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13 UNITED STATES DISTRICT COURT  
14 NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

15 NICHOLAS BENIPAYO, MARK CARNETT,  
16 DANIEL ROBINSON, JONATHON  
HORACEK, STEFANIE BEAUDREAULT,  
17 JAMES BABIAK, DAVID GOODSON,  
EMILY FISHER, KSHANTI GREENE, JOHN  
18 HALLORAN, SCOTT MOEN, GRANT  
GALL, ANTHONY DEMARTINO, PETAR  
19 RAMADANOVIC, CHRISTOPHER  
20 MONROE, MELISSA BRACKEN, REZEDA  
DOZIER, JOHN DULL, MELISSA  
21 FEDORCZYK, DAVID ANTELLOCY,  
JOSHUA CAMPBELL, VAN HAYNES and  
22 ALFRED HOWE, on behalf of themselves and  
all others similarly situated,

23  
24 Plaintiffs,

25 v.

26 VOLKSWAGEN GROUP OF AMERICA,  
27 INC., a New Jersey Corporation,

28 Defendant.

Case No.

CLASS ACTION

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

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1 Plaintiffs [list all Plaintiffs] (“Plaintiffs”), individually and on behalf of all others similarly  
2 situated (the “Class”), allege the following:

3 **I. FACTUAL ALLEGATIONS**

4 1. The United States Government, through the Environmental Protection Agency, has  
5 passed and enforced laws designed to protect United States citizens from pollution and in particular,  
6 certain chemicals and agents known to cause disease in humans. Automobile manufacturers must  
7 abide by these US laws and must adhere to EPA rules and regulations. This case arises because  
8 Nicholas Benipayo, Mark Carnett, Daniel Robinson, Jonathon Horacek, Stefanie Beaudreault,  
9 James Babiak, David Goodson, Emily Fisher, Kshanti Greene, John Halloran, Scott Moen, Grant  
10 Gall, Anthony DeMartino, Petar Ramadanovic, Christopher Monroe, Melissa Bracken, Rezeda  
11 Dozier, Jon Dull, Melissa Fedorczyk, David Antellocy, Joshua Campbell, Alfred Howe  
12 (“Plaintiffs”) claim that Defendant Volkswagen Group of America (“Volkswagen”) purposefully  
13 and intentionally breached the laws of the United States and the rules and regulations of the EPA by  
14 selling in the United States vehicles manufactured by its affiliates Volkswagen AG and Audi AG  
15 that purposefully evaded federal and state laws. As stated by Cynthia Giles, Assistant  
16 Administrator for the Office of Enforcement and Compliance Assurance at the EPA: “Using a  
17 defeat device in cars to evade clean air standards is illegal and a threat to public health.” Yet that is  
18 exactly what Volkswagen did in its 2009-2015 Volkswagen and Audi diesel vehicles.<sup>1</sup>

19 2. As detailed in the EPA’s Notice of Violation (“NOV”), sophisticated software in the  
20 Volkswagen and Audi diesel vehicles sold by Defendant Volkswagen in the United States detects  
21 when the vehicle is undergoing official emissions testing and turns full emissions controls on only  
22 during the test. But otherwise, that is at all other times that the vehicle is running, the emissions  
23 controls are suppressed. This results in cars that meet emissions standards in the laboratory or state  
24 testing station, but during normal operation emit nitrogen oxides (NOx) at up to 40 times the  
25 standard allowed under United States laws and regulations. The software produced and used by  
26 Volkswagen is a “defeat device” as defined by the Clean Air Act.

27 <sup>1</sup> See Sept. 18, 2015 EPA News Release.

1           3.       NOx pollution contributes to nitrogen dioxide, ground-level ozone, and fine  
2 particulate matter. Exposure to these pollutants has been linked with serious health dangers,  
3 including asthma attacks and other respiratory illness serious enough to send people to the hospital.  
4 Ozone and particulate matter exposure have been associated with premature death due to  
5 respiratory-related or cardiovascular-related effects. Children, the elderly, and people with pre-  
6 existing respiratory illness are at acute risk of health effects from these pollutants.

7           4.       The Clean Air Act has strict emissions standards for vehicles and it requires vehicle  
8 manufacturers to certify to the EPA that the vehicles sold in the United States meet applicable  
9 federal emissions standards to control air pollution. Every vehicle sold in the United States must be  
10 covered by an EPA issued certificate of conformity. Under federal law, cars equipped with defeat  
11 devices, which reduce the effectiveness of the emissions control system during normal driving  
12 conditions, cannot be certified. By manufacturing and selling cars with defeat devices that allowed  
13 for higher levels of emissions that were certified to EPA, Volkswagen violated the Clean Air Act,  
14 defrauded its customers, and engaged in unfair competition under state and federal law.

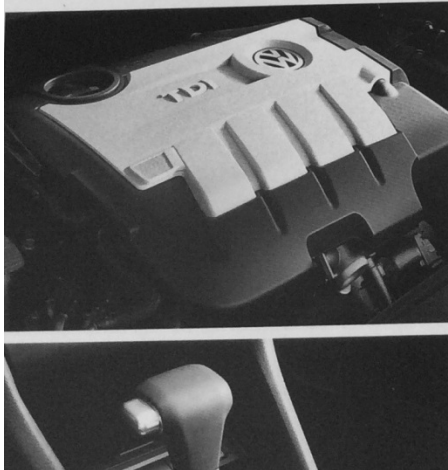
15           5.       According the EPA NOV, Volkswagen installed its “defeat device” in at least the  
16 following diesel models of its vehicles (the “Affected Vehicles”): MY 2009-2015 VW Jetta; MY  
17 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2014-2015 VW Passat; and MY 2009-2015  
18 Audi A3. Discovery may reveal that additional vehicle models and model years are properly  
19 included as Affected Vehicles.

20           6.       Volkswagen expressly marketed and advertised its CleanDiesel models as  
21 extraordinarily clean, EPA certified in all 50 states, and powerful. For example, the following  
22 promotional material was used in 2010, and similar materials have been used across the spectrum of  
23 models using the CleanDiesel engine system:

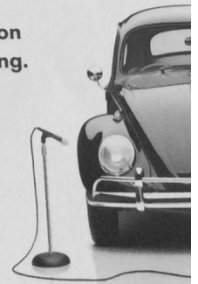
## Burn rubber, not money.

The all-new 2010 Golf TDI Clean Diesel offers fuel efficiency,\* power, and performance. Or, in other words, it's a lean, mean, cleaner-burning machine. The Volkswagen TDI engine is cleaner than conventional diesels, emitting as much as 95% fewer sooty emissions than previous diesel engines, as well as a reduction in oxides of nitrogen and sulfur. It's powerful, with the kind of street-savvy torque that brings a smile to every stoplight. It's efficient, using a turbocharger and smart exhaust design to use fuel more effectively. So much so, in fact, that Volkswagen was the first automaker to make clean diesel cars that are certified in all 50 states. And best of all, it will help save you money, with an out-of-this-world EPA-estimated mileage of 30 city/42 highway mpg (automatic)\* and over 594 miles on a single tank of fuel.\*\*

If efficiency and savings weren't enough, the Golf TDI model also gives you premium features like the multi-function leather steering wheel, the touchscreen Premium VIII radio with a Media Device Interface (MDI) and iPod® cable, SIRIUS® Satellite Radio, a 6-speed manual transmission, fog lights, and the optional navigation package with touchscreen navigation to efficiently find your way to the bank.



"Good, clean fun" takes on a whole new meaning.



7. Volkswagen has charged a substantial premium for the Affected Vehicles, ironically marketed by Volkswagen as "CleanDiesel." For example, for the 2015 Volkswagen Jetta, the base S model has a starting MSRP of \$18,780. The base TDI S CleanDiesel, however, has a starting MSRP of \$21,640, a price premium of \$2,860. The CleanDiesel premium for the highest trim Jetta model is substantially higher. The highest level gas Jetta SE has a starting MSRP of \$20,095, while the CleanDiesel TDI SEL MSRP is \$26,410, a staggering \$6,315 premium.

8. These premiums occur across all of the vehicles in which Volkswagen installed its "defeat device" for emissions testing. The table below sets forth the price premium for each base, mid-level and top-line trim for each affected model:

**CleanDiesel Price Premiums**

<b>Model</b>	<b>Base</b>	<b>Mid-level</b>	<b>Top-line</b>
<i>VW Jetta</i>	\$2,860	\$4,300	\$6,315
<i>VW Beetle</i>	\$4,635	n/a	\$2,640
<i>VW Golf</i>	\$2,950	\$1,000	\$1,000
<i>VW Passat</i>	\$5,755	\$4,750	\$6,855
<i>Audi A3</i>	\$2,805	\$3,095	\$2,925

9. Volkswagen has been ordered by the EPA to recall the Affected Vehicles and repair them so that they comply with EPA emissions requirements at all times during normal operation. However, Volkswagen will not be able to make the Affected Vehicles comply with emissions standards without substantially degrading their performance characteristics, including their horsepower and their efficiency. As a result, even if Volkswagen is able to make Class members' Affected Vehicles EPA compliant, Class members will nonetheless suffer actual harm and damages because their vehicles will no longer perform as they did when purchased and as advertised. This will necessarily result in a diminution in value of every Affected Vehicle and it will cause owners of Affected Vehicles to pay more for fuel while using their affected vehicles.

10. On September 20, 2015, Volkswagen admitted that the EPA allegations were true. It admitted using a "defeat device" in the Affected Vehicles. Its CEO Martin Winterkorn stated: "I personally am deeply sorry that we have broken the trust of our customers and the public."

11. As a result of Volkswagen's unfair, deceptive, and/or fraudulent business practices, and its failure to disclose that under normal operating conditions the Affected Vehicles emit 40 times the allowed levels, owners and/or lessees of the Affected Vehicles have suffered losses in money and/or property. Had Plaintiffs and Class members known of the "defeat device" at the time they purchased or leased their Affected Vehicles, they would not have purchased or leased those vehicles, or would have paid substantially less for the vehicles than they did. Moreover, when and if Volkswagen recalls the Affected Vehicles and degrades the CleanDiesel engine performance in order to make the Affected Vehicles compliant with EPA standards, Plaintiffs and Class members

1 will be required to spend additional sums on fuel and will not obtain the performance characteristics  
2 of their vehicles when purchased. Moreover, affected vehicles will necessarily be worth less in the  
3 marketplace because of their decrease in performance and efficiency.

4 12. Plaintiffs bring this action individually and on behalf of all other current and former  
5 owners or lessees of Affected Vehicles. Plaintiffs seek damages, injunctive relief, and equitable  
6 relief for the conduct of Volkswagen related to the “defeat device,” as alleged in this Complaint.

## 7 **II. JURISDICTION**

8 13. This Court has jurisdiction pursuant to the Class Action Fairness Act of 2005, 28  
9 U.S.C. § 1332(d), because the proposed Class consists of 100 or more members; the amount in  
10 controversy exceeds \$5,000,000, exclusive of costs and interest; and minimal diversity exists. This  
11 Court also has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

## 12 **III. VENUE**

13 14. Venue is proper in this District under 28 U.S.C. § 1391 because a substantial part of  
14 the events or omissions giving rise to Plaintiffs’ claims occurred in this District. Plaintiff Daniel  
15 Robinson resides in this District and purchased his Affected Vehicle in this District. Moreover,  
16 Volkswagen is headquartered in this District and has marketed, advertised, sold, and leased the  
17 Affected Vehicles within this District.

## 18 **IV. PARTIES**

### 19 **A. Virginia Plaintiffs**

#### 20 **1. Nicholas Benipayo**

21 15. Plaintiff Nicholas Benipayo is an individual residing in Chesapeake, Virginia. In  
22 2010, Plaintiff Benipayo purchased a 2010 Jetta TDI CleanDiesel from Lindsay Volkswagen of  
23 Dulles, an authorized Volkswagen dealer in Sterling, Virginia. Plaintiff purchased, and still owns,  
24 this vehicle. Unknown to Plaintiff, at the time the vehicle was purchased, it was equipped with an  
25 emissions control “defeat device” which caused the vehicle to get an undue EPA certification and  
26 pass emissions tests, but at all other times emit 40 times the allowed level of pollutants, including  
27 NOx. The use of the “defeat device” by Volkswagen has caused Plaintiff out-of-pocket loss, future  
28 attempted repairs, and diminished value of his vehicle. Volkswagen knew about and purposefully

1 used the “defeat device,” but did not disclose the “defeat device” and its effects to Plaintiff, so  
2 Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle complied with  
3 United States emissions standards, was properly EPA certified, and would retain all of its operating  
4 characteristics throughout its useful life.

5 **B. Arizona Plaintiffs**

6 **1. Mark Carnett**

7 16. Plaintiff Mark Carnett is an individual residing in Sierra Vista, Arizona. In 2010,  
8 Plaintiff purchased two 2010 Jetta TDI CleanDiesel cars from Chapman Volkswagen Tucson, an  
9 authorized Volkswagen dealer in Tucson, Arizona. Plaintiff purchased, and still owns, these  
10 vehicles. Unknown to Plaintiff, at the time the vehicles were purchased, it was equipped with an  
11 emissions control “defeat device” which caused the vehicle to get an undue EPA certification and  
12 pass emissions tests, but at all other times emit 40 times the allowed level of pollutants, including  
13 NOx. The use of the “defeat device” by Volkswagen has caused Plaintiff out-of-pocket loss, future  
14 attempted repairs, and diminished value of his vehicle. Volkswagen knew about and purposefully  
15 used the “defeat device,” but did not disclose the “defeat device” and its effects to Plaintiff, so  
16 Plaintiff purchased his vehicles on the reasonable, but mistaken, belief that his vehicle complied  
17 with United States emissions standards, was properly EPA certified, and would retain all of its  
18 operating characteristics throughout its useful life.

19 **C. California Plaintiffs**

20 **1. Daniel Robinson**

21 17. Plaintiff Daniel Robinson is an individual residing in Berkeley, California. In 2013,  
22 Plaintiff purchased a new 2013 Jetta TDI Sportswagon CleanDiesel from Volkswagen of Oakland,  
23 an authorized Volkswagen dealer in Oakland, California. Plaintiff purchased, and still owns, this  
24 vehicle. Unknown to Plaintiff, at the time the vehicle was purchased, it was equipped with an  
25 emissions control “defeat device” which caused the vehicle to get an undue EPA certification and  
26 pass emissions tests, but at all other times emit 40 times the allowed level of pollutants, including  
27 NOx. The use of the “defeat device” by Volkswagen has caused Plaintiff out-of-pocket loss, future  
28 attempted repairs, and diminished value of his vehicle. Volkswagen knew about and purposefully

1 used the “defeat device,” but did not disclose the “defeat device” and its effects to Plaintiff, so  
2 Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle complied with  
3 United States emissions standards, was properly EPA certified, and would retain all of its operating  
4 characteristics throughout its useful life.

5 **D. Colorado Plaintiffs**

6 **1. Jonathon Horacek**

7 18. Plaintiff Jonathon Horacek is an individual residing in Colorado Springs, Colorado.  
8 Plaintiff purchased a 2012 Volkswagen Golf TDI CleanDiesel from Al Serra Volkswagen, an  
9 authorized Volkswagen dealer in Colorado Springs, Colorado. Plaintiff purchased, and still owns,  
10 this vehicle. Unknown to Plaintiff, at the time the vehicle was purchased, it was equipped with an  
11 emissions control “defeat device” which caused the vehicle to get an undue EPA certification and  
12 pass emissions tests, but at all other times emit 40 times the allowed level of pollutants, including  
13 NOx. The use of the “defeat device” by Volkswagen has caused Plaintiff out-of-pocket loss, future  
14 attempted repairs, and diminished value of his vehicle. Volkswagen knew about and purposefully  
15 used the “defeat device,” but did not disclose the “defeat device” and its effects to Plaintiff, so  
16 Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle complied with  
17 United States emissions standards, was properly EPA certified, and would retain all of its operating  
18 characteristics throughout its useful life.

19 **E. Connecticut Plaintiffs**

20 **1. Stefanie Beaudreault**

21 19. Plaintiff Stefanie Beaudreault is an individual residing in Middletown, Connecticut.  
22 In 2012, Plaintiff purchased a new 2012 Jetta TDI CleanDiesel from Bertera Subaru, an authorized  
23 Volkswagen dealer in Hartford, Connecticut. Plaintiff purchased, and still owns, this vehicle.  
24 Unknown to Plaintiff, at the time the vehicle was purchased, it was equipped with an emissions  
25 control “defeat device” which caused the vehicle to get an undue EPA certification and pass  
26 emissions tests, but at all other times emit 40 times the allowed level of pollutants, including NOx.  
27 The use of the “defeat device” by Volkswagen has caused Plaintiff out-of-pocket loss, future  
28 attempted repairs, and diminished value of her vehicle. Volkswagen knew about and purposefully

1 used the “defeat device,” but did not disclose the “defeat device” and its effects to Plaintiff, so  
2 Plaintiff purchased her vehicle on the reasonable, but mistaken, belief that her vehicle complied  
3 with United States emissions standards, was properly EPA certified, and would retain all of its  
4 operating characteristics throughout its useful life.

5 **F. Florida Plaintiffs**

6 **1. James Babiak**

7 20. Plaintiff James Babiak is an individual residing in Bradenton, Florida. In 2011,  
8 Plaintiff purchased a new 2011 Golf TDI CleanDiesel from Sunset Volkswagen, an authorized  
9 Volkswagen dealer in Sarasota, Florida. Plaintiff purchased, and still owns, this vehicle. Unknown  
10 to Plaintiff, at the time the vehicle was purchased, it was equipped with an emissions control “defeat  
11 device” which caused the vehicle to get an undue EPA certification and pass emissions tests, but at  
12 all other times emit 40 times the allowed level of pollutants, including NOx. The use of the “defeat  
13 device” by Volkswagen has caused Plaintiff out-of-pocket loss, future attempted repairs, and  
14 diminished value of his vehicle. Volkswagen knew about and purposefully used the “defeat  
15 device,” but did not disclose the “defeat device” and its effects to Plaintiff, so Plaintiff purchased  
16 his vehicle on the reasonable, but mistaken, belief that his vehicle complied with United States  
17 emissions standards, was properly EPA certified, and would retain all of its operating characteristics  
18 throughout its useful life.

19 **G. Georgia Plaintiffs**

20 **1. Van Haynes**

21 21. Plaintiff Van Haynes is an individual residing in Cumming, Georgia. In October  
22 2014, Plaintiff purchased a new 2015 Volkswagen Golf TDI CleanDiesel from Stone Mountain  
23 Volkswagen, an authorized Volkswagen dealer in Stone Mountain, Georgia. Plaintiff purchased,  
24 and still owns, this vehicle. Unknown to Plaintiff, at the time the vehicle was purchased, it was  
25 equipped with an emissions control “defeat device” which caused the vehicle to get an undue EPA  
26 certification and pass emissions tests, but at all other times emit 40 times the allowed level of  
27 pollutants, including NOx. The use of the “defeat device” by Volkswagen has caused Plaintiff out-  
28 of-pocket loss, future attempted repairs, and diminished value of his vehicle. Volkswagen knew



1 about and purposefully used the “defeat device,” but did not disclose the “defeat device” and its  
2 effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his  
3 vehicle complied with United States emissions standards, was properly EPA certified, and would  
4 retain all of its operating characteristics throughout its useful life.

5 **H. Illinois Plaintiffs**

6 **1. David Goodson**

7 22. Plaintiff David Goodson is an individual residing in Wilmette, Illinois. In 2015,  
8 Plaintiff purchased a new 2015 Golf TDI CleanDiesel from Autobarn Volkswagen, an authorized  
9 Volkswagen dealer in Evanston, Illinois. Plaintiff purchased, and still owns, this vehicle. Unknown  
10 to Plaintiff, at the time the vehicle was purchased, it was equipped with an emissions control “defeat  
11 device” which caused the vehicle to get an undue EPA certification and pass emissions tests, but at  
12 all other times emit 40 times the allowed level of pollutants, including NOx. The use of the “defeat  
13 device” by Volkswagen has caused Plaintiff out-of-pocket loss, future attempted repairs, and  
14 diminished value of his vehicle. Volkswagen knew about and purposefully used the “defeat  
15 device,” but did not disclose the “defeat device” and its effects to Plaintiff, so Plaintiff purchased  
16 his vehicle on the reasonable, but mistaken, belief that his vehicle complied with United States  
17 emissions standards, was properly EPA certified, and would retain all of its operating characteristics  
18 throughout its useful life.

19 **I. Kentucky Plaintiffs**

20 **1. Emily Fisher**

21 23. Plaintiff Emily Fisher is an individual residing in Louisville, Kentucky. In 2010,  
22 Plaintiff purchased a new 2010 Jetta TDI Sportswagon CleanDiesel from Clapp Auto Group (now  
23 Sam Swope Volkswagen), an authorized Volkswagen dealer in Clarksville, Indiana. Plaintiff  
24 purchased, and still owns, this vehicle. Unknown to Plaintiff, at the time the vehicle was purchased,  
25 it was equipped with an emissions control “defeat device” which caused the vehicle to get an undue  
26 EPA certification and pass emissions tests, but at all other times emit 40 times the allowed level of  
27 pollutants, including NOx. The use of the “defeat device” by Volkswagen has caused Plaintiff out-  
28 of-pocket loss, future attempted repairs, and diminished value of her vehicle. Volkswagen knew

1 about and purposefully used the “defeat device,” but did not disclose the “defeat device” and its  
2 effects to Plaintiff, so Plaintiff purchased her vehicle on the reasonable, but mistaken, belief that her  
3 vehicle complied with United States emissions standards, was properly EPA certified, and would  
4 retain all of its operating characteristics throughout its useful life.

5 **J. Maine Plaintiffs**

6 **1. Kshanti Greene**

7 24. Plaintiff Kshanti Greene is an individual residing in Carlisle, Maine. In May 2010,  
8 Plaintiff purchased a new 2010 Volkswagen Jetta Sportswagon CleanDiesel from Chapman  
9 Scottsdale Hyundai, an authorized Volkswagen dealer in Scottsdale, Arizona. Plaintiff purchased,  
10 and still owns, this vehicle. Unknown to Plaintiff, at the time the vehicle was purchased, it was  
11 equipped with an emissions control “defeat device” which caused the vehicle to get an undue EPA  
12 certification and pass emissions tests, but at all other times emit 40 times the allowed level of  
13 pollutants, including NOx. The use of the “defeat device” by Volkswagen has caused Plaintiff out-  
14 of-pocket loss, future attempted repairs, and diminished value of his vehicle. Volkswagen knew  
15 about and purposefully used the “defeat device,” but did not disclose the “defeat device” and its  
16 effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his  
17 vehicle complied with United States emissions standards, was properly EPA certified, and would  
18 retain all of its operating characteristics throughout its useful life.

19 **K. Massachusetts Plaintiffs**

20 **1. John Halloran**

21 25. Plaintiff John Halloran is an individual residing in Cambridge, Massachusetts. In  
22 2012, Plaintiff purchased a new Jetta TDI Sportswagon CleanDiesel from an authorized  
23 Volkswagen/Audi. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff, at the  
24 time the vehicle was purchased, it was equipped with an emissions control “defeat device” which  
25 caused the vehicle to get an undue EPA certification and pass emissions tests, but at all other times  
26 emit 40 times the allowed level of pollutants, including NOx. The use of the “defeat device” by  
27 Volkswagen has caused Plaintiff out-of-pocket loss, future attempted repairs, and diminished value  
28 of his vehicle. Volkswagen knew about and purposefully used the “defeat device,” but did not

1 disclose the “defeat device” and its effects to Plaintiff, so Plaintiff purchased his vehicle on the  
2 reasonable, but mistaken, belief that his vehicle complied with United States emissions standards,  
3 was properly EPA certified, and would retain all of its operating characteristics throughout its useful  
4 life.

5 **L. Minnesota Plaintiffs**

6 **1. Scott Moen**

7 26. Plaintiff Scott Moen is an individual residing in St. Paul, Minnesota. In 2015,  
8 Plaintiff purchased a used 2013 Golf and 2010 Jetta Volkswagen TDI CleanDiesel from Schmelz  
9 Countryside Volkswagen, an authorized Volkswagen dealer in Maplewood, Minnesota, and a used.  
10 Plaintiff purchased, and still owns, these vehicles. Unknown to Plaintiff, at the time the vehicles  
11 were purchased, they were equipped with an emissions control “defeat device” which caused the  
12 vehicle to get an undue EPA certification and pass emissions tests, but at all other times emit 40  
13 times the allowed level of pollutants, including NOx. The use of the “defeat device” by  
14 Volkswagen has caused Plaintiff out-of-pocket loss, future attempted repairs, and diminished value  
15 of his vehicle. Volkswagen knew about and purposefully used the “defeat device,” but did not  
16 disclose the “defeat device” and its effects to Plaintiff, so Plaintiff purchased his vehicle on the  
17 reasonable, but mistaken, belief that his vehicles complied with United States emissions standards,  
18 was properly EPA certified, and would retain all of its operating characteristics throughout its useful  
19 life.

20 **M. Missouri Plaintiffs**

21 **1. Grant Gall**

22 27. Plaintiff Grant Gall is an individual residing in Macon, Missouri. In 2015, Plaintiff  
23 purchased a new 2015 Passat TDI SEL Premium CleanDiesel from an authorized Volkswagen  
24 dealer. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff, at the time the  
25 vehicle was purchased, it was equipped with an emissions control “defeat device” which caused the  
26 vehicle to get an undue EPA certification and pass emissions tests, but at all other times emit 40  
27 times the allowed level of pollutants, including NOx. The use of the “defeat device” by  
28 Volkswagen has caused Plaintiff out-of-pocket loss, future attempted repairs, and diminished value

1 of his vehicle. Volkswagen knew about and purposefully used the “defeat device,” but did not  
2 disclose the “defeat device” and its effects to Plaintiff, so Plaintiff purchased his vehicle on the  
3 reasonable, but mistaken, belief that his vehicle complied with United States emissions standards,  
4 was properly EPA certified, and would retain all of its operating characteristics throughout its useful  
5 life.

6 **N. Nevada Plaintiffs**

7 **1. Anthony DeMartino**

8 28. Plaintiff Anthony DeMartino is an individual residing in Las Vegas. In September  
9 2014, Plaintiff purchased a new 2015 Volkswagen Golf TDI SEL CleanDiesel from Hewlett  
10 Volkswagen, an authorized Volkswagen dealer in Georgetown, Texas. Plaintiff purchased, and still  
11 owns, this vehicle. Unknown to Plaintiff, at the time the vehicle was purchased, it was equipped  
12 with an emissions control “defeat device” which caused the vehicle to get an undue EPA  
13 certification and pass emissions tests, but at all other times emit 40 times the allowed level of  
14 pollutants, including NOx. The use of the “defeat device” by Volkswagen has caused Plaintiff out-  
15 of-pocket loss, future attempted repairs, and diminished value of his vehicle. Volkswagen knew  
16 about and purposefully used the “defeat device,” but did not disclose the “defeat device” and its  
17 effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his  
18 vehicle complied with United States emissions standards, was properly EPA certified, and would  
19 retain all of its operating characteristics throughout its useful life.

20 **O. New Hampshire Plaintiffs**

21 **1. Petar Ramadanovic**

22 29. Plaintiff Petar Ramadanovic is an individual residing in Portsmouth, New  
23 Hampshire. On July 22, 2015, Plaintiff purchased a new 2015 Golf TDI CleanDiesel from Seacoast  
24 VW, an authorized Volkswagen dealer in Greenland, NH. Plaintiff purchased, and still owns, this  
25 vehicle. Unknown to Plaintiff, at the time the vehicle was purchased, it was equipped with an  
26 emissions control “defeat device” which caused the vehicle to get an undue EPA certification and  
27 pass emissions tests, but at all other times emit 40 times the allowed level of pollutants, including  
28 NOx. The use of the “defeat device” by Volkswagen has caused Plaintiff out-of-pocket loss, future

1 attempted repairs, and diminished value of his vehicle. Volkswagen knew about and purposefully  
2 used the “defeat device,” but did not disclose the “defeat device” and its effects to Plaintiff, so  
3 Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle complied with  
4 United States emissions standards, was properly EPA certified, and would retain all of its operating  
5 characteristics throughout its useful life.

6 **P. New York Plaintiffs**

7 **1. Christopher Monroe**

8 30. Plaintiff Christopher Monroe is an individual residing in Ithaca, New York. In  
9 October 2010, Plaintiff purchased a new 2010 Volkswagen Jetta TDI Sedan CleanDiesel from  
10 Maguire Automotive, an authorized Volkswagen dealer in Ithaca, New York. Plaintiff purchased,  
11 and still owns, this vehicle. Unknown to Plaintiff, at the time the vehicle was purchased, it was  
12 equipped with an emissions control “defeat device” which caused the vehicle to get an undue EPA  
13 certification and pass emissions tests, but at all other times emit 40 times the allowed level of  
14 pollutants, including NOx. The use of the “defeat device” by Volkswagen has caused Plaintiff out-  
15 of-pocket loss, future attempted repairs, and diminished value of his vehicle. Volkswagen knew  
16 about and purposefully used the “defeat device,” but did not disclose the “defeat device” and its  
17 effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his  
18 vehicle complied with United States emissions standards, was properly EPA certified, and would  
19 retain all of its operating characteristics throughout its useful life.

20 **Q. North Carolina Plaintiffs**

21 **1. Melissa Bracken**

22 31. Plaintiff Melissa Bracken is an individual residing in Cary, North Carolina. In 2013,  
23 Plaintiff purchased a new 2014 Volksagen Golf 4D TDI CleanDiesel from Southern States  
24 Volkswagen an authorized Volkswagen dealer in Durham, North Carolina. Plaintiff purchased, and  
25 still owns, this vehicle. Unknown to Plaintiff, at the time the vehicle was purchased, it was  
26 equipped with an emissions control “defeat device” which caused the vehicle to get an undue EPA  
27 certification and pass emissions tests, but at all other times emit 40 times the allowed level of  
28 pollutants, including NOx. The use of the “defeat device” by Volkswagen has caused Plaintiff out-

1 of-pocket loss, future attempted repairs, and diminished value of his vehicle. Volkswagen knew  
2 about and purposefully used the “defeat device,” but did not disclose the “defeat device” and its  
3 effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his  
4 vehicle complied with United States emissions standards, was properly EPA certified, and would  
5 retain all of its operating characteristics throughout its useful life.

6 **R. Ohio Plaintiffs**

7 **1. Rezeda Dozier**

8 32. Plaintiff Rezeda Dozier is an individual residing in Fairfield Township, Ohio. In  
9 January 2014, Plaintiff purchased a new 2014 Jetta TDI CleanDiesel from Fairfield Volkswagen, an  
10 authorized Volkswagen dealer in Fairfield, Ohio. Plaintiff purchased, and still owns, this vehicle.  
11 Unknown to Plaintiff, at the time the vehicle was purchased, it was equipped with an emissions  
12 control “defeat device” which caused the vehicle to get an undue EPA certification and pass  
13 emissions tests, but at all other times emit 40 times the allowed level of pollutants, including NOx.  
14 The use of the “defeat device” by Volkswagen has caused Plaintiff out-of-pocket loss, future  
15 attempted repairs, and diminished value of her vehicle. Volkswagen knew about and purposefully  
16 used the “defeat device,” but did not disclose the “defeat device” and its effects to Plaintiff, so  
17 Plaintiff purchased her vehicle on the reasonable, but mistaken, belief that her vehicle complied  
18 with United States emissions standards, was properly EPA certified, and would retain all of its  
19 operating characteristics throughout its useful life.

20 **S. Oregon Plaintiffs**

21 **1. Jon Dull**

22 33. Plaintiff Jon Dull is an individual residing in Salem, Oregon. In July 2012, Plaintiff  
23 purchased a new 2012 Jetta Wagon TDI CleanDiesel from Dick Hannah Volkswagen, an authorized  
24 Volkswagen dealer in Vancouver, Washington. Plaintiff purchased, and still owns, this vehicle.  
25 Unknown to Plaintiff, at the time the vehicle was purchased, it was equipped with an emissions  
26 control “defeat device” which caused the vehicle to get an undue EPA certification and pass  
27 emissions tests, but at all other times emit 40 times the allowed level of pollutants, including NOx.  
28 The use of the “defeat device” by Volkswagen has caused Plaintiff out-of-pocket loss, future

1 attempted repairs, and diminished value of his vehicle. Volkswagen knew about and purposefully  
2 used the “defeat device,” but did not disclose the “defeat device” and its effects to Plaintiff, so  
3 Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle complied with  
4 United States emissions standards, was properly EPA certified, and would retain all of its operating  
5 characteristics throughout its useful life.

6 **T. Pennsylvania Plaintiffs**

7 **1. Melissa Fedorczyk**

8 34. Plaintiff Melissa Fedorczyk is an individual residing in Lancaster, Pennsylvania. In  
9 July 2009, Plaintiff purchased a new 2009 Volkswagen Jetta TDI Sportswagon CleanDiesel from an  
10 authorized Volkswagen dealer in Lancaster, Pennsylvania. Plaintiff purchased, and still owns, this  
11 vehicle. Unknown to Plaintiff, at the time the vehicle was purchased, it was equipped with an  
12 emissions control “defeat device” which caused the vehicle to get an undue EPA certification and  
13 pass emissions tests, but at all other times emit 40 times the allowed level of pollutants, including  
14 NOx. The use of the “defeat device” by Volkswagen has caused Plaintiff out-of-pocket loss, future  
15 attempted repairs, and diminished value of her vehicle. Volkswagen knew about and purposefully  
16 used the “defeat device,” but did not disclose the “defeat device” and its effects to Plaintiff, so  
17 Plaintiff purchased her vehicle on the reasonable, but mistaken, belief that her vehicle complied  
18 with United States emissions standards, was properly EPA certified, and would retain all of its  
19 operating characteristics throughout its useful life.

20 **U. Texas Plaintiffs**

21 **1. David Antellocy**

22 35. Plaintiff David Antellocy is an individual residing in Round Rock, Texas. In  
23 October 2014, Plaintiff purchased a used 2010 Volkswagen Golf TDI CleanDiesel from Maund  
24 Volkswagen, an authorized Volkswagen dealer in Austin, Texas. Plaintiff purchased, and still  
25 owns, this vehicle. Unknown to Plaintiff, at the time the vehicle was purchased, it was equipped  
26 with an emissions control “defeat device” which caused the vehicle to get an undue EPA  
27 certification and pass emissions tests, but at all other times emit 40 times the allowed level of  
28 pollutants, including NOx. The use of the “defeat device” by Volkswagen has caused Plaintiff out-

1 of-pocket loss, future attempted repairs, and diminished value of his vehicle. Volkswagen knew  
2 about and purposefully used the “defeat device,” but did not disclose the “defeat device” and its  
3 effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his  
4 vehicle complied with United States emissions standards, was properly EPA certified, and would  
5 retain all of its operating characteristics throughout its useful life.

6 **V. Washington Plaintiffs**

7 **1. Joshua Campbell**

8 36. Plaintiff Joshua Campbell is an individual residing in Seattle, Washington. In  
9 December 2012, Plaintiff purchased a new 2013 Volkswagen Golf CleanDiesel from University  
10 Volkswagen, an authorized Volkswagen dealer in Seattle, Washington. Plaintiff purchased, and still  
11 owns, this vehicle. Unknown to Plaintiff, at the time the vehicle was purchased, it was equipped  
12 with an emissions control “defeat device” which caused the vehicle to get an undue EPA  
13 certification and pass emissions tests, but at all other times emit 40 times the allowed level of  
14 pollutants, including NOx. The use of the “defeat device” by Volkswagen has caused Plaintiff out-  
15 of-pocket loss, future attempted repairs, and diminished value of his vehicle. Volkswagen knew  
16 about and purposefully used the “defeat device,” but did not disclose the “defeat device” and its  
17 effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his  
18 vehicle complied with United States emissions standards, was properly EPA certified, and would  
19 retain all of its operating characteristics throughout its useful life.

20 **W. Wisconsin Plaintiffs**

21 **1. Alfred Howe**

22 37. Plaintiff Alfred Howe is an individual residing in Williams Bay, Wisconsin. In  
23 August 2011, Plaintiff purchased a new 2012 Volkswagen Golf TDI CleanDiesel from Hall  
24 Volkswagen, an authorized Volkswagen dealer in Brookfield, Wisconsin. Plaintiff purchased, and  
25 still owns, this vehicle. Unknown to Plaintiff, at the time the vehicle was purchased, it was  
26 equipped with an emissions control “defeat device” which caused the vehicle to get an undue EPA  
27 certification and pass emissions tests, but at all other times emit 40 times the allowed level of  
28 pollutants, including NOx. The use of the “defeat device” by Volkswagen has caused Plaintiff out-



1 of-pocket loss, future attempted repairs, and diminished value of his vehicle. Volkswagen knew  
2 about and purposefully used the “defeat device,” but did not disclose the “defeat device” and its  
3 effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his  
4 vehicle complied with United States emissions standards, was properly EPA certified, and would  
5 retain all of its operating characteristics throughout its useful life.

6 38. Plaintiffs selected and ultimately purchased their vehicles, in part, because of the  
7 “CleanDiesel” system, as represented through advertisements and representations made by  
8 Volkswagen. Plaintiffs recall that the advertisements and representations touted the cleanliness of  
9 the engine system for the environment and the efficiency and power/performance of the engine  
10 system. None of the advertisements reviewed or representations received by Plaintiffs contained  
11 any disclosure relating to the “defeat device” or that Volkswagen had purposefully falsified its  
12 certification of EPA compliance. Had Volkswagen disclosed that the CleanDiesel actually emitted  
13 40 times the permitted levels of pollutants, including NOx, Plaintiffs would not have purchased the  
14 vehicle with the CleanDiesel engine, or would have paid less for the vehicle.

15 39. Each and every Plaintiff and each Class member has suffered an ascertainable loss as  
16 a result of Volkswagen’s omissions and/or misrepresentations associated with the CleanDiesel  
17 engine system, including, but not limited to, out-of-pocket loss and future attempted repairs, future  
18 additional fuel costs, decreased performance of the vehicle, and diminished value of the vehicle.

19 40. Neither Volkswagen nor any of its agents, dealers, or other representatives informed  
20 Plaintiffs or Class members of the existence of the “defeat device” and/or defective design of the  
21 CleanDiesel engine prior to purchase.

## 22 **X. Defendant**

23 41. Volkswagen Group of America, Inc., is a corporation doing business in all 50 states  
24 (including the District of Columbia) and is organized under the laws of the State of New Jersey,  
25 with its principal place of business located at 2200 Ferdinand Porsche Dr., Herndon, Virginia  
26 20171. At all times relevant to this action, Volkswagen manufactured, distributed, sold, leased, and  
27 warranted the Affected Vehicles under the Volkswagen and Audi brand names throughout the  
28 United States. Volkswagen and/or its agents designed, manufactured, and installed the CleanDiesel

1 engine systems in the Affected Vehicles, which included the “defeat device.” Volkswagen also  
2 developed and disseminated the owner’s manuals and warranty booklets, advertisements, and other  
3 promotional materials relating to the Affected Vehicles.

## 4 V. TOLLING OF THE STATUTE OF LIMITATIONS

### 5 A. Discovery Rule Tolling

6 42. Class Members had no way of knowing about Volkswagen’s deception with respect to  
7 its CleanDiesel engine system and “defeat device.” It took federal EPA and California Air Resources  
8 Board investigations to uncover Volkswagen’s deception, which involved sophisticated software  
9 manipulation on Volkswagen’s part. As reported by the *Los Angeles Times* on September 18, 2015, it  
10 took California Air Resources Board testing on a special dynamometer in a laboratory, open road  
11 testing using portable equipment, and the use of special testing devised by the Board to uncover  
12 Volkswagen’s scheme and to detect how software on the engine’s electronic control module was  
13 deceiving emissions certifications tests. Plainly, Volkswagen was intent on expressly hiding its  
14 behavior from regulators and consumers. This is the quintessential case for tolling.

15 43. Within the time period of any applicable statutes of limitation, Plaintiffs and  
16 members of the proposed classes could not have discovered through the exercise of reasonable  
17 diligence that Volkswagen was concealing the conduct complained of herein and misrepresenting  
18 the Company’s true position with respect to the emission qualities of its vehicles.

19 44. Plaintiffs and the other Class Members did not discover, and did not know of facts  
20 that would have caused a reasonable person to suspect, that Volkswagen did not report information  
21 within its knowledge to federal and state authorities, its dealerships, or consumers; nor would a  
22 reasonable and diligent investigation have disclosed that Volkswagen had information in its  
23 possession about the existence of its sophisticated emissions scheme and that it opted to conceal that  
24 information, which was discovered by Plaintiffs only shortly before this action was filed. Nor in  
25 any event would such an investigation on the part of Plaintiffs and other Class members have  
26 disclosed that Volkswagen valued profits over compliance with federal and state law, or the trust  
27 that Plaintiffs and other Class members had placed in its representations, or that, necessarily,  
28 Volkswagen actively discouraged its personnel from raising or disclosing issues with regard to the

1 true quality and quantity of the emissions, and the emissions software, of its vehicles, or of  
2 Volkswagen's emissions scheme.

3 45. For these reasons, all applicable statutes of limitation have been tolled by operation  
4 of the discovery rule with respect to claims as to all vehicles identified herein.

5 **B. Fraudulent Concealment Tolling**

6 46. All applicable statutes of limitation have also been tolled by Volkswagen's knowing  
7 and active fraudulent concealment and denial of the facts alleged herein throughout the time period  
8 relevant to this action.

9 47. Instead of disclosing its emissions scheme, or that the quality and quantity of  
10 emissions from the subject vehicles were far worse than represented, and of its disregard of federal  
11 and state law, Volkswagen falsely represented that its vehicles complied with federal and state  
12 emissions standards, and that it was a reputable manufacturer whose representations could be  
13 trusted.

14 **C. Estoppel**

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

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

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

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

1 **VI. CLASS ALLEGATIONS**

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

5 **The Nationwide Class**

6 All persons or entities in the United States who are current or former  
7 owners and/or lessees of an “Affected Vehicle.” Affected Vehicles  
8 include, without limitation: MY 2009-2015 VW Jetta; MY 2009-2015  
9 VW Beetle; MY 2009-2015 VW Golf; MY 2014-2015 VW Passat;  
10 and MY 2009-2015 Audi A3.

11 **The Virginia Subclass**

12 All persons or entities in the state of California who are current or  
13 former owners and/or lessees of an “Affected Vehicle.” Affected  
14 Vehicles include, without limitation: MY 2009-2015 VW Jetta; MY  
15 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2014-2015  
16 VW Passat; and MY 2009-2015 Audi A3.

17 **The Arizona Subclass**

18 All persons or entities in the state of Arizona who are current or  
19 former owners and/or lessees of an “Affected Vehicle.” Affected  
20 Vehicles include, without limitation: MY 2009-2015 VW Jetta; MY  
21 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2014-2015  
22 VW Passat; and MY 2009-2015 Audi A3.

23 **The California Subclass**

24 All persons or entities in the state of California who are current or  
25 former owners and/or lessees of an “Affected Vehicle.” Affected  
26 Vehicles include, without limitation: MY 2009-2015 VW Jetta; MY  
27 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2014-2015  
28 VW Passat; and MY 2009-2015 Audi A3.

**The Colorado Subclass**

All persons or entities in the state of Colorado who are current or  
former owners and/or lessees of an “Affected Vehicle.” Affected  
Vehicles include, without limitation: MY 2009-2015 VW Jetta; MY  
2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2014-2015  
VW Passat; and MY 2009-2015 Audi A3.

**The Connecticut Subclass**

All persons or entities in the state of Connecticut who are current or  
former owners and/or lessees of an “Affected Vehicle.” Affected  
Vehicles include, without limitation: MY 2009-2015 VW Jetta; MY  
2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2014-2015  
VW Passat; and MY 2009-2015 Audi A3.

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**The Florida Subclass**

All persons or entities in the state of Florida who are current or former owners and/or lessees of an “Affected Vehicle.” Affected Vehicles include, without limitation: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2014-2015 VW Passat; and MY 2009-2015 Audi A3.

**The Georgia Subclass**

All persons or entities in the state of Georgia who are current or former owners and/or lessees of an “Affected Vehicle.” Affected Vehicles include, without limitation: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2014-2015 VW Passat; and MY 2009-2015 Audi A3.

**The Illinois Subclass**

All persons or entities in the state of Illinois who are current or former owners and/or lessees of an “Affected Vehicle.” Affected Vehicles include, without limitation: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2014-2015 VW Passat; and MY 2009-2015 Audi A3.

**The Kentucky Subclass**

All persons or entities in the state of Kentucky who are current or former owners and/or lessees of an “Affected Vehicle.” Affected Vehicles include, without limitation: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2014-2015 VW Passat; and MY 2009-2015 Audi A3.

**The Maine Subclass**

All persons or entities in the state of Maine who are current or former owners and/or lessees of an “Affected Vehicle.” Affected Vehicles include, without limitation: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2014-2015 VW Passat; and MY 2009-2015 Audi A3.

**The Massachusetts Subclass**

All persons or entities in the state of Massachusetts who are current or former owners and/or lessees of an “Affected Vehicle.” Affected Vehicles include, without limitation: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2014-2015 VW Passat; and MY 2009-2015 Audi A3.

**The Minnesota Subclass**

All persons or entities in the state of Minnesota who are current or former owners and/or lessees of an “Affected Vehicle.” Affected Vehicles include, without limitation: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2014-2015 VW Passat; and MY 2009-2015 Audi A3.

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**The Missouri Subclass**

All persons or entities in the state of Missouri who are current or former owners and/or lessees of an “Affected Vehicle.” Affected Vehicles include, without limitation: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2014-2015 VW Passat; and MY 2009-2015 Audi A3.

**The Nevada Subclass**

All persons or entities in the state of Nevada who are current or former owners and/or lessees of an “Affected Vehicle.” Affected Vehicles include, without limitation: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2014-2015 VW Passat; and MY 2009-2015 Audi A3.

**The New Hampshire Subclass**

All persons or entities in the state of New Hampshire who are current or former owners and/or lessees of an “Affected Vehicle.” Affected Vehicles include, without limitation: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2014-2015 VW Passat; and MY 2009-2015 Audi A3.

**The New York Subclass**

All persons or entities in the state of New York who are current or former owners and/or lessees of an “Affected Vehicle.” Affected Vehicles include, without limitation: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2014-2015 VW Passat; and MY 2009-2015 Audi A3.

**The North Carolina Subclass**

All persons or entities in the state of North Carolina who are current or former owners and/or lessees of an “Affected Vehicle.” Affected Vehicles include, without limitation: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2014-2015 VW Passat; and MY 2009-2015 Audi A3.

**The Ohio Subclass**

All persons or entities in the state of Ohio who are current or former owners and/or lessees of an “Affected Vehicle.” Affected Vehicles include, without limitation: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2014-2015 VW Passat; and MY 2009-2015 Audi A3.

**The Oregon Subclass**

All persons or entities in the state of Oregon who are current or former owners and/or lessees of an “Affected Vehicle.” Affected Vehicles include, without limitation: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2014-2015 VW Passat; and MY 2009-2015 Audi A3.

1                   **The Pennsylvania Subclass**

2                   All persons or entities in the state of Pennsylvania who are current or  
3                   former owners and/or lessees of an “Affected Vehicle.” Affected  
4                   Vehicles include, without limitation: MY 2009-2015 VW Jetta; MY  
5                   2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2014-2015  
6                   VW Passat; and MY 2009-2015 Audi A3.

7                   **The Texas Subclass**

8                   All persons or entities in the state of Texas who are current or former  
9                   owners and/or lessees of an “Affected Vehicle.” Affected Vehicles  
10                  include, without limitation: MY 2009-2015 VW Jetta; MY 2009-2015  
11                  VW Beetle; MY 2009-2015 VW Golf; MY 2014-2015 VW Passat;  
12                  and MY 2009-2015 Audi A3.

13                  **The Washington Subclass**

14                  All persons or entities in the state of Washington who are current or  
15                  former owners and/or lessees of an “Affected Vehicle.” Affected  
16                  Vehicles include, without limitation: MY 2009-2015 VW Jetta; MY  
17                  2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2014-2015  
18                  VW Passat; and MY 2009-2015 Audi A3.

19                  **The Wisconsin Subclass**

20                  All persons or entities in the state of Wisconsin who are current or  
21                  former owners and/or lessees of an “Affected Vehicle.” Affected  
22                  Vehicles include, without limitation: MY 2009-2015 VW Jetta; MY  
23                  2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2014-2015  
24                  VW Passat; and MY 2009-2015 Audi A3.

25                  53.       Excluded from the Class are individuals who have personal injury claims resulting  
26                  from the “defeat device” in the CleanDiesel system. Also excluded from the Class are Volkswagen  
27                  and its subsidiaries and affiliates; all persons who make a timely election to be excluded from the  
28                  Class; governmental entities; and the judge to whom this case is assigned and his/her immediate  
29                  family. Plaintiffs reserve the right to revise the Class definition based upon information learned  
30                  through discovery.

31                  54.       Certification of Plaintiffs’ claims for class-wide treatment is appropriate because  
32                  Plaintiffs can prove the elements of their claims on a class-wide basis using the same evidence as  
33                  would be used to prove those elements in individual actions alleging the same claim.

34                  55.       This action has been brought and may be properly maintained on behalf of each of  
35                  the Classes proposed herein under Federal Rule of Civil Procedure 23.

1           56.    Numerosity. Federal Rule of Civil Procedure 23(a)(1): The members of the Classes  
2 are so numerous and geographically dispersed that individual joinder of all Class members is  
3 impracticable. While Plaintiffs are informed and believes that there are not less than hundreds of  
4 thousands of members of the Class, the precise number of Class members is unknown to Plaintiffs,  
5 but may be ascertained from Volkswagen’s books and records. Class members may be notified of  
6 the pendency of this action by recognized, Court-approved notice dissemination methods, which  
7 may include U.S. mail, electronic mail, Internet postings, and/or published notice.

8           57.    Commonality and Predominance: Federal Rule of Civil Procedure 23(a)(2) and  
9 23(b)(3): This action involves common questions of law and fact, which predominate over any  
10 questions affecting individual Class members, including, without limitation:

- 11           a)    Whether Volkswagen engaged in the conduct alleged herein;
- 12           b)    Whether Volkswagen designed, advertised, marketed, distributed, leased,  
13                sold, or otherwise placed Affected Vehicles into the stream of commerce in  
14                the United States;
- 15           c)    Whether the CleanDiesel engine system in the Affected Vehicles contains a  
16                defect in that it does not comply with U.S. EPA requirements;
- 17           d)    Whether the CleanDiesel engine systems in Affected Vehicles can be made to  
18                comply with EPA standards without substantially degrading the performance  
19                and/or efficiency of the Affected Vehicles;
- 20           e)    Whether Volkswagen knew about the “defeat device” and, if so, how long  
21                Volkswagen has known;
- 22           f)    Whether Volkswagen designed, manufactured, marketed, and distributed  
23                Affected Vehicles with a “defeat device”;
- 24           g)    Whether Volkswagen’s conduct violates consumer protection statutes,  
25                warranty laws, and other laws as asserted herein;
- 26           h)    Whether Plaintiffs and the other Class members overpaid for their Affected  
27                Vehicles;



- 1           i)       Whether Plaintiffs and the other Class members are entitled to equitable  
2                    relief, including, but not limited to, restitution or injunctive relief; and  
3           j)       Whether Plaintiffs and the other Class members are entitled to damages and  
4                    other monetary relief and, if so, in what amount.

5           58.    Typicality: Federal Rule of Civil Procedure 23(a)(3): Plaintiffs' claims are typical of  
6           the other Class members' claims because, among other things, all Class members were comparably  
7           injured through Volkswagen's wrongful conduct as described above.

8           59.    Adequacy: Federal Rule of Civil Procedure 23(a)(4): Plaintiffs are adequate Class  
9           representative because their interests do not conflict with the interests of the other members of the  
10          Classes they seek to represent; Plaintiffs have retained counsel competent and experienced in  
11          complex class action litigation; and Plaintiffs intend to prosecute this action vigorously. The  
12          Classes' interests will be fairly and adequately protected by Plaintiffs and their counsel.

13          60.    Declaratory and Injunctive Relief: Federal Rule of Civil Procedure 23(b)(2):  
14          Volkswagen has acted or refused to act on grounds generally applicable to Plaintiffs and the other  
15          members of the Classes, thereby making appropriate final injunctive relief and declaratory relief, as  
16          described below, with respect to the Class as a whole.

17          61.    Superiority: Federal Rule of Civil Procedure 23(b)(3): A class action is superior to  
18          any other available means for the fair and efficient adjudication of this controversy, and no unusual  
19          difficulties are likely to be encountered in the management of this class action. The damages or  
20          other financial detriment suffered by Plaintiffs and the other Class members are relatively small  
21          compared to the burden and expense that would be required to individually litigate their claims  
22          against Volkswagen, so it would be impracticable for the members of the Classes to individually  
23          seek redress for Volkswagen's wrongful conduct. Even if Class members could afford individual  
24          litigation, the court system could not. Individualized litigation creates a potential for inconsistent or  
25          contradictory judgments, and increases the delay and expense to all parties and the court system.  
26          By contrast, the class action device presents far fewer management difficulties, and provides the  
27          benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.  
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**VII. VIOLATIONS ALLEGED**

**A. Claims Brought on Behalf of the Nationwide Class and the Virginia Subclass Under Virginia Law**

**COUNT I**

**FRAUD BY CONCEALMENT UNDER VIRGINIA LAW**

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

63. This claim is brought on behalf of the Nationwide Class and the Virginia Subclass.

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

65. Plaintiffs and Class members reasonably relied upon Volkswagen’s false representations. They had no way of knowing that Volkswagen’s representations were false and gravely misleading. As alleged herein, Volkswagen employed extremely sophisticated methods of deception. Plaintiffs and Class members did not, and could not, unravel Volkswagen’s deception on their own.

66. Volkswagen concealed and suppressed material facts concerning what is evidently the true culture of Volkswagen – one characterized by an emphasis on profits and sales above compliance with federal and state clean air law, and emissions regulations that are meant to protect the public and consumers. It also emphasized profits and sales about the trust that Plaintiffs and

1 Class members placed in its representations. As one customer, Priya Shah, put it in a quotation  
2 cited by the *Los Angeles Times* in a September 18, 2015 article, “It’s just a blatant disregard and  
3 intentional manipulation of the system. That’s just a whole other level of not only lying to the  
4 government, but also lying to your consumer. People buy diesel cars from Volkswagen because  
5 they feel they are clean diesel cars.” In the words of Ms. Shah, which no doubt reflect the  
6 sentiments of all other “CleanDiesel” vehicle buyers, “I don’t want to be spewing noxious gases  
7 into the environment.”

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

20 68. Volkswagen had a duty to disclose the emissions scheme it engaged in with respect  
21 to the vehicles at issue because knowledge of the scheme and its details were known and/or  
22 accessible only to Volkswagen, because Volkswagen had exclusive knowledge as to  
23 implementation and maintenance of its scheme, and because Volkswagen knew the facts were not  
24 known to or reasonably discoverable by Plaintiffs or Class members. Volkswagen also had a duty  
25 to disclose because it made general affirmative representations about the qualities of its vehicles  
26 with respect to emissions standards, starting with references to them as *clean* diesel cars, or cars  
27 with *clean* diesel engines, which were misleading, deceptive, and incomplete without the disclosure  
28 of the additional facts set forth above regarding its emissions scheme, the actual emissions of its

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

12 69. Volkswagen actively concealed and/or suppressed these material facts, in whole or in  
13 part, to pad and protect its profits and to avoid the perception that its vehicles did not or could not  
14 comply with federal and state laws governing clean air and emissions, which perception would hurt  
15 the brand's image and cost Volkswagen money, and it did so at the expense of Plaintiffs and Class  
16 members.

17 70. On information and belief, Volkswagen has still not made full and adequate  
18 disclosures, and continues to defraud Plaintiffs and Class members by concealing material  
19 information regarding the emission qualities of its referenced vehicles and its emissions scheme.

20 71. Plaintiffs and Class members were unaware of the omitted material facts referenced  
21 herein, and they would not have acted as they did if they had known of the concealed and/or  
22 suppressed facts, in that they would not have purchased purportedly “clean” diesel cars  
23 manufactured by Volkswagen, and/or would not have continued to drive their heavily polluting  
24 vehicles, or would have taken other affirmative steps in light of the information concealed from  
25 them. Plaintiffs' and Class Members' actions were justified. Volkswagen was in exclusive control  
26 of the material facts, and such facts were not known to the public, Plaintiffs, or Class members.

27 72. Because of the concealment and/or suppression of the facts, Plaintiffs and Class  
28 members have sustained damage because they own vehicles that are diminished in value as a result

1 of Volkswagen's concealment of the true quality and quantity of those vehicles' emissions and  
2 Volkswagen's failure to timely disclose the actual emission qualities and quantities of hundreds of  
3 thousands of Volkswagen- and Audi-branded vehicles and the serious issues engendered by  
4 Volkswagen's corporate policies. Had Plaintiffs and Class members been aware of Volkswagen's  
5 emissions schemes with regard to the vehicles at issue, and the company's callous disregard for  
6 compliance with applicable federal and state law and regulations, Plaintiffs and Class members who  
7 purchased or leased new or certified previously owned vehicles would have paid less for their  
8 vehicles or would not have purchased or leased them at all.

9 73. The value of Plaintiffs' and Class Members' vehicles has diminished as a result of  
10 Volkswagen's fraudulent concealment of its emissions scheme, which has greatly tarnished the  
11 Volkswagen and Audi brand names attached to Plaintiffs' and Class members' vehicles and made  
12 any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what  
13 otherwise would have been fair market value for the vehicles.

14 74. Accordingly, Volkswagen is liable to Plaintiffs and Class members for damages in an  
15 amount to be proven at trial.

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

22 76. Plaintiffs plead this count pursuant to the law of Virginia, where Volkswagen has its  
23 American headquarters, on behalf of all members of the Nationwide Class. As necessary, and in the  
24 alternative, Plaintiffs stand ready to plead sub-classes, based on the residences at pertinent times of  
25 members of the Nationwide Class, to allege fraudulent concealment under the laws of states other  
26 than Virginia.

1 **COUNT II**  
2 **VIOLATIONS OF THE VIRGINIA CONSUMER PROTECTION ACT**  
3 **(Va. Code Ann. §§ 59.1-196, et seq.)**

4 77. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set  
5 forth herein.

6 78. This claim is brought on behalf of the Nationwide Class and the Virginia Subclass.

7 79. The Virginia Consumer Protection prohibits “(5) misrepresenting that goods or  
8 services have certain quantities, characteristics, ingredients, uses, or benefits; (6) misrepresenting  
9 that goods or services are of a particular standard, quality, grade, style, or model; ... (8) advertising  
10 goods or services with intent not to sell them as advertised ...; [and] (14) using any other deception,  
11 fraud, false pretense, false promise, or misrepresentation in connection with a consumer  
12 transaction[.]” VA. CODE ANN. § 59.1-200(A).

13 80. Volkswagen is a “person” as defined by VA. CODE ANN. § 59.1-198. The  
14 transactions between Plaintiffs and the other Class members on one hand and Volkswagen on the  
15 other, leading to the purchase or lease of the Affected Vehicles by Plaintiffs and the other Class  
16 members, are “consumer transactions” as defined by VA. CODE ANN. § 59.1-198, because the  
17 Affected Vehicles were purchased or leased primarily for personal, family or household purposes.

18 81. In the course of Volkswagen’s business, it willfully failed to disclose and actively  
19 concealed the “defeat device” in Affected Vehicles as described above. Accordingly, Volkswagen  
20 engaged in acts and practices violating VA. CODE ANN. § 59.1-200(A), including representing that  
21 Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have;  
22 representing that Affected Vehicles are of a particular standard and quality when they are not;  
23 advertising Affected Vehicles with the intent not to sell them as advertised; and otherwise engaging  
24 in conduct likely to deceive.

25 82. Volkswagen’s actions as set forth above occurred in the conduct of trade or  
26 commerce.

27 83. Volkswagen’s conduct proximately caused injuries to Plaintiffs and the other Class  
28 members.

1 84. Plaintiffs and the other Class members were injured as a result of Volkswagen’s  
2 conduct in that Plaintiffs and the other Class members overpaid for their Affected Vehicles and did  
3 not receive the benefit of their bargain, and their Affected Vehicles have suffered a diminution in  
4 value. These injuries are the direct and natural consequence of Volkswagen’s misrepresentations  
5 and omissions.

6 85. Volkswagen actively and willfully concealed and/or suppressed the material facts  
7 regarding the defective and non-EPA compliant CleanDiesel engine system, the “defeat device” and  
8 the Affected Vehicles, in whole or in part, with the intent to deceive and mislead Plaintiffs and the  
9 other Class members and to induce Plaintiffs and the other Class members to purchase or lease  
10 Affected Vehicles at a higher price, which did not match the Affected Vehicles’ true value.  
11 Plaintiffs and the other Class members therefore seek treble damages.

12 **COUNT III**

13 **BREACH OF CONTRACT**  
14 **(Based on Virginia Law)**

15 86. Plaintiffs incorporate by reference all preceding allegations as though fully set forth  
16 herein.

17 87. Plaintiffs bring this Count on behalf of the Nationwide Class and Virginia Subclass.

18 88. Volkswagen’s misrepresentations and omissions alleged herein, including  
19 Volkswagen’s failure to disclose the CleanDiesel engine system was not EPA-compliant and the  
20 existence of the “defeat device” as alleged herein, caused Plaintiffs and the other Class members to  
21 make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and  
22 omissions, Plaintiffs and the other Class members would not have purchased or leased these  
23 Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they  
24 paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain  
25 non EPA-compliant engine systems and a “defeat device.” Accordingly, Plaintiffs and the other  
26 Class members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

27 89. Each and every sale or lease of an Affected Vehicle constitutes a contract between  
28 Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing

1 Plaintiffs and the other Class members defective Affected Vehicles and by misrepresenting or  
2 failing to disclose the CleanDiesel engine system was not EPA-compliant and failing to disclose the  
3 existence of the “defeat device,” including information known to Volkswagen rendering each  
4 Affected Vehicle illegal under U.S. environmental laws, and thus less valuable, than vehicles not  
5 equipped with CleanDiesel engine systems.

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

10 **B. Claims Brought on Behalf of the Arizona Subclass**

11 **COUNT I**

12 **VIOLATIONS OF THE CONSUMER FRAUD ACT**  
13 **(ARIZ. REV. STAT. §§ 44-1521, *et seq.*)**

14 91. Plaintiff Mark Carnett (“Plaintiff,” for purposes of all Arizona Subclass Counts)  
15 incorporates by reference all preceding allegations as though fully set forth herein.

16 92. Plaintiff brings this Count on behalf of the Arizona Subclass.

17 93. Plaintiff and Volkswagen are each “persons” as defined by ARIZ. REV. STAT. § 44-  
18 1521(6). The Affected Vehicles are “merchandise” as defined by ARIZ. REV. STAT. § 44-1521(5).

19 94. The Arizona Consumer Fraud Act proscribes “[t]he act, use or employment by any  
20 person of any deception, deceptive act or practice, fraud, false pretense, false promise,  
21 misrepresentation, or concealment, suppression or omission of any material fact with intent that  
22 others rely upon such concealment, suppression or omission, in connection with the sale or  
23 advertisement of any merchandise whether or not any person has in fact been misled, deceived or  
24 damaged thereby.” ARIZ. REV. STAT. § 44-1522(A).

25 95. By failing to disclose and actively concealing that the CleanDiesel engine systems  
26 were not EPA-compliant and used a “defeat device” in the Affected Vehicles, Volkswagen engaged  
27 in deceptive business practices prohibited by the Arizona Consumer Fraud Act, ARIZ. REV. STAT.  
28 § 44-1522(A), including (1) representing that Affected Vehicles have characteristics, uses, benefits,



1 and qualities which they do not have, (2) representing that Affected Vehicles are of a particular  
2 standard, quality, and grade when they are not, (3) advertising Affected Vehicles with the intent not  
3 to sell them as advertised, and (4) engaging in acts or practices which are otherwise unfair,  
4 misleading, false, or deceptive to the consumer.

5 96. As alleged above, Volkswagen made numerous material statements about the  
6 benefits and characteristics of the CleanDiesel system that were either false or misleading. Each of  
7 these statements contributed to the deceptive context of Volkswagen's unlawful advertising and  
8 representations as a whole.

9 97. Volkswagen knew that the CleanDiesel engine systems in the Affected Vehicles  
10 were defectively designed or manufactured, did not comply with EPA regulations, used a "defeat  
11 device," and were not suitable for their intended use. Volkswagen nevertheless failed to warn  
12 Plaintiff about these defects despite having a duty to do so.

13 98. Volkswagen owed Plaintiff a duty to disclose the defective nature of the CleanDiesel  
14 engine system in the Affected Vehicles, because Volkswagen:

- 15 i) Possessed exclusive knowledge of the defects rendering the Affected  
16 Vehicles illegal under EPA regulations;
- 17 ii) Intentionally concealed the defects associated with CleanDiesel engine  
18 systems through its deceptive marketing campaigns and use of the "defeat  
19 device" that it designed to hide the defects in the CleanDiesel engine system;  
20 and/or
- 21 iii) Made incomplete representations about the characteristics and performance  
22 of the CleanDiesel engine system generally, while purposefully withholding  
23 material facts from Plaintiff that contradicted these representations.

24 99. Volkswagen's unfair or deceptive acts or practices were likely to and did in fact  
25 deceive reasonable consumers, including Plaintiff, about the true performance and characteristics of  
26 the CleanDiesel engine system in Affected Vehicles.

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

1 Plaintiff currently owns or leases, or within the class period has owned or leased, an Affected  
2 Vehicle that is defective. Defects associated with the CleanDiesel engine system have caused the  
3 value of Affected Vehicles to decrease.

4 101. Plaintiff and the Class sustained damages as a result of the Volkswagen's unlawful  
5 acts and are, therefore, entitled to damages and other relief as provided under the Arizona Consumer  
6 Fraud Act.

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

9 **COUNT II**

10 **BREACH OF CONTRACT**  
11 **(Based on Arizona Law)**

12 103. Plaintiff incorporates by reference all preceding allegations as though fully set forth  
13 herein.

14 104. Plaintiff brings this Count on behalf of the Arizona Subclass.

15 105. Volkswagen's misrepresentations and omissions alleged herein, including  
16 Volkswagen's failure to disclose the existence of the CleanDiesel engine system's defect and/or  
17 defective design as alleged herein, caused Plaintiff and the other Arizona Subclass members to  
18 make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and  
19 omissions, Plaintiff and the other Arizona Subclass members would not have purchased or leased  
20 these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices  
21 they paid, and/or would have purchased or leased less expensive alternative vehicles that did not  
22 contain the CleanDiesel engine system and which were not marketed as including such a system.  
23 Accordingly, Plaintiff and the other Arizona Subclass members overpaid for their Affected Vehicles  
24 and did not receive the benefit of their bargain.

25 106. Each and every sale or lease of an Affected Vehicle constitutes a contract between  
26 Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing  
27 Plaintiff and the other Arizona Subclass members defective Affected Vehicles and by  
28 misrepresenting or failing to disclose the existence of the CleanDiesel engine system's defect and/or

1 defective design, including information known to Volkswagen rendering each Affected Vehicle non  
2 EPA-compliant, and thus less valuable, than vehicles not equipped with a CleanDiesel engine  
3 system.

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

8 **COUNT III**

9 **FRAUDULENT CONCEALMENT**  
10 **(Based on Arizona Law)**

11 108. Plaintiff incorporates by reference all preceding allegations as though fully set forth  
12 herein.

13 109. Plaintiff brings this Count on behalf of the Arizona Subclass.

14 110. Volkswagen intentionally concealed that the CleanDiesel engine systems were not  
15 EPA-compliant and used a "defeat device," or acted with reckless disregard for the truth, and denied  
16 Plaintiff and the other Class members information that is highly relevant to their purchasing  
17 decision.

18 111. Volkswagen further affirmatively misrepresented to Plaintiff in advertising and other  
19 forms of communication, including standard and uniform material provided with each car, that the  
20 Affected Vehicles it was selling were new, had no significant defects, complied with EPA  
21 regulations and would perform and operate properly when driven in normal usage.

22 112. Volkswagen knew these representations were false when made.

23 113. The Affected Vehicles purchased or leased by Plaintiff and the other Class members  
24 were, in fact, defective, non-EPA compliant, unsafe, and unreliable because the Affected Vehicles  
25 contained faulty and defective CleanDiesel engine system, as alleged herein.

26 114. Volkswagen had a duty to disclose that these Affected Vehicles were defective,  
27 unsafe, non-EPA compliant and unreliable in that certain crucial emissions functions of the Affected  
28 Vehicles would be rendered inoperative due to the "defeat device" installed in the defective

1 CleanDiesel engine system, because Plaintiff and the other Class members relied on Volkswagen’s  
2 material representations that the Affected Vehicles they were purchasing were safe, environmentally  
3 clean, efficient and free from defects.

4 115. The aforementioned concealment was material because if it had been disclosed  
5 Plaintiff and the other Class members would not have bought or leased the Affected Vehicles, or  
6 would not have bought or leased those Vehicles at the prices they paid.

7 116. The aforementioned representations were material because they were facts that  
8 would typically be relied on by a person purchasing or leasing a new motor vehicle. Volkswagen  
9 knew or recklessly disregarded that its representations were false because it knew that it had to use  
10 the “defeat device” in order for Affected Vehicles to pass EPA emissions requirements.  
11 Volkswagen intentionally made the false statements in order to sell Affected Vehicles.

12 117. Plaintiff and the other Class members relied on Volkswagen’s reputation – along  
13 with Volkswagen’s failure to disclose the faulty and defective nature of the CleanDiesel engine  
14 system and Volkswagen’s affirmative assurance that its Affected Vehicles were safe and reliable,  
15 and other similar false statements – in purchasing or leasing Affected Vehicles.

16 118. As a result of their reliance, Plaintiff and the other Class members have been injured  
17 in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and  
18 overpayment at the time of purchase or lease and/or the diminished value of their Affected Vehicles.

19 119. Volkswagen’s conduct was knowing, intentional, with malice, demonstrated a  
20 complete lack of care, and was in reckless disregard for the rights of Plaintiff and the other Class  
21 members. Plaintiff and the other Class members are therefore entitled to an award of punitive  
22 damages to the extent permitted under applicable law.

23 **C. Claims Brought on Behalf of the California Subclass**

24 **COUNT I**

25 **VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW**  
26 **(CAL. BUS. & PROF. CODE §§ 17200, *et seq.*)**

27 120. Plaintiff Daniel Robinson (“Plaintiff,” for purposes of all California Class Counts)  
28 incorporates by reference all preceding allegations as though fully set forth herein.

1 121. Plaintiff bring this Count on behalf of the California Subclass.

2 122. California’s Unfair Competition Law (“UCL”), CAL. BUS. & PROF. CODE §§ 17200,  
3 *et seq.*, proscribes acts of unfair competition, including “any unlawful, unfair or fraudulent business  
4 act or practice and unfair, deceptive, untrue or misleading advertising.”

5 123. Volkswagen’s conduct, as described herein, was and is in violation of the UCL.

6 Volkswagen’s conduct violates the UCL in at least the following ways:

- 7 i. By knowingly and intentionally concealing from Plaintiff and the other  
8 California Subclass members that the Affected Vehicles suffer from a design  
9 defect while obtaining money from Plaintiffs and the Class;
- 10 ii. By marketing Affected Vehicles as possessing functional and defect-free,  
11 EPA compliant CleanDiesel engine systems;
- 12 iii. By purposefully installing an illegal “defeat device” in the Affected Vehicles  
13 to fraudulently obtain EPA certification and cause Affected Vehicles to pass  
14 emissions tests when in truth and fact they did not pass such tests;
- 15 iv. By violating federal laws, including the Clean Air Act; and
- 16 v. By violating other California laws, including California laws governing  
17 vehicle emissions and emission testing requirements.

18 124. Volkswagen’s misrepresentations and omissions alleged herein caused Plaintiff and  
19 the other California Subclass members to make their purchases or leases of their Affected Vehicles.  
20 Absent those misrepresentations and omissions, Plaintiff and the other California Subclass members  
21 would not have purchased or leased these vehicles, would not have purchased or leased these  
22 Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive  
23 alternative vehicles that did not contain CleanDiesel engine systems that failed to comply with EPA  
24 and California emissions standards.

25 125. Accordingly, Plaintiff and the other California Subclass members have suffered  
26 injury in fact including lost money or property as a result of Volkswagen’s misrepresentations and  
27 omissions.

28

1 126. Plaintiff seeks to enjoin further unlawful, unfair, and/or fraudulent acts or practices  
2 by Volkswagen under CAL. BUS. & PROF. CODE § 17200.

3 127. Plaintiff requests that this Court enter such orders or judgments as may be necessary  
4 to enjoin Volkswagen from continuing its unfair, unlawful, and/or deceptive practices and to restore  
5 to Plaintiffs and members of the Class any money it acquired by unfair competition, including  
6 restitution and/or restitutionary disgorgement, as provided in CAL. BUS. & PROF. CODE § 17203 and  
7 CAL. BUS. & PROF. CODE § 3345; and for such other relief set forth below.

8 **COUNT II**

9 **VIOLATION OF CALIFORNIA CONSUMERS LEGAL REMEDIES ACT**  
10 **(CAL. BUS. & PROF. CODE §§ 1750, *et seq.*)**

11 128. Plaintiff incorporates by reference all preceding allegations as though fully set forth  
12 herein.

13 129. Plaintiff brings this Count on behalf of the California Subclass.

14 130. California’s Consumers Legal Remedies Act (“CLRA”), CAL. BUS. & PROF. CODE  
15 §§ 1750, *et seq.*, proscribes “unfair methods of competition and unfair or deceptive acts or practices  
16 undertaken by any person in a transaction intended to result or which results in the sale or lease of  
17 goods or services to any consumer.”

18 131. The Affected Vehicles are “goods” as defined in CAL. BUS. & PROF. CODE § 1761(a).

19 132. Plaintiff and the other California Subclass members are “consumers” as defined in  
20 CAL. BUS. & PROF. CODE § 1761(d), and Plaintiff, the other California Subclass members, and  
21 Volkswagen are “persons” as defined in CAL. BUS. & PROF. CODE § 1761(c).

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

25 134. In purchasing or leasing the Affected Vehicles, Plaintiff and the other California  
26 Subclass members were deceived by Volkswagen’s failure to disclose that the Affected Vehicles  
27 were equipped with defective CleanDiesel engine systems that failed EPA and California emissions  
28 standards.

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

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

11           136. Plaintiff and the other California Subclass members have suffered injury in fact and  
12 actual damages resulting from Volkswagen's material omissions and misrepresentations because  
13 they paid an inflated purchase or lease price for the Affected Vehicles and because they stand to pay  
14 additional fuel costs if and when their Affected Vehicles are made to comply with emissions  
15 standards.

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

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

25           139. Plaintiffs have provided Volkswagen with notice of its violations of the CLRA  
26 pursuant to CAL. BUS. & PROF. CODE § 1782(a). The notice was transmitted to Volkswagen on  
27 September 21, 2015.

28

1 140. Plaintiff’s and the other California Subclass members’ injuries were proximately  
2 caused by Volkswagen’s fraudulent and deceptive business practices.

3 141. Therefore, Plaintiff and the other California Subclass members are entitled to  
4 equitable and monetary relief under the CLRA.

5 **COUNT III**

6 **VIOLATION OF CALIFORNIA FALSE ADVERTISING LAW**  
7 **(CAL. BUS. & PROF. CODE §§ 17500, et seq.)**

8 142. Plaintiff incorporates by reference all preceding allegations as though fully set forth  
9 herein.

10 143. Plaintiff brings this Count on behalf of the California Subclass.

11 144. California Bus. & Prof. Code § 17500 states: “It is unlawful for any ... corporation  
12 ... with intent directly or indirectly to dispose of real or personal property ... to induce the public to  
13 enter into any obligation relating thereto, to make or disseminate or cause to be made or  
14 disseminated ... from this state before the public in any state, in any newspaper or other publication,  
15 or any advertising device, ... or in any other manner or means whatever, including over the Internet,  
16 any statement ... which is untrue or misleading, and which is known, or which by the exercise of  
17 reasonable care should be known, to be untrue or misleading.”

18 145. Volkswagen caused to be made or disseminated through California and the United  
19 States, through advertising, marketing and other publications, statements that were untrue or  
20 misleading, and which were known, or which by the exercise of reasonable care should have been  
21 known to Volkswagen, to be untrue and misleading to consumers, including Plaintiff and the other  
22 Class members.

23 146. Volkswagen has violated § 17500 because the misrepresentations and omissions  
24 regarding the safety, reliability, and functionality of Affected Vehicles as set forth in this Complaint  
25 were material and likely to deceive a reasonable consumer.

26 147. Plaintiff and the other Class members have suffered an injury in fact, including the  
27 loss of money or property, as a result of Volkswagen’s unfair, unlawful, and/or deceptive practices.  
28 In purchasing or leasing their Affected Vehicles, Plaintiff and the other Class members relied on the



1 misrepresentations and/or omissions of Volkswagen with respect to the safety, performance and  
2 reliability of the Affected Vehicles. Volkswagen's representations turned out not to be true because  
3 the Affected Vehicles are distributed with faulty and defective CleanDiesel engine systems,  
4 rendering certain safety and emissions functions inoperative. Had Plaintiff and the other Class  
5 members known this, they would not have purchased or leased their Affected Vehicles and/or paid  
6 as much for them. Accordingly, Plaintiff and the other Class members overpaid for their Affected  
7 Vehicles and did not receive the benefit of their bargain.

8 148. All of the wrongful conduct alleged herein occurred, and continues to occur, in the  
9 conduct of Volkswagen's business. Volkswagen's wrongful conduct is part of a pattern or  
10 generalized course of conduct that is still perpetuated and repeated, both in the State of California  
11 and nationwide.

12 149. Plaintiff, individually and on behalf of the other Class members, requests that this  
13 Court enter such orders or judgments as may be necessary to enjoin Volkswagen from continuing  
14 their unfair, unlawful, and/or deceptive practices and to restore to Plaintiff and the other Class  
15 members any money Volkswagen acquired by unfair competition, including restitution and/or  
16 restitutionary disgorgement, and for such other relief set forth below.

17 **COUNT IV**

18 **BREACH OF CONTRACT**  
19 **(Based on California Law)**

20 150. Plaintiff incorporates by reference all preceding allegations as though fully set forth  
21 herein.

22 151. Plaintiff brings this Count on behalf of the California Subclass.

23 152. Volkswagen's misrepresentations and omissions alleged herein, including  
24 Volkswagen's failure to disclose the existence of the "defeat device" and/or defective design as  
25 alleged herein, caused Plaintiff and the other California Subclass members to make their purchases  
26 or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiff and  
27 the other California Subclass members would not have purchased or leased these Affected Vehicles,  
28 would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would

1 have purchased or leased less expensive alternative vehicles that did not contain the CleanDiesel  
2 engine system and the “defeat device.” Accordingly, Plaintiff and the other California Subclass  
3 members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

4 153. Each and every sale or lease of an Affected Vehicle constitutes a contract between  
5 Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing  
6 Plaintiff and the other California Subclass members defective Affected Vehicles and by  
7 misrepresenting or failing to disclose the existence of the “defeat device” and/or defective design,  
8 including information known to Volkswagen rendering each Affected Vehicle less safe and  
9 emissions compliant, and thus less valuable, than vehicles not equipped with CleanDiesel engine  
10 systems and “defeat devices.”

11 154. As a direct and proximate result of Volkswagen’s breach of contract, Plaintiff and  
12 the California Subclass have been damaged in an amount to be proven at trial, which shall include,  
13 but is not limited to, all compensatory damages, incidental and consequential damages, and other  
14 damages allowed by law.

15 **COUNT V**

16 **FRAUD BY CONCEALMENT**  
17 **(Based on California Law)**

18 155. Plaintiff realleges and incorporates by reference all paragraphs as though fully set  
19 forth herein.

20 156. This claim is brought on behalf of California Subclass members.

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

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

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

9 159. Volkswagen concealed and suppressed material facts concerning what is evidently  
10 the true culture of Volkswagen – one characterized by an emphasis on profits and sales above  
11 compliance with federal and state clean air law, and emissions regulations that are meant to protect  
12 the public and consumers. It also emphasized profits and sales about the trust that Plaintiff and  
13 California Subclass members placed in its representations. As one customer, Priya Shah, put it in a  
14 quotation cited by the *Los Angeles Times* in a September 15, 2015 article, "It's just a blatant  
15 disregard and intentional manipulation of the system. That's just a whole other level of not only  
16 lying to the government, but also lying to your consumer. People buy diesel cars from Volkswagen  
17 because they feel they are clean diesel cars." As Ms. Shah put it, "I don't want to be spewing  
18 noxious gases into the environment."

19 160. Necessarily, Volkswagen also took steps to ensure that its employees did not reveal  
20 the details of its scheme to regulators or consumers, including Plaintiff and California Subclass  
21 Members. Volkswagen did so in order to boost the reputations of its vehicles and to falsely assure  
22 purchasers and lessors of its vehicles, including certified previously owned vehicles, that  
23 Volkswagen is a reputable manufacturer that complies with applicable law, including federal and  
24 state clean air law and emissions regulations, and that its vehicles likewise comply with applicable  
25 law and regulations. Volkswagen's false representations were material to consumers, both because  
26 they concerned the quality of the affected vehicles, including their compliance with applicable  
27 federal and state law and regulations regarding clean air and emissions, and also because the  
28 representations played a significant role in the value of the vehicles. As Volkswagen well knew, its

1 customers, including Plaintiff and California Subclass Members, highly valued that the vehicles  
2 they were purchasing or leasing were *clean* diesel cars, and they paid accordingly.

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

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

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

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

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

23           166. The value of Plaintiff’s and California Subclass Members’ vehicles has diminished  
24 as a result of Volkswagen’s fraudulent concealment of its emissions scheme, which has greatly  
25 tarnished the Volkswagen and Audi brand names attached to Plaintiff’s and California Subclass  
26 members’ vehicles and made any reasonable consumer reluctant to purchase any of the Affected  
27 Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.  
28

1 167. Accordingly, Volkswagen is liable to Plaintiff and California Subclass members for  
2 damages in an amount to be proven at trial.

3 168. Volkswagen's acts were done wantonly, maliciously, oppressively, deliberately, with  
4 intent to defraud, and in reckless disregard of Plaintiff's and California Subclass members' rights  
5 and the representations that Volkswagen made to them, in order to enrich Volkswagen.  
6 Volkswagen's conduct warrants an assessment of punitive damages in an amount sufficient to deter  
7 such conduct in the future, which amount is to be determined according to proof.

8 **D. Claims Brought on Behalf of the Colorado Subclass**

9 **COUNT I**

10 **VIOLATIONS OF THE COLORADO CONSUMER PROTECTION ACT**  
11 **(COLO. REV. STAT. §§ 6-1-101, *et seq.*)**

12 169. Plaintiff Jonathon Horacek ("Plaintiff," for purposes of all Colorado Subclass  
13 Counts) incorporates by reference all preceding allegations as though fully set forth herein.

14 170. Plaintiff brings this Count on behalf of the Colorado Subclass.

15 171. Colorado's Consumer Protection Act (the "CCPA") prohibits a person from  
16 engaging in a "deceptive trade practice," which includes knowingly making "a false representation  
17 as to the source, sponsorship, approval, or certification of goods," or "a false representation as to the  
18 characteristics, ingredients, uses, benefits, alterations, or quantities of goods." COLO. REV. STAT.  
19 § 6-1-105(1)(b), (e). The CCPA further prohibits "represent[ing] that goods ... are of a particular  
20 standard, quality, or grade ... if he knows or should know that they are of another," and  
21 "advertis[ing] goods ... with intent not to sell them as advertised." CAL. BUS. & PROF. CODE. § 6-1-  
22 105(1)(g), (i).

23 172. Volkswagen is a "person" within the meaning of CAL. BUS. & PROF. CODE. § 6-1-  
24 102(6).

25 173. In the course of Volkswagen's business, it willfully misrepresented and failed to  
26 disclose, and actively concealed, that the CleanDiesel Engine System was non-EPA compliant, and  
27 the use of the "defeat device" in Affected Vehicles as described above. Accordingly, Volkswagen  
28 engaged in unlawful trade practices, including representing that Affected Vehicles have

1 characteristics, uses, benefits, and qualities which they do not have; representing that Affected  
2 Vehicles are of a particular standard and quality when they are not; advertising Affected Vehicles  
3 with the intent not to sell them as advertised; and otherwise engaging in conduct likely to deceive.

4 174. Volkswagen's actions as set forth above occurred in the conduct of trade or  
5 commerce.

6 175. Volkswagen's conduct proximately caused injuries to Plaintiff and the other Class  
7 members.

8 176. Plaintiff and the other Class members were injured as a result of Volkswagen's  
9 conduct in that Plaintiff and the other Class members overpaid for their Affected Vehicles and did  
10 not receive the benefit of their bargain, and their Affected Vehicles have suffered a diminution in  
11 value. These injuries are the direct and natural consequence of Volkswagen's misrepresentations  
12 and omissions.

13 **COUNT II**

14 **STRICT PRODUCT LIABILITY**  
15 **(Based on Colorado Law)**

16 177. Plaintiff incorporates by reference all preceding allegations as though fully set forth  
17 herein.

18 178. Plaintiff brings this Count on behalf of the Colorado Subclass.

19 179. Colorado law recognizes an action for product defects that complements Colorado's  
20 Product Liability Statute, COLO. REV. STAT. TITLE 13, Article 21, Part 4.

21 180. Volkswagen is a "manufacturer" and "seller" of the Affected Vehicles within the  
22 meaning of COLO. REV. STAT. § 13-21-401(1).

23 181. Volkswagen manufactured and sold the Affected Vehicles in a defective condition  
24 and in a condition that was unreasonably dangerous to drivers, other motorists, pedestrians, and  
25 others or to their property, including persons who may reasonably be expected to use, consume, or  
26 be affected by them, in at least the following respects: (i) the Affected Vehicles were defectively  
27 designed, assembled, fabricated, produced, and constructed in that they were not EPA compliant  
28

1 and used a “defeat device”; and (ii) the Affected Vehicles were not accompanied by adequate  
2 warnings about their defective nature.

3 182. The Affected Vehicles were defective and unreasonably dangerous at the time they  
4 were sold by Volkswagen and were intended to and did reach Plaintiff and the other Class Members  
5 in substantially the same condition as they were in when they were manufactured, sold, and left the  
6 control of Volkswagen.

7 183. Plaintiff and the other Class members are persons who were reasonably expected to  
8 use, consume, or be affected by the Affected Vehicles.

9 184. As a direct and proximate result of the defective and illegal conditions of the  
10 Affected Vehicles, Plaintiff and the other Class members have suffered damages.

11 **COUNT III**

12 **BREACH OF CONTRACT**  
13 **(Based on Colorado Law)**

14 185. Plaintiff incorporates by reference all preceding allegations as though fully set forth  
15 herein.

16 186. Plaintiff brings this Count on behalf of the Colorado Subclass.

17 187. Volkswagen’s misrepresentations and omissions alleged herein, including  
18 Volkswagen’s failure to disclose the existence of the CleanDiesel engine system’s defect and/or  
19 defective design as alleged herein, caused Plaintiff and the other Colorado Subclass members to  
20 make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and  
21 omissions, Plaintiff and the other Colorado Subclass members would not have purchased or leased  
22 these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices  
23 they paid, and/or would have purchased or leased less expensive alternative vehicles that did not  
24 contain the CleanDiesel engine system and which were not marketed as including such a system.  
25 Accordingly, Plaintiff and the other Colorado Subclass members overpaid for their Affected  
26 Vehicles and did not receive the benefit of their bargain.

27 188. Each and every sale or lease of an Affected Vehicle constitutes a contract between  
28 Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing



1 Plaintiff and the other Colorado Subclass members defective Affected Vehicles and by  
2 misrepresenting or failing to disclose the existence of the CleanDiesel engine system's defect and/or  
3 defective design, including information known to Volkswagen rendering each Affected Vehicle non  
4 EPA-compliant, and thus less valuable, than vehicles not equipped with a CleanDiesel engine  
5 system.

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

10 **COUNT IV**

11 **FRAUDULENT CONCEALMENT**  
12 **(Based on Colorado Law)**

13 190. Plaintiff incorporates by reference all preceding allegations as though fully set forth  
14 herein.

15 191. Plaintiff brings this Count on behalf of the Colorado Subclass.

16 192. Volkswagen intentionally concealed that the CleanDiesel engine systems were not  
17 EPA-compliant and used a "defeat device", or acted with reckless disregard for the truth, and denied  
18 Plaintiff and the other Class members information that is highly relevant to their purchasing  
19 decision.

20 193. Volkswagen further affirmatively misrepresented to Plaintiff in advertising and other  
21 forms of communication, including standard and uniform material provided with each car, that the  
22 Affected Vehicles it was selling were new, had no significant defects, complied with EPA  
23 regulations and would perform and operate properly when driven in normal usage.

24 194. Volkswagen knew these representations were false when made.

25 195. The Affected Vehicles purchased or leased by Plaintiff and the other Class members  
26 were, in fact, defective, non-EPA compliant, unsafe, and unreliable because the Affected Vehicles  
27 contained faulty and defective CleanDiesel engine system, as alleged herein.  
28

1           196. Volkswagen had a duty to disclose that these Affected Vehicles were defective,  
2 unsafe, non-EPA compliant and unreliable in that certain crucial emissions functions of the Affected  
3 Vehicles would be rendered inoperative due to the “defeat device” installed in the defective  
4 CleanDiesel engine system, because Plaintiff and the other Class members relied on Volkswagen’s  
5 material representations that the Affected Vehicles they were purchasing were safe, environmentally  
6 clean, efficient and free from defects.

7           197. The aforementioned concealment was material because if it had been disclosed  
8 Plaintiff and the other Class members would not have bought or leased the Affected Vehicles, or  
9 would not have bought or leased those Vehicles at the prices they paid.

10           198. The aforementioned representations were material because they were facts that  
11 would typically be relied on by a person purchasing or leasing a new motor vehicle. Volkswagen  
12 knew or recklessly disregarded that its representations were false because it knew that it had to use  
13 the “defeat device” in order for Affected Vehicles to pass EPA emissions requirements.  
14 Volkswagen intentionally made the false statements in order to sell Affected Vehicles.

15           199. Plaintiff and the other Class members relied on Volkswagen’s reputation – along  
16 with Volkswagen’s failure to disclose the faulty and defective nature of the CleanDiesel engine  
17 system and Volkswagen’s affirmative assurance that its Affected Vehicles were safe and reliable,  
18 and other similar false statements – in purchasing or leasing Volkswagen’s Affected Vehicles.

19           200. As a result of their reliance, Plaintiff and the other Class members have been injured  
20 in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and  
21 overpayment at the time of purchase or lease and/or the diminished value of their Affected Vehicles.

22           201. Volkswagen’s conduct was knowing, intentional, with malice, demonstrated a  
23 complete lack of care, and was in reckless disregard for the rights of Plaintiff and the other Class  
24 members. Plaintiff and the other Class members are therefore entitled to an award of punitive  
25 damages to the extent permitted under applicable law.

1 **E. Claims Brought on Behalf of the Connecticut Subclass**

2 **COUNT I**

3 **VIOLATIONS OF THE UNFAIR TRADE PRACTICES ACT**  
4 **(CONN. GEN. STAT. ANN. §§ 42-110A, et seq.)**

5 202. Plaintiff Stefanie Beaudreault (“Plaintiff,” for purposes of all Connecticut Subclass  
6 Counts) incorporates by reference all preceding allegations as though fully set forth herein.

7 203. Plaintiff brings this Count on behalf of the Connecticut Subclass.

8 204. Plaintiff and Volkswagen are each “persons” as defined by CONN. GEN. STAT. ANN.  
9 § 42-110a(3).

10 205. The Connecticut Unfair Trade Practices Act (“CUTPA”) provides that “[n]o person  
11 shall engage in unfair methods of competition and unfair or deceptive acts or practices in the  
12 conduct of any trade or commerce.” CONN. GEN. STAT. ANN. § 42-110b(a). The CUTPA further  
13 provides a private right of action under CONN. GEN. STAT. ANN. § 42-110g(a).

14 206. By failing to disclose and actively concealing that the CleanDiesel engine systems  
15 were not EPA-compliant and used a “defeat device” in the Affected Vehicles, Volkswagen engaged  
16 in deceptive business practices prohibited by the CUTPA, including (1) representing that Affected  
17 Vehicles have characteristics, uses, benefits, and qualities which they do not have, (2) representing  
18 that Affected Vehicles are of a particular standard, quality, and grade when they are not,  
19 (3) advertising Affected Vehicles with the intent not to sell them as advertised, and (4) engaging in  
20 acts or practices which are otherwise unfair, misleading, false, or deceptive to the consumer.

21 207. As alleged above, Volkswagen made numerous material statements about the  
22 benefits and characteristics of the CleanDiesel engine system that were either false or misleading.  
23 Each of these statements contributed to the deceptive context of Volkswagen’s unlawful advertising  
24 and representations as a whole.

25 208. Volkswagen knew that the CleanDiesel engine system in the Affected Vehicles were  
26 defectively designed or manufactured, were not EPA-compliant, and were not suitable for their  
27 intended use. Volkswagen nevertheless failed to warn Plaintiff about these defects despite having a  
28 duty to do so.

1           209. Volkswagen owed Plaintiff a duty to disclose the defective nature of the CleanDiesel  
2 engine system in the Affected Vehicles, because Volkswagen:

- 3                   a) Possessed exclusive knowledge of the defects rendering the Affected  
4 Vehicles illegal under EPA standards;
- 5                   b) Intentionally concealed the defects associated with CleanDiesel through its  
6 deceptive marketing campaigns that it designed to hide the defects in the  
7 CleanDiesel engine system; and/or
- 8                   c) Made incomplete representations about the characteristics and performance  
9 of the CleanDiesel engine system generally, while purposefully withholding  
10 material facts from Plaintiff that contradicted these representations.

11           210. Volkswagen's unfair or deceptive acts or practices were likely to and did in fact  
12 deceive reasonable consumers, including Plaintiff, about the true performance and characteristics of  
13 the CleanDiesel engine system.

14           211. As a result of its violations of the CUTPA detailed above, Volkswagen caused actual  
15 damage to Plaintiff and, if not stopped, will continue to harm Plaintiff. Plaintiff currently owns or  
16 leases, or within the class period has owned or leased, an Affected Vehicle that is defective.  
17 Defects associated with the CleanDiesel engine system have caused the value of Affected Vehicles  
18 to decrease.

19           212. Plaintiff and the Class sustained damages as a result of the Volkswagen's unlawful  
20 acts and are, therefore, entitled to damages and other relief as provided under the CUTPA.

21           213. Plaintiff also seeks court costs and attorneys' fees as a result of Volkswagen's  
22 violation of the CUTPA as provided in CONN. GEN. STAT. ANN. § 42-110g(d). A copy of this  
23 Complaint has been mailed to the Attorney General and the Commissioner of Consumer Protection  
24 of the State of Connecticut in accordance with CONN. GEN. STAT. ANN. § 42-110g(c).

**COUNT II**

**BREACH OF CONTRACT  
(Based on Connecticut Law)**

1  
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3  
4           214. Plaintiff incorporates by reference all preceding allegations as though fully set forth  
5 herein.

6           215. Plaintiff brings this Count on behalf of the Connecticut Subclass.

7           216. Volkswagen's misrepresentations and omissions alleged herein, including  
8 Volkswagen's failure to disclose the existence of the CleanDiesel engine system's defect and/or  
9 defective design as alleged herein, caused Plaintiff and the other Connecticut Subclass members to  
10 make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and  
11 omissions, Plaintiff and the other Connecticut Subclass members would not have purchased or  
12 leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the  
13 prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did  
14 not contain the CleanDiesel engine system and which were not marketed as including such a  
15 system. Accordingly, Plaintiff and the other Connecticut Subclass members overpaid for their  
16 Affected Vehicles and did not receive the benefit of their bargain.

17           217. Each and every sale or lease of an Affected Vehicle constitutes a contract between  
18 Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing  
19 Plaintiff and the other Connecticut Subclass members defective Affected Vehicles and by  
20 misrepresenting or failing to disclose the existence of the CleanDiesel engine system's defect and/or  
21 defective design, including information known to Volkswagen rendering each Affected Vehicle  
22 non-EPA-compliant, and thus less valuable, than vehicles not equipped with a CleanDiesel engine  
23 system.

24           218. As a direct and proximate result of Volkswagen's breach of contract, Plaintiff and  
25 the Connecticut Subclass have been damaged in an amount to be proven at trial, which shall  
26 include, but is not limited to, all compensatory damages, incidental and consequential damages, and  
27 other damages allowed by law.  
28

**COUNT III**

**FRAUDULENT CONCEALMENT  
(Based on Connecticut Law)**

1  
2  
3  
4 219. Plaintiff incorporates by reference all preceding allegations as though fully set forth  
5 herein.

6 220. Plaintiff brings this Count on behalf of the Connecticut Subclass.

7 221. Volkswagen intentionally concealed that the CleanDiesel engine systems were not  
8 EPA-compliant and used a “defeat device,” or acted with reckless disregard for the truth, and denied  
9 Plaintiff and the other Class members information that is highly relevant to their purchasing  
10 decision.

11 222. Volkswagen further affirmatively misrepresented to Plaintiff in advertising and other  
12 forms of communication, including standard and uniform material provided with each car, that the  
13 Affected Vehicles it was selling were new, had no significant defects, complied with EPA  
14 regulations and would perform and operate properly when driven in normal usage.

15 223. Volkswagen knew these representations were false when made.

16 224. The Affected Vehicles purchased or leased by Plaintiff and the other Class members  
17 were, in fact, defective, non-EPA compliant, unsafe, and unreliable because the Affected Vehicles  
18 contained faulty and defective CleanDiesel engine system, as alleged herein.

19 225. Volkswagen had a duty to disclose that these Affected Vehicles were defective,  
20 unsafe, non-EPA compliant and unreliable in that certain crucial emissions functions of the Affected  
21 Vehicles would be rendered inoperative due to the “defeat device” installed in the defective  
22 CleanDiesel engine system, because Plaintiff and the other Class members relied on Volkswagen’s  
23 material representations that the Affected Vehicles they were purchasing were safe, environmentally  
24 clean, efficient and free from defects.

25 226. The aforementioned concealment was material because if it had been disclosed  
26 Plaintiff and the other Class members would not have bought or leased the Affected Vehicles, or  
27 would not have bought or leased those Vehicles at the prices they paid.  
28

1           227. The aforementioned representations were material because they were facts that  
2 would typically be relied on by a person purchasing or leasing a new motor vehicle. Volkswagen  
3 knew or recklessly disregarded that its representations were false because it knew that it had to use  
4 the “defeat device” in order for Affected Vehicles to pass EPA emissions requirements.  
5 Volkswagen intentionally made the false statements in order to sell Affected Vehicles.

6           228. Plaintiff and the other Class members relied on Volkswagen’s reputation – along  
7 with Volkswagen’s failure to disclose the faulty and defective nature of the CleanDiesel engine  
8 system and Volkswagen’s affirmative assurance that its Affected Vehicles were safe and reliable,  
9 and other similar false statements – in purchasing or leasing Volkswagen’s Affected Vehicles.

10           229. As a result of their reliance, Plaintiff and the other Class members have been injured  
11 in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and  
12 overpayment at the time of purchase or lease and/or the diminished value of their Affected Vehicles.

13           230. Volkswagen’s conduct was knowing, intentional, with malice, demonstrated a  
14 complete lack of care, and was in reckless disregard for the rights of Plaintiff and the other Class  
15 members. Plaintiff and the other Class members are therefore entitled to an award of punitive  
16 damages.

17 **F. Claims Brought on Behalf of the Florida Subclass**

18 **COUNT I**

19 **VIOLATIONS OF THE FLORIDA DECEPTIVE & UNFAIR TRADE PRACTICES ACT**  
20 **(FLA. STAT. §§ 501.201, *et seq.*)**

21           231. Plaintiff James Babiak (“Plaintiff,” for purposes of all Florida Subclass Counts)  
22 incorporates by reference all preceding allegations as though fully set forth herein.

23           232. Plaintiff brings this Count on behalf of the Florida Subclass.

24           233. Florida’s Deceptive and Unfair Trade Practices Act prohibits “[u]nfair methods of  
25 competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the  
26 conduct of any trade or commerce.” FLA. STAT. § 501.204(1).

27           234. In the course of Volkswagen’s business, it willfully failed to disclose and actively  
28 concealed that the CleanDiesel Engine System was non-EPA compliant, and the use of the “defeat

1 device” in Affected Vehicles as described above. Accordingly, Volkswagen engaged in unfair  
2 methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices  
3 as defined in FLA. STAT. § 501.204(1), including representing that Affected Vehicles have  
4 characteristics, uses, benefits, and qualities which they do not have; representing that Affected  
5 Vehicles are of a particular standard and quality when they are not; advertising Affected Vehicles  
6 with the intent not to sell them as advertised; and otherwise engaging in conduct likely to deceive.

7 235. Volkswagen’s actions as set forth above occurred in the conduct of trade or  
8 commerce.

9 236. Volkswagen’s conduct proximately caused injuries to Plaintiff and the other Class  
10 members.

11 237. Plaintiff and the other Class members were injured as a result of Volkswagen’s  
12 conduct in that Plaintiff and the other Class members overpaid for their Affected Vehicles and did  
13 not receive the benefit of their bargain, and their Affected Vehicles have suffered a diminution in  
14 value. These injuries are the direct and natural consequence of Volkswagen’s misrepresentations  
15 and omissions.

16 **COUNT II**

17 **BREACH OF CONTRACT**  
18 **(Based on Florida Law)**

19 238. Plaintiff incorporates by reference all preceding allegations as though fully set forth  
20 herein.

21 239. Plaintiff brings this Count on behalf of the Florida Subclass.

22 240. Volkswagen’s misrepresentations and omissions alleged herein, including  
23 Volkswagen’s failure to disclose the existence of the CleanDiesel engine system’s defect and/or  
24 defective design as alleged herein, caused Plaintiff and the other Florida Subclass members to make  
25 their purchases or leases of their Affected Vehicles. Absent those misrepresentations and  
26 omissions, Plaintiff and the other Florida Subclass members would not have purchased or leased  
27 these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices  
28 they paid, and/or would have purchased or leased less expensive alternative vehicles that did not



1 contain the CleanDiesel engine system and which were not marketed as including such a system.  
2 Accordingly, Plaintiff and the other Florida Subclass members overpaid for their Affected Vehicles  
3 and did not receive the benefit of their bargain.

4 241. Each and every sale or lease of an Affected Vehicle constitutes a contract between  
5 Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing  
6 Plaintiff and the other Florida Subclass members defective Affected Vehicles and by  
7 misrepresenting or failing to disclose the existence of the CleanDiesel engine system's defect and/or  
8 defective design, including information known to Volkswagen rendering each Affected Vehicle non  
9 EPA-compliant, and thus less valuable, than vehicles not equipped with a CleanDiesel engine  
10 system.

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

15 **COUNT III**

16 **FRAUDULENT CONCEALMENT**  
17 **(Based on Florida Law)**

18 243. Plaintiff incorporates by reference all preceding allegations as though fully set forth  
19 herein.

20 244. Plaintiff brings this Count on behalf of the Florida Subclass.

21 245. Volkswagen intentionally concealed that the CleanDiesel engine systems were not  
22 EPA-compliant and used a "defeat device," or acted with reckless disregard for the truth, and denied  
23 Plaintiff and the other Class members information that is highly relevant to their purchasing  
24 decision.

25 246. Volkswagen further affirmatively misrepresented to Plaintiff in advertising and other  
26 forms of communication, including standard and uniform material provided with each car, that the  
27 Affected Vehicles it was selling were new, had no significant defects, complied with EPA  
28 regulations and would perform and operate properly when driven in normal usage.

1           247. Volkswagen knew these representations were false when made.

2           248. The Affected Vehicles purchased or leased by Plaintiff and the other Class members  
3 were, in fact, defective, non-EPA-compliant, unsafe, and unreliable because the Affected Vehicles  
4 contained faulty and defective CleanDiesel engine system, as alleged herein.

5           249. Volkswagen had a duty to disclose that these Affected Vehicles were defective,  
6 unsafe, non-EPA compliant and unreliable in that certain crucial emissions functions of the Affected  
7 Vehicles would be rendered inoperative due to the “defeat device” installed in the defective  
8 CleanDiesel engine system, because Plaintiff and the other Class members relied on Volkswagen’s  
9 material representations that the Affected Vehicles they were purchasing were safe, environmentally  
10 clean, efficient and free from defects.

11           250. The aforementioned concealment was material because if it had been disclosed  
12 Plaintiff and the other Class members would not have bought or leased the Affected Vehicles, or  
13 would not have bought or leased those Vehicles at the prices they paid.

14           251. The aforementioned representations were material because they were facts that  
15 would typically be relied on by a person purchasing or leasing a new motor vehicle. Volkswagen  
16 knew or recklessly disregarded that its representations were false because it knew that it had to use  
17 the “defeat device” in order for Affected Vehicles to pass EPA emissions requirements.  
18 Volkswagen intentionally made the false statements in order to sell Affected Vehicles.

19           252. Plaintiff and the other Class members relied on Volkswagen’s reputation – along  
20 with Volkswagen’s failure to disclose the faulty and defective nature of the CleanDiesel engine  
21 system and Volkswagen’s affirmative assurance that its Affected Vehicles were safe and reliable,  
22 and other similar false statements – in purchasing or leasing Volkswagen’s Affected Vehicles.

23           253. As a result of their reliance, Plaintiff and the other Class members have been injured  
24 in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and  
25 overpayment at the time of purchase or lease and/or the diminished value of their Affected Vehicles.

26           254. Volkswagen’s conduct was knowing, intentional, with malice, demonstrated a  
27 complete lack of care, and was in reckless disregard for the rights of Plaintiff and the other Class  
28

1 members. Plaintiff and the other Class members are therefore entitled to an award of punitive  
2 damages.

3 **G. Claims Brought on Behalf of the Georgia Subclass**

4 **COUNT I**

5 **VIOLATION OF GEORGIA’S FAIR BUSINESS PRACTICES ACT**  
6 **(GA. CODE ANN. § 10-1-390, *et seq.*)**

7 255. Plaintiff Van Haynes (“Plaintiff,” for purposes of all Georgia Subclass Counts)  
8 incorporates by reference all preceding allegations as though fully set forth herein.

9 256. Plaintiffs intend to assert a claim under the Georgia Fair Business Practices Act  
10 (“Georgia FBPA”) which declares “[u]nfair or deceptive acts or practices in the conduct of  
11 consumer transactions and consumer acts or practices in trade or commerce” to be unlawful, GA.  
12 CODE. ANN. § 10-1-393(a), including but not limited to “representing that goods or services have  
13 sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not  
14 have,” “[r]epresenting that goods or services are of a particular standard, quality, or grade ... if they  
15 are of another,” and “[a]dvertising goods or services with intent not to sell them as advertised.” GA.  
16 CODE. ANN. § 10-1-393(b). Plaintiffs will make a demand in satisfaction of GA. CODE. ANN. § 10-  
17 1-399, and may amend this Complaint to assert claims under the Georgia FBPA once the required  
18 30 days have elapsed. This paragraph is included for purposes of notice only and is not intended to  
19 actually assert a claim under the Georgia FBPA.

20 **COUNT II**

21 **VIOLATION OF GEORGIA’S UNIFORM DECEPTIVE TRADE PRACTICES ACT**  
22 **(GA. CODE ANN. § 10-1-370, *et seq.*)**

23 257. Plaintiff realleges and incorporates by reference all paragraphs as though fully set  
24 forth herein.

25 258. This claim is brought only on behalf of the Georgia Subclass.

26 259. Volkswagen, Plaintiff, and the Georgia Subclass are “persons’ within the meaning of  
27 Georgia Uniform Deceptive Trade Practices Act (“Georgia UDTPA”), GA. CODE. ANN. § 10-1-  
28 371(5).

1           260. The Georgia UDTPA prohibits “deceptive trade practices,” which include the  
2 “misrepresentation of standard or quality of goods or services,” and “engaging in any other conduct  
3 which similarly creates a likelihood of confusion or of misunderstanding.” GA. CODE. ANN. § 10-1-  
4 372(a). By fraudulently installing the “defeat device” to make it appear that its CleanDiesel engine  
5 systems complied with EPA regulations, Volkswagen engaged in deceptive trade practices  
6 prohibited by the Georgia UDTPA.

7           261. In the course of its business, Volkswagen installed the “defeat device” and concealed  
8 that its CleanDiesel systems failed EPA regulations as described herein and otherwise engaged in  
9 activities with a tendency or capacity to deceive. Volkswagen also engaged in unlawful trade  
10 practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or  
11 concealment, suppression or omission of any material fact with intent that others rely upon such  
12 concealment, suppression or omission, in connection with the sale of Affected Vehicles.

13           262. Volkswagen has known of its use of the “defeat device” and the true nature of its  
14 CleanDiesel engine system for at least six years, but concealed all of that information until recently.

15           263. Volkswagen was also aware that it valued profits over environmental cleanliness,  
16 efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles  
17 throughout the United States that did not comply with EPA regulations. Volkswagen concealed this  
18 information as well.

19           264. By failing to disclose and by actively concealing the “defeat device” and the true  
20 cleanliness and performance of the CleanDiesel engine system, by marketing its vehicles as safe,  
21 reliable, environmentally clean, efficient, and of high quality, and by presenting itself as a reputable  
22 manufacturer that valued safety, environmental cleanliness and efficiency, and stood behind its  
23 vehicles after they were sold, Volkswagen engaged in deceptive business practices in violation of  
24 the Georgia UDTPA.

25           265. In the course of Volkswagen’s business, it willfully failed to disclose and actively  
26 concealed the use of the “defeat device” and true cleanliness and efficiency of the CleanDiesel  
27 engine system and serious defects discussed above. Volkswagen compounded the deception by  
28 repeatedly asserting that the Affected Vehicles were safe, reliable, environmentally clean, efficient,

1 and of high quality, and by claiming to be a reputable manufacturer that valued safety,  
2 environmental cleanliness and efficiency, and stood behind its vehicles once they are on the road.

3 266. Volkswagen's unfair or deceptive acts or practices were likely to and did in fact  
4 deceive reasonable consumers, including Plaintiffs, about the true cleanliness and efficiency of the  
5 CleanDiesel engine system, the quality of the Volkswagen and Audi brands, the devaluing of  
6 environmental cleanliness and integrity at Volkswagen, and the true value of the Affected Vehicles.

7 267. Volkswagen intentionally and knowingly misrepresented material facts regarding the  
8 Affected Vehicles with an intent to mislead Plaintiffs and the Georgia Subclass.

9 268. Volkswagen knew or should have known that its conduct violated the Georgia  
10 UDTPA.

11 269. As alleged above, Volkswagen made material statements about the safety,  
12 cleanliness, efficiency and reliability of the Affected Vehicles and the Volkswagen and Audi brands  
13 that were either false or misleading.

14 270. Volkswagen owed Plaintiffs a duty to disclose the true safety, cleanliness, efficiency  
15 and reliability of the Affected Vehicles and the devaluing of environmental cleanliness and integrity  
16 at Volkswagen, because Volkswagen:

- 17 a. Possessed exclusive knowledge that it valued profits over  
18 environmental cleanliness, efficiency, and lawfulness, and that  
19 it was manufacturing, selling and distributing vehicles  
throughout the United States that did not comply with EPA  
regulations;
- 20 b. Intentionally concealed the foregoing from Plaintiffs; and/or
- 21 c. Made incomplete representations about the safety, cleanliness,  
22 efficiency and reliability of the Affected Vehicles generally,  
23 and the "defeat device" and true nature of the CleanDiesel  
engine system in particular, while purposefully withholding  
24 material facts from Plaintiffs that contradicted these  
representations.

25 271. Because Volkswagen fraudulently concealed the "defeat device" and the true  
26 cleanliness and performance of the CleanDiesel engine system, resulting in a raft of negative  
27 publicity once the use of the "defeat device" and true characteristics of the CleanDiesel engine  
28 system finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In

1 light of the stigma attached to those vehicles by Volkswagen's conduct, they are now worth  
2 significantly less than they otherwise would be.

3 272. Volkswagen's fraudulent use of the "defeat device" and its concealment of the true  
4 characteristics of the CleanDiesel engine system were material to Plaintiffs and the Georgia  
5 Subclass. A vehicle made by a reputable manufacturer of environmentally friendly vehicles is  
6 worth more than an otherwise comparable vehicle made by a disreputable manufacturer of  
7 environmentally dirty vehicles that conceals its polluting engines rather than promptly remedying  
8 them.

9 273. Plaintiffs and the Georgia Subclass suffered ascertainable loss caused by  
10 Volkswagen's misrepresentations and its concealment of and failure to disclose material  
11 information.

12 274. Volkswagen had an ongoing duty to all Volkswagen and Audi customers to refrain  
13 from unfair and deceptive acts or practices under the Georgia UDTPA. All owners of Affected  
14 Vehicles suffered ascertainable loss in the form of diminished value of their vehicles as a result of  
15 Volkswagen's deceptive and unfair acts and practices made in the course of Volkswagen's business.

16 275. Volkswagen's violations present a continuing risk to Plaintiffs as well as to the  
17 general public. Volkswagen's unlawful acts and practices complained of herein affect the public  
18 interest.

19 276. As a direct and proximate result of Volkswagen's violations of the Georgia UDTPA,  
20 Plaintiffs and the Georgia Subclass have suffered injury-in-fact and/or actual damage.

21 277. Plaintiffs seek an order enjoining Volkswagen's unfair, unlawful, and/or deceptive  
22 practices, attorneys' fees, and any other just and proper relief available under the Georgia UDTPA  
23 per GA. CODE. ANN § 10-1-373.

24 **COUNT III**

25 **FRAUD BY CONCEALMENT**

26 278. Plaintiff realleges and incorporates by reference all paragraphs as though fully set  
27 forth herein.  
28

1           279. This claim is brought on behalf of the Georgia Subclass.

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

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

18           282. Volkswagen concealed and suppressed material facts concerning what is evidently  
19 the true culture of Volkswagen – one characterized by an emphasis on profits and sales above  
20 compliance with federal and state clean air law, and emissions regulations that are meant to protect  
21 the public and consumers. It also emphasized profits and sales about the trust that Plaintiffs and  
22 Class members placed in its representations. As one customer, Priya Shah, put it in a quotation  
23 cited by the *Los Angeles Times* in a September 18, 2015 article, “It’s just a blatant disregard and  
24 intentional manipulation of the system. That’s just a whole other level of not only lying to the  
25 government, but also lying to your consumer. People buy diesel cars from Volkswagen because  
26 they feel they are clean diesel cars.” In the words of Ms. Shah, which no doubt reflect the  
27 sentiments of all other “CleanDiesel” vehicle buyers, “I don’t want to be spewing noxious gases  
28 into the environment.”

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

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



1 or non-compliance, are material concerns to a consumer, including with respect to the emissions  
2 certifications testing their vehicles must pass. Volkswagen represented to Plaintiffs and Class  
3 members that they were purchasing *clean* diesel vehicles, and certification testing appeared to  
4 confirm this – except that, secretly, Volkswagen had subverted the testing process thoroughly.

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

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

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

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

1 purchased or leased new or certified previously owned vehicles would have paid less for their  
2 vehicles or would not have purchased or leased them at all.

3 289. The value of Plaintiffs' and Class Members' vehicles has diminished as a result of  
4 Volkswagen's fraudulent concealment of its emissions scheme, which has greatly tarnished the  
5 Volkswagen and Audi brand names attached to Plaintiffs' and Class members' vehicles and made  
6 any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what  
7 otherwise would have been fair market value for the vehicles.

8 290. Accordingly, Volkswagen is liable to Plaintiffs and Class members for damages in an  
9 amount to be proven at trial.

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

16 **COUNT IV**

17 **BREACH OF CONTRACT**  
18 **(Based on Georgia Law)**

19 292. Plaintiff incorporates by reference all preceding allegations as though fully set forth  
20 herein.

21 293. Plaintiff brings this Count on behalf of the Georgia Subclass.

22 294. Volkswagen's misrepresentations and omissions alleged herein, including  
23 Volkswagen's failure to disclose the existence of the CleanDiesel engine system's defect and/or  
24 defective design as alleged herein, caused Plaintiff and the other Georgia Subclass members to  
25 make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and  
26 omissions, Plaintiff and the other Georgia Subclass members would not have purchased or leased  
27 these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices  
28 they paid, and/or would have purchased or leased less expensive alternative vehicles that did not

1 contain the CleanDiesel engine system and which were not marketed as including such a system.  
2 Accordingly, Plaintiff and the other Georgia Subclass members overpaid for their Affected Vehicles  
3 and did not receive the benefit of their bargain.

4 295. Each and every sale or lease of an Affected Vehicle constitutes a contract between  
5 Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing  
6 Plaintiff and the other Georgia Subclass members defective Affected Vehicles and by  
7 misrepresenting or failing to disclose the existence of the CleanDiesel engine system's defect and/or  
8 defective design, including information known to Volkswagen rendering each Affected Vehicle non  
9 EPA-compliant, and thus less valuable, than vehicles not equipped with a CleanDiesel engine  
10 system.

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

15 **H. Claims Brought on Behalf of the Illinois Subclass**

16 **COUNT I**

17 **VIOLATION OF ILLINOIS CONSUMER FRAUD AND**  
18 **DECEPTIVE BUSINESS PRACTICES ACT**  
**(815 ILCS 505/1, et seq. and 720 ILCS 295/1A)**

19 297. Plaintiff David Goodson ("Plaintiff," for purposes of all Illinois Subclass Counts)  
20 incorporates by reference all preceding allegations as though fully set forth herein.

21 298. This claim is brought only on behalf of the Illinois Subclass.

22 299. Volkswagen is a "person" as that term is defined in 815 ILCS 505/1(c).

23 300. Plaintiff and the Illinois Subclass are "consumers" as that term is defined in 815  
24 ILCS 505/1(e).

25 301. The Illinois Consumer Fraud and Deceptive Business Practices Act ("Illinois CFA")  
26 prohibits "unfair or deceptive acts or practices, including but not limited to the use or employment  
27 of any deception, fraud, false pretense, false promise, misrepresentation or the concealment,  
28

1 suppression or omission of any material fact, with intent that others rely upon the concealment,  
2 suppression or omission of such material fact ... in the conduct of trade or commerce ... whether  
3 any person has in fact been misled, deceived or damaged thereby.” 815 ILCS 505/2.

4 302. Volkswagen participated in misleading, false, or deceptive acts that violated the  
5 Illinois CFA. By fraudulently installing the “defeat device” to make it appear that its CleanDiesel  
6 engine systems complied with EPA regulations, Volkswagen engaged in deceptive business  
7 practices prohibited by the Illinois CFA.

8 303. In the course of its business, Volkswagen installed the “defeat device” and concealed  
9 that its CleanDiesel systems failed EPA regulations as described herein and otherwise engaged in  
10 activities with a tendency or capacity to deceive. Volkswagen also engaged in unlawful trade  
11 practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or  
12 concealment, suppression or omission of any material fact with intent that others rely upon such  
13 concealment, suppression or omission, in connection with the sale of Affected Vehicles.

14 304. Volkswagen has known of its use of the “defeat device” and the true nature of its  
15 CleanDiesel engine system for at least six years, but concealed all of that information until recently.

16 305. Volkswagen was also aware that it valued profits over environmental cleanliness,  
17 efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles  
18 throughout the United States that did not comply with EPA regulations. Volkswagen concealed this  
19 information as well.

20 306. By failing to disclose and by actively concealing the “defeat device” and the true  
21 cleanliness and performance of the CleanDiesel engine system, by marketing its vehicles as safe,  
22 reliable, environmentally clean, efficient, and of high quality, and by presenting itself as a reputable  
23 manufacturer that valued safety, environmental cleanliness and efficiency, and stood behind its  
24 vehicles after they were sold, Volkswagen engaged in unfair and deceptive business practices in  
25 violation of the Illinois CFA.

26 307. In the course of Volkswagen’s business, it willfully failed to disclose and actively  
27 concealed the use of the “defeat device” and true cleanliness and efficiency of the CleanDiesel  
28 engine system and serious defects discussed above. Volkswagen compounded the deception by

1 repeatedly asserting that the Affected Vehicles were safe, reliable, environmentally clean, efficient,  
2 and of high quality, and by claiming to be a reputable manufacturer that valued safety,  
3 environmental cleanliness and efficiency, and stood behind its vehicles once they are on the road.

4 308. Volkswagen's unfair or deceptive acts or practices were likely to and did in fact  
5 deceive reasonable consumers, including Plaintiffs, about the true cleanliness and efficiency of the  
6 CleanDiesel engine system, the quality of the Volkswagen and Audi brands, the devaluing of  
7 environmental cleanliness and integrity at Volkswagen, and the true value of the Affected Vehicles.

8 309. Volkswagen intentionally and knowingly misrepresented material facts regarding the  
9 Affected Vehicles with an intent to mislead Plaintiffs and the Illinois Subclass.

10 310. Volkswagen knew or should have known that its conduct violated the Illinois CFA.

11 311. As alleged above, Volkswagen made material statements about the safety,  
12 cleanliness, efficiency and reliability of the Affected Vehicles and the Volkswagen and Audi brands  
13 that were either false or misleading.

14 312. Volkswagen owed Plaintiffs a duty to disclose the true safety, cleanliness, efficiency  
15 and reliability of the Affected Vehicles and the devaluing of environmental cleanliness and integrity  
16 at Volkswagen, because Volkswagen:

- 17 a. Possessed exclusive knowledge that it valued profits over  
18 environmental cleanliness, efficiency, and lawfulness, and that  
19 it was manufacturing, selling and distributing vehicles  
throughout the United States that did not comply with EPA  
regulations;
- 20 b. Intentionally concealed the foregoing from Plaintiffs; and/or
- 21 c. Made incomplete representations about the safety, cleanliness,  
22 efficiency and reliability of the Affected Vehicles generally,  
23 and the use of the "defeat device" and true nature of the  
CleanDiesel engine system in particular, while purposefully  
withholding material facts from Plaintiffs that contradicted  
24 these representations.

25 313. Because Volkswagen fraudulently concealed the "defeat device" and the true  
26 cleanliness and performance of the CleanDiesel engine system, resulting in a raft of negative  
27 publicity once the use of the "defeat device" and true characteristics of the CleanDiesel engine  
28 system finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In

1 light of the stigma attached to those vehicles by Volkswagen's conduct, they are now worth  
2 significantly less than they otherwise would be.

3 314. Volkswagen's fraudulent use of the "defeat device" and its concealment of the true  
4 characteristics of the CleanDiesel engine system were material to Plaintiffs and the Illinois  
5 Subclass. A vehicle made by a reputable manufacturer of environmentally friendly vehicles is  
6 worth more than an otherwise comparable vehicle made by a disreputable manufacturer of  
7 environmentally dirty vehicles that conceals its polluting engines rather than promptly remedying  
8 them.

9 315. Plaintiffs and the Illinois Subclass suffered ascertainable loss caused by  
10 Volkswagen's misrepresentations and its concealment of and failure to disclose material  
11 information.

12 316. Volkswagen had an ongoing duty to all Volkswagen and Audi customers to refrain  
13 from unfair and deceptive acts or practices under the Illinois CFA. All owners of Affected Vehicles  
14 suffered ascertainable loss in the form of the diminished value of their vehicles as a result of  
15 Volkswagen's deceptive and unfair acts and practices made in the course of Volkswagen's business.

16 317. Volkswagen's violations present a continuing risk to Plaintiffs as well as to the  
17 general public. Volkswagen's unlawful acts and practices complained of herein affect the public  
18 interest.

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

21 319. Pursuant to 815 ILCS 505/10a(a), Plaintiffs and the Illinois Subclass seek monetary  
22 relief against Volkswagen in the amount of actual damages, as well as punitive damages because  
23 Volkswagen acted with fraud and/or malice and/or was grossly negligent.

24 320. Plaintiffs also seek an order enjoining Volkswagen's unfair and/or deceptive acts or  
25 practices, punitive damages, and attorneys' fees, and any other just and proper relief available under  
26 815 ILCS § 505/1 *et seq.*

**COUNT II**

**FRAUD BY CONCEALMENT**

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

322. This claim is brought on behalf of the Illinois Subclass.

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

324. Plaintiffs and Class members reasonably relied upon Volkswagen’s false representations. They had no way of knowing that Volkswagen’s representations were false and gravely misleading. As alleged herein, Volkswagen employed extremely sophisticated methods of deception. Plaintiffs and Class members did not, and could not, unravel Volkswagen’s deception on their own.

325. Volkswagen concealed and suppressed material facts concerning what is evidently the true culture of Volkswagen – one characterized by an emphasis on profits and sales above compliance with federal and state clean air law, and emissions regulations that are meant to protect the public and consumers. It also emphasized profits and sales about the trust that Plaintiffs and Class members placed in its representations. As one customer, Priya Shah, put it in a quotation cited by the *Los Angeles Times* in a September 18, 2015 article, “It’s just a blatant disregard and

1 intentional manipulation of the system. That’s just a whole other level of not only lying to the  
2 government, but also lying to your consumer. People buy diesel cars from Volkswagen because  
3 they feel they are clean diesel cars.” In the words of Ms. Shah, which no doubt reflect the  
4 sentiments of all other “CleanDiesel” vehicle buyers, “I don’t want to be spewing noxious gases  
5 into the environment.”

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

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



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

10 328. Volkswagen actively concealed and/or suppressed these material facts, in whole or in  
11 part, to pad and protect its profits and to avoid the perception that its vehicles did not or could not  
12 comply with federal and state laws governing clean air and emissions, which perception would hurt  
13 the brand's image and cost Volkswagen money, and it did so at the expense of Plaintiffs and Class  
14 members.

15 329. On information and belief, Volkswagen has still not made full and adequate  
16 disclosures, and continues to defraud Plaintiffs and Class members by concealing material  
17 information regarding the emission qualities of its referenced vehicles and its emissions scheme.

18 330. Plaintiffs and Class members were unaware of the omitted material facts referenced  
19 herein, and they would not have acted as they did if they had known of the concealed and/or  
20 suppressed facts, in that they would not have purchased purportedly “clean” diesel cars  
21 manufactured by Volkswagen, and/or would not have continued to drive their heavily polluting  
22 vehicles, or would have taken other affirmative steps in light of the information concealed from  
23 them. Plaintiffs' and Class Members' actions were justified. Volkswagen was in exclusive control  
24 of the material facts, and such facts were not known to the public, Plaintiffs, or Class members.

25 331. Because of the concealment and/or suppression of the facts, Plaintiffs and Class  
26 members have sustained damage because they own vehicles that are diminished in value as a result  
27 of Volkswagen's concealment of the true quality and quantity of those vehicles' emissions and  
28 Volkswagen's failure to timely disclose the actual emission qualities and quantities of hundreds of

1 thousands of Volkswagen- and Audi-branded vehicles and the serious issues engendered by  
2 Volkswagen's corporate policies. Had Plaintiffs and Class members been aware of Volkswagen's  
3 emissions schemes with regard to the vehicles at issue, and the company's callous disregard for  
4 compliance with applicable federal and state law and regulations, Plaintiffs and Class members who  
5 purchased or leased new or certified previously owned vehicles would have paid less for their  
6 vehicles or would not have purchased or leased them at all.

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

12 333. Accordingly, Volkswagen is liable to Plaintiffs and Class members for damages in an  
13 amount to be proven at trial.

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

20 **COUNT III**

21 **BREACH OF CONTRACT**  
22 **(Based on Illinois Law)**

23 335. Plaintiff incorporates by reference all preceding allegations as though fully set forth  
24 herein.

25 336. Plaintiff brings this Count on behalf of the Illinois Subclass.

26 337. Volkswagen's misrepresentations and omissions alleged herein, including  
27 Volkswagen's failure to disclose the existence of the CleanDiesel engine system's defect and/or  
28 defective design as alleged herein, caused Plaintiff and the other Illinois Subclass members to make

1 their purchases or leases of their Affected Vehicles. Absent those misrepresentations and  
2 omissions, Plaintiff and the other Illinois Subclass members would not have purchased or leased  
3 these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices  
4 they paid, and/or would have purchased or leased less expensive alternative vehicles that did not  
5 contain the CleanDiesel engine system and which were not marketed as including such a system.  
6 Accordingly, Plaintiff and the other Illinois Subclass members overpaid for their Affected Vehicles  
7 and did not receive the benefit of their bargain.

8 338. Each and every sale or lease of an Affected Vehicle constitutes a contract between  
9 Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing  
10 Plaintiff and the other Illinois Subclass members defective Affected Vehicles and by  
11 misrepresenting or failing to disclose the existence of the CleanDiesel engine system's defect and/or  
12 defective design, including information known to Volkswagen rendering each Affected Vehicle non  
13 EPA-compliant, and thus less valuable, than vehicles not equipped with a CleanDiesel engine  
14 system.

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

19 **I. Claims Brought on Behalf of the Kentucky Subclass**

20 **COUNT I**

21 **VIOLATION OF THE KENTUCKY CONSUMER PROTECTION ACT**  
22 **(KY. REV. STAT. § 367.110, et seq.)**

23 340. Plaintiff Emily Fisher ("Plaintiff," for purposes of all Kentucky Subclass Counts)  
24 incorporates by reference all preceding allegations as though fully set forth herein.

25 341. This claim is brought only on behalf of the Kentucky Subclass.

26 342. Volkswagen, Plaintiffs, and the Kentucky Subclass are "persons" within the meaning  
27 of the KY. REV. STAT. § 367.110(1).

28

1           343. Volkswagen engaged in “trade” or “commerce” within the meaning of KY. REV.  
2 STAT. § 367.110(2).

3           344. The Kentucky Consumer Protection Act (“Kentucky CPA”) makes unlawful  
4 “[u]nfair, false, misleading, or deceptive acts or practices in the conduct of any trade or commerce  
5 ....” KY. REV. STAT. § 367.170(1). Volkswagen both participated in misleading, false, or deceptive  
6 acts that violated the Kentucky CPA. By fraudulently installing the “defeat device” to make it  
7 appear that its CleanDiesel engine systems complied with EPA regulations, Volkswagen engaged in  
8 deceptive business practices prohibited by the Kentucky CPA.

9           345. In the course of its business, Volkswagen installed the “defeat device” and concealed  
10 that its CleanDiesel systems failed EPA regulations as described herein and otherwise engaged in  
11 activities with a tendency or capacity to deceive. Volkswagen also engaged in unlawful trade  
12 practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or  
13 concealment, suppression or omission of any material fact with intent that others rely upon such  
14 concealment, suppression or omission, in connection with the sale of Affected Vehicles.

15           346. Volkswagen has known of its use of the “defeat device” and the true nature of its  
16 CleanDiesel engine system for at least six years, but concealed all of that information until recently.

17           347. Volkswagen was also aware that it valued profits over environmental cleanliness,  
18 efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles  
19 throughout the United States that did not comply with EPA regulations. Volkswagen concealed this  
20 information as well.

21           348. By failing to disclose and by actively concealing the “defeat device” and the true  
22 cleanliness and performance of the CleanDiesel engine system, by marketing its vehicles as safe,  
23 reliable, environmentally clean, efficient, and of high quality, and by presenting itself as a reputable  
24 manufacturer that valued safety, environmental cleanliness and efficiency, and stood behind its  
25 vehicles after they were sold, Volkswagen engaged in deceptive business practices in violation of  
26 the Kentucky CPA.

27           349. In the course of Volkswagen’s business, it willfully failed to disclose and actively  
28 concealed the use of the “defeat device” and true cleanliness and efficiency of the CleanDiesel

1 engine system and serious defects discussed above. Volkswagen compounded the deception by  
2 repeatedly asserting that the Affected Vehicles were safe, reliable, environmentally clean, efficient,  
3 and of high quality, and by claiming to be a reputable manufacturer that valued safety,  
4 environmental cleanliness and efficiency, and stood behind its vehicles once they are on the road.

5 350. Volkswagen's unfair or deceptive acts or practices were likely to and did in fact  
6 deceive reasonable consumers, including Plaintiffs, about the true cleanliness and efficiency of the  
7 CleanDiesel engine system, the quality of the Volkswagen and Audi brands, the devaluing of  
8 environmental cleanliness and integrity at Volkswagen, and the true value of the Affected Vehicles.

9 351. Volkswagen intentionally and knowingly misrepresented material facts regarding the  
10 Affected Vehicles with an intent to mislead Plaintiffs and the Kentucky Subclass.

11 352. Volkswagen knew or should have known that its conduct violated the Kentucky  
12 CPA.

13 353. Volkswagen made material statements about the safety, cleanliness, efficiency and  
14 reliability of the Affected Vehicles and the Volkswagen and Audi brands that were either false or  
15 misleading.

16 354. Volkswagen owed Plaintiffs a duty to disclose the true safety, cleanliness, efficiency  
17 and reliability of the Affected Vehicles and the devaluing of environmental cleanliness and integrity  
18 at Volkswagen, because Volkswagen:

- 19 a. Possessed exclusive knowledge that it valued profits over  
20 environmental cleanliness, efficiency, and lawfulness, and that  
21 it was manufacturing, selling and distributing vehicles  
throughout the United States that did not comply with EPA  
regulations;
- 22 b. Intentionally concealed the foregoing from Plaintiffs; and/or
- 23 c. Made incomplete representations about the safety, cleanliness,  
24 efficiency and reliability of the Affected Vehicles generally,  
25 and the "defeat device" and true nature of the CleanDiesel  
engine system in particular, while purposefully withholding  
26 material facts from Plaintiffs that contradicted these  
representations.

27 355. Because Volkswagen fraudulently concealed the "defeat device" and the true  
28 cleanliness and performance of the CleanDiesel engine system, resulting in a raft of negative

1 publicity once the use of the “defeat device” and true characteristics of the CleanDiesel engine  
2 system finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In  
3 light of the stigma attached to those vehicles by Volkswagen’s conduct, they are now worth  
4 significantly less than they otherwise would be.

5 356. Volkswagen’s fraudulent use of the “defeat device” and its concealment of the true  
6 characteristics of the CleanDiesel engine system were material to Plaintiffs and the Kentucky  
7 Subclass. A vehicle made by a reputable manufacturer of environmentally friendly vehicles is  
8 worth more than an otherwise comparable vehicle made by a disreputable manufacturer of  
9 environmentally dirty vehicles that conceals its polluting engines rather than promptly remedying  
10 them.

11 357. Plaintiffs and the Kentucky Subclass suffered ascertainable loss caused by  
12 Volkswagen’s misrepresentations and its concealment of and failure to disclose material  
13 information.

14 358. Volkswagen had an ongoing duty to all Volkswagen and Audi customers to refrain  
15 from unfair and deceptive acts or practices under the Kentucky CPA. All owners of Affected  
16 Vehicles suffered ascertainable loss in the form of the diminished value of their vehicles as a result  
17 of Volkswagen’s deceptive and unfair acts and practices made in the course of Volkswagen’s  
18 business

19 359. Volkswagen’s violations present a continuing risk to Plaintiffs as well as to the  
20 general public. Volkswagen’s unlawful acts and practices complained of herein affect the public  
21 interest.

22 360. As a direct and proximate result of Volkswagen’s violations of the Kentucky CPA,  
23 Plaintiffs and the Kentucky Subclass have suffered injury-in-fact and/or actual damage.

24 361. Pursuant to KY. REV. STAT. ANN. § 367.220, Plaintiffs and the Kentucky Subclass  
25 seek to recover actual damages in an amount to be determined at trial; an order enjoining  
26 Volkswagen’s unfair, unlawful, and/or deceptive practices; declaratory relief; attorneys’ fees; and  
27 any other just and proper relief available under KY. REV. STAT. ANN. § 367.220.  
28

**COUNT II**

**FRAUD BY CONCEALMENT**

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3 362. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set  
4 forth herein.

5 363. This claim is brought on behalf of the Kentucky Subclass.

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

17 365. Plaintiffs and Class members reasonably relied upon Volkswagen’s false  
18 representations. They had no way of knowing that Volkswagen’s representations were false and  
19 gravely misleading. As alleged herein, Volkswagen employed extremely sophisticated methods of  
20 deception. Plaintiffs and Class members did not, and could not, unravel Volkswagen’s deception on  
21 their own.

22 366. Volkswagen concealed and suppressed material facts concerning what is evidently  
23 the true culture of Volkswagen – one characterized by an emphasis on profits and sales above  
24 compliance with federal and state clean air law, and emissions regulations that are meant to protect  
25 the public and consumers. It also emphasized profits and sales about the trust that Plaintiffs and  
26 Class members placed in its representations. As one customer, Priya Shah, put it in a quotation  
27 cited by the *Los Angeles Times* in a September 18, 2015 article, “It’s just a blatant disregard and  
28 intentional manipulation of the system. That’s just a whole other level of not only lying to the

1 government, but also lying to your consumer. People buy diesel cars from Volkswagen because  
2 they feel they are clean diesel cars.” In the words of Ms. Shah, which no doubt reflect the  
3 sentiments of all other “CleanDiesel” vehicle buyers, “I don’t want to be spewing noxious gases  
4 into the environment.”

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

17 368. Volkswagen had a duty to disclose the emissions scheme it engaged in with respect  
18 to the vehicles at issue because knowledge of the scheme and its details were known and/or  
19 accessible only to Volkswagen, because Volkswagen had exclusive knowledge as to  
20 implementation and maintenance of its scheme, and because Volkswagen knew the facts were not  
21 known to or reasonably discoverable by Plaintiffs or Class members. Volkswagen also had a duty  
22 to disclose because it made general affirmative representations about the qualities of its vehicles  
23 with respect to emissions standards, starting with references to them as *clean* diesel cars, or cars  
24 with *clean* diesel engines, which were misleading, deceptive, and incomplete without the disclosure  
25 of the additional facts set forth above regarding its emissions scheme, the actual emissions of its  
26 vehicles, its actual philosophy with respect to compliance with federal and state clean air law and  
27 emissions regulations, and its actual practices with respect to the vehicles at issue. Having  
28 volunteered to provide information to Plaintiffs, Volkswagen had the duty to disclose not just the



1 partial truth, but the entire truth. These omitted and concealed facts were material because they  
2 directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and Class  
3 members. Whether a manufacturer's products comply with federal and state clean air law and  
4 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance  
5 or non-compliance, are material concerns to a consumer, including with respect to the emissions  
6 certifications testing their vehicles must pass. Volkswagen represented to Plaintiffs and Class  
7 members that they were purchasing *clean* diesel vehicles, and certification testing appeared to  
8 confirm this – except that, secretly, Volkswagen had subverted the testing process thoroughly.

9 369. Volkswagen actively concealed and/or suppressed these material facts, in whole or in  
10 part, to pad and protect its profits and to avoid the perception that its vehicles did not or could not  
11 comply with federal and state laws governing clean air and emissions, which perception would hurt  
12 the brand's image and cost Volkswagen money, and it did so at the expense of Plaintiffs and Class  
13 members.

14 370. On information and belief, Volkswagen has still not made full and adequate  
15 disclosures, and continues to defraud Plaintiffs and Class members by concealing material  
16 information regarding the emission qualities of its referenced vehicles and its emissions scheme.

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

24 372. Because of the concealment and/or suppression of the facts, Plaintiffs and Class  
25 members have sustained damage because they own vehicles that are diminished in value as a result  
26 of Volkswagen's concealment of the true quality and quantity of those vehicles' emissions and  
27 Volkswagen's failure to timely disclose the actual emission qualities and quantities of hundreds of  
28 thousands of Volkswagen- and Audi-branded vehicles and the serious issues engendered by

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

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

11 374. Accordingly, Volkswagen is liable to Plaintiffs and Class members for damages in an  
12 amount to be proven at trial.

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

19 **COUNT III**

20 **BREACH OF CONTRACT**  
21 **(Based on Kentucky Law)**

22 376. Plaintiff incorporates by reference all preceding allegations as though fully set forth  
23 herein.

24 377. Plaintiff brings this Count on behalf of the Kentucky Subclass.

25 378. Volkswagen's misrepresentations and omissions alleged herein, including  
26 Volkswagen's failure to disclose the existence of the CleanDiesel engine system's defect and/or  
27 defective design as alleged herein, caused Plaintiff and the other Kentucky Subclass members to  
28 make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and

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

7 379. Each and every sale or lease of an Affected Vehicle constitutes a contract between  
 8 Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing  
 9 Plaintiff and the other Kentucky Subclass members defective Affected Vehicles and by  
 10 misrepresenting or failing to disclose the existence of the CleanDiesel engine system's defect and/or  
 11 defective design, including information known to Volkswagen rendering each Affected Vehicle non  
 12 EPA-compliant, and thus less valuable, than vehicles not equipped with a CleanDiesel engine  
 13 system.

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

18 **J. Claims Brought on Behalf of the Maine Subclass**

19 **COUNT I**

20 **VIOLATION OF MAINE UNFAIR TRADE PRACTICES ACT**  
 21 **(ME. REV. STAT. ANN. TIT. 5 § 205-A, et seq.)**

22 381. Plaintiff Kshanti Greene ("Plaintiff," for purposes of all Maine Subclass Counts)  
 23 incorporates by reference all preceding allegations as though fully set forth herein.

24 382. Plaintiff intends to assert a claim under the Maine Unfair Trade Practices Act  
 25 ("Maine UTPA") which makes unlawful "[u]nfair methods of competition and unfair or deceptive  
 26 acts or practices in the conduct of any trade or commerce...." ME. REV. STAT. ANN. TIT. 5 § 207.  
 27 Plaintiffs will make a demand in satisfaction of ME. REV. STAT. ANN. TIT. 5, § 213(A), and may  
 28 amend this Complaint to assert claims under the Maine UTPA once the required 30 days have

1 elapsed. This paragraph is included for purposes of notice only and is not intended to actually assert  
2 a claim under the Maine UTPA.

3 **COUNT II**

4 **FRAUD BY CONCEALMENT**

5 383. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set  
6 forth herein.

7 384. This claim is brought on behalf of the Maine Subclass.

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

19 386. Plaintiffs and Class members reasonably relied upon Volkswagen’s false  
20 representations. They had no way of knowing that Volkswagen’s representations were false and  
21 gravely misleading. As alleged herein, Volkswagen employed extremely sophisticated methods of  
22 deception. Plaintiffs and Class members did not, and could not, unravel Volkswagen’s deception on  
23 their own.

24 387. Volkswagen concealed and suppressed material facts concerning what is evidently  
25 the true culture of Volkswagen – one characterized by an emphasis on profits and sales above  
26 compliance with federal and state clean air law, and emissions regulations that are meant to protect  
27 the public and consumers. It also emphasized profits and sales about the trust that Plaintiffs and  
28 Class members placed in its representations. As one customer, Priya Shah, put it in a quotation

1 cited by the *Los Angeles Times* in a September 18, 2015 article, “It’s just a blatant disregard and  
2 intentional manipulation of the system. That’s just a whole other level of not only lying to the  
3 government, but also lying to your consumer. People buy diesel cars from Volkswagen because  
4 they feel they are clean diesel cars.” In the words of Ms. Shah, which no doubt reflect the  
5 sentiments of all other “CleanDiesel” vehicle buyers, “I don’t want to be spewing noxious gases  
6 into the environment.”

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

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

1 emissions regulations, and its actual practices with respect to the vehicles at issue. Having  
2 volunteered to provide information to Plaintiffs, Volkswagen had the duty to disclose not just the  
3 partial truth, but the entire truth. These omitted and concealed facts were material because they  
4 directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and Class  
5 members. Whether a manufacturer's products comply with federal and state clean air law and  
6 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance  
7 or non-compliance, are material concerns to a consumer, including with respect to the emissions  
8 certifications testing their vehicles must pass. Volkswagen represented to Plaintiffs and Class  
9 members that they were purchasing *clean* diesel vehicles, and certification testing appeared to  
10 confirm this—except that, secretly, Volkswagen had subverted the testing process thoroughly.

11 390. Volkswagen actively concealed and/or suppressed these material facts, in whole or in  
12 part, to pad and protect its profits and to avoid the perception that its vehicles did not, or could not,  
13 comply with federal and state laws governing clean air and emissions, which perception would hurt  
14 the brand's image and cost Volkswagen money, and it did so at the expense of Plaintiffs and Class  
15 members.

16 391. On information and belief, Volkswagen has still not made full and adequate  
17 disclosures, and continues to defraud Plaintiffs and Class members by concealing material  
18 information regarding the emission qualities of its referenced vehicles and its emissions scheme.

19 392. Plaintiffs and Class members were unaware of the omitted material facts referenced  
20 herein, and they would not have acted as they did if they had known of the concealed and/or  
21 suppressed facts, in that they would not have purchased purportedly "clean" diesel cars  
22 manufactured by Volkswagen, and/or would not have continued to drive their heavily polluting  
23 vehicles, or would have taken other affirmative steps in light of the information concealed from  
24 them. Plaintiffs' and Class Members' actions were justified. Volkswagen was in exclusive control  
25 of the material facts, and such facts were not known to the public, Plaintiffs, or Class members.

26 393. Because of the concealment and/or suppression of the facts, Plaintiffs and Class  
27 members have sustained damage because they own vehicles that are diminished in value as a result  
28 of Volkswagen's concealment of the true quality and quantity of those vehicles' emissions and

1 Volkswagen's failure to timely disclose the actual emission qualities and quantities of hundreds of  
2 thousands of Volkswagen- and Audi-branded vehicles and the serious issues engendered by  
3 Volkswagen's corporate policies. Had Plaintiffs and Class members been aware of Volkswagen's  
4 emissions schemes with regard to the vehicles at issue, and the company's callous disregard for  
5 compliance with applicable federal and state law and regulations, Plaintiffs and Class members who  
6 purchased or leased new or certified previously owned vehicles would have paid less for their  
7 vehicles or would not have purchased or leased them at all.

8 394. The value of Plaintiffs' and Class Members' vehicles has diminished as a result of  
9 Volkswagen's fraudulent concealment of its emissions scheme, which has greatly tarnished the  
10 Volkswagen and Audi brand names attached to Plaintiffs' and Class members' vehicles and made  
11 any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what  
12 otherwise would have been fair market value for the vehicles.

13 395. Accordingly, Volkswagen is liable to Plaintiffs and Class members for damages in an  
14 amount to be proven at trial.

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

21 **COUNT III**

22 **BREACH OF CONTRACT**  
23 **(Based on Maine Law)**

24 397. Plaintiff incorporates by reference all preceding allegations as though fully set forth  
25 herein.

26 398. Plaintiff brings this Count on behalf of the Maine Subclass.

27 399. Volkswagen's misrepresentations and omissions alleged herein, including  
28 Volkswagen's failure to disclose the existence of the CleanDiesel engine system's defect and/or

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

9 400. Each and every sale or lease of an Affected Vehicle constitutes a contract between  
 10 Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing  
 11 Plaintiff and the other Maine Subclass members defective Affected Vehicles and by misrepresenting  
 12 or failing to disclose the existence of the CleanDiesel engine system's defect and/or defective  
 13 design, including information known to Volkswagen rendering each Affected Vehicle non EPA-  
 14 compliant, and thus less valuable, than vehicles not equipped with a CleanDiesel engine system.

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

19 **K. Claims Brought on Behalf of the Massachusetts Subclass**

20 **COUNT I**

21 **VIOLATIONS OF THE MASSACHUSETTS CONSUMER PROTECTION ACT**  
 22 **(MASS. GEN. LAWS CH. 93A)**

23 402. Plaintiff John Halloran ("Plaintiff," for purposes of all Massachusetts Subclass  
 24 Counts) incorporates by reference all preceding allegations as though fully set forth herein.

25 403. Plaintiff intends to assert a claim under the Massachusetts Consumer Protection Act  
 26 ("MCPA"), which makes it unlawful to engage in any "[u]nfair methods of competition or deceptive  
 27 acts or practices in the conduct of any trade or commerce." MASS. GEN. LAWS CH. 93A, § 2(1).  
 28 Plaintiffs will make a demand in satisfaction of MASS. GEN. LAWS CH. 93A, § 9(3), and may amend



1 this Complaint to assert claims under the MCPA once the required 30 days have elapsed. This  
2 paragraph is included for purposes of notice only and is not intended to actually assert a claim under  
3 the MCPA.

4 **COUNT II**

5 **BREACH OF CONTRACT**  
6 **(BASED ON MASSACHUSETTS LAW)**

7 404. Plaintiff incorporates by reference all preceding allegations as though fully set forth  
8 herein.

9 405. Plaintiff brings this Count on behalf of the Massachusetts Subclass.

10 406. Volkswagen's misrepresentations and omissions alleged herein, including  
11 Volkswagen's failure to disclose the existence of the CleanDiesel engine system's defect and/or  
12 defective design as alleged herein, caused Plaintiff and the other Massachusetts Subclass members  
13 to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and  
14 omissions, Plaintiff and the other Massachusetts Subclass members would not have purchased or  
15 leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the  
16 prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did  
17 not contain the CleanDiesel engine system and which were not marketed as including such a  
18 system. Accordingly, Plaintiff and the other Massachusetts Subclass members overpaid for their  
19 Affected Vehicles and did not receive the benefit of their bargain.

20 407. Each and every sale or lease of an Affected Vehicle constitutes a contract between  
21 Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing  
22 Plaintiff and the other Massachusetts Subclass members defective Affected Vehicles and by  
23 misrepresenting or failing to disclose the existence of the CleanDiesel engine system's defect and/or  
24 defective design, including information known to Volkswagen rendering each Affected Vehicle non  
25 EPA-compliant, and thus less valuable, than vehicles not equipped with a CleanDiesel engine  
26 system.

27 408. As a direct and proximate result of Volkswagen's breach of contract, Plaintiff and  
28 the Massachusetts Subclass have been damaged in an amount to be proven at trial, which shall

1 include, but is not limited to, all compensatory damages, incidental and consequential damages, and  
2 other damages allowed by law.

3 **COUNT III**  
4 **FRAUDULENT CONCEALMENT**  
5 **(BASED ON MASSACHUSETTS LAW)**

6 409. Plaintiff incorporates by reference all preceding allegations as though fully set forth  
7 herein.

8 410. Plaintiff brings this Count on behalf of the Massachusetts Subclass.

9 411. Volkswagen intentionally concealed that the CleanDiesel engine systems were not  
10 EPA-compliant and used a “defeat device,” or acted with reckless disregard for the truth, and denied  
11 Plaintiff and the other Class members information that is highly relevant to their purchasing  
12 decision.

13 412. Volkswagen further affirmatively misrepresented to Plaintiff in advertising and other  
14 forms of communication, including standard and uniform material provided with each car, that the  
15 Affected Vehicles it was selling were new, had no significant defects, complied with EPA  
16 regulations and would perform and operate properly when driven in normal usage.

17 413. Volkswagen knew these representations were false when made.

18 414. The Affected Vehicles purchased or leased by Plaintiff and the other Class members  
19 were, in fact, defective, non-EPA compliant, unsafe, and unreliable because the Affected Vehicles  
20 contained faulty and defective CleanDiesel engine system, as alleged herein.

21 415. Volkswagen had a duty to disclose that these Affected Vehicles were defective,  
22 unsafe, non-EPA compliant and unreliable in that certain crucial emissions functions of the Affected  
23 Vehicles would be rendered inoperative due to the “defeat device” installed in the defective  
24 CleanDiesel engine system, because Plaintiff and the other Class members relied on Volkswagen’s  
25 material representations that the Affected Vehicles they were purchasing were safe, environmentally  
26 clean, efficient and free from defects.

1           416. The aforementioned concealment was material because if it had been disclosed  
2 Plaintiff and the other Class members would not have bought or leased the Affected Vehicles, or  
3 would not have bought or leased those Vehicles at the prices they paid.

4           417. The aforementioned representations were material because they were facts that  
5 would typically be relied on by a person purchasing or leasing a new motor vehicle. Volkswagen  
6 knew or recklessly disregarded that its representations were false because it knew that it had to use  
7 the “defeat device” in order for Affected Vehicles to pass EPA emissions requirements.  
8 Volkswagen intentionally made the false statements in order to sell Affected Vehicles.

9           418. Plaintiff and the other Class members relied on Volkswagen’s reputation – along  
10 with Volkswagen’s failure to disclose the faulty and defective nature of the CleanDiesel engine  
11 system and Volkswagen’s affirmative assurance that its Affected Vehicles were safe and reliable,  
12 and other similar false statements – in purchasing or leasing Volkswagen’s Affected Vehicles.

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

16           420. Volkswagen’s conduct was knowing, intentional, with malice, demonstrated a  
17 complete lack of care, and was in reckless disregard for the rights of Plaintiff and the other Class  
18 members. Plaintiff and the other Class members are therefore entitled to an award of punitive  
19 damages.

20 **L. Claims Brought on Behalf of the Minnesota Subclass**

21 **COUNT I**

22 **VIOLATION OF MINNESOTA PREVENTION**  
23 **OF CONSUMER FRAUD ACT**

24 **(MINN. STAT. § 325F.68, *et seq.*)**

25           421. Plaintiff Scott Moen (“Plaintiff,” for purposes of all Minnesota Subclass Counts)  
26 incorporates by reference all preceding allegations as though fully set forth herein.

27           422. This claim is brought only on behalf of the Minnesota Subclass.  
28

1           423. The Affected Vehicles constitute “merchandise” within the meaning of MINN. STAT.  
2 § 325F.68(2).

3           424. The Minnesota Prevention of Consumer Fraud Act (“Minnesota CFA”) prohibits  
4 “[t]he act, use, or employment by any person of any fraud, false pretense, false promise,  
5 misrepresentation, misleading statement or deceptive practice, with the intent that others rely  
6 thereon in connection with the sale of any merchandise, whether or not any person has in fact been  
7 misled, deceived, or damaged thereby . . .” MINN. STAT. § 325F.69(1). Volkswagen participated in  
8 misleading, false, or deceptive acts that violated the Minnesota CFA. By fraudulently installing the  
9 “defeat device” to make it appear that its CleanDiesel engine systems complied with EPA  
10 regulations, Volkswagen engaged in deceptive business practices prohibited by the Minnesota CFA.

11           425. Volkswagen’s actions as set forth above occurred in the conduct of trade or  
12 commerce.

13           426. In the course of its business, Volkswagen installed the “defeat device” and concealed  
14 that its CleanDiesel systems failed EPA regulations as described herein and otherwise engaged in  
15 activities with a tendency or capacity to deceive. Volkswagen also engaged in unlawful trade  
16 practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or  
17 concealment, suppression or omission of any material fact with intent that others rely upon such  
18 concealment, suppression or omission, in connection with the sale of Affected Vehicles.

19           427. Volkswagen has known of its use of the “defeat device” and the true nature of its  
20 CleanDiesel engine system for at least six years, but concealed all of that information until recently.

21           428. Volkswagen was also aware that it valued profits over environmental cleanliness,  
22 efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles  
23 throughout the United States that did not comply with EPA regulations. Volkswagen concealed this  
24 information as well.

25           429. By failing to disclose and by actively concealing the “defeat device” and the true  
26 cleanliness and performance of the CleanDiesel engine system, by marketing its vehicles as safe,  
27 reliable, environmentally clean, efficient, and of high quality, and by presenting itself as a reputable  
28 manufacturer that valued safety, environmental cleanliness and efficiency, and stood behind its

1 vehicles after they were sold, Volkswagen engaged in deceptive business practices in violation of  
2 the Minnesota CFA.

3 430. In the course of Volkswagen's business, it willfully failed to disclose and actively  
4 concealed the use of the "defeat device" and true cleanliness and efficiency of the CleanDiesel  
5 engine system and serious defects discussed above. Volkswagen compounded the deception by  
6 repeatedly asserting that the Affected Vehicles were safe, reliable, environmentally clean, efficient,  
7 and of high quality, and by claiming to be a reputable manufacturer that valued safety,  
8 environmental cleanliness and efficiency, and stood behind its vehicles once they were on the road.

9 431. Volkswagen's unfair or deceptive acts or practices were likely to, and did in fact,  
10 deceive reasonable consumers, including Plaintiffs, about the true cleanliness and efficiency of the  
11 CleanDiesel engine system, the quality of the Volkswagen and Audi brands, the devaluing of  
12 environmental cleanliness and integrity at Volkswagen, and the true value of the Affected Vehicles.

13 432. Volkswagen intentionally and knowingly misrepresented material facts regarding the  
14 Affected Vehicles with an intent to mislead Plaintiffs and the Minnesota Subclass.

15 433. Volkswagen knew or should have known that its conduct violated the Minnesota  
16 CFA.

17 434. As alleged above, Volkswagen made material statements about the safety,  
18 cleanliness, efficiency and reliability of the Affected Vehicles and the Volkswagen and Audi brands  
19 that were either false or misleading.

20 435. Volkswagen owed Plaintiffs a duty to disclose the true safety, cleanliness, efficiency  
21 and reliability of the Affected Vehicles and the devaluing of environmental cleanliness and integrity  
22 at Volkswagen, because Volkswagen:

- 23 a. Possessed exclusive knowledge that it valued profits over  
24 environmental cleanliness, efficiency, and lawfulness, and that  
25 it was manufacturing, selling and distributing vehicles  
throughout the United States that did not comply with EPA  
regulations;
- 26 b. Intentionally concealed the foregoing from Plaintiffs; and/or
- 27 c. Made incomplete representations about the safety, cleanliness,  
28 efficiency and reliability of the Affected Vehicles generally,  
and the use of the "defeat device" and true nature of the

1 CleanDiesel engine system in particular, while purposefully  
2 withholding material facts from Plaintiffs that contradicted  
these representations.

3 436. Because Volkswagen fraudulently concealed the “defeat device” and the true  
4 cleanliness and performance of the CleanDiesel engine system, resulting in a raft of negative  
5 publicity once the use of the “defeat device” and true characteristics of the CleanDiesel engine  
6 system finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In  
7 light of the stigma attached to those vehicles by Volkswagen’s conduct, they are now worth  
8 significantly less than they otherwise would be.

9 437. Volkswagen’s fraudulent use of the “defeat device” and its concealment of the true  
10 characteristics of the CleanDiesel engine system were material to Plaintiffs and the Minnesota  
11 Subclass. A vehicle made by a reputable manufacturer of environmentally friendly vehicles is  
12 worth more than an otherwise comparable vehicle made by a disreputable and dishonest  
13 manufacturer of polluting vehicles that conceals the amount its cars pollutes rather than make  
14 environmentally friendly vehicles.

15 438. Plaintiffs and the Minnesota Subclass suffered ascertainable loss caused by  
16 Volkswagen’s misrepresentations and its concealment of and failure to disclose material  
17 information.

18 439. Volkswagen had an ongoing duty to all Volkswagen and Audi customers to refrain  
19 from unfair and deceptive acts or practices under the Minnesota CFA. All owners of Affected  
20 Vehicles suffered ascertainable loss in the form of the diminished value of their vehicles as a result  
21 of Volkswagen’s deceptive and unfair acts and practices made in the course of Volkswagen’s  
22 business.

23 440. Volkswagen’s violations present a continuing risk to Plaintiffs as well as to the  
24 general public. Volkswagen’s unlawful acts and practices complained of herein affect the public  
25 interest.

26 441. As a direct and proximate result of Volkswagen’s violations of the Minnesota CFA,  
27 Plaintiffs and the Minnesota Subclass have suffered injury-in-fact and/or actual damage.  
28



1 make it appear that its CleanDiesel engine systems complied with EPA regulations, Volkswagen  
2 engaged in deceptive business practices prohibited by the Minnesota DTPA.

3 447. Volkswagen's actions as set forth above occurred in the conduct of trade or  
4 commerce.

5 448. In the course of its business, Volkswagen installed the "defeat device" and concealed  
6 that its CleanDiesel systems failed EPA regulations as described herein and otherwise engaged in  
7 activities with a tendency or capacity to deceive. Volkswagen also engaged in unlawful trade  
8 practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or  
9 concealment, suppression or omission of any material fact with intent that others rely upon such  
10 concealment, suppression or omission, in connection with the sale of Affected Vehicles.

11 449. Volkswagen has known of its use of the "defeat device" and the true nature of its  
12 CleanDiesel engine system for at least six years, but concealed all of that information until recently.

13 450. Volkswagen was also aware that it valued profits over environmental cleanliness,  
14 efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles  
15 throughout the United States that did not comply with EPA regulations. Volkswagen concealed this  
16 information as well.

17 451. By failing to disclose and by actively concealing the "defeat device" and the true  
18 cleanliness and performance of the CleanDiesel engine system, by marketing its vehicles as safe,  
19 reliable, environmentally clean, efficient, and of high quality, and by presenting itself as a reputable  
20 manufacturer that valued safety, environmental cleanliness and efficiency, and stood behind its  
21 vehicles after they were sold, Volkswagen engaged in deceptive business practices in violation of  
22 the Minnesota DTPA.

23 452. In the course of Volkswagen's business, it willfully failed to disclose and actively  
24 concealed the use of the "defeat device" and true cleanliness and efficiency of the CleanDiesel  
25 engine system and serious defects discussed above. Volkswagen compounded the deception by  
26 repeatedly asserting that the Affected Vehicles were safe, reliable, environmentally clean, efficient,  
27 and of high quality, and by claiming to be a reputable manufacturer that valued safety,  
28 environmental cleanliness and efficiency, and stood behind its vehicles once they are on the road.



1           453. Volkswagen’s unfair or deceptive acts or practices were likely to and did in fact  
2 deceive reasonable consumers, including Plaintiffs, about the true cleanliness and efficiency of the  
3 CleanDiesel engine system, the quality of the Volkswagen brand, the devaluing of environmental  
4 cleanliness and integrity at Volkswagen, and the true value of the Affected Vehicles.

5           454. Volkswagen intentionally and knowingly misrepresented material facts regarding the  
6 Affected Vehicles with an intent to mislead Plaintiffs and the Minnesota Subclass.

7           455. Volkswagen knew or should have known that its conduct violated the Minnesota  
8 DTPA.

9           456. As alleged above, Volkswagen made material statements about the safety,  
10 cleanliness, efficiency and reliability of the Affected Vehicles that were either false or misleading.

11           457. Volkswagen owed Plaintiffs a duty to disclose the true safety, cleanliness, efficiency  
12 and reliability of the Affected Vehicles and the devaluing of environmental cleanliness and integrity  
13 at Volkswagen, because Volkswagen:

- 14           a. Possessed exclusive knowledge that it valued profits over  
15 environmental cleanliness, efficiency, and lawfulness, and that  
16 it was manufacturing, selling and distributing vehicles  
17 throughout the United States that did not comply with EPA  
18 regulations;  
19           b. Intentionally concealed the foregoing from Plaintiffs; and/or  
20           c. Made incomplete representations about the safety, cleanliness,  
21 efficiency and reliability of the Affected Vehicles generally,  
22 and the use of the “defeat device” and true nature of the  
23 CleanDiesel engine system in particular, while purposefully  
24 withholding material facts from Plaintiffs that contradicted  
25 these representations.  
26

27           458. Because Volkswagen fraudulently concealed the “defeat device” and the true  
28 cleanliness and performance of the CleanDiesel engine system, resulting in a raft of negative  
publicity once the use of the “defeat device” and true characteristics of the CleanDiesel engine  
system finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In  
light of the stigma attached to those vehicles by Volkswagen’s conduct, they are now worth  
significantly less than they otherwise would be.



1           466. This claim is brought on behalf of the Minnesota Subclass.

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

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

18           469. Volkswagen concealed and suppressed material facts concerning what is evidently  
19 the true culture of Volkswagen—one characterized by an emphasis on profits and sales above  
20 compliance with federal and state clean air law, and emissions regulations that are meant to protect  
21 the public and consumers. It also emphasized profits and sales about the trust that Plaintiffs and  
22 Class members placed in its representations. As one customer, Priya Shah, put it in a quotation  
23 cited by the *Los Angeles Times* in a September 18, 2015 article, “It’s just a blatant disregard and  
24 intentional manipulation of the system. That’s just a whole other level of not only lying to the  
25 government, but also lying to your consumer. People buy diesel cars from Volkswagen because  
26 they feel they are clean diesel cars.” In the words of Ms. Shah, which no doubt reflect the  
27 sentiments of all other “CleanDiesel” vehicle buyers, “I don’t want to be spewing noxious gases  
28 into the environment.”

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

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

1 or non-compliance, are material concerns to a consumer, including with respect to the emissions  
2 certifications testing their vehicles must pass. Volkswagen represented to Plaintiffs and Class  
3 members that they were purchasing *clean* diesel vehicles, and certification testing appeared to  
4 confirm this—except that, secretly, Volkswagen had subverted the testing process thoroughly.

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

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

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

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

1 purchased or leased new or certified previously owned vehicles would have paid less for their  
2 vehicles or would not have purchased or leased them at all.

3 476. The value of Plaintiffs' and Class Members' vehicles has diminished as a result of  
4 Volkswagen's fraudulent concealment of its emissions scheme, which has greatly tarnished the  
5 Volkswagen and Audi brand names attached to Plaintiffs' and Class members' vehicles and made  
6 any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what  
7 otherwise would have been fair market value for the vehicles.

8 477. Accordingly, Volkswagen is liable to Plaintiffs and Class members for damages in an  
9 amount to be proven at trial.

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

16 **COUNT IV**  
17 **BREACH OF CONTRACT**  
**(BASED ON MINNESOTA LAW)**

18 479. Plaintiff incorporates by reference all preceding allegations as though fully set forth  
19 herein.

20 480. Plaintiff brings this Count on behalf of the Minnesota Subclass.

21 481. Volkswagen's misrepresentations and omissions alleged herein, including  
22 Volkswagen's failure to disclose the existence of the CleanDiesel engine system's defect and/or  
23 defective design as alleged herein, caused Plaintiff and the other Minnesota Subclass members to  
24 make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and  
25 omissions, Plaintiff and the other Minnesota Subclass members would not have purchased or leased  
26 these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices  
27 they paid, and/or would have purchased or leased less expensive alternative vehicles that did not  
28

1 contain the CleanDiesel engine system and which were not marketed as including such a system.  
2 Accordingly, Plaintiff and the other Minnesota Subclass members overpaid for their Affected  
3 Vehicles and did not receive the benefit of their bargain.

4 482. Each and every sale or lease of an Affected Vehicle constitutes a contract between  
5 Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing  
6 Plaintiff and the other Minnesota Subclass members defective Affected Vehicles and by  
7 misrepresenting or failing to disclose the existence of the CleanDiesel engine system's defect and/or  
8 defective design, including information known to Volkswagen rendering each Affected Vehicle non  
9 EPA-compliant, and thus less valuable, than vehicles not equipped with a CleanDiesel engine  
10 system.

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

15 **M. Claims Brought on Behalf of the Missouri Subclass**

16 **COUNT I**

17 **VIOLATION OF MISSOURI MERCHANDISING PRACTICES ACT**

18 **(MO. REV. STAT. § 407.010, et seq.)**

19 484. Plaintiff Grant Gall ("Plaintiff," for purposes of all Missouri Subclass Counts)  
20 incorporates by reference all preceding allegations as though fully set forth herein.

21 485. This claim is brought only on behalf of the Missouri Subclass.

22 486. Volkswagen, Plaintiffs and the Missouri Subclass are "persons" within the meaning  
23 of MO. REV. STAT. § 407.010(5).

24 487. Volkswagen engaged in "trade" or "commerce" in the State of Missouri within the  
25 meaning of MO. REV. STAT. § 407.010(7).

26 488. The Missouri Merchandising Practices Act ("Missouri MPA") makes unlawful the  
27 "act, use or employment by any person of any deception, fraud, false pretense, misrepresentation,  
28

1 unfair practice, or the concealment, suppression, or omission of any material fact in connection with  
2 the sale or advertisement of any merchandise.” MO. REV. STAT. § 407.020.

3 489. In the course of its business, Volkswagen environmental laws and regulations and,  
4 omitted, suppressed, and concealed its use of the “defeat device” as described herein. By failing to  
5 disclose these defects or facts about the defects described herein known to it or that were available  
6 to Volkswagen upon reasonable inquiry, Volkswagen deprived consumers of all material facts about  
7 the safety and functionality of their vehicle. By failing to release material facts about the defect,  
8 Volkswagen curtailed or reduced the ability of consumers to take notice of material facts about their  
9 vehicle, and/or it affirmatively operated to hide or keep those facts from consumers. 15 MO. CODE  
10 OF SERV. REG. § 60-9.110. Moreover, Volkswagen has otherwise engaged in activities with a  
11 tendency or capacity to deceive. Volkswagen also engaged in unlawful trade practices by  
12 employing deception, deceptive acts or practices, fraud, misrepresentations, unfair practices, and/or  
13 concealment, suppression or omission of any material fact with intent that others rely upon such  
14 concealment, suppression or omission, in connection with the sale of Affected Vehicles.

15 490. Volkswagen has known of its use of the “defeat device” and the true characteristics  
16 of its CleanDiesel engine system, but suppressed and/or concealed all of that information until  
17 recently.

18 491. Volkswagen was also aware that it valued profits over environmental cleanliness,  
19 efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles  
20 throughout the United States that did not comply with EPA regulations. Volkswagen omitted,  
21 suppressed, and/or concealed this information as well.

22 492. By failing to disclose and by actively concealing, suppressing, or omitting the  
23 “defeat device” and the true cleanliness and performance of the CleanDiesel engine system, by  
24 marketing its vehicles as safe, reliable, environmentally clean, efficient, and of high quality, and by  
25 presenting itself as a reputable manufacturer that valued safety, environmental cleanliness and  
26 efficiency, and stood behind its vehicles after they were sold, Volkswagen engaged in unfair and/or  
27 deceptive business practices and concealed, suppressed, and/or omitted material facts from  
28 consumers in connection with the purchase of their vehicles – all in violation of the Missouri MPA.



1           493. In the course of Volkswagen’s business, it willfully failed to disclose and actively  
2           concealed, suppressed, and omitted the use of the “defeat device” and true cleanliness and  
3           efficiency of the CleanDiesel engine system and serious defects discussed above. Volkswagen  
4           compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable,  
5           environmentally clean, efficient, and of high quality, and by claiming to be a reputable manufacturer  
6           that valued safety, environmental cleanliness and efficiency, and stood behind its vehicles once they  
7           are on the road.

8           494. Volkswagen’s unfair or deceptive acts or practices, including these concealments,  
9           omissions, and suppressions of material facts, had a tendency or capacity to mislead, tended to  
10          create a false impression in consumers, and did in fact deceive reasonable consumers, including  
11          Plaintiffs, about the true cleanliness and efficiency of the CleanDiesel engine system, the quality of  
12          the Volkswagen and Audi brands, the devaluing of environmental cleanliness and integrity at  
13          Volkswagen, and the true value of the Affected Vehicles.

14          495. Volkswagen intentionally and knowingly misrepresented material facts regarding the  
15          Affected Vehicles with an intent to mislead Plaintiffs and the Missouri Subclass, including without  
16          limitation by failing to disclose the “defeat device” in light of circumstances under which the  
17          omitted facts were necessary in order to correct the assumptions, inferences or representations being  
18          made by Volkswagen about the safety, efficiency, cleanliness or reliability of its vehicles.  
19          Consequently, the failure to disclose such facts amounts to misleading statements pursuant to 15  
20          MO. CODE OF SERV. REG. § 60-9.090.

21          496. Because Volkswagen knew or believed that its statements regarding cleanliness,  
22          efficiency and reliability of its vehicles were not in accord with the facts and/or had no reasonable  
23          basis for such statements in light of its knowledge of these defects, Volkswagen engaged in  
24          fraudulent misrepresentations pursuant to 15 MO. CODE OF SERV. REG. 60-9.100.

25          497. Volkswagen’s conduct as described herein is unethical, oppressive, or unscrupulous  
26          and/or it presented a risk of substantial injury to consumers whose vehicles were operating illegally  
27          and under circumstances that rendered them unsafe. Such acts are unfair practices in violation of  
28          15 MO. CODE OF SERV. REG. 60-8.020.

1           498. Volkswagen knew or should have known that its conduct violated the Missouri  
2 MPA.

3           499. As alleged above, Volkswagen made material statements about the safety,  
4 cleanliness, efficiency and reliability of the Affected Vehicles that were either false, misleading,  
5 and/or half-truths in violation of the Missouri MPA.

6           500. Volkswagen owed Plaintiffs a duty to disclose the true safety, cleanliness, efficiency  
7 and reliability of the Affected Vehicles and the devaluing of environmental cleanliness and integrity  
8 at Volkswagen, because Volkswagen:

- 9           a. Possessed exclusive knowledge that it valued profits over  
10 environmental cleanliness, efficiency, and lawfulness, and that  
11 it was manufacturing, selling and distributing vehicles  
12 throughout the United States that did not comply with EPA  
13 regulations;
- 12           b. Intentionally concealed the foregoing from Plaintiffs; and/or
- 13           c. Made incomplete representations about the safety, cleanliness,  
14 efficiency and reliability of the Affected Vehicles generally,  
15 and the use of the “defeat device” and true nature of the  
16 CleanDiesel engine system in particular, while purposefully  
withholding material facts from Plaintiffs that contradicted  
these representations.

17           501. Because Volkswagen fraudulently concealed the “defeat device” and the true  
18 cleanliness and performance of the CleanDiesel engine system, and committed these other unlawful  
19 acts in violation of the Missouri MPA, resulting in a raft of negative publicity once the use of the  
20 “defeat device” and true characteristics of the CleanDiesel engine system finally began to be  
21 disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached  
22 to those vehicles by Volkswagen’s conduct, they are now worth significantly less than they  
23 otherwise would be.

24           502. Volkswagen’s misleading statements, deception, and/or concealment, suppression, or  
25 omission of the “defeat device” and true nature of the CleanDiesel engine system were material to  
26 Plaintiffs and the Missouri Subclass. A vehicle made by a reputable manufacturer of  
27 environmentally friendly vehicles is worth more than an otherwise comparable vehicle made by a  
28

1 disreputable and dishonest manufacturer of polluting vehicles that conceals the amount its cars  
2 pollutes rather than make environmentally friendly vehicles.

3 503. Plaintiffs and the Missouri Subclass suffered ascertainable loss caused by  
4 Volkswagen's misrepresentations and its concealment of and failure to disclose material  
5 information.

6 504. Volkswagen had an ongoing duty to all Volkswagen and Audi customers to refrain  
7 from unfair and deceptive acts or practices under the Missouri MPA. All owners of Affected  
8 Vehicles suffered ascertainable loss in the form of the diminished value of their vehicles as a result  
9 of Volkswagen's deceptive and unfair acts and practices made in the course of Volkswagen's  
10 business.

11 505. Volkswagen's violations present a continuing risk to Plaintiffs as well as to the  
12 general public. Volkswagen's unlawful acts and practices complained of herein affect the public  
13 interest.

14 506. As a direct and proximate result of Volkswagen's violations of the Missouri MPA,  
15 Plaintiffs and the Missouri Subclass have suffered injury-in-fact and/or actual damage.

16 507. Volkswagen is liable to Plaintiffs and the Missouri Subclass for damages in amounts  
17 to be proven at trial, including attorneys' fees, costs, and punitive damages, as well as injunctive  
18 relief enjoining Volkswagen's unfair and deceptive practices, and any other just and proper relief  
19 under MO. REV. STAT. § 407.025.

20 **COUNT II**

21 **FRAUD BY CONCEALMENT**

22 508. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set  
23 forth herein.

24 509. This claim is brought on behalf of the Missouri Subclass.

25 510. Volkswagen intentionally concealed and suppressed material facts concerning the  
26 quality of the Affected Vehicles. As alleged in this Complaint, notwithstanding references in the  
27 very model names of the subject vehicles as "Clean Diesel," or to their engines as "TDI Clean  
28

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

9 511. Plaintiffs and Class members reasonably relied upon Volkswagen’s false  
10 representations. They had no way of knowing that Volkswagen’s representations were false and  
11 gravely misleading. As alleged herein, Volkswagen employed extremely sophisticated methods of  
12 deception. Plaintiffs and Class members did not, and could not, unravel Volkswagen’s deception on  
13 their own.

14 512. Volkswagen concealed and suppressed material facts concerning what is evidently  
15 the true culture of Volkswagen—one characterized by an emphasis on profits and sales above  
16 compliance with federal and state clean air law, and emissions regulations that are meant to protect  
17 the public and consumers. It also emphasized profits and sales about the trust that Plaintiffs and  
18 Class members placed in its representations. As one customer, Priya Shah, put it in a quotation  
19 cited by the *Los Angeles Times* in a September 18, 2015 article, “It’s just a blatant disregard and  
20 intentional manipulation of the system. That’s just a whole other level of not only lying to the  
21 government, but also lying to your consumer. People buy diesel cars from Volkswagen because  
22 they feel they are clean diesel cars.” In the words of Ms. Shah, which no doubt reflect the  
23 sentiments of all other “CleanDiesel” vehicle buyers, “I don’t want to be spewing noxious gases  
24 into the environment.”

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

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

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

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

6           516. On information and belief, Volkswagen has still not made full and adequate  
7 disclosures, and continues to defraud Plaintiffs and Class members by concealing material  
8 information regarding the emission qualities of its referenced vehicles and its emissions scheme.

9           517. Plaintiffs and Class members were unaware of the omitted material facts referenced  
10 herein, and they would not have acted as they did if they had known of the concealed and/or  
11 suppressed facts, in that they would not have purchased purportedly "clean" diesel cars  
12 manufactured by Volkswagen, and/or would not have continued to drive their heavily polluting  
13 vehicles, or would have taken other affirmative steps in light of the information concealed from  
14 them. Plaintiffs' and Class Members' actions were justified. Volkswagen was in exclusive control  
15 of the material facts, and such facts were not known to the public, Plaintiffs, or Class members.

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

26           519. The value of Plaintiffs' and Class Members' vehicles has diminished as a result of  
27 Volkswagen's fraudulent concealment of its emissions scheme, which has greatly tarnished the  
28 Volkswagen and Audi brand names attached to Plaintiffs' and Class members' vehicles and made

1 any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what  
2 otherwise would have been fair market value for the vehicles.

3 520. Accordingly, Volkswagen is liable to Plaintiffs and Class members for damages in an  
4 amount to be proven at trial.

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

11 **COUNT III**  
12 **BREACH OF CONTRACT**  
**(BASED ON MISSOURI LAW)**

13 522. Plaintiff incorporates by reference all preceding allegations as though fully set forth  
14 herein.

15 523. Plaintiff brings this Count on behalf of the Missouri Subclass.

16 524. Volkswagen's misrepresentations and omissions alleged herein, including  
17 Volkswagen's failure to disclose the existence of the CleanDiesel engine system's defect and/or  
18 defective design as alleged herein, caused Plaintiff and the other Missouri Subclass members to  
19 make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and  
20 omissions, Plaintiff and the other Missouri Subclass members would not have purchased or leased  
21 these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices  
22 they paid, and/or would have purchased or leased less expensive alternative vehicles that did not  
23 contain the CleanDiesel engine system and which were not marketed as including such a system.  
24 Accordingly, Plaintiff and the other Missouri Subclass members overpaid for their Affected  
25 Vehicles and did not receive the benefit of their bargain.

26 525. Each and every sale or lease of an Affected Vehicle constitutes a contract between  
27 Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing  
28

1 Plaintiff and the other Missouri Subclass members defective Affected Vehicles and by  
2 misrepresenting or failing to disclose the existence of the CleanDiesel engine system's defect and/or  
3 defective design, including information known to Volkswagen rendering each Affected Vehicle non  
4 EPA-compliant, and thus less valuable, than vehicles not equipped with a CleanDiesel engine  
5 system.

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

10 **N. Claims Brought on Behalf of the Nevada Subclass**

11 **COUNT I**

12 **VIOLATION OF THE NEVADA DECEPTIVE TRADE PRACTICES ACT**

13 **(NEV. REV. STAT. § 598.0903, *et seq.*)**

14 527. Plaintiff Anthony DeMartino ("Plaintiff," for purposes of all Nevada Subclass  
15 Counts) incorporates by reference all preceding allegations as though fully set forth herein.

16 528. This claim is brought only on behalf of the Nevada Subclass.

17 529. The Nevada Deceptive Trade Practices Act ("Nevada DTPA"), NEV. REV. STAT.  
18 § 598.0903, *et seq.* prohibits deceptive trade practices. NEV. REV. STAT. § 598.0915 provides that a  
19 person engages in a "deceptive trade practice" if, in the course of business or occupation, the  
20 person: "5. Knowingly makes a false representation as to the characteristics, ingredients, uses,  
21 benefits, alterations or quantities of goods or services for sale or lease or a false representation as to  
22 the sponsorship, approval, status, affiliation or connection of a person therewith"; "7. Represents  
23 that goods or services for sale or lease are of a particular standard, quality or grade, or that such  
24 goods are of a particular style or model, if he or she knows or should know that they are of another  
25 standard, quality, grade, style or model"; "9. Advertises goods or services with intent not to sell or  
26 lease them as advertised"; or "15. Knowingly makes any other false representation in a  
27 transaction."  
28



1           530. Volkswagen engaged in deceptive trade practices that violated the Nevada DTPA,  
2 including: knowingly representing that Affected Vehicles have uses and benefits which they do not  
3 have; representing that Affected Vehicles are of a particular standard, quality, and grade when they  
4 are not; advertising Affected Vehicles with the intent not to sell or lease them as advertised;  
5 representing that the subject of a transaction involving Affected Vehicles has been supplied in  
6 accordance with a previous representation when it has not; and knowingly making other false  
7 representations in a transaction.

8           531. Volkswagen's actions as set forth above occurred in the conduct of trade or  
9 commerce.

10           532. In the course of its business, Volkswagen installed the "defeat device" and concealed  
11 that its CleanDiesel systems failed EPA regulations as described herein and otherwise engaged in  
12 activities with a tendency or capacity to deceive. Volkswagen also engaged in unlawful trade  
13 practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or  
14 concealment, suppression or omission of any material fact with intent that others rely upon such  
15 concealment, suppression or omission, in connection with the sale of Affected Vehicles.

16           533. Volkswagen has known of its use of the "defeat device" and the true nature of its  
17 CleanDiesel engine system for at least six years, but concealed all of that information until recently.

18           534. Volkswagen was also aware that it valued profits over environmental cleanliness,  
19 efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles  
20 throughout the United States that did not comply with EPA regulations. Volkswagen concealed this  
21 information as well.

22           535. By failing to disclose and by actively concealing the "defeat device" and the true  
23 cleanliness and performance of the CleanDiesel engine system, by marketing its vehicles as safe,  
24 reliable, environmentally clean, efficient, and of high quality, and by presenting itself as a reputable  
25 manufacturer that valued safety, environmental cleanliness and efficiency, and stood behind its  
26 vehicles after they were sold, Volkswagen engaged in deceptive business practices in violation of  
27 the Nevada DTPA.

28

1           536. In the course of Volkswagen’s business, it willfully failed to disclose and actively  
2           concealed the use of the “defeat device” and true cleanliness and efficiency of the CleanDiesel  
3           engine system and serious defects discussed above. Volkswagen compounded the deception by  
4           repeatedly asserting that the Affected Vehicles were safe, reliable, environmentally clean, efficient,  
5           and of high quality, and by claiming to be a reputable manufacturer that valued safety,  
6           environmental cleanliness and efficiency, and stood behind its vehicles once they are on the road.

7           537. Volkswagen’s unfair or deceptive acts or practices were likely to and did in fact  
8           deceive reasonable consumers, including Plaintiffs, about the true cleanliness and efficiency of the  
9           CleanDiesel engine system, the quality of the Volkswagen and Audi brands, the devaluing of  
10          environmental cleanliness and integrity at Volkswagen, and the true value of the Affected Vehicles.

11          538. Volkswagen intentionally and knowingly misrepresented material facts regarding the  
12          Affected Vehicles with an intent to mislead Plaintiffs and the Nevada Subclass.

13          539. Volkswagen knew or should have known that its conduct violated the Nevada DTPA.

14          540. As alleged above, Volkswagen made material statements about the safety,  
15          cleanliness, efficiency and reliability of the Affected Vehicles and the Volkswagen and Audi brands  
16          that were either false or misleading.

17          541. Volkswagen owed Plaintiffs a duty to disclose the true safety, cleanliness, efficiency  
18          and reliability of the Affected Vehicles and the devaluing of environmental cleanliness and integrity  
19          at Volkswagen, because Volkswagen:

- 20               a. Possessed exclusive knowledge that it valued profits over  
21               environmental cleanliness, efficiency, and lawfulness, and that  
22               it was manufacturing, selling and distributing vehicles  
                  throughout the United States that did not comply with EPA  
                  regulations;
- 23               b. Intentionally concealed the foregoing from Plaintiffs; and/or
- 24               c. Made incomplete representations about the safety, cleanliness,  
25               efficiency and reliability of the Affected Vehicles generally,  
26               and the use of the “defeat device” and true nature of the  
27               CleanDiesel engine system in particular, while purposefully  
28               withholding material facts from Plaintiffs that contradicted  
                  these representations.

1           542. Because Volkswagen fraudulently concealed the “defeat device” and the true  
2 cleanliness and performance of the CleanDiesel engine system, resulting in a raft of negative  
3 publicity once the use of the “defeat device” and true characteristics of the CleanDiesel engine  
4 system finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In  
5 light of the stigma attached to those vehicles by Volkswagen’s conduct, they are now worth  
6 significantly less than they otherwise would be.

7           543. Volkswagen’s fraudulent use of the “defeat device” and its concealment of the true  
8 characteristics of the CleanDiesel engine system were material to Plaintiffs and the Nevada  
9 Subclass. A vehicle made by a reputable manufacturer of environmentally friendly vehicles is  
10 worth more than an otherwise comparable vehicle made by a disreputable and dishonest  
11 manufacturer of polluting vehicles that conceals the amount its cars pollutes rather than make  
12 environmentally friendly vehicles.

13           544. Plaintiffs and the Nevada Subclass suffered ascertainable loss caused by  
14 Volkswagen’s misrepresentations and its concealment of and failure to disclose material  
15 information.

16           545. Volkswagen had an ongoing duty to all Volkswagen and Audi customers to refrain  
17 from unfair and deceptive acts or practices under the Nevada DTPA. All owners of Affected  
18 Vehicles suffered ascertainable loss in the form of the diminished value of their vehicles as a result  
19 of Volkswagen’s deceptive and unfair acts and practices that occurred in the course of  
20 Volkswagen’s business.

21           546. Volkswagen’s violations present a continuing risk to Plaintiffs as well as to the  
22 general public. Volkswagen’s unlawful acts and practices complained of herein affect the public  
23 interest.

24           547. As a direct and proximate result of Volkswagen’s violations of the Nevada DTPA,  
25 Plaintiffs and the Nevada Subclass have suffered injury-in-fact and/or actual damage.

26           548. Accordingly, Plaintiffs and the Nevada Subclass seek their actual damages, punitive  
27 damages, an order enjoining Volkswagen’s deceptive acts or practices, costs of Court, attorney’s  
28

1 fees, and all other appropriate and available remedies under the Nevada Deceptive Trade Practices  
2 Act. NEV. REV. STAT. § 41.600.

3 **COUNT II**

4 **FRAUD BY CONCEALMENT**

5 549. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set  
6 forth herein.

7 550. This claim is brought on behalf of the Nevada Subclass.

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

19 552. Plaintiffs and Class members reasonably relied upon Volkswagen’s false  
20 representations. They had no way of knowing that Volkswagen’s representations were false and  
21 gravely misleading. As alleged herein, Volkswagen employed extremely sophisticated methods of  
22 deception. Plaintiffs and Class members did not, and could not, unravel Volkswagen’s deception on  
23 their own.

24 553. Volkswagen concealed and suppressed material facts concerning what is evidently  
25 the true culture of Volkswagen—one characterized by an emphasis on profits and sales above  
26 compliance with federal and state clean air law, and emissions regulations that are meant to protect  
27 the public and consumers. It also emphasized profits and sales about the trust that Plaintiffs and  
28

1 Class members placed in its representations. As one customer, Priya Shah, put it in a quotation  
2 cited by the *Los Angeles Times* in a September 18, 2015 article, “It’s just a blatant disregard and  
3 intentional manipulation of the system. That’s just a whole other level of not only lying to the  
4 government, but also lying to your consumer. People buy diesel cars from Volkswagen because  
5 they feel they are clean diesel cars.” In the words of Ms. Shah, which no doubt reflect the  
6 sentiments of all other “CleanDiesel” vehicle buyers, “I don’t want to be spewing noxious gases  
7 into the environment.”

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

20 555. Volkswagen had a duty to disclose the emissions scheme it engaged in with respect  
21 to the vehicles at issue because knowledge of the scheme and its details were known and/or  
22 accessible only to Volkswagen, because Volkswagen had exclusive knowledge as to  
23 implementation and maintenance of its scheme, and because Volkswagen knew the facts were not  
24 known to or reasonably discoverable by Plaintiffs or Class members. Volkswagen also had a duty  
25 to disclose because it made general affirmative representations about the qualities of its vehicles  
26 with respect to emissions standards, starting with references to them as *clean* diesel cars, or cars  
27 with *clean* diesel engines, which were misleading, deceptive, and incomplete without the disclosure  
28 of the additional facts set forth above regarding its emissions scheme, the actual emissions of its

1 vehicles, its actual philosophy with respect to compliance with federal and state clean air law and  
2 emissions regulations, and its actual practices with respect to the vehicles at issue. Having  
3 volunteered to provide information to Plaintiffs, Volkswagen had the duty to disclose not just the  
4 partial truth, but the entire truth. These omitted and concealed facts were material because they  
5 directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and Class  
6 members. Whether a manufacturer's products comply with federal and state clean air law and  
7 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance  
8 or non-compliance, are material concerns to a consumer, including with respect to the emissions  
9 certifications testing their vehicles must pass. Volkswagen represented to Plaintiffs and Class  
10 members that they were purchasing *clean* diesel vehicles, and certification testing appeared to  
11 confirm this—except that, secretly, Volkswagen had subverted the testing process thoroughly.

12 556. Volkswagen actively concealed and/or suppressed these material facts, in whole or in  
13 part, to pad and protect its profits and to avoid the perception that its vehicles did not or could not  
14 comply with federal and state laws governing clean air and emissions, which perception would hurt  
15 the brand's image and cost Volkswagen money, and it did so at the expense of Plaintiffs and Class  
16 members.

17 557. On information and belief, Volkswagen has still not made full and adequate  
18 disclosures, and continues to defraud Plaintiffs and Class members by concealing material  
19 information regarding the emission qualities of its referenced vehicles and its emissions scheme.

20 558. Plaintiffs and Class members were unaware of the omitted material facts referenced  
21 herein, and they would not have acted as they did if they had known of the concealed and/or  
22 suppressed facts, in that they would not have purchased purportedly “clean” diesel cars  
23 manufactured by Volkswagen, and/or would not have continued to drive their heavily polluting  
24 vehicles, or would have taken other affirmative steps in light of the information concealed from  
25 them. Plaintiffs' and Class Members' actions were justified. Volkswagen was in exclusive control  
26 of the material facts, and such facts were not known to the public, Plaintiffs, or Class members.

27 559. Because of the concealment and/or suppression of the facts, Plaintiffs and Class  
28 members have sustained damage because they own vehicles that are diminished in value as a result

1 of Volkswagen's concealment of the true quality and quantity of those vehicles' emissions and  
2 Volkswagen's failure to timely disclose the actual emission qualities and quantities of hundreds of  
3 thousands of Volkswagen- and Audi-branded vehicles and the serious issues engendered by  
4 Volkswagen's corporate policies. Had Plaintiffs and Class members been aware of Volkswagen's  
5 emissions schemes with regard to the vehicles at issue, and the company's callous disregard for  
6 compliance with applicable federal and state law and regulations, Plaintiffs and Class members who  
7 purchased or leased new or certified previously owned vehicles would have paid less for their  
8 vehicles or would not have purchased or leased them at all.

9 560. The value of Plaintiffs' and Class Members' vehicles has diminished as a result of  
10 Volkswagen's fraudulent concealment of its emissions scheme, which has greatly tarnished the  
11 Volkswagen and Audi brand names attached to Plaintiffs' and Class members' vehicles and made  
12 any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what  
13 otherwise would have been fair market value for the vehicles.

14 561. Accordingly, Volkswagen is liable to Plaintiffs and Class members for damages in an  
15 amount to be proven at trial.

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

22 **COUNT III**  
23 **BREACH OF CONTRACT**  
**(BASED ON NEVADA LAW)**

24 563. Plaintiff incorporates by reference all preceding allegations as though fully set forth  
25 herein.

26 564. Plaintiff brings this Count on behalf of the Nevada Subclass.  
27  
28

1           565. Volkswagen’s misrepresentations and omissions alleged herein, including  
2 Volkswagen’s failure to disclose the existence of the CleanDiesel engine system’s defect and/or  
3 defective design as alleged herein, caused Plaintiff and the other Nevada Subclass members to make  
4 their purchases or leases of their Affected Vehicles. Absent those misrepresentations and  
5 omissions, Plaintiff and the other Nevada Subclass members would not have purchased or leased  
6 these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices  
7 they paid, and/or would have purchased or leased less expensive alternative vehicles that did not  
8 contain the CleanDiesel engine system and which were not marketed as including such a system.  
9 Accordingly, Plaintiff and the other Nevada Subclass members overpaid for their Affected Vehicles  
10 and did not receive the benefit of their bargain.

11           566. Each and every sale or lease of an Affected Vehicle constitutes a contract between  
12 Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing  
13 Plaintiff and the other Nevada Subclass members defective Affected Vehicles and by  
14 misrepresenting or failing to disclose the existence of the CleanDiesel engine system’s defect and/or  
15 defective design, including information known to Volkswagen, rendering each Affected Vehicle  
16 non EPA-compliant, and thus less valuable, than vehicles not equipped with a CleanDiesel engine  
17 system.

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

22 **O. Claims on Behalf of the New Hampshire Subclass**

23 **COUNT I**

24 **VIOLATION OF N.H. CONSUMER PROTECTION ACT**

25 **(N.H. REV. STAT. ANN. § 358-A:1, *et seq.*)**

26           568. Plaintiff Petar Ramadanovic (“Plaintiff,” for purposes of all New Hampshire  
27 Subclass Counts) incorporates by reference all preceding allegations as though fully set forth herein.  
28



1           569. This claim is brought only on behalf of the New Hampshire Subclass.

2           570. Plaintiffs, the New Hampshire Subclass, and Volkswagen are “persons” under the  
3 New Hampshire Consumer Protection Act (“New Hampshire CPA”), N.H. REV. STAT. § 358-A:1.

4           571. Volkswagen’s actions as set forth herein occurred in the conduct of trade or  
5 commerce as defined under N.H. REV. STAT. § 358-A:1.

6           572. The New Hampshire CPA prohibits a person, in the conduct of any trade or  
7 commerce, from using “any unfair or deceptive act or practice,” including “but ... not limited to, the  
8 following: ... (V) Representing that goods or services have ... characteristics, ... uses, benefits, or  
9 quantities that they do not have;” “(VII) Representing that goods or services are of a particular  
10 standard, quality, or grade, ... if they are of another;” and “(IX) Advertising goods or services with  
11 intent not to sell them as advertised.” N.H. REV. STAT. § 358-A:2.

12           573. Volkswagen participated in unfair or deceptive acts or practices that violated the  
13 New Hampshire CPA as described above and below. By fraudulently installing the “defeat device”  
14 to make it appear that its CleanDiesel engine systems complied with EPA regulations, Volkswagen  
15 engaged in deceptive business practices prohibited by the CPA, including representing that Affected  
16 Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that  
17 Affected Vehicles are of a particular standard, quality, and grade when they are not; advertising  
18 Affected Vehicles with the intent not to sell or lease them as advertised; representing that the  
19 subject of a transaction involving Affected Vehicles has been supplied in accordance with a  
20 previous representation when it has not; and engaging in other unconscionable, false, misleading, or  
21 deceptive acts or practices in the conduct of trade or commerce.

22           574. In the course of its business, Volkswagen installed the “defeat device” and concealed  
23 that its CleanDiesel systems failed EPA regulations as described herein and otherwise engaged in  
24 activities with a tendency or capacity to deceive. Volkswagen also engaged in unlawful trade  
25 practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or  
26 concealment, suppression or omission of any material fact with intent that others rely upon such  
27 concealment, suppression or omission, in connection with the sale of Affected Vehicles.

28

1           575. Volkswagen has known of its use of the “defeat device” and the true nature of its  
2 CleanDiesel engine system for at least six years, but concealed all of that information until recently.

3           576. Volkswagen was also aware that it valued profits over environmental cleanliness,  
4 efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles  
5 throughout the United States that did not comply with EPA regulations. Volkswagen concealed this  
6 information as well.

7           577. By failing to disclose and by actively concealing the “defeat device” and the true  
8 cleanliness and performance of the CleanDiesel engine system, by marketing its vehicles as safe,  
9 reliable, environmentally clean, efficient, and of high quality, and by presenting itself as a reputable  
10 manufacturer that valued safety, environmental cleanliness and efficiency, and stood behind its  
11 vehicles after they were sold, Volkswagen engaged in unfair and deceptive business practices in  
12 violation of the New Hampshire CPA.

13           578. In the course of Volkswagen’s business, it willfully failed to disclose and actively  
14 concealed the use of the “defeat device” and true cleanliness and efficiency of the CleanDiesel  
15 engine system and serious defects discussed above. Volkswagen compounded the deception by  
16 repeatedly asserting that the Affected Vehicles were safe, reliable, environmentally clean, efficient,  
17 and of high quality, and by claiming to be a reputable manufacturer that valued safety,  
18 environmental cleanliness and efficiency, and stood behind its vehicles once they are on the road.

19           579. Volkswagen’s unfair or deceptive acts or practices were likely to and did in fact  
20 deceive reasonable consumers, including Plaintiffs, about the true cleanliness and efficiency of the  
21 CleanDiesel engine system, the quality of the Volkswagen and Audi brands, the devaluing of  
22 environmental cleanliness and integrity at Volkswagen, and the true value of the Affected Vehicles.

23           580. Volkswagen intentionally and knowingly misrepresented material facts regarding the  
24 Affected Vehicles with an intent to mislead Plaintiffs and the New Hampshire Subclass.

25           581. Volkswagen knew or should have known that its conduct violated the New  
26 Hampshire CPA.

27  
28

1           582. As alleged above, Volkswagen made material statements about the safety,  
2 cleanliness, efficiency and reliability of the Affected Vehicles and the Volkswagen and Audi brands  
3 that were either false or misleading.

4           583. Volkswagen owed Plaintiffs a duty to disclose the true safety, cleanliness, efficiency  
5 and reliability of the Affected Vehicles and the devaluing of environmental cleanliness and integrity  
6 at Volkswagen, because Volkswagen:

- 7           a. Possessed exclusive knowledge that it valued profits over  
8 environmental cleanliness, efficiency, and lawfulness, and that  
9 it was manufacturing, selling and distributing vehicles  
throughout the United States that did not comply with EPA  
regulations;
- 10           b. Intentionally concealed the foregoing from Plaintiffs; and/or
- 11           c. Made incomplete representations about the safety, cleanliness,  
12 efficiency and reliability of the Affected Vehicles generally,  
13 and the use of the “defeat device” and true nature of the  
CleanDiesel engine system in particular, while purposefully  
withholding material facts from Plaintiffs that contradicted  
14 these representations.

15           584. Because Volkswagen fraudulently concealed the “defeat device” and the true  
16 cleanliness and performance of the CleanDiesel engine system, resulting in a raft of negative  
17 publicity once the use of the “defeat device” and true characteristics of the CleanDiesel engine  
18 system finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In  
19 light of the stigma attached to those vehicles by Volkswagen’s conduct, they are now worth  
20 significantly less than they otherwise would be.

21           585. Volkswagen’s fraudulent use of the “defeat device” and its concealment of the true  
22 characteristics of the CleanDiesel engine system were material to Plaintiffs and the New Hampshire  
23 Subclass. A vehicle made by a reputable manufacturer of environmentally friendly vehicles is  
24 worth more than an otherwise comparable vehicle made by a disreputable and dishonest  
25 manufacturer of polluting vehicles that conceals the amount its cars pollutes rather than make  
26 environmentally friendly vehicles.

1 586. Plaintiffs and the New Hampshire Subclass suffered ascertainable loss caused by  
2 Volkswagen’s misrepresentations and its concealment of and failure to disclose material  
3 information.

4 587. Volkswagen had an ongoing duty to all Volkswagen and Audi customers to refrain  
5 from unfair and deceptive acts or practices under the New Hampshire CPA. All owners of Affected  
6 Vehicles suffered ascertainable loss in the form of the diminished value of their vehicles as a result  
7 of Volkswagen’s deceptive and unfair acts and practices that occurred in the course of  
8 Volkswagen’s business.

9 588. Volkswagen’s violations present a continuing risk to Plaintiffs as well as to the  
10 general public. Volkswagen’s unlawful acts and practices complained of herein affect the public  
11 interest.

12 589. As a direct and proximate result of Volkswagen’s violations of the New Hampshire  
13 CPA, Plaintiffs and the New Hampshire Subclass have suffered injury-in-fact and/or actual damage.

14 590. Because Volkswagen’s willful conduct caused injury to New Hampshire Subclass  
15 members’ property through violations of the New Hampshire CPA, the New Hampshire Subclass  
16 seeks recovery of actual damages or \$1,000, whichever is greater, treble damages, costs and  
17 reasonable attorneys’ fees, an order enjoining Volkswagen’s unfair and/or deceptive acts and  
18 practices, and any other just and proper relief under N.H. REV. STAT. § 358-A:10.

19 **COUNT II**

20 **FRAUD BY CONCEALMENT**

21 591. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set  
22 forth herein.

23 592. This claim is brought on behalf of the New Hampshire Subclass.

24 593. Volkswagen intentionally concealed and suppressed material facts concerning the  
25 quality of the Affected Vehicles. As alleged in this Complaint, notwithstanding references in the  
26 very model names of the subject vehicles as “Clean Diesel,” or to their engines as “TDI Clean  
27 Diesel” engines, Volkswagen engaged in a secret scheme to evade federal and state vehicle  
28

1 emissions standards by installing software designed to conceal its vehicles' emissions of the  
2 pollutant nitrogen oxide, which contributes to the creation of ozone and smog. The software  
3 installed on the vehicles at issue was designed nefariously to kick-in during emissions certification  
4 testing, such that the vehicles would show far lower emissions than when actually operating on the  
5 road. The result was what Volkswagen intended: vehicles passed emissions certifications by way of  
6 deliberately induced false readings. Reportedly, Volkswagen's deliberate, secret scheme resulted in  
7 noxious emissions from these vehicles at 40 times applicable standards.

8 594. Plaintiffs and Class members reasonably relied upon Volkswagen's false  
9 representations. They had no way of knowing that Volkswagen's representations were false and  
10 gravely misleading. As alleged herein, Volkswagen employed extremely sophisticated methods of  
11 deception. Plaintiffs and Class members did not, and could not, unravel Volkswagen's deception on  
12 their own.

13 595. Volkswagen concealed and suppressed material facts concerning what is evidently  
14 the true culture of Volkswagen—one characterized by an emphasis on profits and sales above  
15 compliance with federal and state clean air laws, and emissions regulations that are meant to protect  
16 the public and consumers. It also emphasized profits and sales about the trust that Plaintiffs and  
17 Class members placed in its representations. As one customer, Priya Shah, put it in a quotation  
18 cited by the *Los Angeles Times* in a September 18, 2015 article, "It's just a blatant disregard and  
19 intentional manipulation of the system. That's just a whole other level of not only lying to the  
20 government, but also lying to your consumer. People buy diesel cars from Volkswagen because  
21 they feel they are clean diesel cars." In the words of Ms. Shah, which no doubt reflect the  
22 sentiments of all other "CleanDiesel" vehicle buyers, "I don't want to be spewing noxious gases  
23 into the environment."

24 596. Necessarily, Volkswagen also took steps to ensure that its employees did not reveal  
25 the details of its scheme to regulators or consumers, including Plaintiffs and Class members.  
26 Volkswagen did so in order to boost the reputations of its vehicles and to falsely assure purchasers  
27 and lessors of its vehicles, including certified previously owned vehicles, that Volkswagen is a  
28 reputable manufacturer that complies with applicable law, including federal and state clean air laws

1 and emissions regulations, and that its vehicles likewise comply with applicable laws and  
2 regulations. Volkswagen's false representations were material to consumers, both because they  
3 concerned the quality of the affected vehicles, including their compliance with applicable federal  
4 and state laws and regulations regarding clean air and emissions, and also because the  
5 representations played a significant role in the value of the vehicles. As Volkswagen well knew, its  
6 customers, including Plaintiffs and Class members, highly valued that the vehicles they were  
7 purchasing or leasing were *clean* diesel cars, and they paid accordingly.

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

28

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

6           599. On information and belief, Volkswagen has still not made full and adequate  
7 disclosures, and continues to defraud Plaintiffs and Class members by concealing material  
8 information regarding the emission qualities of its referenced vehicles and its emissions scheme.

9           600. Plaintiffs and Class members were unaware of the omitted material facts referenced  
10 herein, and they would not have acted as they did if they had known of the concealed and/or  
11 suppressed facts, in that they would not have purchased purportedly "clean" diesel cars  
12 manufactured by Volkswagen, and/or would not have continued to drive their heavily polluting  
13 vehicles, or would have taken other affirmative steps in light of the information concealed from  
14 them. Plaintiffs' and Class members' actions were justified. Volkswagen was in exclusive control  
15 of the material facts, and such facts were not known to the public, Plaintiffs, or Class members.

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

26           602. The value of Plaintiffs' and Class members' vehicles has diminished as a result of  
27 Volkswagen's fraudulent concealment of its emissions scheme, which has greatly tarnished the  
28 Volkswagen and Audi brand names attached to Plaintiffs' and Class members' vehicles and made

1 any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what  
2 otherwise would have been fair market value for the vehicles.

3 603. Accordingly, Volkswagen is liable to Plaintiffs and Class members for damages in an  
4 amount to be proven at trial.

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

11 **COUNT III**  
12 **BREACH OF CONTRACT**  
13 **(BASED ON NEW HAMPSHIRE LAW)**

14 605. Plaintiff incorporates by reference all preceding allegations as though fully set forth  
15 herein.

16 606. Plaintiff brings this Count on behalf of the New Hampshire Subclass.

17 607. Volkswagen's misrepresentations and omissions alleged herein, including  
18 Volkswagen's failure to disclose the existence of the CleanDiesel engine system's defect and/or  
19 defective design as alleged herein, caused Plaintiff and the other New Hampshire Subclass members  
20 to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and  
21 omissions, Plaintiff and the other New Hampshire Subclass members would not have purchased or  
22 leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the  
23 prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did  
24 not contain the CleanDiesel Engine System and which were not marketed as including such a  
25 system. Accordingly, Plaintiff and the other New Hampshire Subclass members overpaid for their  
26 Affected Vehicles and did not receive the benefit of their bargain.

27 608. Each and every sale or lease of an Affected Vehicle constitutes a contract between  
28 Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing



1 Plaintiff and the other New Hampshire Subclass members defective Affected Vehicles and by  
2 misrepresenting or failing to disclose the existence of the CleanDiesel engine system's defect and/or  
3 defective design, including information known to Volkswagen rendering each Affected Vehicle non  
4 EPA-compliant, and thus less valuable, than vehicles not equipped with a CleanDiesel engine  
5 system.

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

10 **P. Claims Brought on Behalf of the New York Subclass**

11 **COUNT I**  
12 **VIOLATIONS OF NEW YORK GENERAL BUSINESS LAW § 349**  
13 **(N.Y. GEN. BUS. LAW § 349)**

14 610. Plaintiff Christopher Monroe ("Plaintiffs," for purposes of all New York Subclass  
15 Counts) incorporates by reference all preceding allegations as though fully set forth herein.

16 611. Plaintiffs bring this Count on behalf of the New York Subclass.

17 612. New York's General Business Law § 349 makes unlawful "[d]eceptive acts or  
18 practices in the conduct of any business, trade or commerce."

19 613. In the course of Volkswagen's business, it willfully failed to disclose and actively  
20 concealed that the CleanDiesel engine system was non-EPA compliant, and the use of the "defeat  
21 device" in Affected Vehicles as described above. Accordingly, Volkswagen engaged in unfair  
22 methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices  
23 as defined in N.Y. Gen. Bus. Law § 349, including representing that Affected Vehicles have  
24 characteristics, uses, benefits, and qualities which they do not have; representing that Affected  
25 Vehicles are of a particular standard and quality when they are not; advertising Affected Vehicles  
26 with the intent not to sell them as advertised; and otherwise engaging in conduct likely to deceive.

27 614. Volkswagen's actions as set forth above occurred in the conduct of trade or  
28 commerce.



1 the “defeat device” in Affected Vehicles as described above, as well as the inherently defective  
2 nature of the CleanDiesel engine system as designed and sold by Volkswagen, were material and  
3 likely to deceive a reasonable consumer.

4 623. Plaintiffs and the other Class members have suffered injury, including the loss of  
5 money or property, as a result of Volkswagen’s false advertising. In purchasing or leasing their  
6 Affected Vehicles, Plaintiffs and the other Class members relied on the misrepresentations and/or  
7 omissions of Volkswagen with respect to the safety, quality, functionality, and reliability of the  
8 Affected Vehicles. Volkswagen’s representations turned out to be untrue because the CleanDiesel  
9 engine system installed in Affected Vehicles did not comply with EPA regulations. Had Plaintiffs  
10 and the other Class members known this, they would not have purchased or leased their Affected  
11 Vehicles and/or paid as much for them.

12 624. Accordingly, Plaintiffs and the other Class members overpaid for their Affected  
13 Vehicles and did not receive the benefit of the bargain for their Affected Vehicles, which have also  
14 suffered diminution in value.

15 625. Plaintiffs, individually and on behalf of the other Class members, request that this  
16 Court enter such orders or judgments as may be necessary to enjoin Volkswagen from continuing its  
17 unfair, unlawful and/or deceptive practices. Plaintiffs and the other Class members are also entitled  
18 to recover their actual damages or \$500, whichever is greater. Because Volkswagen acted willfully  
19 or knowingly, Plaintiffs and the other Class members are entitled to recover three times actual  
20 damages, up to \$10,000.

21 **COUNT III**  
22 **BREACH OF CONTRACT**  
**(BASED ON NEW YORK LAW)**

23 626. Plaintiff incorporates by reference all preceding allegations as though fully set forth  
24 herein.

25 627. Plaintiff brings this Count on behalf of the New York Subclass.

26 628. Volkswagen’s misrepresentations and omissions alleged herein, including  
27 Volkswagen’s failure to disclose the existence of the CleanDiesel engine system’s defect and/or  
28

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

9 629. Each and every sale or lease of an Affected Vehicle constitutes a contract between  
10 Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing  
11 Plaintiff and the other New York Subclass members defective Affected Vehicles and by  
12 misrepresenting or failing to disclose the existence of the CleanDiesel engine system's defect and/or  
13 defective design, including information known to Volkswagen rendering each Affected Vehicle non  
14 EPA-compliant, and thus less valuable, than vehicles not equipped with a CleanDiesel engine  
15 system.

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

20 **COUNT IV**  
21 **FRAUDULENT CONCEALMENT**  
22 **(BASED ON NEW YORK LAW)**

23 631. Plaintiffs incorporate by reference all preceding allegations as though fully set forth  
24 herein.

25 632. Plaintiffs bring this Count on behalf of the New York Subclass.

26 633. Volkswagen intentionally concealed that the CleanDiesel engine systems were not  
27 EPA-compliant and used a "defeat device," or acted with reckless disregard for the truth, and denied  
28

1 Plaintiffs and the other Class members information that is highly relevant to their purchasing  
2 decision.

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

7 635. Volkswagen knew these representations were false when made.

8 636. The Affected Vehicles purchased or leased by Plaintiffs and the other Class members  
9 were, in fact, defective, non-EPA compliant, unsafe, and unreliable because the Affected Vehicles  
10 contained faulty and defective CleanDiesel engine system, as alleged herein.

11 637. Volkswagen had a duty to disclose that these Affected Vehicles were defective,  
12 unsafe, non-EPA compliant and unreliable in that certain crucial emissions functions of the Affected  
13 Vehicles would be rendered inoperative due to the “defeat device” installed in the defective  
14 CleanDiesel engine system, because Plaintiffs and the other Class members relied on Volkswagen’s  
15 material representations that the Affected Vehicles they were purchasing were safe, environmentally  
16 clean, efficient and free from defects.

17 638. The aforementioned concealment was material because if it had been disclosed  
18 Plaintiffs and the other Class members would not have bought or leased the Affected Vehicles, or  
19 would not have bought or leased those Vehicles at the prices they paid.

20 639. The aforementioned representations were material because they were facts that  
21 would typically be relied on by a person purchasing or leasing a new motor vehicle. Volkswagen  
22 knew or recklessly disregarded that its representations were false because it knew that it had to use  
23 the “defeat device” in order for Affected Vehicles to pass EPA emissions requirements.

24 Volkswagen intentionally made the false statements in order to sell Affected Vehicles.

25 640. Plaintiffs and the other Class members relied on Volkswagen’s reputation – along  
26 with Volkswagen’s failure to disclose the faulty and defective nature of the CleanDiesel engine  
27 system and Volkswagen’s affirmative assurance that its Affected Vehicles were safe and reliable,  
28

1 and complied with environmental regulations – in purchasing or leasing Volkswagen’s Affected  
2 Vehicles.

3 641. As a result of their reliance, Plaintiffs and the other Class members have been injured  
4 in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and  
5 overpayment at the time of purchase or lease and/or the diminished value of their Affected Vehicles.

6 642. Volkswagen’s conduct was knowing, intentional, with malice, demonstrated a  
7 complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class  
8 members. Plaintiffs and the other Class members are therefore entitled to an award of punitive  
9 damages.

10 **Q. Claims Brought on Behalf of the North Carolina Subclass**

11 **COUNT I**  
12 **VIOLATIONS OF THE NORTH CAROLINA UNFAIR**  
13 **AND DECEPTIVE TRADE PRACTICES ACT**  
**(N.C. GEN. STAT. §§ 75-1.1, et seq.)**

14 643. Plaintiff Melissa Bracken (“Plaintiff,” for purposes of all North Carolina Class  
15 Counts) incorporates by reference all preceding allegations as though fully set forth herein.

16 644. Plaintiff brings this Count on behalf of the North Carolina Subclass.

17 645. North Carolina’s Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. §§ 75-  
18 1.1, *et seq.* (“NCUDTPA”), prohibits a person from engaging in “[u]nfair methods of competition in  
19 or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce[.]” The  
20 NCUDTPA provides a private right of action for any person injured “by reason of any act or thing  
21 done by any other person, firm or corporation in violation of” the NCUDTPA. N.C. Gen. Stat.  
22 § 75-16.

23 646. Volkswagen’s acts and practices complained of herein were performed in the course  
24 of Volkswagen’s trade or business and thus occurred in or affected “commerce,” as defined in N.C.  
25 Gen. Stat. § 75-1.1(b).

26 647. In the course of Volkswagen’s business, it willfully failed to disclose and actively  
27 concealed that the CleanDiesel Engine System was non-EPA compliant, and the use of the “defeat  
28 device” in Affected Vehicles as described above. Accordingly, Volkswagen engaged in unlawful

1 trade practices, including representing that Affected Vehicles have characteristics, uses, benefits,  
2 and qualities which they do not have; representing that Affected Vehicles are of a particular  
3 standard and quality when they are not; advertising Affected Vehicles with the intent not to sell  
4 them as advertised; and otherwise engaging in conduct likely to deceive.

5 648. Volkswagen's conduct proximately caused injuries to Plaintiff and the other Class  
6 members.

7 649. Volkswagen acted with willful and conscious disregard of the rights and safety of  
8 others, subjecting Plaintiff and the other Class members to cruel and unjust hardship as a result,  
9 such that an award of punitive damages is appropriate.

10 650. Plaintiff and the other Class members were injured as a result of Volkswagen's  
11 conduct in that Plaintiff and the other Class members overpaid for their Affected Vehicles and did  
12 not receive the benefit of their bargain, and their Affected Vehicles have suffered a diminution in  
13 value. These injuries are the direct and natural consequence of Volkswagen's misrepresentations  
14 and omissions.

15 651. Plaintiff, individually and on behalf of the other Class members, seeks treble  
16 damages pursuant to N.C. Gen. Stat. § 75-16, and an award of attorneys' fees pursuant to N.C. Gen.  
17 Stat. § 75-16.1.

18 **COUNT II**  
19 **BREACH OF CONTRACT**  
20 **(BASED ON NORTH CAROLINA LAW)**

21 652. Plaintiff incorporates by reference all preceding allegations as though fully set forth  
22 herein.

23 653. Plaintiff brings this Count on behalf of the North Carolina Class.

24 654. Volkswagen's misrepresentations and omissions alleged herein, including  
25 Volkswagen's failure to disclose the existence of the CleanDiesel engine system's defect and/or  
26 defective design as alleged herein, caused Plaintiff and the other North Carolina Class members to  
27 make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and  
28 omissions, Plaintiff and the other North Carolina Class members would not have purchased or

1 leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the  
2 prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did  
3 not contain the CleanDiesel engine system and which were not marketed as including such a  
4 system. Accordingly, Plaintiff and the other North Carolina Class members overpaid for their  
5 Affected Vehicles and did not receive the benefit of their bargain.

6 655. Each and every sale or lease of an Affected Vehicle constitutes a contract between  
7 Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing  
8 Plaintiff and the other North Carolina Class members defective Affected Vehicles and by  
9 misrepresenting or failing to disclose the existence of the CleanDiesel engine system's defect and/or  
10 defective design, including information known to Volkswagen rendering each Affected Vehicle non  
11 EPA-compliant, and thus less valuable, than vehicles not equipped with a CleanDiesel engine  
12 system.

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

17 **COUNT III**  
18 **FRAUDULENT CONCEALMENT**  
19 **(BASED ON NORTH CAROLINA LAW)**

20 657. Plaintiff incorporates by reference all preceding allegations as though fully set forth  
21 herein.

22 658. Plaintiff brings this Count on behalf of the North Carolina Class.

23 659. Volkswagen intentionally concealed that the CleanDiesel engine systems were not  
24 EPA-compliant and used a "defeat device," or acted with reckless disregard for the truth, and denied  
25 Plaintiff and the other Class members information that is highly relevant to their purchasing  
26 decision.

27 660. Volkswagen further affirmatively misrepresented to Plaintiff in advertising and other  
28 forms of communication, including standard and uniform material provided with each car, that the



1 Affected Vehicles it was selling were new, had no significant defects, complied with EPA  
2 regulations and would perform and operate properly when driven in normal usage.

3 661. Volkswagen knew these representations were false when made.

4 662. The Affected Vehicles purchased or leased by Plaintiff and the other Class members  
5 were, in fact, defective, non-EPA compliant, unsafe, and unreliable because the Affected Vehicles  
6 contained faulty and defective CleanDiesel engine system, as alleged herein.

7 663. Volkswagen had a duty to disclose that these Affected Vehicles were defective,  
8 unsafe, non-EPA compliant and unreliable in that certain crucial emissions functions of the Affected  
9 Vehicles would be rendered inoperative due to the “defeat device” installed in the defective  
10 CleanDiesel engine system, because Plaintiff and the other Class members relied on Volkswagen’s  
11 material representations that the Affected Vehicles they were purchasing were safe, environmentally  
12 clean, efficient and free from defects.

13 664. The aforementioned concealment was material because if it had been disclosed  
14 Plaintiff and the other Class members would not have bought or leased the Affected Vehicles, or  
15 would not have bought or leased those Vehicles at the prices they paid.

16 665. The aforementioned representations were material because they were facts that  
17 would typically be relied on by a person purchasing or leasing a new motor vehicle. Volkswagen  
18 knew or recklessly disregarded that its representations were false because it knew that it had to use  
19 the “defeat device” in order for Affected Vehicles to pass EPA emissions requirements.  
20 Volkswagen intentionally made the false statements in order to sell Affected Vehicles.

21 666. Plaintiff and the other Class members relied on Volkswagen’s reputation – along  
22 with Volkswagen’s failure to disclose the faulty and defective nature of the CleanDiesel engine  
23 system and Volkswagen’s affirmative assurance that its Affected Vehicles were safe and reliable,  
24 and other similar false statements – in purchasing or leasing Volkswagen’s Affected Vehicles.

25 667. As a result of their reliance, Plaintiff and the other Class members have been injured  
26 in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and  
27 overpayment at the time of purchase or lease and/or the diminished value of their Affected Vehicles.

28



1 and were not suitable for their intended use. Volkswagen nevertheless failed to warn Plaintiff about  
2 these defects despite having a duty to do so.

3 675. Volkswagen owed Plaintiff a duty to disclose the defective nature of the CleanDiesel  
4 engine system in the Affected Vehicles, because Volkswagen:

- 5 i) Possessed exclusive knowledge of the defects rendering the Affected  
6 Vehicles more unreliable than similar vehicles;
- 7 ii) Intentionally concealed the defects associated with MyVolkswagen Touch  
8 through its deceptive marketing campaign and recall program that it designed  
9 to hide the defects in the CleanDiesel engine system; and/or
- 10 iii) Made incomplete representations about the characteristics and performance  
11 of the CleanDiesel engine system generally, while purposefully withholding  
12 material facts from Plaintiff that contradicted these representations.

13 676. Volkswagen's unfair or deceptive acts or practices were likely to, and did in fact,  
14 deceive reasonable consumers, including Plaintiff, about the true performance and characteristics of  
15 the CleanDiesel engine system.

16 677. The Ohio Attorney General has made available for public inspection prior state court  
17 decisions which have held that the acts and omissions of Volkswagen in this Complaint, including,  
18 but not limited to, the failure to honor both implied warranties and express warranties, the making  
19 and distribution of false, deceptive, and/or misleading representations, and the concealment and/or  
20 non-disclosure of a dangerous defect, constitute deceptive sales practices in violation of the  
21 OCSPA. These cases include, but are not limited to, the following:

- 22 a. *Mason v. Mercedes Benz USA, LLC* (OPIF #10002382);
- 23 b. *State ex rel. Betty D. Montgomery v. Volkswagen Motor Co.* (OPIF  
24 #10002123);
- 25 c. *State ex rel. Betty D. Montgomery v. Bridgestone/Firestone, Inc.* (OPIF  
26 #10002025);
- 27 d. *Bellinger v. Hewlett-Packard Co.*, No. 20744, 2002 Ohio App. LEXIS 1573  
28 (Ohio Ct. App. Apr. 10, 2002) (OPIF #10002077);
- e. *Borrer v. MarineMax of Ohio*, No. OT-06-010, 2007 Ohio App. LEXIS 525  
(Ohio Ct. App. Feb. 9, 2007) (OPIF #10002388);
- f. *State ex rel. Jim Petro v. Craftmatic Organization, Inc.* (OPIF #10002347);
- g. *Mark J. Craw Volkswagen, et al. v. Joseph Airport Toyota, Inc.* (OPIF  
#10001586);

- 1 h. *State ex rel. William J. Brown v. Harold Lyons, et al.* (OPIF #10000304);
- 2 i. *Brinkman v. Mazda Motor of America, Inc.* (OPIF #10001427);
- 3 j. *Khoury v. Don Lewis* (OPIF #100001995);
- 4 k. *Mosley v. Performance Mitsubishi aka Automanage* (OPIF #10001326);
- 5 l. *Walls v. Harry Williams dba Butch's Auto Sales* (OPIF #10001524); and
- 6 m. *Brown v. Spears* (OPIF #10000403).

7 678. As a result of its violations of the OCSPA, as detailed above, Volkswagen caused  
8 actual damage to Plaintiff and, if not stopped, will continue to harm Plaintiff. Plaintiff currently  
9 owns or leases, or within the class period has owned or leased, an Affected Vehicle that is defective.  
10 Defects associated with the CleanDiesel engine system have caused the value of Affected Vehicles  
11 to decrease.

12 679. Plaintiff and the Class sustained damages as a result of Volkswagen's unlawful acts  
13 and are, therefore, entitled to damages and other relief as provided under the OCSPA.

14 680. Plaintiff also seeks court costs and attorneys' fees as a result of Volkswagen's  
15 violations of the OCSPA as provided in Ohio Rev. Code § 1345.09.

16 **COUNT II**  
17 **BREACH OF CONTRACT**  
**(BASED ON OHIO LAW)**

18 681. Plaintiff incorporates by reference all preceding allegations as though fully set forth  
19 herein.

20 682. Plaintiff brings this Count on behalf of the Ohio Subclass.

21 683. Volkswagen's misrepresentations and omissions alleged herein, including  
22 Volkswagen's failure to disclose the existence of the CleanDiesel engine system's defect and/or  
23 defective design as alleged herein, caused Plaintiff and the other Ohio Subclass members to make  
24 their purchases or leases of their Affected Vehicles. Absent those misrepresentations and  
25 omissions, Plaintiff and the other Ohio Subclass members would not have purchased or leased these  
26 Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they  
27 paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain  
28

1 the CleanDiesel engine system and which were not marketed as including such a system.  
2 Accordingly, Plaintiff and the other Ohio Subclass members overpaid for their Affected Vehicles  
3 and did not receive the benefit of their bargain.

4 684. Each and every sale or lease of an Affected Vehicle constitutes a contract between  
5 Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing  
6 Plaintiff and the other Ohio Subclass members defective Affected Vehicles and by misrepresenting  
7 or failing to disclose the existence of the CleanDiesel engine system's defect and/or defective  
8 design, including information known to Volkswagen, rendering each Affected Vehicle non-EPA-  
9 compliant, and thus less valuable, than vehicles not equipped with a CleanDiesel engine system.

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

14 **COUNT III**  
15 **FRAUDULENT CONCEALMENT**  
16 **(BASED ON OHIO LAW)**

17 686. Plaintiff incorporates by reference all preceding allegations as though fully set forth  
18 herein.

19 687. Plaintiff brings this Count on behalf of the Ohio Subclass.

20 688. Volkswagen intentionally concealed that the CleanDiesel engine systems were not  
21 EPA-compliant and used a "defeat device," or acted with reckless disregard for the truth, and denied  
22 Plaintiff and the other Class members' information that is highly relevant to their purchasing  
23 decision.

24 689. Volkswagen further affirmatively misrepresented to Plaintiff in advertising and other  
25 forms of communication, including standard and uniform material provided with each car, that the  
26 Affected Vehicles it was selling were new, had no significant defects, complied with EPA  
27 regulations and would perform and operate properly when driven in normal usage.

28 690. Volkswagen knew these representations were false when made.

1           691. The Affected Vehicles purchased or leased by Plaintiff and the other Class members  
2 were, in fact, defective, non-EPA compliant, unsafe, and unreliable because the Affected Vehicles  
3 contained the faulty and defective CleanDiesel engine system, as alleged herein.

4           692. Volkswagen had a duty to disclose that these Affected Vehicles were defective,  
5 unsafe, non-EPA compliant and unreliable in that certain crucial emissions functions of the Affected  
6 Vehicles would be rendered inoperative due to the “defeat device” installed in the defective  
7 CleanDiesel engine system, because Plaintiff and the other Class members relied on Volkswagen’s  
8 material representations that the Affected Vehicles they were purchasing were safe, environmentally  
9 clean, efficient and free from defects.

10           693. The aforementioned concealment was material because if it had been disclosed  
11 Plaintiff and the other Class members would not have bought or leased the Affected Vehicles, or  
12 would not have bought or leased those Vehicles at the prices they paid.

13           694. The aforementioned representations were material because they were facts that  
14 would typically be relied on by a person purchasing or leasing a new motor vehicle. Volkswagen  
15 knew or recklessly disregarded that its representations were false because it knew that it had to use  
16 the “defeat device” in order for Affected Vehicles to pass EPA emissions requirements.  
17 Volkswagen intentionally made the false statements in order to sell Affected Vehicles.

18           695. Plaintiff and the other Class members relied on Volkswagen’s reputation – along  
19 with Volkswagen’s failure to disclose the faulty and defective nature of the CleanDiesel engine  
20 system and Volkswagen’s affirmative assurance that its Affected Vehicles were safe and reliable,  
21 and other similar false statements – in purchasing or leasing Volkswagen’s Affected Vehicles.

22           696. As a result of their reliance, Plaintiff and the other Class members have been injured  
23 in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and  
24 overpayment at the time of purchase or lease and/or the diminished value of their Affected Vehicles.

25           697. Volkswagen’s conduct was knowing, intentional, with malice, demonstrated a  
26 complete lack of care, and was in reckless disregard for the rights of Plaintiff and the other Class  
27 members. Plaintiff and the other Class members are therefore entitled to an award of punitive  
28 damages.

1 **S. Claims Brought on Behalf of the Oregon Subclass**

2 **COUNT I**

3 **VIOLATION OF THE OREGON UNLAWFUL TRADE PRACTICES ACT**

4 **(OR. REV. STAT. §§ 646.605, *et seq.*)**

5  
6 698. Plaintiff Jon Dull (“Plaintiff,” for purposes of all Oregon Subclass Counts)  
7 incorporates by reference all preceding allegations as though fully set forth herein.

8 699. This claim is brought only on behalf of the Oregon Subclass.

9 700. Volkswagen is a person within the meaning of OR. REV. STAT. § 646.605(4).

10 701. The Affected Vehicles at issue are “goods” obtained primarily for personal family or  
11 household purposes within the meaning of OR. REV. STAT. § 646.605(6).

12 702. The Oregon Unfair Trade Practices Act (“Oregon UTPA”) prohibits a person from,  
13 in the course of the person’s business, doing any of the following: “(e) Represent[ing] that ...  
14 goods ... have ... characteristics ... uses, benefits, ... or qualities that they do not have;  
15 (g) Represent[ing] that ... goods ... are of a particular standard [or] quality ... if they are of another;  
16 (i) Advertis[ing] ... goods or services with intent not to provide them as advertised;” and “(u)  
17 engag[ing] in any other unfair or deceptive conduct in trade or commerce.” OR. REV. STAT.  
18 § 646.608(1).

19 703. Volkswagen engaged in unlawful trade practices, including representing that  
20 Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have;  
21 representing that Affected Vehicles are of a particular standard and quality when they are not;  
22 advertising Affected Vehicles with the intent not to sell them as advertised; and engaging in other  
23 unfair or deceptive acts.

24 704. Volkswagen also engaged in unlawful trade practices by employing deception,  
25 deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of  
26 any material fact with intent that others rely upon such concealment, suppression or omission, in  
27 connection with the sale of Affected Vehicles.  
28

1           705. Volkswagen’s actions as set forth above occurred in the conduct of trade or  
2 commerce.

3           706. Volkswagen has known of its use of the “defeat device” and the true nature of its  
4 CleanDiesel engine system for at least six years, but concealed all of that information until recently.

5           707. Volkswagen was also aware that it valued profits over environmental cleanliness,  
6 efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles  
7 throughout the United States that did not comply with EPA regulations. Volkswagen concealed this  
8 information as well.

9           708. By failing to disclose and by actively concealing the “defeat device” and the true  
10 cleanliness and performance of the CleanDiesel engine system, by marketing its vehicles as safe,  
11 reliable, environmentally clean, efficient, and of high quality, and by presenting itself as a reputable  
12 manufacturer that valued safety, environmental cleanliness and efficiency, and stood behind its  
13 vehicles after they were sold, Volkswagen engaged in deceptive business practices in violation of  
14 the Oregon UTPA.

15           709. In the course of Volkswagen’s business, it willfully failed to disclose and actively  
16 concealed the use of the “defeat device” and true cleanliness and efficiency of the CleanDiesel  
17 engine system and serious defects discussed above. Volkswagen compounded the deception by  
18 repeatedly asserting that the Affected Vehicles were safe, reliable, environmentally clean, efficient,  
19 and of high quality, and by claiming to be a reputable manufacturer that valued safety,  
20 environmental cleanliness and efficiency, and stood behind its vehicles once they are on the road.

21           710. Volkswagen’s unfair or deceptive acts or practices were likely to and did in fact  
22 deceive reasonable consumers, including Plaintiff, about the true cleanliness and efficiency of the  
23 CleanDiesel engine system, the quality of the Volkswagen and Audi brands, the devaluing of  
24 environmental cleanliness and integrity at Volkswagen, and the true value of the Affected Vehicles.

25           711. Volkswagen intentionally and knowingly misrepresented material facts regarding the  
26 Affected Vehicles with an intent to mislead Plaintiff and the Oregon Subclass.

27           712. Volkswagen knew or should have known that its conduct violated the Oregon UTPA.  
28



1           713. As alleged above, Volkswagen made material statements about the safety,  
2 cleanliness, efficiency and reliability of the Affected Vehicles that were either false or misleading.

3           714. Volkswagen owed Plaintiff a duty to disclose the true safety, cleanliness, efficiency  
4 and reliability of the Affected Vehicles, and the devaluing of environmental cleanliness and  
5 integrity at Volkswagen, because Volkswagen:

- 6           a. Possessed exclusive knowledge that it valued profits over  
7 environmental cleanliness, efficiency, and lawfulness, and that  
8 it was manufacturing, selling and distributing vehicles  
9 throughout the United States that did not comply with EPA  
10 regulations;  
11           b. Intentionally concealed the foregoing from Plaintiffs; and/or  
12           c. Made incomplete representations about the safety, cleanliness,  
13 efficiency and reliability of the Affected Vehicles generally,  
14 and the use of the “defeat device” and true nature of the  
15 CleanDiesel engine system in particular, while purposefully  
16 withholding material facts from Plaintiffs that contradicted  
17 these representations.

18           715. Because Volkswagen fraudulently concealed the “defeat device” and the true  
19 cleanliness and performance of the CleanDiesel engine system, resulting in a raft of negative  
20 publicity once the use of the “defeat device” and true characteristics of the CleanDiesel engine  
21 system finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In  
22 light of the stigma attached to those vehicles by Volkswagen’s conduct, they are now worth  
23 significantly less than they otherwise would be.

24           716. Volkswagen’s fraudulent use of the “defeat device” and its concealment of the true  
25 characteristics of the CleanDiesel engine system were material to Plaintiff and the Oregon Subclass.  
26 A vehicle made by a reputable manufacturer of environmentally friendly vehicles is worth more  
27 than an otherwise comparable vehicle made by a disreputable and dishonest manufacturer of  
28 polluting vehicles that conceals the amount its cars pollutes rather than make environmentally  
friendly vehicles.

717. Plaintiff and the Oregon Subclass suffered ascertainable loss caused by  
Volkswagen’s misrepresentations and its concealment of and failure to disclose material  
information.



1 road. The result was what Volkswagen intended: vehicles passed emissions certifications by way of  
2 deliberately induced false readings. Reportedly, Volkswagen’s deliberate, secret scheme resulted in  
3 noxious emissions from these vehicles at 40 times applicable standards.

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

9 726. Volkswagen concealed and suppressed material facts concerning what is evidently  
10 the true culture of Volkswagen—one characterized by an emphasis on profits and sales above  
11 compliance with federal and state clean air law, and emissions regulations that are meant to protect  
12 the public and consumers. It also emphasized profits and sales about the trust that Plaintiffs and  
13 Class members placed in its representations. As one customer, Priya Shah, put it in a quotation  
14 cited by the *Los Angeles Times* in a September 18, 2015 article, “It’s just a blatant disregard and  
15 intentional manipulation of the system. That’s just a whole other level of not only lying to the  
16 government, but also lying to your consumer. People buy diesel cars from Volkswagen because  
17 they feel they are clean diesel cars.” In the words of Ms. Shah, which no doubt reflect the  
18 sentiments of all other “CleanDiesel” vehicle buyers, “I don’t want to be spewing noxious gases  
19 into the environment.”

20 727. Necessarily, Volkswagen also took steps to ensure that its employees did not reveal  
21 the details of its scheme to regulators or consumers, including Plaintiffs and Class members.  
22 Volkswagen did so in order to boost the reputations of its vehicles and to falsely assure purchasers  
23 and lessors of its vehicles, including certified previously owned vehicles, that Volkswagen is a  
24 reputable manufacturer that complies with applicable law, including federal and state clean air laws  
25 and emissions regulations, and that its vehicles likewise comply with applicable laws and  
26 regulations. Volkswagen’s false representations were material to consumers, both because they  
27 concerned the quality of the affected vehicles, including their compliance with applicable federal  
28 and state laws and regulations regarding clean air and emissions, and also because the

1 representations played a significant role in the value of the vehicles. As Volkswagen well knew, its  
2 customers, including Plaintiffs and Class members, highly valued that the vehicles they were  
3 purchasing or leasing were *clean* diesel cars, and they paid accordingly.

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

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

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

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

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

21           733. The value of Plaintiffs’ and Class members’ vehicles has diminished as a result of  
22 Volkswagen’s fraudulent concealment of its emissions scheme, which has greatly tarnished the  
23 Volkswagen and Audi brand names attached to Plaintiffs’ and Class members’ vehicles and made  
24 any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what  
25 otherwise would have been fair market value for the vehicles.

26           734. Accordingly, Volkswagen is liable to Plaintiffs and Class members for damages in an  
27 amount to be proven at trial.

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1 non-EPA-compliant, and thus less valuable, than vehicles not equipped with a CleanDiesel engine  
2 system.

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

7 **T. Claims Brought on Behalf of the Pennsylvania Subclass**

8 **COUNT I**

9 **VIOLATION OF THE PENNSYLVANIA UNFAIR TRADE PRACTICES AND**  
10 **CONSUMER PROTECTION LAW**

11 **(73 P.S. § 201-1, et seq.)**

12 741. Plaintiff Melissa Fedorczyk ("Plaintiff," for purposes of all Pennsylvania Subclass  
13 Counts) incorporates by reference all preceding allegations as though fully set forth herein.

14 742. This claim is brought only on behalf of the Pennsylvania Subclass.

15 743. Plaintiffs purchased or leased their Affected Vehicles primarily for personal, family  
16 or household purposes within the meaning of 73 P.S. § 201-9.2.

17 744. All of the acts complained of herein were perpetrated by Volkswagen in the course  
18 of trade or commerce within the meaning of 73 P.S. § 201-2(3).

19 745. The Pennsylvania Unfair Trade Practices and Consumer Protection Law  
20 ("Pennsylvania CPL") prohibits unfair or deceptive acts or practices, including: (i) "Representing  
21 that goods or services have ... characteristics, .... Benefits or qualities that they do not have;" (ii)  
22 "Representing that goods or services are of a particular standard, quality or grade ... if they are of  
23 another;" (iii) "Advertising goods or services with intent not to sell them as advertised;" and (iv)  
24 "Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or  
25 misunderstanding." 73 P.S. § 201-2(4).

26 746. Volkswagen engaged in unlawful trade practices, including representing that  
27 Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have;  
28 representing that Affected Vehicles are of a particular standard and quality when they are not;

1 advertising Affected Vehicles with the intent not to sell them as advertised; and engaging in any  
2 other fraudulent or deceptive conduct which creates a likelihood of confusion or of  
3 misunderstanding.

4 747. In the course of its business, Volkswagen installed the “defeat device” and concealed  
5 that its CleanDiesel systems failed EPA regulations as described herein and otherwise engaged in  
6 activities with a tendency or capacity to deceive. Volkswagen also engaged in unlawful trade  
7 practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or  
8 concealment, suppression or omission of any material fact with intent that others rely upon such  
9 concealment, suppression or omission, in connection with the sale of Affected Vehicles.

10 748. Volkswagen has known of its use of the “defeat device” and the true nature of its  
11 CleanDiesel engine system for at least six years, but concealed all of that information until recently.

12 749. Volkswagen was also aware that it valued profits over environmental cleanliness,  
13 efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles  
14 throughout the United States that did not comply with EPA regulations. Volkswagen concealed this  
15 information as well.

16 750. By failing to disclose and by actively concealing the “defeat device” and the true  
17 cleanliness and performance of the CleanDiesel engine system, by marketing its vehicles as safe,  
18 reliable, environmentally clean, efficient, and of high quality, and by presenting itself as a reputable  
19 manufacturer that valued safety, environmental cleanliness and efficiency, and stood behind its  
20 vehicles after they were sold, Volkswagen engaged in unfair and deceptive business practices in  
21 violation of the Pennsylvania CPL.

22 751. In the course of Volkswagen’s business, it willfully failed to disclose and actively  
23 concealed the use of the “defeat device” and true cleanliness and efficiency of the CleanDiesel  
24 engine system and serious defects discussed above. Volkswagen compounded the deception by  
25 repeatedly asserting that the Affected Vehicles were safe, reliable, environmentally clean, efficient,  
26 and of high quality, and by claiming to be a reputable manufacturer that valued safety,  
27 environmental cleanliness and efficiency, and stood behind its vehicles once they are on the road.  
28



1           752. Volkswagen’s unfair or deceptive acts or practices were likely to and did in fact  
2 deceive reasonable consumers, including Plaintiffs, about the true cleanliness and efficiency of the  
3 CleanDiesel engine system, the quality of the Volkswagen and Audi brands, the devaluing of  
4 environmental cleanliness and integrity at Volkswagen, and the true value of the Affected Vehicles.

5           753. Volkswagen intentionally and knowingly misrepresented material facts regarding the  
6 Affected Vehicles with an intent to mislead Plaintiffs and the Pennsylvania Subclass.

7           754. Volkswagen knew or should have known that its conduct violated the Pennsylvania  
8 CPL.

9           755. As alleged above, Volkswagen made material statements about the safety,  
10 cleanliness, efficiency and reliability of the Affected Vehicles and the Volkswagen and Audi brands  
11 that were either false or misleading.

12           756. Volkswagen owed Plaintiffs a duty to disclose the true safety, cleanliness, efficiency  
13 and reliability of the Affected Vehicles and the devaluing of environmental cleanliness and integrity  
14 at Volkswagen, because Volkswagen:

- 15           a. Possessed exclusive knowledge that it valued profits over  
16 environmental cleanliness, efficiency, and lawfulness, and that  
17 it was manufacturing, selling and distributing vehicles  
throughout the United States that did not comply with EPA  
regulations;
- 18           b. Intentionally concealed the foregoing from Plaintiffs; and/or
- 19           c. Made incomplete representations about the safety, cleanliness,  
20 efficiency and reliability of the Affected Vehicles generally,  
21 and the use of the “defeat device” and true nature of the  
CleanDiesel engine system in particular, while purposefully  
withholding material facts from Plaintiffs that contradicted  
22 these representations.

23           757. Because Volkswagen fraudulently concealed the “defeat device” and the true  
24 cleanliness and performance of the CleanDiesel engine system, resulting in a raft of negative  
25 publicity once the use of the “defeat device” and true characteristics of the CleanDiesel engine  
26 system finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In  
27 light of the stigma attached to those vehicles by Volkswagen’s conduct, they are now worth  
28 significantly less than they otherwise would be.

1           758. Volkswagen’s fraudulent use of the “defeat device” and its concealment of the true  
2 characteristics of the CleanDiesel engine system were material to Plaintiffs and the Pennsylvania  
3 Subclass. A vehicle made by a reputable manufacturer of environmentally friendly vehicles is  
4 worth more than an otherwise comparable vehicle made by a disreputable and dishonest  
5 manufacturer of polluting vehicles that conceals the amount its cars pollutes rather than make  
6 environmentally friendly vehicles.

7           759. Plaintiffs and the Pennsylvania Subclass suffered ascertainable loss caused by  
8 Volkswagen’s misrepresentations and its concealment of and failure to disclose material  
9 information.

10           760. Volkswagen had an ongoing duty to all Volkswagen and Audi customers to refrain  
11 from unfair and deceptive acts or practices under the Pennsylvania CPL. All owners of Affected  
12 Vehicles suffered ascertainable loss in the form of the diminished value of their vehicles as a result  
13 of Volkswagen’s deceptive and unfair acts and practices that occurred in the course of  
14 Volkswagen’s business.

15           761. Volkswagen’s violations present a continuing risk to Plaintiffs as well as to the  
16 general public. Volkswagen’s unlawful acts and practices complained of herein affect the public  
17 interest.

18           762. As a direct and proximate result of Volkswagen’s violations of the Pennsylvania  
19 CPL, Plaintiffs and the Pennsylvania Subclass have suffered injury-in-fact and/or actual damage.

20           763. Volkswagen is liable to Plaintiffs and the Pennsylvania Subclass for treble their  
21 actual damages or \$100, whichever is greater, and attorneys’ fees and costs. 73 P.S. § 201-9.2(a).  
22 Plaintiffs and the Pennsylvania Subclass are also entitled to an award of punitive damages given that  
23 Volkswagen’s conduct was malicious, wanton, willful, oppressive, or exhibited a reckless  
24 indifference to the rights of others.

**COUNT II**

**FRAUD BY CONCEALMENT**

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764. Plaintiff realleges and incorporates by reference all paragraphs as though fully set forth herein.

765. This claim is brought on behalf of the Pennsylvania Subclass.

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

767. Plaintiffs and Class members reasonably relied upon Volkswagen’s false representations. They had no way of knowing that Volkswagen’s representations were false and gravely misleading. As alleged herein, Volkswagen employed extremely sophisticated methods of deception. Plaintiffs and Class members did not, and could not, unravel Volkswagen’s deception on their own.

768. Volkswagen concealed and suppressed material facts concerning what is evidently the true culture of Volkswagen—one characterized by an emphasis on profits and sales above compliance with federal and state clean air law, and emissions regulations that are meant to protect the public and consumers. It also emphasized profits and sales about the trust that Plaintiffs and Class members placed in its representations. As one customer, Priya Shah, put it in a quotation cited by the *Los Angeles Times* in a September 18, 2015 article, “It’s just a blatant disregard and

1 intentional manipulation of the system. That’s just a whole other level of not only lying to the  
2 government, but also lying to your consumer. People buy diesel cars from Volkswagen because  
3 they feel they are clean diesel cars.” In the words of Ms. Shah, which no doubt reflect the  
4 sentiments of all other “CleanDiesel” vehicle buyers, “I don’t want to be spewing noxious gases  
5 into the environment.”

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

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

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

10 771. Volkswagen actively concealed and/or suppressed these material facts, in whole or in  
11 part, to pad and protect its profits and to avoid the perception that its vehicles did not or could not  
12 comply with federal and state laws governing clean air and emissions, which perception would hurt  
13 the brand's image and cost Volkswagen money, and it did so at the expense of Plaintiffs and Class  
14 members.

15 772. On information and belief, Volkswagen has still not made full and adequate  
16 disclosures, and continues to defraud Plaintiffs and Class members by concealing material  
17 information regarding the emission qualities of its referenced vehicles and its emissions scheme.

18 773. Plaintiffs and Class members were unaware of the omitted material facts referenced  
19 herein, and they would not have acted as they did if they had known of the concealed and/or  
20 suppressed facts, in that they would not have purchased purportedly “clean” diesel cars  
21 manufactured by Volkswagen, and/or would not have continued to drive their heavily polluting  
22 vehicles, or would have taken other affirmative steps in light of the information concealed from  
23 them. Plaintiffs' and Class members' actions were justified. Volkswagen was in exclusive control  
24 of the material facts, and such facts were not known to the public, Plaintiffs, or Class members.

25 774. Because of the concealment and/or suppression of the facts, Plaintiffs and Class  
26 members have sustained damage because they own vehicles that are diminished in value as a result  
27 of Volkswagen's concealment of the true quality and quantity of those vehicles' emissions and  
28 Volkswagen's failure to timely disclose the actual emission qualities and quantities of hundreds of

1 thousands of Volkswagen- and Audi-branded vehicles and the serious issues engendered by  
2 Volkswagen's corporate policies. Had Plaintiffs and Class members been aware of Volkswagen's  
3 emissions schemes with regard to the vehicles at issue, and the company's callous disregard for  
4 compliance with applicable federal and state law and regulations, Plaintiffs and Class members who  
5 purchased or leased new or certified previously owned vehicles would have paid less for their  
6 vehicles or would not have purchased or leased them at all.

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

12 776. Accordingly, Volkswagen is liable to Plaintiffs and Class members for damages in an  
13 amount to be proven at trial.

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

20 **COUNT III**  
21 **BREACH OF CONTRACT**  
**(BASED ON PENNSYLVANIA LAW)**

22 778. Plaintiff incorporates by reference all preceding allegations as though fully set forth  
23 herein.

24 779. Plaintiff brings this Count on behalf of the Pennsylvania Subclass.

25 780. Volkswagen's misrepresentations and omissions alleged herein, including  
26 Volkswagen's failure to disclose the existence of the CleanDiesel engine system's defect and/or  
27 defective design as alleged herein, caused Plaintiff and the other Pennsylvania Subclass members to  
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1 make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and  
 2 omissions, Plaintiff and the other Pennsylvania Subclass members would not have purchased or  
 3 leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the  
 4 prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did  
 5 not contain the CleanDiesel engine system and which were not marketed as including such a  
 6 system. Accordingly, Plaintiff and the other Pennsylvania Subclass members overpaid for their  
 7 Affected Vehicles and did not receive the benefit of their bargain.

8 781. Each and every sale or lease of an Affected Vehicle constitutes a contract between  
 9 Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing  
 10 Plaintiff and the other Pennsylvania Subclass members defective Affected Vehicles and by  
 11 misrepresenting or failing to disclose the existence of the CleanDiesel engine system's defect and/or  
 12 defective design, including information known to Volkswagen rendering each Affected Vehicle  
 13 non-EPA-compliant, and thus less valuable, than vehicles not equipped with a CleanDiesel engine  
 14 system.

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

19 **U. Claims Brought on Behalf of the Texas Subclass**

20 **COUNT I**  
 21 **VIOLATIONS OF THE DECEPTIVE TRADE PRACTICES ACT**  
 22 **(TEX. BUS. & COM. CODE §§ 17.41, *et seq.*)**

23 783. Plaintiff David Antellocy ("Plaintiff," for purposes of all Texas Subclass Counts)  
 24 incorporate by reference all preceding allegations as though fully set forth herein.

25 784. Plaintiff intends to assert a claim under the Texas Deceptive Trade Practices Act  
 26 ("TDTPA"), which makes it unlawful to commit "[f]alse, misleading, or deceptive acts or practices  
 27 in the conduct of any trade or commerce." TEX. BUS. & COM. CODE § 17.46. Plaintiffs will make a  
 28 demand in satisfaction of TEX. BUS. & COM. CODE § 17.45(2), and may amend this Complaint to

1 assert claims under the TDTPA once the required 60 days have elapsed. This paragraph is included  
2 for purposes of notice only and is not intended to actually assert a claim under the TDTPA.

3 **COUNT II**  
4 **BREACH OF CONTRACT**  
5 **(BASED ON TEXAS LAW)**

6 785. Plaintiffs incorporate by reference all preceding allegations as though fully set forth  
7 herein.

8 786. Plaintiff bring this Count on behalf of the Texas Subclass.

9 787. Volkswagen's misrepresentations and omissions alleged herein, including  
10 Volkswagen's failure to disclose the existence of the CleanDiesel engine system's defect and/or  
11 defective design as alleged herein, caused Plaintiffs and the other Texas Subclass members to make  
12 their purchases or leases of their Affected Vehicles. Absent those misrepresentations and  
13 omissions, Plaintiffs and the other Texas Subclass members would not have purchased or leased  
14 these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices  
15 they paid, and/or would have purchased or leased less expensive alternative vehicles that did not  
16 contain the CleanDiesel engine system and which were not marketed as including such a system.  
17 Accordingly, Plaintiff and the other Texas Subclass members overpaid for their Affected Vehicles  
18 and did not receive the benefit of their bargain.

19 788. Each and every sale or lease of an Affected Vehicle constitutes a contract between  
20 Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing  
21 Plaintiff and the other Texas Subclass members defective Affected Vehicles and by misrepresenting  
22 or failing to disclose the existence of the CleanDiesel engine system's defect and/or defective  
23 design, including information known to Volkswagen rendering each Affected Vehicle non EPA-  
24 compliant, and thus less valuable, than vehicles not equipped with a CleanDiesel engine system.

25 789. As a direct and proximate result of Volkswagen's breach of contract, Plaintiff and  
26 the Texas Subclass have been damaged in an amount to be proven at trial, which shall include, but  
27 is not limited to, all compensatory damages, incidental and consequential damages, and other  
28 damages allowed by law.



**COUNT III  
FRAUD BY CONCEALMENT**

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3           790. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set  
4 forth herein.

5           791. This claim is brought on behalf of the Texas Subclass.

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

17           793. Plaintiffs and Class members reasonably relied upon Volkswagen’s false  
18 representations. They had no way of knowing that Volkswagen’s representations were false and  
19 gravely misleading. As alleged herein, Volkswagen employed extremely sophisticated methods of  
20 deception. Plaintiffs and Class members did not, and could not, unravel Volkswagen’s deception on  
21 their own.

22           794. Volkswagen concealed and suppressed material facts concerning what is evidently  
23 the true culture of Volkswagen—one characterized by an emphasis on profits and sales above  
24 compliance with federal and state clean air law, and emissions regulations that are meant to protect  
25 the public and consumers. It also emphasized profits and sales about the trust that Plaintiffs and  
26 Class members placed in its representations. As one customer, Priya Shah, put it in a quotation  
27 cited by the *Los Angeles Times* in a September 18, 2015 article, “It’s just a blatant disregard and  
28 intentional manipulation of the system. That’s just a whole other level of not only lying to the

1 government, but also lying to your consumer. People buy diesel cars from Volkswagen because  
2 they feel they are clean diesel cars.” In the words of Ms. Shah, which no doubt reflect the  
3 sentiments of all other “CleanDiesel” vehicle buyers, “I don’t want to be spewing noxious gases  
4 into the environment.”

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

17 796. Volkswagen had a duty to disclose the emissions scheme it engaged in with respect  
18 to the vehicles at issue because knowledge of the scheme and its details were known and/or  
19 accessible only to Volkswagen, because Volkswagen had exclusive knowledge as to  
20 implementation and maintenance of its scheme, and because Volkswagen knew the facts were not  
21 known to or reasonably discoverable by Plaintiffs or Class members. Volkswagen also had a duty  
22 to disclose because it made general affirmative representations about the qualities of its vehicles  
23 with respect to emissions standards, starting with references to them as *clean* diesel cars, or cars  
24 with *clean* diesel engines, which were misleading, deceptive, and incomplete without the disclosure  
25 of the additional facts set forth above regarding its emissions scheme, the actual emissions of its  
26 vehicles, its actual philosophy with respect to compliance with federal and state clean air law and  
27 emissions regulations, and its actual practices with respect to the vehicles at issue. Having  
28 volunteered to provide information to Plaintiffs, Volkswagen had the duty to disclose not just the

1 partial truth, but the entire truth. These omitted and concealed facts were material because they  
2 directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and Class  
3 members. Whether a manufacturer's products comply with federal and state clean air law and  
4 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance  
5 or non-compliance, are material concerns to a consumer, including with respect to the emissions  
6 certifications testing their vehicles must pass. Volkswagen represented to Plaintiffs and Class  
7 members that they were purchasing *clean* diesel vehicles, and certification testing appeared to  
8 confirm this—except that, secretly, Volkswagen had subverted the testing process thoroughly.

9 797. Volkswagen actively concealed and/or suppressed these material facts, in whole or in  
10 part, to pad and protect its profits and to avoid the perception that its vehicles did not or could not  
11 comply with federal and state laws governing clean air and emissions, which perception would hurt  
12 the brand's image and cost Volkswagen money, and it did so at the expense of Plaintiffs and Class  
13 members.

14 798. On information and belief, Volkswagen has still not made full and adequate  
15 disclosures, and continues to defraud Plaintiffs and Class members by concealing material  
16 information regarding the emission qualities of its referenced vehicles and its emissions scheme.

17 799. Plaintiffs and Class members were unaware of the omitted material facts referenced  
18 herein, and they would not have acted as they did if they had known of the concealed and/or  
19 suppressed facts, in that they would not have purchased purportedly "clean" diesel cars  
20 manufactured by Volkswagen, and/or would not have continued to drive their heavily polluting  
21 vehicles, or would have taken other affirmative steps in light of the information concealed from  
22 them. Plaintiffs' and Class members' actions were justified. Volkswagen was in exclusive control  
23 of the material facts, and such facts were not known to the public, Plaintiffs, or Class members.

24 800. Because of the concealment and/or suppression of the facts, Plaintiffs and Class  
25 members have sustained damage because they own vehicles that are diminished in value as a result  
26 of Volkswagen's concealment of the true quality and quantity of those vehicles' emissions and  
27 Volkswagen's failure to timely disclose the actual emission qualities and quantities of hundreds of  
28 thousands of Volkswagen- and Audi-branded vehicles and the serious issues engendered by

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

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

11 802. Accordingly, Volkswagen is liable to Plaintiffs and Class members for damages in an  
12 amount to be proven at trial.

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

19 **V. Claims Brought on Behalf of the Washington Subclass**

20 **COUNT I**

21 **VIOLATION OF THE WASHINGTON CONSUMER PROTECTION ACT**

22 **(Wash. Rev. Code Ann. §§ 19.86.010, *et seq.*)**

23 804. Plaintiff Joshua Campbell ("Plaintiff," for purposes of all Washington Subclass  
24 Counts) incorporates by reference all preceding allegations as though fully set forth herein.

25 805. Plaintiff brings this Count on behalf of the Washington Subclass.

26 806. The conduct of Volkswagen as set forth herein constitutes unfair or deceptive acts or  
27 practices, including, but not limited to, Volkswagen's manufacture and sale of vehicles with "defeat  
28

1 devices” and non-EPA compliant CleanDiesel engine systems, which Volkswagen failed to  
2 adequately investigate, disclose and remedy. Further, Volkswagen knew about these defects prior to  
3 the sale of the Affected Vehicles but did not disclose the existence of these defects to Plaintiff and  
4 the Washington Subclass members. Volkswagen also made misrepresentations and omissions  
5 regarding the safety, cleanliness, efficiency and reliability of the Affected Vehicles.

6 807. Volkswagen’s actions as set forth above occurred in the conduct of trade or  
7 commerce.

8 808. Volkswagen’s actions constituted a generalized course of deception that impacts the  
9 public interest because Plaintiff and the Washington Subclass members were injured in exactly the  
10 same way as millions of others purchasing and/or leasing Volkswagen/Audi vehicles and that the  
11 failure to follow the practices pertaining to motor vehicle warranties in Wash. Rev. Code § 19.18 is  
12 recognized by statute as matters vitally affecting the public interest. All of the wrongful conduct  
13 alleged herein occurred, and continues to occur, in the conduct of Volkswagen’s business and has  
14 the potential for repetition.

15 809. Volkswagen’s actions as set forth above induced Plaintiff and the Washington  
16 Subclass members to purchase their Affected Vehicles from Volkswagen and/or pay a higher price  
17 for their Affected Vehicles than they otherwise would have.

18 810. Plaintiff and the Washington Subclass members were injured as a result of  
19 Volkswagen’s conduct. Due to Volkswagen’s deceptive or unfair conduct, Plaintiff and the  
20 Washington Subclass members overpaid for their Affected Vehicles and did not receive the benefit  
21 of their bargain. Their vehicles have also suffered a diminution in value.

22 811. Volkswagen’s conduct proximately caused the injuries to Plaintiff and the  
23 Washington Subclass members.

24 812. Volkswagen is liable to Plaintiff and the Washington Subclass members for damages  
25 in amounts to be proven at trial, including attorneys’ fees, costs, and treble damages.

26 813. Pursuant to Wash. Rev. Code § 19.86.095, Plaintiff will serve the Washington  
27 Attorney General with a copy of this Complaint as Plaintiff and the Washington Subclass members  
28 seek injunctive relief.

**COUNT II**

**BREACH OF CONTRACT  
(Based On Washington Law)**

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5 814. Plaintiff incorporates by reference all preceding allegations as though fully set forth  
6 herein.

7 815. Plaintiff brings this Count on behalf of the Washington Subclass.

8 816. Volkswagen's misrepresentations and omissions alleged herein, including  
9 Volkswagen's failure to disclose the existence of the CleanDiesel engine system's defect and/or  
10 defective design as alleged herein, caused Plaintiff and the other Washington Subclass members to  
11 make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and  
12 omissions, Plaintiff and the other Washington Subclass members would not have purchased or  
13 leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the  
14 prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did  
15 not contain the CleanDiesel engine system and which were not marketed as including such a  
16 system. Accordingly, Plaintiff and the other Washington Subclass members overpaid for their  
17 Affected Vehicles and did not receive the benefit of their bargain.

18 817. Each and every sale or lease of an Affected Vehicle constitutes a contract between  
19 Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing  
20 Plaintiff and the other Washington Subclass members defective Affected Vehicles and by  
21 misrepresenting or failing to disclose the existence of the CleanDiesel engine system's defect and/or  
22 defective design, including information known to Volkswagen rendering each Affected Vehicle non  
23 EPA-compliant, and thus less valuable, than vehicles not equipped with a CleanDiesel engine  
24 system.

25 818. As a direct and proximate result of Volkswagen's breach of contract, Plaintiff and  
26 the Washington Subclass have been damaged in an amount to be proven at trial, which shall  
27 include, but is not limited to, all compensatory damages, incidental and consequential damages, and  
28 other damages allowed by law.

**COUNT III**

**FRAUD BY CONCEALMENT**

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

820. This claim is brought on behalf of the Washington Subclass.

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

822. Plaintiffs and Class members reasonably relied upon Volkswagen’s false representations. They had no way of knowing that Volkswagen’s representations were false and gravely misleading. As alleged herein, Volkswagen employed extremely sophisticated methods of deception. Plaintiffs and Class members did not, and could not, unravel Volkswagen’s deception on their own.

823. Volkswagen concealed and suppressed material facts concerning what is evidently the true culture of Volkswagen—one characterized by an emphasis on profits and sales above compliance with federal and state clean air law, and emissions regulations that are meant to protect the public and consumers. It also emphasized profits and sales about the trust that Plaintiffs and Class members placed in its representations. As one customer, Priya Shah, put it in a quotation cited by the *Los Angeles Times* in a September 18, 2015 article, “It’s just a blatant disregard and

1 intentional manipulation of the system. That’s just a whole other level of not only lying to the  
2 government, but also lying to your consumer. People buy diesel cars from Volkswagen because  
3 they feel they are clean diesel cars.” In the words of Ms. Shah, which no doubt reflect the  
4 sentiments of all other “CleanDiesel” vehicle buyers, “I don’t want to be spewing noxious gases  
5 into the environment.”

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

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



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

10 826. Volkswagen actively concealed and/or suppressed these material facts, in whole or in  
11 part, to pad and protect its profits and to avoid the perception that its vehicles did not or could not  
12 comply with federal and state laws governing clean air and emissions, which perception would hurt  
13 the brand's image and cost Volkswagen money, and it did so at the expense of Plaintiffs and Class  
14 members.

15 827. On information and belief, Volkswagen has still not made full and adequate  
16 disclosures, and continues to defraud Plaintiffs and Class members by concealing material  
17 information regarding the emission qualities of its referenced vehicles and its emissions scheme.

18 828. Plaintiffs and Class members were unaware of the omitted material facts referenced  
19 herein, and they would not have acted as they did if they had known of the concealed and/or  
20 suppressed facts, in that they would not have purchased purportedly "clean" diesel cars  
21 manufactured by Volkswagen, and/or would not have continued to drive their heavily polluting  
22 vehicles, or would have taken other affirmative steps in light of the information concealed from  
23 them. Plaintiffs' and Class Members' actions were justified. Volkswagen was in exclusive control  
24 of the material facts, and such facts were not known to the public, Plaintiffs, or Class members.

25 829. Because of the concealment and/or suppression of the facts, Plaintiffs and Class  
26 members have sustained damage because they own vehicles that are diminished in value as a result  
27 of Volkswagen's concealment of the true quality and quantity of those vehicles' emissions and  
28 Volkswagen's failure to timely disclose the actual emission qualities and quantities of hundreds of

1 thousands of Volkswagen- and Audi-branded vehicles and the serious issues engendered by  
2 Volkswagen's corporate policies. Had Plaintiffs and Class members been aware of Volkswagen's  
3 emissions schemes with regard to the vehicles at issue, and the company's callous disregard for  
4 compliance with applicable federal and state law and regulations, Plaintiffs and Class members who  
5 purchased or leased new or certified previously owned vehicles would have paid less for their  
6 vehicles or would not have purchased or leased them at all.

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

12 831. Accordingly, Volkswagen is liable to Plaintiffs and Class members for damages in an  
13 amount to be proven at trial.

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

20 **W. Claims Brought on Behalf of the Wisconsin Subclass**

21 **COUNT I**

22 **VIOLATIONS OF THE WISCONSIN**  
23 **DECEPTIVE TRADE PRACTICES ACT**

24 **(WIS. STAT. § 110.18)**

25 833. Plaintiff Alfred Howe ("Plaintiff," for purposes of all Wisconsin Subclass Counts)  
26 incorporates by reference all preceding allegations as though fully set forth herein.

27 834. This claim is brought only on behalf of the Wisconsin Subclass.  
28

1 835. Volkswagen is a “person, firm, corporation or association” within the meaning of  
2 WIS. STAT. § 100.18(1).

3 836. Plaintiff and Wisconsin Subclass Members are members of “the public” within the  
4 meaning of WIS. STAT. § 100.18(1). Plaintiff and Wisconsin Subclass Members purchased or leased  
5 one or more Affected Vehicles.

6 837. The Wisconsin Deceptive Trade Practices Act (“Wisconsin DTPA”) prohibits a  
7 “representation or statement of fact which is untrue, deceptive or misleading.” WIS. STAT.  
8 § 100.18(1). By fraudulently installing the “defeat device” to make it appear that its CleanDiesel  
9 engine systems complied with EPA regulations, Volkswagen engaged in unfair and deceptive acts  
10 and practices and violated the Wisconsin DTPA.

11 838. In the course of its business, Volkswagen installed the “defeat device” and concealed  
12 that its CleanDiesel systems failed EPA regulations as described herein and otherwise engaged in  
13 activities with a tendency or capacity to deceive. Volkswagen also engaged in unlawful trade  
14 practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or  
15 concealment, suppression or omission of any material fact with intent that others rely upon such  
16 concealment, suppression or omission, in connection with the sale of Affected Vehicles.

17 839. Volkswagen has known of its use of the “defeat device” and the true nature of its  
18 CleanDiesel engine system for at least six years, but concealed all of that information until recently.

19 840. Volkswagen was also aware that it valued profits over environmental cleanliness,  
20 efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles  
21 throughout the United States that did not comply with EPA regulations. Volkswagen concealed this  
22 information as well.

23 841. By failing to disclose and by actively concealing the “defeat device” and the true  
24 cleanliness and performance of the CleanDiesel engine system, by marketing its vehicles as safe,  
25 reliable, environmentally clean, efficient, and of high quality, and by presenting itself as a reputable  
26 manufacturer that valued safety, environmental cleanliness and efficiency, and stood behind its  
27 vehicles after they were sold, Volkswagen engaged in deceptive business practices in violation of  
28 the Wisconsin DTPA.

1           842. In the course of Volkswagen’s business, it willfully failed to disclose and actively  
2 concealed the use of the “defeat device” and true cleanliness and efficiency of the CleanDiesel  
3 engine system and serious defects discussed above. Volkswagen compounded the deception by  
4 repeatedly asserting that the Affected Vehicles were safe, reliable, environmentally clean, efficient,  
5 and of high quality, and by claiming to be a reputable manufacturer that valued safety,  
6 environmental cleanliness and efficiency, and stood behind its vehicles once they are on the road.

7           843. Volkswagen’s unfair or deceptive acts or practices were likely to and did in fact  
8 deceive reasonable consumers, including Plaintiffs, about the true cleanliness and efficiency of the  
9 CleanDiesel engine system, the quality of the Volkswagen and Audi brands, the devaluing of  
10 environmental cleanliness and integrity at Volkswagen, and the true value of the Affected Vehicles.

11           844. Volkswagen intentionally and knowingly misrepresented material facts regarding the  
12 Affected Vehicles with an intent to mislead Plaintiffs and the Wisconsin Subclass.

13           845. Volkswagen knew or should have known that its conduct violated the Wisconsin  
14 DTPA.

15           846. As alleged above, Volkswagen made material statements about the safety,  
16 cleanliness, efficiency and reliability of the Affected Vehicles and the Volkswagen and Audi brands  
17 that were either false or misleading.

18           847. Volkswagen owed Plaintiffs a duty to disclose the true safety, cleanliness, efficiency  
19 and reliability of the Affected Vehicles and the devaluing of environmental cleanliness and integrity  
20 at Volkswagen, because Volkswagen:

- 21           a. Possessed exclusive knowledge that it valued profits over  
22 environmental cleanliness, efficiency, and lawfulness, and that  
23 it was manufacturing, selling and distributing vehicles  
throughout the United States that did not comply with EPA  
regulations;
- 24           b. Intentionally concealed the foregoing from Plaintiffs; and/or
- 25           c. Made incomplete representations about the safety, cleanliness,  
26 efficiency and reliability of the Affected Vehicles generally,  
27 and the use of the “defeat device” and true nature of the  
CleanDiesel engine system in particular, while purposefully  
withholding material facts from Plaintiffs that contradicted  
28 these representations.

1 848. Because Volkswagen fraudulently concealed the “defeat device” and the true  
2 cleanliness and performance of the CleanDiesel engine system, resulting in a raft of negative  
3 publicity once the use of the “defeat device” and true characteristics of the CleanDiesel engine  
4 system finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In  
5 light of the stigma attached to those vehicles by Volkswagen’s conduct, they are now worth  
6 significantly less than they otherwise would be.

7 849. Volkswagen’s fraudulent use of the “defeat device” and its concealment of the true  
8 characteristics of the CleanDiesel engine system were material to Plaintiffs and the Wisconsin  
9 Subclass. A vehicle made by a reputable manufacturer of environmentally clean vehicles is worth  
10 more than an otherwise comparable vehicle made by a disreputable and dishonest manufacturer of  
11 polluting vehicles that conceals the amount its cars pollutes rather than make environmentally  
12 friendly vehicles.

13 850. Plaintiff and the Wisconsin Subclass suffered ascertainable loss caused by  
14 Volkswagen’s misrepresentations and its concealment of and failure to disclose material  
15 information.

16 851. Volkswagen had an ongoing duty to all Volkswagen and Audi customers to refrain  
17 from unfair and deceptive acts or practices under the Wisconsin DTPA. All owners of Affected  
18 Vehicles suffered ascertainable loss in the form of the diminished value of their vehicles as a result  
19 of Volkswagen’s deceptive and unfair acts and practices that occurred in the course of  
20 Volkswagen’s business.

21 852. Volkswagen’s violations present a continuing risk to Plaintiffs as well as to the  
22 general public. Volkswagen’s unlawful acts and practices complained of herein affect the public  
23 interest.

24 853. As a direct and proximate result of Volkswagen’s violations of the Wisconsin DTPA,  
25 Plaintiff and the Wisconsin Subclass have suffered injury-in-fact and/or actual damage.

26 854. Plaintiff and the Wisconsin Subclass are entitled to damages and other relief  
27 provided for under WIS. STAT. § 100.18(11)(b)(2). Because Volkswagen’s conduct was committed  
28 knowingly and/or intentionally, Plaintiff and the Wisconsin Subclass are entitled to treble damages.

1 855. Plaintiff and the Wisconsin Subclass also seek court costs and attorneys' fees under  
2 WIS. STAT. § 110.18(11)(b)(2).

3 **COUNT II**

4 **FRAUD BY CONCEALMENT**

5 856. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set  
6 forth herein.

7 857. This claim is brought on behalf of the Wisconsin Subclass.

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

19 859. Plaintiffs and Class members reasonably relied upon Volkswagen's false  
20 representations. They had no way of knowing that Volkswagen's representations were false and  
21 gravely misleading. As alleged herein, Volkswagen employed extremely sophisticated methods of  
22 deception. Plaintiffs and Class members did not, and could not, unravel Volkswagen's deception on  
23 their own.

24 860. Volkswagen concealed and suppressed material facts concerning what is evidently  
25 the true culture of Volkswagen—one characterized by an emphasis on profits and sales above  
26 compliance with federal and state clean air law, and emissions regulations that are meant to protect  
27 the public and consumers. It also emphasized profits and sales about the trust that Plaintiffs and  
28

1 Class members placed in its representations. As one customer, Priya Shah, put it in a quotation  
2 cited by the *Los Angeles Times* in a September 18, 2015 article, “It’s just a blatant disregard and  
3 intentional manipulation of the system. That’s just a whole other level of not only lying to the  
4 government, but also lying to your consumer. People buy diesel cars from Volkswagen because  
5 they feel they are clean diesel cars.” In the words of Ms. Shah, which no doubt reflect the  
6 sentiments of all other “CleanDiesel” vehicle buyers, “I don’t want to be spewing noxious gases  
7 into the environment.”

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

20 862. Volkswagen had a duty to disclose the emissions scheme it engaged in with respect  
21 to the vehicles at issue because knowledge of the scheme and its details were known and/or  
22 accessible only to Volkswagen, because Volkswagen had exclusive knowledge as to  
23 implementation and maintenance of its scheme, and because Volkswagen knew the facts were not  
24 known to or reasonably discoverable by Plaintiffs or Class members. Volkswagen also had a duty  
25 to disclose because it made general affirmative representations about the qualities of its vehicles  
26 with respect to emissions standards, starting with references to them as *clean* diesel cars, or cars  
27 with *clean* diesel engines, which were misleading, deceptive, and incomplete without the disclosure  
28 of the additional facts set forth above regarding its emissions scheme, the actual emissions of its

1 vehicles, its actual philosophy with respect to compliance with federal and state clean air law and  
2 emissions regulations, and its actual practices with respect to the vehicles at issue. Having  
3 volunteered to provide information to Plaintiffs, Volkswagen had the duty to disclose not just the  
4 partial truth, but the entire truth. These omitted and concealed facts were material because they  
5 directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and Class  
6 members. Whether a manufacturer's products comply with federal and state clean air law and  
7 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance  
8 or non-compliance, are material concerns to a consumer, including with respect to the emissions  
9 certifications testing their vehicles must pass. Volkswagen represented to Plaintiffs and Class  
10 members that they were purchasing *clean* diesel vehicles, and certification testing appeared to  
11 confirm this—except that, secretly, Volkswagen had subverted the testing process thoroughly.

12 863. Volkswagen actively concealed and/or suppressed these material facts, in whole or in  
13 part, to pad and protect its profits and to avoid the perception that its vehicles did not or could not  
14 comply with federal and state laws governing clean air and emissions, which perception would hurt  
15 the brand's image and cost Volkswagen money, and it did so at the expense of Plaintiffs and Class  
16 members.

17 864. On information and belief, Volkswagen has still not made full and adequate  
18 disclosures, and continues to defraud Plaintiffs and Class members by concealing material  
19 information regarding the emission qualities of its referenced vehicles and its emissions scheme.

20 865. Plaintiffs and Class members were unaware of the omitted material facts referenced  
21 herein, and they would not have acted as they did if they had known of the concealed and/or  
22 suppressed facts, in that they would not have purchased purportedly "clean" diesel cars  
23 manufactured by Volkswagen, and/or would not have continued to drive their heavily polluting  
24 vehicles, or would have taken other affirmative steps in light of the information concealed from  
25 them. Plaintiffs' and Class Members' actions were justified. Volkswagen was in exclusive control  
26 of the material facts, and such facts were not known to the public, Plaintiffs, or Class members.

27 866. Because of the concealment and/or suppression of the facts, Plaintiffs and Class  
28 members have sustained damage because they own vehicles that are diminished in value as a result



1 of Volkswagen's concealment of the true quality and quantity of those vehicles' emissions and  
2 Volkswagen's failure to timely disclose the actual emission qualities and quantities of hundreds of  
3 thousands of Volkswagen- and Audi-branded vehicles and the serious issues engendered by  
4 Volkswagen's corporate policies. Had Plaintiffs and Class members been aware of Volkswagen's  
5 emissions schemes with regard to the vehicles at issue, and the company's callous disregard for  
6 compliance with applicable federal and state law and regulations, Plaintiffs and Class members who  
7 purchased or leased new or certified previously owned vehicles would have paid less for their  
8 vehicles or would not have purchased or leased them at all.

9 867. The value of Plaintiffs' and Class members' vehicles has diminished as a result of  
10 Volkswagen's fraudulent concealment of its emissions scheme, which has greatly tarnished the  
11 Volkswagen and Audi brand names attached to Plaintiffs' and Class members' vehicles and made  
12 any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what  
13 otherwise would have been fair market value for the vehicles.

14 868. Accordingly, Volkswagen is liable to Plaintiffs and Class members for damages in an  
15 amount to be proven at trial.

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

22 **COUNT III**  
23 **BREACH OF CONTRACT**  
**(BASED ON WISCONSIN LAW)**

24 870. Plaintiff incorporates by reference all preceding allegations as though fully set forth  
25 herein.

26 871. Plaintiff brings this Count on behalf of the Wisconsin Subclass.  
27  
28



1 B. An order temporarily and permanently enjoining Volkswagen from continuing the  
2 unlawful, deceptive, fraudulent, and unfair business practices alleged in this Complaint;

3 C. Injunctive relief in the form of a recall or free replacement program;

4 D. Costs, restitution, damages, including punitive damages, and disgorgement in an  
5 amount to be determined at trial;

6 E. An order requiring Volkswagen to pay both pre- and post-judgment interest on any  
7 amounts awarded;

8 F. An award of costs and attorneys' fees; and

9 G. Such other or further relief as may be appropriate.

10 **DEMAND FOR JURY TRIAL**

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

12  
13 DATED: September 21, 2015

HAGENS BERMAN SOBOL SHAPIRO LLP

14  
15 By           /s/ Thomas E. Loeser            
THOMAS E. LOESER

16 Steve W. Berman (*pro hac vice to be filed*)

17 Thomas E. Loeser (202724)

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