 Volkswagen to cheat official emissions tests has been sold in approximately 11  
14 million cars around the world.<sup>15</sup> However, Plaintiffs allege on information and  
15 believe that this number may actually be higher.

16           **D. Volkswagen Purposefully Installed the Defeat Device to Evade**  
17           **Applicable Emission Standards in the United States**

18           17. The software and related components used by Volkswagen to bypass,  
19 defeat, or render inoperative elements of the vehicles’ control system is a defeat  
20 device under the EPA (hereinafter referred to as the “Defeat Device”).

21           18. Volkswagen knew that the Defeat Device bypassed, defeated, or  
22 rendered inoperative elements of the vehicle to evade emission standards. This is  
23 apparent given that the Defeat Device tracked the parameters of the federal test  
24 procedure and caused the emission control system to operate at its highest levels

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25           <sup>14</sup> *Id.*

26           <sup>15</sup> See Bill Chappell, “11 Million Cars Worldwide Have Emissions ‘Defeat Device,’  
27 Volkswagen Says,” (*available at* [http://www.npr.org/sections/thetwo-  
28 way/2015/09/22/442457697/11-million-cars-worldwide-have-emissions-problem-  
volkswagen-says](http://www.npr.org/sections/thetwo-way/2015/09/22/442457697/11-million-cars-worldwide-have-emissions-problem-volkswagen-says)).

1 under such conditions, but at lower levels when the vehicle was not undergoing  
2 official testing.

3 19. Volkswagen purposefully and intentionally installed this Defeat Device  
4 to evade clean air standards, including standards imposed by the Clean Air Act, in  
5 the Affected Vehicles. Volkswagen did not identify the Defeat Device to the EPA,  
6 CARB, or other regulatory agencies in the United States.

7 20. On September 22, 2015, Volkswagen AG (the parent company of  
8 Volkswagen Group of America, Inc.) issued a statement, admitting that it used a  
9 defeat device in the Affected Vehicles, therefore violating the emission standards of  
10 the EPA: "Volkswagen is working at full speed to clarify irregularities concerning a  
11 particular software used in diesel engines. A noticeable deviation between bench test  
12 results and actual road use was established solely for this type of engine."<sup>16</sup>

13 21. Volkswagen AG CEO Dr. Martin Winterkorn stated: "I personally am  
14 deeply sorry that we have broken the trust of our customers and the public. We at  
15 Volkswagen will do everything that must be done in order to re-establish the trust  
16 that so many people have placed in us, and we will do everything necessary in order  
17 to reverse the damage this has caused."<sup>17</sup>

18 22. On September 23, 2015, Martin Winterkorn resigned from the company.  
19 Mr. Winterkorn said he was stunned by the scale of the misconduct.<sup>18</sup>

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21  
22 <sup>16</sup> See Statement, VOLKSWAGEN AG, Sept. 22, 2015 (*available at*  
23 [http://www.volkswagenag.com/content/vwcorp/info\\_center/en/news/2015/09/Ad\\_hoc\\_US.bin.html/downloadfilelist/downloadfile/downloadfile/file/Ad-](http://www.volkswagenag.com/content/vwcorp/info_center/en/news/2015/09/Ad_hoc_US.bin.html/downloadfilelist/downloadfile/downloadfile/file/Ad-hoc+Release.pdf)  
24 [hoc+Release.pdf](http://www.volkswagenag.com/content/vwcorp/info_center/en/news/2015/09/Ad_hoc_US.bin.html/downloadfilelist/downloadfile/downloadfile/file/Ad-hoc+Release.pdf)).

25 <sup>17</sup> See Statement of Prof. Dr. Martin Winterkorn, CEO of Volkswagen AG, Sept.  
26 20, 2015 (*availbale at* <http://media.vw.com/release/1066/>).

27 <sup>18</sup> See "Volkswagen CEO Resigns, Saying He's 'Shocked' By Emissions Scandal,"  
28 NPR, Sept. 23, 2015 (*available at* <http://www.npr.org/sections/thetwo-way/2015/09/23/442818919/volkswagen-ceo-resigns-saying-he-s-shocked-at-emissions-scandal>).

1           23. On September 21, 2015, Michael Horn, President and CEO of  
2 Defendant Volkswagen of America, stated at the launch of Volkswagen's new Passat  
3 "[L]et's be clear about this: our company was dishonest with the EPA and the  
4 California Air Resources Board, and with all of you. In my German words, *we've*  
5 *totally screwed up*. We must fix those cars, and prevent this from ever happening  
6 again, and we have to make things right." Mr. Horn continued "You can be sure that  
7 we will continue not only to correct this TDI [Defeat Device] issue, and to straighten  
8 things out, and to pay what we have to pay."<sup>19</sup>

9           24. Volkswagen violated the laws of the United States and the rules and  
10 regulations of the EPA by purposefully selling in the United States vehicles that  
11 contain this Defeat Device.

12           **E. Volkswagen Charged a Premium for the Affected Vehicles, Which**  
13           **it Marketed and Advertised as Clean, Fuel Efficient, and Powerful**

14           25. Volkswagen expressly marketed and advertised the Affected Vehicles  
15 as "Clean Diesel" models. Cars with diesel engines are specifically marketed for  
16 their fuel economy and low carbon emissions as compared to standard gasoline  
17 engines. In order to sell their cars, Volkswagen stated that the Affected Vehicles  
18 were clean, EPA certified in all 50 states, and powerful.

19           26. Not only did Volkswagen market that the Affected Vehicles as clean,  
20 but it marketed them as cleaner than other cars containing diesel engines. Below are  
21 images from Volkswagen's webpage promoting the environmental friendliness of the  
22 Affected Vehicles as compared to other diesel-engine cars:



27 <sup>19</sup> See "Volkswagen's US Boss: We Totally Screwed Up," CNBC, Sept. 22, 2015  
28 (available at <http://www.cnbc.com/2015/09/21/volkswagen-us-ceo-screwed-up-on-eca-emissions-diesel-test-rigging.html>).

## This ain't your daddy's diesel.

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

- Engineered to burn low-sulfur diesel fuel
- "Common Rail" direct injection system

27. By marketing its diesel vehicles as clean, fuel efficient, and powerful, Volkswagen has charged a substantial premium for the Affected Vehicles. For example, as of September 22, 2015, according to Volkswagen's United States website, the base level Jetta (Volkswagen's compact sedan) starts at an MSRP of \$18,780 for the base. However, the Jetta TDI Clean Diesel model has a starting MSRP of \$21,640 (a \$2,860 increase).<sup>20</sup> The Volkswagen Passat (Volkswagen's mid-size sedan) has a starting MSRP of \$21,340, but the Passat TDI Clean Diesel model has a starting MSRP of \$27,095. (a \$5,755 increase).<sup>21</sup> The premiums occur across all vehicles in which Volkswagen installed a "defeat device," including the 2015 Volkswagen Jetta, 2015 Volkswagen Beetle,<sup>22</sup> 2015 Volkswagen Golf,<sup>23</sup> 2015 Golf SportWagen,<sup>24</sup> 2015 Volkswagen Passat, and 2015 Audi A3<sup>25</sup>. As of September 23, 2015, Volkswagen's website no longer listed the prices for the Affected Vehicles.

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<sup>20</sup> See <http://www.vw.com/models/jetta/> (last accessed Sept. 22, 2015).

<sup>21</sup> See <http://www.vw.com/models/passat/> (last accessed Sept. 22, 2015).

<sup>22</sup> See <http://www.vw.com/models/beetle/> (last accessed Sept. 22, 2015).

<sup>23</sup> See <http://www.vw.com/models/golf/> (last accessed Sept. 22, 2015).

<sup>24</sup> See <http://www.vw.com/models/golf-sportwagen/> (last accessed Sept. 22, 2015).

<sup>25</sup> See <http://www.audiusa.com/models/audi-a3-sedan/configurator> (last accessed Sept. 22, 2015).

1           **F. The Defeat Device and Other Defects Diminish the Value of the**  
2           **Affected Vehicles**

3           28. Volkswagen has already been ordered by the EPA to recall the Affected  
4 Vehicles and modify them so that they comply with EPA emissions requirements.  
5 However, Volkswagen will not be able to make the Affected Vehicles comply with  
6 emissions standards without substantially inhibiting their performance  
7 characteristics, including their torque and acceleration. According to Drew Kodjak,  
8 executive director of the International Council on Clean Transportation, “[w]hen the  
9 pollution controls are functioning on these vehicles, there’s a trade-off between  
10 performance and emissions.”<sup>26</sup>

11           29. Even if Volkswagen is able to modify Plaintiffs and proposed class  
12 members’ Affected Vehicles so that they comply with EPA emissions standards,  
13 Class members will nonetheless suffer actual harm and damages because their  
14 vehicles will no longer perform as they did when purchased the vehicles and as  
15 advertised. This will necessarily result in a diminution in value of every Affected  
16 Vehicle. It will also require owners of Affected Vehicles to pay more for fuel while  
17 using their affected vehicles.

18           30. As a result of Volkswagen’s unfair, deceptive, and fraudulent business  
19 practices, and its intentional failure to disclose that under normal operating  
20 conditions, the Affected Vehicles emit up to 40 times the emissions levels permitted  
21 by the EPA, owners and lessees of the Affected Vehicles have suffered losses in  
22 money and property. Had Plaintiffs and proposed class members known of the  
23 “defeat device” at the time they purchased or leased their Affected Vehicles, they  
24 would not have purchased or leased those vehicles, or would have paid substantially  
25

---

26 <sup>26</sup> See Coral Davenport and Jack Ewing, “VW Is Said to Cheat on Diesel Emission;  
27 U.S. to Order Big Recall,” Sept. 18, 2015 (*available at*  
28 [http://www.nytimes.com/2015/09/19/business/volkswagen-is-ordered-to-recall-nearly-500000-vehicles-over-emissions-software.html?\\_r=0](http://www.nytimes.com/2015/09/19/business/volkswagen-is-ordered-to-recall-nearly-500000-vehicles-over-emissions-software.html?_r=0)).

1 less for the vehicles than they did. Moreover, if and when Volkswagen recalls the  
2 Affected Vehicles and modifies the vehicles to comply with emission standards,  
3 Plaintiffs and proposed class members will be required to spend additional money on  
4 fuel, and will not obtain the performance characteristics of their vehicles as  
5 advertised. Likewise, the Affected Vehicles will be worth less in the marketplace  
6 because of their decrease in performance and efficiency.

7 31. Plaintiffs bring this action individually and on behalf of all other current  
8 and former owners or lessees of Affected Vehicles, as alleged in the Class  
9 Allegations, *infra* section IV. Plaintiffs seek damages, injunctive relief, and equitable  
10 relief as a result of Volkswagen's conduct related to the Defeat Device, and other  
11 defects, including but not limited to defects related to emission levels in the Affected  
12 Vehicles, as alleged in this Complaint.

## 13 **II. JURISDICTION AND VENUE**

14 32. This Court has subject-matter jurisdiction pursuant to the Class Action  
15 Fairness Act, 28 U.S.C. § 1332(d), because the proposed Class consists of 100 or  
16 more members; the amount in controversy exceeds \$5,000,000, exclusive of costs  
17 and interest; and there is minimal diversity between plaintiffs and defendants. This  
18 Court also has supplemental jurisdiction over the state law claims pursuant to 28  
19 U.S.C. § 1367.

20 33. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because a  
21 substantial part of the events, acts, and omissions giving rise to Plaintiffs' claims  
22 were occurred in this district. Plaintiff GREGORY GIAQUE resides in this district  
23 and purchased his Affected Vehicle in this District. Volkswagen has marketed,  
24 advertised, sold, and leased the Affected Vehicles within this District.

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1 **III. PARTIES**

2 **A. Plaintiffs**

3 34. Plaintiff GREGORY GIAQUE is a California resident. He resides in  
4 Los Osos, San Luis Obispo County, CA.

5 35. Plaintiff GIAQUE purchased a 2015 Passat TDI SE 2.0 from Perry  
6 Volkswagen San Luis Obispo in San Luis Obispo, CA. Plaintiff GIAQUE still own  
7 the vehicle.

8 36. Plaintiff GIAQUE bought the diesel version of the Volkswagen Passat  
9 specifically for the lower emissions, performance, and stellar fuel economy  
10 advertised and marketed by Defendant Volkswagen. Unbeknownst to Plaintiff  
11 GIAQUE at the time of purchase, the vehicle contains the aforementioned Defeat  
12 Device.

13 37. Volkswagen's use of the Defeat Device has caused Plaintiff GIAQUE  
14 out-of-pocket loss, future attempted repairs, and diminished value of his vehicle.  
15 Volkswagen knew about and purposefully used the Defeat Device, but did not  
16 disclose the Defeat Device to Plaintiff. Plaintiff purchased his vehicle on the  
17 reasonable, but mistaken belief that his vehicle complied with United States federal  
18 laws, emissions standards, was properly certified by the EPA, and would retain all of  
19 its operating characteristics, including its performance and fuel economy, throughout  
20 its lifetime.

21 38. Plaintiff GREGORY DEANGELO is a Pennsylvania resident. He  
22 resides in Pittsburgh, Allegheny County, PA.

23 39. Plaintiff DEANGELO purchased a 2015 Turbo Diesel Passat 2.0 from  
24 Gene Messer Volkswagen, located in Lubbock, TX, in June 2015. Plaintiff  
25 DEANGELO still owns the vehicle.

26 40. Plaintiff DEANGELO specifically purchased the diesel version of the  
27 Passat based on its fuel economy and low environmental impact advertised and  
28



1 marketed by Defendant Volkswagen. Unbeknownst to Plaintiff DEANGELO at the  
2 time of purchase, the vehicle contains the aforementioned Defeat Device.

3 41. Volkswagen's use of the Defeat Device has caused Plaintiff  
4 DEANGELO out-of-pocket loss, future attempted repairs, and diminished value of  
5 his vehicle. Volkswagen knew about and purposefully used the Defeat Device, but  
6 did not disclose the Defeat Device to Plaintiff. Plaintiff purchased his vehicle on the  
7 reasonable, but mistaken belief that his vehicle complied with United States federal  
8 laws, emissions standards, was properly certified by the EPA, and would retain all of  
9 its operating characteristics, including its performance and fuel economy, throughout  
10 its lifetime.

11 **B. Defendant**

12 42. Defendant Volkswagen Group of America, Inc. ("Volkswagen") is a  
13 New Jersey corporation with its headquarters and principal place of business in  
14 Herndon, Virginia.

15 43. Defendant Volkswagen Group of America, Inc. operates an emission  
16 compliance lab and test center located at 201 Del Norte Blvd, Oxnard, CA. *The*  
17 *center is utilized as the only Volkswagen emission testing facility in the United*  
18 *States.*<sup>27</sup> According to Defendant Volkswagen Group of America's 2013 Corporate  
19 Social Responsibility Report: "As the largest technical center of its kind for the  
20 Volkswagen Group outside of Germany, the TCC plays a pivotal role in the product  
21 development food chain, acting as the final stop for many products before they are  
22 approved for production. Work at the TCC is focused on powertrain product  
23 development, governmental compliance and field quality testing."<sup>28</sup>

24 \_\_\_\_\_  
25 <sup>27</sup> See Volkswagen Group of America—Emission Compliance Lab & Test Center,  
26 OLTMANS CONSTRUCTION CO. (available at  
27 [http://www.oltmans.com/projects/emission-compliance-lab-test-center-volkswagen-](http://www.oltmans.com/projects/emission-compliance-lab-test-center-volkswagen-group-of-america)  
28 [group-of-america](http://www.oltmans.com/projects/emission-compliance-lab-test-center-volkswagen-group-of-america)).

<sup>28</sup> See At Home in America: 2013 Corporate Social Responsibility Report,  
VOLKSWAGEN GROUP OF AMERICA at 10 (available at

1 **IV. CLASS ALLEGATIONS**

2 44. Plaintiffs brings this action on behalf of themselves and the following  
3 class and subclasses (collectively, the “Class”) pursuant to Rules 23(a), (b)(2), and  
4 (b)(3) of the Federal Rules of Civil Procedure (collectively, the “Classes”):

5 **The Nationwide Class**

6 *All persons or entities who purchased or leased an affected vehicle in*  
7 *the United States, including both former and current owners and*  
8 *lessees.*

9 **The California Subclass**

10 *All persons or entities who purchased or leased an affected vehicle in*  
11 *California, including both former and current owners and lessees.*

12 **The Texas Subclass**

13 *All persons or entities who purchased or leased an affected vehicle in*  
14 *Texas, including both former and current owners and lessees.*

15 45. Excluded from the Class are Defendant Volkswagen and any of its  
16 parents, subsidiaries and affiliates; any entity in which Volkswagen has a controlling  
17 interest; any officer, director, or employee of Volkswagen; any successor or assign  
18 of Volkswagen; governmental entities; the judge to whom this case is assigned and  
19 his or her immediate family; and all persons who make a timely election to be  
20 excluded from the Class.

21 46. Plaintiffs reserve the right to revise the definitions of the Class or  
22 Subclasses based upon information learned through discovery.

23 47. **Numerosity.** Pursuant to Federal Rule of Civil Procedure 23(a)(1), the  
24 members of the Class are so numerous and geographically dispersed that individual  
25 joinder of all Class members is impracticable. The precise number of Class members  
26 is unknown to Plaintiffs; however, Plaintiffs are informed and believes that there are

27 

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[http://www.volkswagengroupamerica.com/documents/VWGOA\\_CSR\\_Report\\_FIN](http://www.volkswagengroupamerica.com/documents/VWGOA_CSR_Report_FIN)  
28 [AL\\_2013.pdf](http://www.volkswagengroupamerica.com/documents/VWGOA_CSR_Report_FIN)).

1 not less than hundreds of thousands of members of the Class. Volkswagen has  
2 already recalled 482,000 cars in connection with the Defeat Device. The precise  
3 number and identity of Class members is ascertainable from Volkswagen's books  
4 and records. Class members may be notified of the pendency of this action by  
5 recognized, Court-approved notice dissemination methods, which may include U.S.  
6 mail, electronic mail, Internet postings, and/or published notice.

7 48. ***Commonality and Predominance.*** Pursuant to Federal Rule of Civil  
8 Procedure 23(a)(2) and 23(b)(3), this action involves common questions of law and  
9 fact, which predominate over any individual questions with respect to class  
10 members, including, without limitation:

- 11 a) Whether Volkswagen engaged in the conduct alleged herein;
- 12 b) Whether the Affected Vehicles failed to comply with the applicable  
13 federal and state emissions regulations, including but not limited to  
14 regulations promulgated by the EPA;
- 15 c) The length and extent to which Volkswagen knew of and concealed the  
16 Defeat Device;
- 17 d) Whether Volkswagen designed, advertised, marketed, distributed,  
18 leased, sold, or otherwise placed the Affected Vehicles into the stream  
19 of commerce in the United States, California, and Texas;
- 20 e) Whether Volkswagen's advertising and marketing of the Affected  
21 Vehicles was likely to deceive or mislead consumers;
- 22 f) Whether the existence of the Defeat Device in the Affected Vehicles  
23 would be considered material to a reasonable consumer;
- 24 g) Whether Volkswagen's conduct violates the consumer-protection  
25 statutes, warranty laws, and other laws as asserted herein;
- 26 h) Whether and to what extent Plaintiffs and class Members overpaid for  
27 their Affected Vehicles;
- 28

- 1 i) Whether and to what extent the Affected Vehicles can be modified to comply  
2 with EPA and other regulatory standards without substantially degrading the  
3 performance, fuel efficiency, and other characteristics of the Affected  
4 Vehicles;
- 5 j) Whether and to what extent Plaintiffs and class members are entitled to  
6 equitable relief, including, but not limited to restitution or injunctive relief;
- 7 k) Whether and to what extent Plaintiffs and other class members are entitled to  
8 damages and other monetary relief.

9 49. **Typicality.** Pursuant to Federal Rule of Civil Procedure 23(a)(3),  
10 Plaintiffs' claims are typical of the claims of the Class because, among other things,  
11 all Class Members purchased or leased Affected Vehicles, and as a result were  
12 comparably injured through Volkswagen's wrongful conduct as described above.

13 50. **Adequacy.** Pursuant to Federal Rule of Civil Procedure 23(a)(4),  
14 Plaintiffs are adequate Class representative because their interests do not conflict  
15 with the interests of the other purported Class members. Likewise, Plaintiffs'  
16 counsel is competent and experienced in prosecuting complex class actions. The  
17 Class's interests will be fairly and adequately protected by Plaintiffs and their  
18 counsel.

19 51. **Superiority.** Pursuant to Rule 23(b)(3) a class action is the best available  
20 method to adjudicate this controversy. This action involves the aforementioned  
21 questions common to the Class. Moreover, prosecution of the action by plaintiffs  
22 will require expert testimony and targeted discovery on complex issues, and could  
23 not practically be taken on by individual litigants. Likewise Plaintiffs and other Class  
24 member's damages are relatively small compared to the burden and expense that  
25 would be required to individually litigate claims. In addition, individual litigation of  
26 Class members' claims would be impracticable and unduly burdensome to the court  
27 system and has the potential to lead to inconsistent results and delay of the majority  
28

1 of litigant's claims. A class action provides the benefits of single adjudication,  
2 economy of scale, and comprehensive supervision by a single court, presents the  
3 fewest management problems.

4 **V. VIOLATIONS ALLEGED**

5 **A. Violations Alleged on Behalf of the Nationwide Class**

6 **COUNT I**

7 **Violation of the Magnuson-Moss Warranty Act**

8 **15 U.S.C. §§ 2301 *et seq.***

9 (On Behalf of the Nationwide Class)

10 52. Plaintiffs incorporate by reference each preceding and succeeding  
11 paragraph as though fully set forth herein.

12 53. Plaintiffs bring this claim on behalf of themselves and the Nationwide  
13 Class, as defined above, against Defendant.

14 54. The Affected Vehicles are "consumer products" under 15 U.S.C. §  
15 2301(1).

16 55. Plaintiff and the members of the putative class are "consumers" under  
17 15 U.S.C. § 2301(3).

18 56. Defendant are "suppliers" and "warrantors" within the meaning of 15  
19 U.S.C. § 2301(4)-(5).

20 57. Defendant provided purchasers and lessees of Affected Vehicles  
21 multiple written warranties as defined by 15 U.S.C. § 2301(6).

22 58. ***Manufacturer's Warranty.*** Defendant provided Plaintiffs and each  
23 member of the proposed class who purchased a new Affected Vehicle with a  
24 Manufacturer's Warranty, which provides "bumper-to-bumper" limited express  
25 warranty coverage for a minimum of 3 years or 36,000 miles, whichever comes first.  
26 This warranty covers emissions related repairs. This warranty is directly applicable  
27 to the Affected Vehicles.  
28

1           59. As required by law, Defendant also provided a Federal Emissions  
2 Warranty to members of the proposed class, and a California Emissions Warranty to  
3 members of the California Subclass. Vehicles certified to meet California emissions  
4 standards and registered in states which have adopted those standards are also  
5 entitled to coverage under the California Emissions Warranty.

6           60. ***Federal Emissions Warranty.*** Consistent with federal law, Defendant  
7 provided Plaintiff and the proposed class with a “performance warranty” and a  
8 “design and defect warranty.” In the event that a vehicle fails an emissions test, these  
9 warranties cover all emissions related parts for 2 years or 24,000 miles (whichever  
10 comes first), with the catalytic converter, engine control unit, and onboard diagnostic  
11 device covered for 8 years or 80,000 miles (whichever comes first). These warranties  
12 are directly applicable to the Affected Vehicles.

13           61. ***California Emissions Warranty.*** California law requires additional  
14 warranty coverage beyond that required by federal law. Under California law, all  
15 emissions related performance and parts are covered for 3 years or 50,000 miles  
16 (whichever comes first), and a vehicle-specific list of more expensive emissions  
17 related parts is covered for 7 years or 70,000 miles (whichever comes first). In  
18 addition, the 8 year or 80,000 mile coverage for the catalytic converter, engine  
19 control unit, and onboard diagnostic device required by Federal law also applies. 13  
20 Cal. Code. Regs. § 2038; see CAL. HEALTH & SAFETY CODE § 43205. The California  
21 Emissions Warranty provisions described here are directly applicable to the Affected  
22 Vehicles.

23           62. Defendant breached the Manufacturer’s, Federal Emissions, and  
24 California Emissions Warranties by selling the Affected Vehicles with the Defeat  
25 Device, which renders the emissions control systems defective, and other defects.  
26 The Affected Vehicles thus do not comply with emissions standards set by federal  
27 laws and regulations. This device cannot be repaired or redressed without materially  
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1 altering the advertised estimated fuel economy and other performance characteristics  
2 of the vehicle.

3 63. Defendant's breach of warranty has deprived Plaintiff and other  
4 proposed class members of the benefit of their bargain. The amount in controversy of  
5 each Plaintiff's individual claim meets or exceeds the sum or value of \$25. In  
6 addition, the amount in controversy meets or exceeds the sum or value of \$50,000  
7 (exclusive of interests and costs) computed on the basis of all claims to be  
8 determined in this suit.

9 64. Defendant knew of the defect, and had an opportunity to disclose  
10 information concerning the Affected Vehicles' inability to perform as warranted, and  
11 to cure its breach of warranties since at least May 2014. Defendant has failed to do  
12 so. Contemporaneously with the filing of this complaint, Plaintiffs are making  
13 further demand of Defendant—in writing and on behalf of the proposed class—to  
14 comply with its warranty obligations and is offering to participate in an informal  
15 dispute settlement procedure.

16 65. As a direct and proximate result of Defendant's conduct, Plaintiff and  
17 other members of the proposed Class have suffered damages and continue to suffer  
18 damages, including economic damages at the point of sale or lease, that is, the  
19 difference between the value of the vehicle as promised and the value of the vehicle  
20 as delivered. Plaintiff and the proposed class members are entitled to legal and  
21 equitable relief against Defendant, including damages, specific performance,  
22 attorney fees, costs, and other relief as appropriate.

23 **COUNT II**

24 **Fraud by Concealment**

25 (On Behalf of the Nationwide Class)

26 66. Plaintiff incorporates by reference each preceding and succeeding  
27 paragraph as though fully set forth herein.

28

1           67. Plaintiffs bring this claim on behalf of themselves and the Nationwide  
2 Class, as defined above, against Defendant.

3           68. Since at least 2009, Defendant has intentionally concealed and  
4 suppressed the material fact that they had installed an illegal Defeat Device in the  
5 Alleged Vehicles to either bypass or render inoperative elements of the vehicle  
6 design related to compliance with federal and California emission standards, and that  
7 its vehicles emit between 10 - 40 times the amount of pollution allowed under  
8 applicable laws and regulations. In addition, Defendant intentionally concealed and  
9 suppressed the material fact that the vehicles, if brought in compliance with federal  
10 and California emissions standards, would exhibit diminished performance and fuel  
11 economy, as compared to the performance and fuel economy promised by Defendant  
12 through its advertising and marketing.

13           69. Defendant had a duty to disclose these facts because they had exclusive  
14 knowledge of the material facts described above and such facts were not known or  
15 reasonably knowable by the Plaintiff and proposed class; because it actively  
16 concealed these material facts from the Plaintiff and the proposed class; and because  
17 it made representations regarding the Affected Vehicles' emissions and compliance  
18 with federal and state laws and regulations, while at the same time suppressing  
19 material facts regarding the vehicle's emission levels.

20           70. These facts which Defendant concealed were material because they  
21 falsely suggested that these vehicles are compliant with federal and state emissions  
22 requirements. In addition, whether the Affected Vehicles are compliant, and whether  
23 they are "clean" diesel vehicles as advertised by Defendant, directly impact the value  
24 of the Affected Vehicles purchased or leased by Plaintiff and the proposed class.

25           71. Defendants actively concealed or suppressed these material facts since  
26 at least since 2009 in order to profit from the sale of these vehicles, thereby  
27 defrauding Plaintiffs and consumers. Plaintiffs and the proposed class had no  
28



1 knowledge of, and had no reason to know, that Defendant had concealed or  
2 suppressed these material facts. In fact, such facts were exclusively known by  
3 Defendant. Plaintiff and the proposed Nationwide Class would not have purchased  
4 the Affected Vehicles, or would have paid substantially less for them, or would have  
5 purchased alternative vehicles that did not contain the Defeat Device and other  
6 defects, had Defendant not concealed or suppressed these material facts.

7 72. As a result of Defendant's fraudulent concealment, Plaintiff and the  
8 proposed class's Affected Vehicles have lost significant value. Plaintiff and the  
9 proposed class are thus entitled to damages in an amount to be determined at trial.

10 73. Moreover, because Defendant's conduct was wanton, deliberate,  
11 oppressive and malicious, and reckless disregard of Plaintiff's and the proposed  
12 class's consumer and contractual rights, Plaintiff and the proposed class are entitled  
13 to an award of punitive or exemplary damages in an amount to be determined at trial.

### 14 **COUNT III**

#### 15 **Breach of Contract**

16 (On Behalf of the Nationwide Class)

17 74. Plaintiff incorporates by reference each preceding and succeeding  
18 paragraph as though fully set forth herein.

19 75. Plaintiffs bring this claim on behalf of themselves and the Nationwide  
20 Class, as defined above, against Defendant.

21 76. Defendant's misrepresentations and omissions alleged herein, including  
22 its failure to disclose the existence of the Defeat Device, and the fact that its Affected  
23 Vehicles were not EPA-compliant as alleged herein, caused Plaintiffs and the other  
24 proposed class members to purchase or lease their Affected Vehicles. Absent those  
25 misrepresentations and omissions, Plaintiffs and the other proposed class members  
26 would not have purchased or leased these Affected Vehicles, would not have  
27 purchased or leased these Affected Vehicles at the prices they paid, or would have  
28

1 purchased or leased less expensive alternative vehicles that were EPA-compliant and  
2 did not contain a Defeat Device or other defect. Accordingly, Plaintiffs and the other  
3 Class members overpaid for their Affected Vehicles and did not receive the benefit  
4 of their bargain.

5 77. Each and every sale or lease of an Affected Vehicle constitutes a  
6 contract between Defendant and the purchaser or lessee. Defendant breached these  
7 contracts by selling or leasing to Plaintiffs and the other proposed class members  
8 Affected Vehicles that were defective; by misrepresenting or failing to disclose that  
9 the Affected Vehicles were not compliant with federal and state laws and  
10 regulations; and by failing to disclose the existence of the Defeat Device and other  
11 defects, all of which rendered Plaintiffs and proposed Class Members vehicles less  
12 valuable than vehicles not equipped with the Defeat Device and other defects .

13 78. As a direct and proximate result of Defendant's breach of contract,  
14 Plaintiffs and the class's Affected Vehicles have lost significant value. Plaintiffs are  
15 entitled to damages to be proven at trial which shall include, but are not limited to,  
16 all compensatory damages, incidental and consequential damages, and other  
17 damages allowed by law.

18 **B. Violations Alleged on Behalf of the California Subclass**

19 **COUNT IV**

20 **Violation of the California Unfair Competition Law**

21 **CAL. BUS. & PROF. CODE §§ 17200, et seq.**

22 (On Behalf of the California subclass)

23 79. Plaintiff GREGORY GIAUQUE Plaintiff incorporates by reference  
24 each preceding and succeeding paragraph as though fully set forth herein.

25 80. Plaintiff GREGORY GIAUQUE brings this Count on behalf of the  
26 California Subclass.

1           81. California’s Unfair Competition Law (“UCL”) proscribes acts of unfair  
2 competition, including “any unlawful, unfair or fraudulent business act or practice  
3 and unfair, deceptive, untrue or misleading advertising.”

4           82. Defendant’s conduct, as described herein, was and is in violation of the  
5 UCL. Defendant’s conduct violates the UCL in at least the following ways:

- 6           a) By knowingly and intentionally concealing from Plaintiff GIAQUE and  
7 the other proposed class members that the Affected Vehicles suffer from  
8 a design defect, while at the same time obtaining money from Plaintiff  
9 and the class for selling and leasing said vehicles;
- 10           b) By marketing Affected Vehicles as having clean engine systems that  
11 were compliant with state and federal regulations;
- 12           c) By purposefully installing an illegal Defeat Device in the Affected  
13 Vehicles to fraudulently obtain EPA certification and cause Affected  
14 Vehicles to pass emissions tests when they did not meet applicable  
15 standard during normal operation;
- 16           d) By violating federal laws and regulations, including the Clean Air Act;  
17 and
- 18           e) By violating other California laws and regulations governing vehicle  
19 emissions and emission testing requirements.

20           83. Defendant’s misrepresentations and omissions alleged herein caused  
21 Plaintiff GIAQUE and the other proposed class members to make their purchases or  
22 leases of their Affected Vehicles. Absent those misrepresentations and omissions,  
23 Plaintiff and the other proposed class members would not have purchased or leased  
24 these vehicles, would not have purchased or leased these Affected Vehicles at the  
25 prices they paid, or would have purchased or leased less expensive alternative  
26 vehicles that complied with EPA and California emissions standards.

27 //

28

1 84. Accordingly, Plaintiff GIAQUE and the other proposed class members  
2 have suffered injury in fact including lost money or property as a result of  
3 Defendant's misrepresentations and omissions.

4 85. Plaintiff GIAQUE seeks to enjoin further unlawful, unfair, and/or  
5 fraudulent acts or practices by Defendant under the UCL, CAL. BUS. & PROF. CODE §  
6 17200, *et seq.*

7 86. Plaintiff GIAQUE requests that this Court enter such orders or  
8 judgments as may be necessary to enjoin Defendant from continuing its unfair,  
9 unlawful, and/or deceptive practices and to restore to Plaintiff and members of the  
10 proposed class any money it acquired by unfair competition, including restitution  
11 and/or restitutionary disgorgement, as provided in CAL. BUS. & PROF. CODE § 17203  
12 and CAL. BUS. & PROF. CODE § 3345; and for such other relief set forth below.

13 **COUNT V**

14 **Violation of the California Consumer Legal Remedies Act**

15 **CAL. BUS. & PROF. CODE §§ 1750, *et seq.***

16 (On Behalf of the California Subclass)

17 87. Plaintiff GIAQUE incorporates by reference all preceding and  
18 succeeding paragraphs as though fully set forth herein.

19 88. Plaintiff GIAQUE brings this Count on behalf of the California  
20 Subclass.

21 89. California's Consumers Legal Remedies Act ("CLRA"), CAL. BUS. &  
22 PROF. CODE §§ 1750, *et seq.*, proscribes "unfair methods of competition and unfair  
23 or deceptive acts or practices undertaken by any person in a transaction intended to  
24 result or which results in the sale or lease of goods or services to any consumer."

25 90. The Affected Vehicles are "goods" as defined in CAL. BUS. & PROF.  
26 CODE § 1761(a).

27 //

28

1           91. Plaintiff GIAQUE and the other members of the proposed class are  
2 “consumers” as defined in CAL. BUS. & PROF. CODE § 1761(d), and Plaintiff, the  
3 other members of the proposed class, and Defendant Volkswagen are “persons” as  
4 defined in CAL. BUS. & PROF. CODE § 1761(c).

5           92. As alleged above, Defendant made numerous representations  
6 concerning the benefits, efficiency, performance and safety features of the Affected  
7 Vehicles that were misleading.

8           93. In purchasing or leasing the Affected Vehicles, Plaintiff GIAQUE and  
9 the other proposed Class Members were deceived by Defendant’s failure to disclose  
10 that the Affected Vehicles were defective, and that failed to comply with federal and  
11 California emissions standards.

12           94. Defendant’s conduct, as described herein, was and is in violation of the  
13 CLRA. Volkswagen’s conduct violates at least the following enumerated CLRA  
14 provisions:

- 15           a) CAL. BUS. & PROF. CODE § 1770(a)(5): Representing that goods have  
16 characteristics, uses, and benefits which they do not have;  
17           b) CAL. BUS. & PROF. CODE § 1770(a)(7): Representing that goods are of a  
18 particular standard, quality, or grade, if they are of another;  
19           c) CAL. BUS. & PROF. CODE § 1770(a)(9): Advertising goods with intent not to  
20 sell them as advertised; and  
21           d) CAL. BUS. & PROF. CODE § 1770(a)(16): Representing that goods have been  
22 supplied in accordance with a previous representation when they have not.

23           95. Plaintiff and the other proposed class members have suffered injury in  
24 fact and actual damages resulting from Defendant’s material omissions and  
25 misrepresentations because they paid an inflated price for the Affected Vehicles and  
26 because they stand to pay additional fuel costs if and when their Affected Vehicles  
27 are made to comply with emissions standards.  
28

1 96. Defendant knew, should have known, or was reckless in not knowing of  
2 the defective design and manufacture of the Affected Vehicles, and that the Affected  
3 Vehicles were not suitable for their intended use.

4 97. The facts concealed and omitted by Defendant to Plaintiff GIAQUE and  
5 the other proposed class members are material in that a reasonable consumer would  
6 have considered them to be important in deciding whether to purchase or lease the  
7 Affected Vehicles or pay a lower price. Had Plaintiff and the other proposed class  
8 members known about the defective nature of the Affected Vehicles, they would not  
9 have purchased or leased the Affected Vehicles or would not have paid the prices  
10 they paid.

11 98. Plaintiff GIAQUE and the proposed class are entitled to equitable relief  
12 and a declaration that Defendant’s conduct violates the Consumer Legal Remedies  
13 Act.

14 99. Plaintiff GIAQUE disclaims any request for monetary relief, including  
15 punitive damages, under the Consumer Legal Remedies Act at this time but reserve  
16 the right to seek such relief after providing Defendant with the notice required by the  
17 Act.

18 **COUNT VI**

19 **Violation of the California False Advertising Law**

20 **CAL. BUS. & PROF. CODE §§ 17500, *et seq.***

21 (On Behalf of the California Subclass)

22 100. Plaintiff GIAQUE incorporates by reference all preceding and  
23 succeeding paragraphs as though fully set forth herein.

24 101. Plaintiff GIAQUE brings this Count on behalf of the California  
25 Subclass.

26 102. California Business & Professional Code § 17500 states: “It is unlawful  
27 for any ... corporation ... with intent directly or indirectly to dispose of real or  
28

1 personal property ... to induce the public to enter into any obligation relating thereto,  
2 to make or disseminate or cause to be made or disseminated ... from this state before  
3 the public in any state, in any newspaper or other publication, or any advertising  
4 device, ... or in any other manner or means whatever, including over the Internet,  
5 any statement ... which is untrue or misleading, and which is known, or which by the  
6 exercise of reasonable care should be known, to be untrue or misleading.”

7 103. Defendant caused to be made or disseminated through California and  
8 the United States, through advertising, marketing and other publications, statements  
9 that were untrue or misleading, and which were known, or which by the exercise of  
10 reasonable care should have been known to Defendant, to be untrue and misleading  
11 to consumers, including Plaintiff GIAQUE and the other proposed class members.

12 104. Defendant has violated § 17500 because the misrepresentations and  
13 omissions regarding the safety, reliability, and functionality of Affected Vehicles as  
14 set forth in this Complaint were material and likely to deceive a reasonable  
15 consumer. Plaintiff GIAQUE and the other proposed class members have suffered  
16 an injury in fact, including the loss of money or property, as a result of Defendant’s  
17 unfair, unlawful, and/or deceptive practices. In purchasing or leasing their Affected  
18 Vehicles, Plaintiff and the other class members relied on the misrepresentations  
19 and/or omissions of Defendant with respect to the safety, performance and reliability  
20 of the Affected Vehicles. Defendant’s representations turned out to be false because  
21 the Affected Vehicles are distributed with faulty and defective Defeat Device,  
22 rendering certain safety and emissions functions inoperative. Had Plaintiff and the  
23 other proposed class members known this, they would not have purchased or leased  
24 their Affected Vehicles or paid as much for them, or purchased alternative vehicles  
25 that did not contain the Defeat Device and other defects. Accordingly, Plaintiff and  
26 the other proposed class members overpaid for their Affected Vehicles and did not  
27 receive the benefit of their bargain.  
28

1 105. All of the wrongful conduct alleged herein occurred, and continues to  
2 occur, in the course of Defendant’s business. Defendant’s wrongful conduct is part  
3 of a pattern or generalized course of conduct that is still perpetuated and repeated,  
4 both in the State of California and nationwide.

5 106. Plaintiff GIAQUE, individually and on behalf of the other proposed  
6 class members, requests that this Court enter such orders or judgments as may be  
7 necessary to enjoin Defendant from continuing its unfair, unlawful, and/or deceptive  
8 practices, and to restore to Plaintiff and the other proposed class members any  
9 money Defendant acquired by unfair competition, including restitution and/or  
10 restitutionary disgorgement, and for such other relief set forth below.

11 **COUNT VII**

12 **Fraud by Concealment (Pursuant to California Law)**

13 (On Behalf of the California Subclass)

14 107. Plaintiff GIAQUE realleges and incorporates by reference all preceding  
15 and succeeding paragraphs as though fully set forth herein.

16 108. This claim is brought on behalf of the California Subclass.

17 109. Defendant intentionally concealed and suppressed material facts  
18 concerning the quality of the Affected Vehicles. As alleged in this Complaint,  
19 Defendant engaged in a scheme to evade federal and state vehicle emissions  
20 standards by installing software designed to conceal its vehicles’ emissions of  
21 nitrogen oxide during normal operation.

22 110. Plaintiff GIAQUE and the proposed class members reasonably relied  
23 upon Defendant’s false representations. They had no way of knowing that  
24 Defendant’s representations were false and misleading.

25 111. Defendant also took steps to ensure that its employees did not reveal the  
26 details of its scheme to regulators or consumers, including Plaintiff GIAQUE and the  
27 proposed class members. Defendant did so in order to boost the reputations of its  
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1 vehicles and falsely assure purchasers and lessors of its Affected Vehicles that they  
2 comply with applicable laws, including federal and state regulations governing  
3 emissions standards law and regulations. Defendant's false representations were  
4 material to consumers, both because they concerned the quality of the Affected  
5 Vehicles, including their compliance with applicable federal and state laws and  
6 regulations, and also because the representations played a significant role in the  
7 value of the vehicles. As Defendant was aware, customers, including Plaintiff and  
8 proposed class members, valued that the vehicles specifically because they were  
9 advertised and marketed as clean, fuel efficient, and because of their performance,  
10 and paid a premium for such vehicles.

11 112. Defendant had a duty to disclose that the Affected Vehicles were  
12 defective and contained the Defeat Device, because Defendant had exclusive  
13 knowledge as to implementation and maintenance of its scheme, and because  
14 Defendant knew the facts were not known to or reasonably discoverable by Plaintiff  
15 GIAQUE or proposed class members. Defendant also had a duty to disclose that the  
16 Affected Vehicles were defective and contained the Defeat Device because it made  
17 general affirmative representations about the qualities of its vehicles with respect to  
18 emissions standards which were misleading, deceptive, and incomplete without the  
19 disclosure of the additional facts set forth above regarding the actual nitrogen oxide  
20 emissions of its vehicles, and the existence of the Defeat Device. Having volunteered  
21 to provide certain information to Plaintiff, Volkswagen had the duty to disclose all  
22 relevant information. The omitted and concealed facts were material because they  
23 directly impact the value of the Affected Vehicles purchased or leased by Plaintiff  
24 and proposed class members.

25 113. Defendant actively concealed and/or suppressed these material facts, in  
26 whole or in part, to profit at the expense of Plaintiff GIAQUE and the proposed class  
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1 members, and to avoid the perception that its vehicles did not or comply with federal  
2 and state laws and regulations governing clean air and emissions.

3 114. Based upon Plaintiffs' information and belief, Volkswagen has still not  
4 made full and adequate disclosures regarding the defects contained in the Affected  
5 Vehicles, and continues to defraud Plaintiff GIAQUE and proposed class members  
6 by concealing material information.

7 115. Because of the concealment and/or suppression of the facts alleged  
8 herein, Plaintiff GIAQUE and proposed class members have sustained damage  
9 because they own vehicles that are diminished in value. Had Plaintiff and proposed  
10 class members been aware of such facts, Plaintiff the proposed class members who  
11 purchased or leased the Affected Vehicles would have paid less for their vehicles,  
12 would not have purchased or leased them at all, or would have purchased alternative  
13 vehicles that did not contain the defect or Defeat Device.

14 116. The value of Plaintiff GIAQUE's and proposed class members' vehicles  
15 has diminished as a result of Defendant's fraudulent concealment, which has made  
16 reasonable consumers reluctant to purchase any of the Affected Vehicles, or pay  
17 what otherwise would have been fair market value for the vehicles.

18 117. Defendant is liable to Plaintiff GIAQUE and proposed class members  
19 for damages in an amount to be proven at trial.

20 118. Defendant's acts were done wantonly, maliciously, oppressively,  
21 deliberately, with intent to defraud, and in reckless disregard of Plaintiff GIAQUE  
22 and the proposed class members' rights and the representations that Defendant made  
23 to them, in order to profit at the expense of Plaintiff and the proposed class.  
24 Volkswagen's conduct warrants an assessment of punitive or exemplary damages in  
25 an amount sufficient to deter such conduct in the future, to be determined at trial.

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**COUNT VIII**

**Breach of Contract (Pursuant to California Law)**

(On Behalf of the California Subclass)

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4 119. Plaintiff GIAQUE incorporates by reference all preceding and  
5 succeeding paragraphs as though fully set forth herein.

6 120. Plaintiff GIAQUE brings this Count on behalf of the California  
7 Subclass.

8 121. Defendant's misrepresentations and omissions alleged herein, including  
9 its failure to disclose the existence of the Defeat Device and the defective design of  
10 the Affected Vehicles, caused Plaintiff GIAQUE and the other proposed class  
11 members to purchase or lease their Affected Vehicles. Absent those  
12 misrepresentations and omissions, Plaintiff and the other proposed class members  
13 would not have purchased or leased these Affected Vehicles, would not have  
14 purchased or leased these Affected Vehicles at the prices they paid, or would have  
15 purchased or leased less expensive alternative vehicles that did not contain the defect  
16 or Defeat Device. Accordingly, Plaintiff and the other proposed class members  
17 overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

18 122. Each and every sale or lease of an Affected Vehicle constitutes a  
19 contract between Defendant Volkswagen and the purchaser or lessee. Defendant  
20 breached these contracts by selling or leasing Plaintiff GIAQUE and the other  
21 proposed class members the Affected Vehicles, and by misrepresenting or failing to  
22 disclose the existence of the Defeat Device and defective design, including  
23 information known to Volkswagen rendering each Affected Vehicle less safe and  
24 less compliant with state and federal regulations related to emissions and thus less  
25 valuable, than vehicles that were not defective or did not contain "defeat devices."

26 123. As a direct and proximate result of Defendant's breach of contract,  
27 Plaintiff GIAQUE and the proposed class have been damaged in an amount to be  
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1 proven at trial, which shall include, but is not limited to, all compensatory damages,  
2 incidental and consequential damages, and other damages allowed by law.

3 **C. Violations Alleged on Behalf of the Texas Subclass**

4 **COUNT IX**

5 **Violations of the Deceptive Trade Practices Act**

6 **TEX. BUS. & COM. CODE §§ 17.41, et seq.**

7 (On Behalf of the Texas Subclass)

8 124. Plaintiff DEANGELO incorporates by reference all preceding and  
9 succeeding paragraphs as though fully set forth herein.

10 125. Plaintiff DEANGELO brings this Count on behalf of the Texas  
11 Subclass.

12 126. The Texas Deceptive Trade Practices Act (“TDTPA”) makes it  
13 unlawful to commit “[f]alse, misleading, or deceptive acts or practices in the conduct  
14 of any trade or commerce.” TEX. BUS. & COM. CODE § 17.46.

15 127. Plaintiffs will make a demand in satisfaction of Texas Business &  
16 Commercial Code § 17.45(2), and may amend this Complaint to assert claims under  
17 the TDTPA once the required 60 days have elapsed. This paragraph is included for  
18 purposes of notice only and is not intended to actually assert a claim under the  
19 TDTPA.

20 **COUNT X**

21 **Fraud by Concealment (Pursuant to Texas Law)**

22 (On Behalf of the Texas Subclass)

23 128. Plaintiff DEANGELO incorporates by reference all preceding and  
24 succeeding paragraphs as though fully set forth herein.

25 129. This claim is brought on behalf of the Texas Subclass.

26 130. Defendant intentionally concealed and suppressed material facts  
27 concerning the quality of the Affected Vehicles. As alleged in this Complaint,  
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1 Defendant engaged in a secret scheme to evade federal and state vehicle emissions  
2 standards by installing software designed to conceal its vehicles' emissions of  
3 nitrogen oxide during normal operation.

4 131. Plaintiff DEANGELO and the proposed class members reasonably  
5 relied upon Defendant's false representations. They had no way of knowing that  
6 Defendant's representations were false and gravely misleading.

7 132. Defendant also took steps to ensure that its employees did not reveal the  
8 details of its scheme to regulators or consumers, including Plaintiff DEANGELO  
9 and the proposed class members. Defendant did so in order to boost the reputations  
10 of its vehicles and falsely assure purchasers and lessors of its Affected Vehicles that  
11 its vehicles comply with applicable laws, including federal and state regulations  
12 governing emissions standards law and regulations. Defendant's false representations  
13 were material to consumers, both because they concerned the quality of the affected  
14 vehicles, including their compliance with applicable federal and state laws and  
15 regulations, and also because the representations played a significant role in the  
16 value of the vehicles. As Defendant was aware, customers, including Plaintiff and  
17 proposed class members, valued that the vehicles specifically because they were  
18 advertised and marketed as clean, and paid a premium for such vehicles.

19 133. Defendant had a duty to disclose that the Affected Vehicles were  
20 defective and contained the Defeat Device, because Defendant had exclusive  
21 knowledge as to implementation and maintenance of its scheme, and because  
22 Defendant knew the facts were not known to or reasonably discoverable by Plaintiff  
23 DEANGELO or proposed class members. Defendant also had a duty to disclose that  
24 the Affected Vehicles were defective and contained the Defeat Device because it  
25 made general affirmative representations about the qualities of its vehicles with  
26 respect to emissions standards which were misleading, deceptive, and incomplete  
27 without the disclosure of the additional facts set forth above regarding the actual  
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1 nitrogen oxide emissions of its vehicles, and the existence of the Defeat Device.  
2 Having volunteered to provide certain information to Plaintiff and proposed class  
3 members, Defendant had the duty to disclose all relevant information. The omitted  
4 and concealed facts were material because they directly impact the value of the  
5 Affected Vehicles purchased or leased by Plaintiff and proposed class members.

6 134. Defendant actively concealed and/or suppressed these material facts, in  
7 whole or in part, to profit at the expense of Plaintiff DEANGELO and the proposed  
8 class members, and to avoid the perception that its vehicles did not or comply with  
9 federal and state laws and regulations governing clean air and emissions.

10 135. Based upon Plaintiffs' information and belief, Defendant Volkswagen  
11 has still not made full and adequate disclosures regarding the defects contained in the  
12 Affected Vehicles, and continues to defraud Plaintiff DEANGELO and proposed  
13 class members by concealing material information.

14 136. Because of the concealment and/or suppression of the facts alleged  
15 herein, Plaintiff DEANGELO and proposed class have sustained damage because  
16 they own vehicles that are diminished in value. Had Plaintiff and proposed class  
17 members been aware of such facts, Plaintiff the proposed class members who  
18 purchased or leased the Affected Vehicles would have paid less for their vehicles,  
19 would not have purchased or leased them at all, or would have purchased alternative  
20 vehicles that did not contain the defects or Defeat Device.

21 137. The value of Plaintiff DEANGELO's and proposed class members'  
22 vehicles has diminished as a result of Defendant's fraudulent concealment, which  
23 has made reasonable consumers reluctant to purchase any of the Affected Vehicles,  
24 or pay what otherwise would have been fair market value for the vehicles.

25 138. Defendant is liable to Plaintiff DEANGELO and proposed class  
26 members for damages in an amount to be proven at trial.  
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1 proposed class members Affected Vehicles containing the Defeat Device and other  
2 defects alleged herein, and by misrepresenting or failing to disclose the existence of  
3 the Defeat Device and or defective design, including information known to  
4 Volkswagen rendering each Affected Vehicle noncompliant with federal and state  
5 laws and regulation regarding emission standards, and thus less valuable than  
6 vehicles that did not contain the Defeat Device or other defects alleged herein.

7 144. As a direct and proximate result of Defendant's breach of contract,  
8 Plaintiff DEANGELO and the proposed class have been damaged in an amount to be  
9 proven at trial, which shall include, but not be limited to, all compensatory,  
10 incidental and consequential damages, and other damages allowed by law.

## 11 **VI. TOLLING OF THE STATUTES OF LIMITATIONS**

### 12 **A. Tolling Pursuant to the Discovery Rule**

13 145. Plaintiffs and members of the proposed class and subclasses had no way  
14 of knowing about Defendant's deception with respect to the existence of the Defeat  
15 Device and other defects, including defects related to emission levels, in the Affected  
16 Vehicles. Defendant's conduct was only discovered as a result of investigations by  
17 the EPA and CARB, which involved sophisticated testing. Defendant was intent on  
18 expressly hiding its behavior from regulators and consumers.

19 146. Within the time period of any applicable statutes of limitation, Plaintiffs  
20 and members of the proposed class and subclasses could not have discovered  
21 through the exercise of reasonable diligence that Defendant was concealing the  
22 conduct complained of herein, and misrepresenting the true emission levels of the  
23 Affected Vehicles.

24 147. Plaintiffs and the other members of the proposed classes did not  
25 discover, and did not know of facts that would have caused a reasonable person to  
26 suspect that Defendant did not report information within its knowledge to federal and  
27 state authorities or consumers; nor would a reasonable and diligent investigation  
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1 have disclosed that Defendant had information in its possession about the existence  
2 the Defeat Device and other defects, including defects related to emission levels,  
3 which were discovered by Plaintiffs only shortly before this action was filed. Nor  
4 would such an investigation on the part of Plaintiffs and members of the proposed  
5 classes have disclosed that Defendant actively discouraged its personnel from raising  
6 or disclosing such issues with respect to the Affected Vehicles.

7 148. For the aforementioned reasons, all applicable statutes of limitation  
8 have been tolled by operation of the Discovery Rule with respect to claims asserted  
9 herein.

10 **B. Tolling Pursuant to Defendant's Fraudulent Concealment**

11 149. All applicable statutes of limitation have also been tolled by  
12 Defendant's knowing fraudulent concealment, and denial of the facts alleged herein,  
13 throughout the time period relevant to this action.

14 150. Rather than disclosing the existence of the Defeat Device and other  
15 defects, including defects related to emission levels, Defendant falsely represented to  
16 state and federal authorities and consumers that its vehicles complied with federal  
17 and state emissions standards.

18 **C. Defendant is Estopped from Relying on any Statutes of Limitation**

19 151. Defendant was under a continuous duty to disclose to Plaintiffs and the  
20 other members of the proposed classes the true character, quality, and nature of  
21 emissions from the Affected Vehicles, and the existence of the Defeat Device and  
22 other defects, and the fact that the Affected Vehicles failed to comply with  
23 applicable federal and state laws and regulations.

24 152. Defendant knowingly, affirmatively, and actively concealed the true  
25 nature, quality, and character of the emissions from the Affected Vehicles, the  
26 existence of the Defeat Device and other defects, and the fact that the Affected  
27 Vehicles failed to comply with applicable federal and state laws and regulations.  
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1           153. Based on the foregoing, Defendant is estopped from relying on any  
2 statutes of limitations in defense of this action.

3   **REQUEST FOR RELIEF**

4           154. WHEREFORE, Plaintiffs, individually and on behalf of members of the  
5 proposed Nationwide Class, California Subclasses, and Texas Subclass, respectfully  
6 request that the Court enter judgment in their favor as follows:

- 7           a) An order certifying the proposed Nationwide Class, California Subclass,  
8 and Texas Subclass;
- 9           b) An order appointing Plaintiffs' counsel as Class Counsel for the  
10 proposed class and subclasses;
- 11           c) An order temporarily and permanently enjoining Defendant  
12 Volkswagen from continuing the unlawful, deceptive, fraudulent, and  
13 unfair business practices alleged in this Complaint;
- 14           d) An order requiring Defendant Volkswagen to either 1) buy back the  
15 Affected Vehicles at the original sale price; 2) institute a free  
16 replacement program for all Affected Vehicles; or 3) free of charge,  
17 remove all defects from the Affected Vehicles, including the Defeat  
18 Devices, and ensure that said vehicles both comply with applicable state  
19 and federal emissions standards *and* conform to all promised and  
20 previous characteristics regarding fuel efficiency and drive  
21 performance;
- 22           e) An order awarding costs, restitution, damages, including punitive  
23 damages, and disgorgement in an amount to be determined at trial;
- 24           f) An order requiring Defendant Volkswagen to pay both pre- and post-  
25 judgment interest on any amounts awarded;
- 26           g) An order awarding costs and attorneys' fees; and
- 27           h) Such other relief that the Court deems as appropriate.
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**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a jury trial for all claims so triable.

DATED: September 23, 2015

By: /s/ Mark P. Robinson, Jr.  
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*Attorneys for Plaintiffs and the Proposed  
Classes*

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