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and the proposed Class*

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page]*

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

MICHAEL E. JOHNSON SR. and
MICHAEL E. JOHNSON JR. on behalf
of themselves and all others similarly
situated,

Plaintiffs,

v.

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

Defendant.

Case No. 2:15-CV-07394

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

- 1. Breach of Contract**
- 2. Fraudulent Misrepresentation
and Fraudulent Concealment**
- 3. Unjust Enrichment**
- 4. Violations of State Consumer
Protection and Unfair
Competition Statutes**

1 The allegations herein are based on personal knowledge as to Plaintiffs' own
2 conduct and are made on information and belief as to all other matters based on an
3 investigation by counsel:¹
4

5 **I. INTRODUCTION**

6 1. Plaintiffs Michael E. Johnson Sr. and Michael E. Johnson Jr.
7 ("Plaintiffs") bring this class action against Volkswagen Group of America, Inc.
8 ("Volkswagen" or "Defendant") for violations of various state statutes and common
9 law duties, individually and on behalf of all persons in the United States who own,
10 owned, lease or leased one or more of the following 2.0 liter diesel-engine vehicles:
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12 the 2009 to 2015 model year Volkswagen Jetta; the 2009 to 2014 model year
13 Volkswagen Jetta Sportwagen; the 2010 to 2015 model year Volkswagen Golf; the
14 2012 to 2015 model year Volkswagen Beetle; the 2012 to 2015 model year
15 Volkswagen Beetle Convertible; the 2012 to 2015 model year Volkswagen Passat;
16 the 2015 model year Volkswagen Golf Sportwagen; and the 2010 to 2015 model year
17 Audi A3 (collectively, the "Non-compliant Vehicles").
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21 2. As detailed herein, Plaintiffs and the Class suffered diminished market
22 value and other damages related to the Non-compliant Vehicles purchased or leased
23 by Plaintiffs and the Classes (defined *infra*) as a direct result of Volkswagen omitting
24 material information and issuing misleading statements about the emission standards
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27 ¹ Counsel's investigation includes an analysis of publicly available information,
28 news articles, reports to federal regulators, other statistics and additional analysis.

1 of those vehicles. As disclosed in letters by the United States Environmental
2 Protection Agency (“EPA”) and Air Resource Board of the California Environmental
3 Protection Agency (“Cal EPA”), dated September 18, 2015,² Volkswagen sold the
4 Non-compliant Vehicles with a “defeat device” system to falsely indicate compliance
5 with federal and California environmental laws when undergoing emission testing.
6 In reality, the “defeat device” caused the Non-compliant Vehicles to emit, in some
7 cases, *up to 40 times* the EPA allowable emission of nitrogen oxides (“NOx”). See
8 Exhibit A at 3-4.

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12 3. NOx is a highly toxic emission. In a 1997 report entitled *Nitrogen*
13 *Oxides: Impacts on Public Health and the Environment*, the EPA characterizes
14 nitrogen oxides as some of the most dangerous and harmful pollutants to human
15 health and the natural environment.³ The report describes how, *inter alia*, NOx
16 pollutants make their way into the drinking water creating a health hazard for infants
17 and how even short-term exposure to NOx pollutants is associated with a variety of
18 acute and chronic health effects, especially in children. The report also lists the
19 harmful effects of NOx pollutants on the environment. Given the toxic nature of
20 NOx, the emission of the pollutant from vehicles, including the Non-compliant
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25 ² The EPA and Cal EPA letters are attached hereto as Exhibits A and B,
26 respectively.

27 ³ See Office of Air and Radiation, *Nitrogen Oxides: Impacts on Public Health*
28 *and the Environment*, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, (Aug.,
1997), available at <http://www3.epa.gov/ttn/oarpg/t1/reports/noxrept.pdf>.

1 Vehicles, is regulated and subject to specific limitations. *See* 40 C.F.R. § 86.1811-
2 04; *see also* Exhibit A at 2 (“Light-duty vehicles must satisfy emission standards for
3 air pollutants, *including NOx*”) (citing 40 C.F.R. § 86.1811-04) (emphasis added).

4
5 4. Compliance with emission regulations has been a cornerstone of
6 Volkswagen’s marketing campaigns for its diesel vehicles. For example, since 2008,
7 Volkswagen has marketed its 2.0 liter diesel engine vehicles as having the “world’s
8 cleanest diesel engines”⁴ that comply with the world’s “most demanding emissions
9 laws.”⁵ On Volkswagen’s main website *VW.com*, Volkswagen states that, with
10 respect to its TDI Clean Diesel vehicles,⁶ “[Volkswagen’s] commitment to making
11 vehicles that are eco-conscious is part of bigger thinking.”⁷ In Volkswagen
12 brochures, distributed to customers and the Class, Volkswagen has touted that its
13 “Clean diesel vehicles meet the strictest EPA standards in the U.S. Plus, TDI
14 technology helps reduce sooty emissions by up to 90%, giving you a fuel-efficient
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22 ⁴ Environment, *Environmental Responsibility*, VW, available at
23 <http://update.vw.com/environment/index.htm> (last visited Sept. 20, 2015).

24 ⁵ About Audi, *Responsibility Report 2015*, AUDI USA,
25 http://www.audiusa.com/content/dam/audiusa/Documents/Audi_Responsibility_Report_Web.pdf (last visited Sept. 20, 2015) (hereinafter, “Audi Responsibility Report”).

26 ⁶ References to “Clean Diesel” herein are to Volkswagen’s marketing campaign
27 for the Non-compliant Vehicles.

28 ⁷ Features, *Clean Diesel*, VW, <http://www.vw.com/features/clean-diesel/> (last visited Sept. 20, 2015).

1 and eco-conscious vehicle.” *See* Exhibit C.⁸ The brochure identifies the Volkswagen
2 Jetta TDI, the Volkswagen Jetta SportWagen TDI, the Volkswagen Golf TDI, the
3 Volkswagen Passat TDI, and the Volkswagen Beetle TDI – each of which is now
4 included in the Non-compliant Vehicles list.
5

6 5. Volkswagen’s statements were blatantly false. As detailed in the EPA’s
7 Notice of Violation (“NOV”) letter dated September 18, 2015, Volkswagen admitted
8 to the EPA and the Cal EPA that it manufactured and installed sophisticated software
9 in all of the Non-compliant Vehicles, which detected when the vehicle was
10 undergoing EPA emission standards compliance testing, in order to manipulate the
11 emission results. *See* Exhibit A. Specifically, Volkswagen programmed the Non-
12 compliant Vehicles to fully engage their emission control systems *only* when the
13 Non-compliant Vehicles’ software detected it was receiving various inputs associated
14 with the EPA’s emission standards compliance testing. *See id.* When Volkswagen’s
15 software detected the various inputs associated with the EPA’s emission testing, it
16 activated a pre-loaded program designed to produce EPA compliant (but false)
17 emission results. *See id.* During non-testing conditions, the Non-compliant Vehicles
18 ran a program that was designed to substantially reduce the effectiveness of their
19 emission control system. *See id.* As a result of Volkswagen’s actions, the Non-
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27 ⁸ Volkswagen Brochures, *TDI Volkswagen Brochure*, GALPIN VOLKSWAGEN,
28 <http://www.galpinvolkswagen.com/Media/Default/Page/brochures/pdf/tdi.pdf> (last
visited Sept. 20, 2015) (Exhibit C).

1 compliant Vehicles emitted NO_x at *10 to 40 times above* EPA compliant levels
2 during real world driving conditions. *See id.*

3
4 6. The software Volkswagen created to manipulate the EPA's emission
5 compliance tests is a "defeat device," as defined by the Clean Air Act ("CAA"). *See*
6 42 U.S.C. § 7522(a)(3)(B). A "defeat device" is designed to bypass, defeat, or render
7 inoperative a vehicle's emission control system put in place to comply with CAA
8 emission standards. *See id.* As stated by Cynthia Giles, Assistant Administrator for
9 the Office of Enforcement and Compliance Assurance at the EPA, in the EPA's
10 September 18, 2015 press release, announcing Volkswagen's wrongdoing: "Using a
11 defeat device in cars to evade clean air standards is illegal and a threat to public
12 health."⁹

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16 7. The disclosures have revealed that approximately 482,000 Volkswagen
17 diesel vehicles are in violation of EPA and Cal EPA emission standards. *See* EPA
18 Press Release. More Volkswagen vehicles may be found to be in violation of EPA
19 and Cal EPA regulations, as both the EPA and the Cal EPA are investigating whether
20 other Volkswagen diesel vehicles violate federal and state emission standards. *See*
21 Exhibit A at 5; Exhibit B at 4.
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25 ⁹ 2015 Press Releases, EPA, *California Notify Volkswagen of Clean Air Act*
26 *Violations*, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, (Sept. 18, 2015),
27 <http://yosemite.epa.gov/opa/admpress.nsf/21b8983ffa5d0e4685257dd4006b85e2/dfc8e33b5ab162b985257ec40057813b!OpenDocument> (hereinafter "EPA Press
28 Release").

1 8. Thus, Volkswagen marketed and sold the Non-compliant Vehicles as
2 eco-friendly, emission compliant vehicles while knowing that each one of the Non-
3 compliant Vehicles was designed to manipulate emission compliance tests. As noted
4 by Tyson Slocum, director of the energy program at Public Citizen, a consumer
5 advocacy group, “This is several steps beyond the violations that we’ve seen from
6 other auto companies They appear to have designed a system with the *intention*
7 to mislead consumers and the government.”¹⁰

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10 9. The disclosure of the foregoing facts has resulted in economic harm to
11 Plaintiffs and the Classes.

12 II. JURISDICTION AND VENUE

13 10. This Court has jurisdiction over the subject matter of this action pursuant
14 to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d)(2), because members
15 of the proposed Plaintiff Class are citizens of states different from Defendant’s home
16 state, and the aggregate amount in controversy exceeds \$5,000,000, exclusive of
17 interest and costs.

18 11. Venue is proper in this district under 28 U.S.C. § 1391 because a
19 substantial part of the events or omissions giving rise to the claims alleged herein
20 occurred in this District as Volkswagen conducts operations within this District.
21 Moreover, on September 18, 2015, the Cal EPA’s El Monte location announced the

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27 ¹⁰ Coral Davenport, *VW Is Said to Cheat on Diesel Emissions; U.S. to Order Big*
28 *Recall*, THE NEW YORK TIMES, Sept. 18, 2015 (emphasis added).

1 initiation of an enforcement action based, in part, on the violations set forth herein.

2 **III. PARTIES**

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4 12. Plaintiff Michael E. Johnson Sr. resides in Texarkana, Texas, and
5 purchased a model year 2010 Volkswagen Jetta Sportwagen diesel.

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7 13. Plaintiff Michael E. Johnson Jr. resides in Texarkana, Texas, and
8 purchased a new model year 2010 Volkswagen Jetta diesel.

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10 14. Plaintiffs selected and ultimately purchased their respective vehicles, in
11 part, because of the “clean diesel” system, as represented through advertisements and
12 representations made by Defendant. Specifically, prior to their respective vehicle
13 purchases, Plaintiffs viewed advertisements regarding the clean diesel technology.
14 Plaintiffs respectively recall that the advertisements and representations touted the
15 cleanliness of the engine system for the environment as well as the efficiency and
16 power/performance of the engine system. None of the advertisements reviewed or
17 representations received by Plaintiffs contained any disclosure relating to the “defeat
18 device” or that Defendant had purposefully falsified its certification of EPA
19 compliance. Had Defendant disclosed that the purportedly clean diesel engine in
20 Plaintiffs’ respective vehicles actually emitted up to 40 times the permitted levels of
21 pollutants, including NOx, Plaintiffs would not have purchased their vehicles, or
22 would have paid less for their vehicles.
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26 15. Plaintiffs have suffered an ascertainable loss as a result of Defendant’s
27 omissions and/or misrepresentations associated with the clean diesel engine system,
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1 including but not limited to, out-of-pocket loss and future attempted repairs, future
2 additional fuel costs, and diminished performance and value of their respective
3 vehicles.
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5 16. Neither Volkswagen nor any of its agents, dealers, or other
6 representatives informed Plaintiffs of the existence of the “defeat device” and/or
7 defective design of the clean diesel engine prior to purchase.
8

9 17. Defendant Volkswagen is a corporation doing business throughout the
10 United States and is organized under the laws of the State of New Jersey. At all
11 times relevant to this action, Volkswagen manufactured, distributed, sold, leased, and
12 warranted the Non-compliant Vehicles under the Volkswagen and Audi brand names
13 throughout the United States. Volkswagen and/or its agents designed, manufactured,
14 and installed the clean diesel engine systems in the Non-compliant Vehicles, which
15 included the “defeat device.” Volkswagen also developed and disseminated the
16 owner’s manuals and warranty booklets, advertisements, and other promotional
17 materials relating to the Non-compliant Vehicles.
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21 **IV. FACTUAL ALLEGATIONS**

22 **A. Volkswagen Markets and Sells the Non-compliant Vehicles as some** 23 **of the Cleanest Diesel Operating Vehicles in the World**

24 18. Volkswagen’s advertisements assure consumers that its vehicles are
25 equipped with the cleanest diesel engines in the market that are environmentally
26 friendly and meet federal and state emission standards.
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1 19. For instance, in a press release dated October 29, 2008, Volkswagen
2 claimed that the 2.0 liter diesel engine in its 2009 model-year Jetta, one of the Non-
3 compliant Vehicles, “fulfills stringent Californian [sic] emissions standards.”¹¹
4

5 20. Volkswagen’s assurances are repeated on vehicle window labels, which
6 provide information on a vehicle’s: features, performance, warranty, price, and
7 environmental impact. For instance, the Manufacturer’s Suggested Retail Price
8 (“MSRP”) labels, placed on the windows of new cars include a green box titled
9 “Environmental Performance.” *See* Exhibit D.¹² This green box informs a potential
10 buyer of the vehicle’s impact on the environment. Vehicles receive a “Global
11 Warming Score” and a “Smog Score.” The scores are on a scale from 1 to 10, with 1
12 being the dirtiest and 10 being the “Cleanest.” The rating and scores in the green box
13 are administered and granted by the Cal EPA. On the MSRP label for a 2012 model-
14 year Volkswagen Passat, one of the Non-compliant Vehicles, the green box shows
15 that the car received a “Global Warming Score” of 8, or 3 points higher than average
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24 ¹¹ News, *Volkswagen in Fuel Economy Guide 2009*, VOLKSWAGEN AG, (Oct. 29,
25 2008),
26 http://www.volkswagenag.com/content/vwcorp/info_center/en/news/2008/10/vw_in_fuel_economy_guide.html (last visited Sept. 20, 2015).

27 ¹² News Release, *New car label makes it easier to choose clean, efficient*
28 *transportation*, CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY AIR RESOURCES
BOARD, (June 19, 2008), <http://www.arb.ca.gov/newsrel/nr061908b.htm> (Exhibit D).

score of a new vehicle. *See* Exhibit E.¹³ The green box also shows that the car received a “Smog Score” of 5, the average score for a new vehicle. *See id.* Both of the Environmental Performance scores for the 2012 model-year Volkswagen Passat were based on the fraudulent emission results the “defeat device” produced. In reality, as detailed in the EPA’s letter, the 2012 model-year Volkswagen Passat, and all the other Non-compliant Vehicles, were emitting pollutants at up to 40 times the emission standard.

21. Volkswagen’s advertisements echoed the eco-friendly theme it promoted for its purportedly clean diesel vehicles – including “*meeting the strictest EPA standards*”:

A

Get from A to B. But don't forget to stop at points C, M, and Z. And of course Toledo.

A car that can drive a long way should still make you want to, well, drive it a long way. Volkswagen TDI Clean Diesel is the line of high-mileage vehicles that lets you stop at the filling station less often, so you can spend more time enjoying all the paths you take. And with six models in the TDI family, there's an enjoyable high-mileage vehicle for everyone.

Joyride further.

TDI vehicles use clean diesel fuel and advanced engineering to achieve up to 43 miles per gallon with a range of up to 795 miles. That's up to 30% better fuel economy than comparable gas engines. You'll probably notice it when you take up to 30% fewer trips to the pump. Visit thinkblue.volkswagen.com to learn driving tips that can help you save even more fuel.

Not that kind of diesel.

These are not the kind of diesel engines that you find spewing sooty exhaust like an old 18-wheeler. Clean diesel vehicles meet the strictest EPA standards in the U.S. Plus, TDI technology helps reduce sooty emissions by up to 90%, giving you a fuel-efficient and eco-conscious vehicle.

High mileage doesn't mean low fun.

Get better fuel economy without sacrificing the joy of driving. With a Volkswagen TDI vehicle, you'll get the performance, style, safety, and quality of a turbocharged German vehicle. It's just that you'll get those qualities in a high-mileage vehicle.

Think Blue.

Think beyond green. TDI represents one part of the Volkswagen Think Blue initiative, our goal of creating and encouraging eco-conscious products and behaviors. Join us in being more responsible on the road and on the planet.

Volkswagen TDI Clean Diesel

That's the Power of German Engineering. Das Auto.

See Exhibit C (emphasis added).

¹³ 2012 Volkswagen Passat TDI SEL MSRP Sticker
<http://gtrcarlot.com/data/Volkswagen/Passat/2012/51988435/Window%20Sticker-62697023.html> (last visited Sept. 20, 2015).

22. Likewise, Volkswagen's marketing for its Audi line represented that "Audi pioneered TDI[®] clean diesel engines to deliver more torque, lower fuel consumption and reduce CO2 emissions, compared to equivalent gasoline engines. The result of this revolutionary engineering delivers remarkable performance, while achieving increased fuel economy."¹⁴

23. Thus, Volkswagen sought to create an image of its diesel cars as having the cleanest diesel engines, being environmentally friendly, and meeting federal and state emission regulations. As explained by the *Los Angeles Times*, the Volkswagen marketed the Non-compliant Vehicles as "clean diesels" that were "fun-to-drive alternatives to hybrids" and specifically marketed the vehicles to "eco-conscious buyers."¹⁵

24. Moreover, as set forth in the chart below, Volkswagen demanded significant premiums over gasoline-engine vehicles from consumers across each of the Non-compliant Vehicles:

Clean Diesel Price Premium									
Model	Base			Mid-level			Top-Level		
	Gas	Diesel	Premium	Gas	Diesel	Premium	Gas	Diesel	Premium
VW Jetta	\$18,780	\$21,640	\$2,860	\$22,325	\$24,075	\$1,750	\$25,380	\$26,410	\$1,030
VW Jetta Sportwagen (2014)	\$20,995	\$26,565	\$5,570	\$24,885	\$26,565	\$1,680	NA	NA	NA
VW Golf	\$20,175	\$22,575	\$2,400	\$25,225	\$26,225	\$1,000	\$27,425	\$28,425	\$1,000
VW Golf Sportwagen	\$21,625	\$24,575	\$2,950	\$27,025	\$28,025	\$1,000	\$29,385	\$30,385	\$1,000
VW Beetle	\$20,695	\$25,330	\$4,635	\$23,605	\$28,525	\$4,920	\$25,885	NA	NA
VW Beetle Convertible	\$25,595	\$29,675	\$4,080	\$27,995	\$28,525	\$530	\$30,425	\$31,125	\$700
VW Passat	\$21,340	\$27,095	\$5,755	\$26,280	\$29,125	\$2,845	\$31,790	\$33,925	\$2,135
Audi A3	\$30,900	\$33,200	\$2,300	\$33,600	\$35,900	\$2,300	\$39,750	\$42,050	\$2,300

¹⁴ <http://www.audiusa.com/technology/efficiency/tdi>, last visited Sept. 20, 2015.

¹⁵ Jerry Hirsch, *VW cheated on U.S. pollution tests for 'clean diesel'*, LOS ANGELES TIMES, Sept. 18, 2015.

1 **B. Volkswagen Designs and Implements a Software Program in the**
2 **Non-compliant Vehicles to Manipulate Emission Tests**

3 25. Notwithstanding the eco-friendly image Volkswagen was touting to the
4 market, between the 2009 and 2015 model years, Volkswagen designed and installed
5 a software program, the “defeat device,” in the electronic control module (“ECM”) of
6 the Non-compliant Vehicles. *See* Exhibit A at 3.

7
8 26. Under EPA regulations, Volkswagen was required to submit Certificate
9 of Conformity (“COC”) applications for the Non-compliant Vehicles which must
10 identify any auxiliary emission control devices (“AECDs”), and justifications for use
11 of the AECDs, such as the “defeat device” installed in the Non-compliant Vehicles.
12 *See id.* at 2. Submission of the COC, gives the EPA the opportunity to evaluate the
13 AECDs to determine whether their use is justified. *See id.* Each of the Non-
14 compliant Vehicles contains an AECD, the “defeat device,” that was not described in
15 the application for the COC that purportedly covers the vehicle. *See id.* Vehicles
16 equipped with “defeat devices” such as those installed by Volkswagen cannot be
17 certified by the EPA, and manufacturers are prohibited from selling any vehicle that
18 is not covered by an EPA-issued COC. *See id.* at 3.

19
20 27. According to federal and state regulators, the “defeat device” was able to
21 detect when the Recalled Vehicle was undergoing EPA emission standards
22 compliance testing based on certain inputs the vehicle received during the test. *See*
23 *id.* The “defeat device” would then activate the “dyno calibration” program which
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1 Volkswagen had pre-loaded into the vehicle's ECM. *See id.* at 4. The "dyno
2 calibration" program fully engaged the vehicle's emission control system so that the
3 vehicle produced EPA compliant emission results. *See id.*

4
5 28. At all other times, during real world driving conditions, the "defeat
6 device" would run a separate program which Volkswagen referred to as the "road
7 calibration" program. *See id.* The "road calibration" emitted **up to 40 times** the
8 pollutants allowed under federal and state emission standards. *See id.*

9
10 **C. Volkswagen Conceals the "Defeat Device" so Effectively that it**
11 **Escapes the Attention of Regulators and Consumers for Six years**

12 29. Volkswagen intentionally concealed the existence of the "defeat device"
13 from consumers and federal and state regulators for years.

14
15 30. Volkswagen's concealment of the "defeat device" was intended to
16 deceive consumers into believing they were purchasing one of the cleanest diesel cars
17 on the market with stated performance features. Indeed, "[e]xperts in automotive
18 technology said that disengaging the pollution controls on a diesel-fueled car can
19 yield better performance, including increased torque and acceleration."¹⁶ As
20 explained by Drew Kodjak, executive director of the International Council on Clean
21 Transportation, "[w]hen the pollution controls are functioning on these vehicles,
22 there's a trade-off between performance and emissions This is cutting
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27 ¹⁶ Coral Davenport, *VW Is Said to Cheat on Diesel Emissions; U.S. to Order Big*
28 *Recall*, THE NEW YORK TIMES, Sept. 18, 2015.

1 corners.”¹⁷ Corroborating Mr. Kodjak, other market professionals noted that “[i]t had
2 been surprising that Volkswagen diesel models were able to get impressive
3 horsepower output and fuel economy performance using less costly pollution control
4 technology than employed in some other automakers’ engines The software
5 workaround may have enabled the performance without the expected pollution
6 controls.”¹⁸
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9 31. Plaintiffs and the Classes reasonably relied on Volkswagen’s
10 misrepresentations in purchasing the Non-compliant Vehicles or paying a premium
11 for an emission compliant vehicle with the represented performance specifications.
12

13 **D. Volkswagen Admits the Truth to the EPA About the “Defeat**
14 **Device” in the Non-compliant Vehicles**

15 32. On September 3, 2015, Volkswagen admitted to EPA and Cal EPA staff
16 that the Non-compliant Vehicles were designed and manufactured with a “defeat
17 device” that bypassed, defeated, or rendered inoperative elements of the Non-
18 compliant Vehicles’ emission control system. *See* Exhibit B.
19

20 33. Volkswagen’s admission was more than a year in the making. The EPA
21 was first alerted of emissions problems in the Non-compliant Vehicles by the West
22 Virginia University’s Center for Alternative Fuels, Engines & Emissions (“WVU
23 Center”) in May 2014. *See* Exhibit A at 4. The WVU Center determined that testing
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27 ¹⁷ *Id.*

28 ¹⁸ Jeff Plungis, *Volkswagen Admits to Cheating on U.S. Emissions Tests*,
BLOOMBERG, Sept. 18, 2015.

1 on a 2012 model year diesel Volkswagen Jetta and 2013 model year diesel
2 Volkswagen Passat, both of which are on the Non-compliant Vehicles list, yielded
3 significantly higher emissions than reported. *See id.* Over the course of 2014,
4 Volkswagen reassured both the EPA and the Cal EPA that its Non-compliant
5 Vehicles were operating within federal and state emission regulations, and that the
6 higher emission results could be attributed to various technical issues and unexpected
7 real world conditions. *See id.*

10 34. In December 2014, Volkswagen issued a voluntary recall of certain of the
11 Non-compliant Vehicles in order to fix the issues causing the higher emission results.
12 *See id.* On May 6, 2015 the EPA and the Cal EPA subsequently tested the vehicles
13 Volkswagen alleged it fixed in the December 2014 voluntary recall. *See* Exhibit B at
14 3. The subsequent testing revealed that Volkswagen had not fixed the emission issue
15 and the vehicles Volkswagen allegedly fixed in the voluntary recall, failed the
16 emission tests. *See id.* The Cal EPA shared the results of the emission tests with
17 Volkswagen on July 8, 2015. *See id.*

21 35. Following this latest failure, the EPA and Cal EPA threatened to
22 withhold certifications of conformity for the 2016 model year diesel vehicles,
23 effectively suspending vehicle sales of these vehicles unless Volkswagen corrected
24 the emission issue. *See* Exhibit A at 4.

26 36. After the regulators' threat, Volkswagen finally admitted to the EPA and
27 the Cal EPA, on September 3, 2015, that it had designed and manufactured the Non-
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1 compliant Vehicles with a “defeat device.” *See* Exhibit B.

2 **E. The “Defeat Device” and its Effect on Volkswagen’s Reputation as**
3 **Having Clean Diesel Vehicles Will Adversely Affect the Classes**

4 37. Vehicles are purchased or leased under the reasonable assumption that
5 they comply with federal and state emission standards and performance specifications
6 as advertised. Moreover, vehicle owners (and lessees) have a reasonable expectation
7 that car manufacturers will abide by federal and state emission standards and federal,
8 state and common law obligations to affirmatively disclose known defects, including
9 the “defeat device,” in a timely manner. This did not happen with respect to the Non-
10 compliant Vehicles.
11

12 38. As a result of Volkswagen’s admitted use of “defeat devices” in the Non-
13 compliant Vehicles, devices which artificially enhanced road performance, all
14 purchasers of the Non-compliant Vehicles overpaid for their cars at the time of
15 purchase.
16

17 39. As news of the Non-compliant Vehicles’ failure to follow federal and
18 state emission standards surfaced on September 18, 2015, the value of Volkswagen’s
19 vehicles had diminished and will continue to do so as purchasers, owners and persons
20 leasing these vehicles are encumbered with the stigma of operating a high polluting
21 vehicle designed to evade emission testing. As noted in a September 18, 2015 article
22 in the *Los Angeles Times*, “people buy diesel cars from Volkswagen because they feel
23 they are clean diesel cars, and they are told they are clean diesel cars I don’t
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1 want to be spewing noxious gases into the environment.”¹⁹

2 40. These reports, along with the reports that are to follow in the coming
3 days and weeks, have materially negatively impacted the value of the Non-compliant
4 Vehicles, including Plaintiffs’ vehicles, and will continue to do so in the future.
5 Indeed, an analyst for Kelly Blue Book described the disclosures as “pretty ugly” and
6 noted that “Volkswagen has far outstripped everyone else in selling diesel cars. This
7 challenges everything they’ve been saying about those vehicles.”²⁰ Moreover,
8 *Consumer Reports* has suspended its “recommended” rating for the Volkswagen Jetta
9 and Passat diesels.²¹ According to *Consumer Reports*, “These recommendations will
10 be suspended until Consumer Reports can re-test these vehicles with a recall repair
11 performed. Once the emissions systems are functioning properly, we will assess
12 whether the repair has adversely affected performance or fuel economy.”²²

13 **V. TOLLING OF THE STATUTE OF LIMITATIONS**

14 **A. Discovery Rule Tolling**

15 41. Class Members could not reasonably discover Volkswagen’s deception

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22 ¹⁹ Samantha Masunga, *Volkswagen customers sound off on Twitter*, THE LOS
23 ANGELES TIMES, Sept. 18, 2015, available at <http://www.latimes.com/business/la-fi-vw-reaction-20150918-htm1story.html>.

24 ²⁰ Jerry Hirsch, *VW cheated on U.S. pollution tests for ‘clean diesel’*, LOS
25 ANGELES TIMES, Sept. 18, 2015.

26 ²¹ Jon Linkov, *VW, Audi Cited by EPA for Cheating on Diesel Emissions Tests*,
27 Consumer Reports, Sept. 21, 2015, available at
28 <http://www.consumerreports.org/cro/cars/vw--audi-cited-by-epa-for-cheating-on-diesel-emissions-tests>.

²² *Id.*

1 with respect to its Clean Diesel marketing campaign and its use of a “defeat device”
2 in the Non-compliant Vehicles prior to the disclosure of the EPA and Cal EPA
3 letters.
4

5 42. In fact, it took investigations from three separate investigatory entities,
6 including two environmental regulators, to discover Volkswagen’s “defeat device.”
7 *See* Exhibit A at 4 (referring to the WVU Center, the EPA, and the Cal EPA). As
8 detailed in the Cal EPA’s letter, the Cal EPA was required to use a sophisticated
9 over-the-road Portable Emission Measurement System (“PEMS”) and then develop a
10 special dynamometer cycle to determine why the Non-compliant Vehicles were
11 failing the emission tests when tested for normal driving conditions. *See* Exhibit B.
12 The difficulty of detecting the “defeat device” and the sophistication of the “defeat
13 device,” described herein, establish Volkswagen’ intention of hiding its actions from
14 both regulators and consumers.
15
16
17
18

19 43. Within the time period of any applicable statutes of limitation, Plaintiffs
20 and members of the proposed Classes could not have discovered through the exercise
21 of reasonable diligence that Volkswagen was concealing the conduct complained of
22 herein.
23

24 44. Plaintiffs and other Class members did not discover and did not know of
25 any facts that would have caused a reasonable person to suspect that Volkswagen did
26 not report information within its knowledge concerning the use of a “defeat device”
27 in the Non-compliant Vehicles to federal and state regulators, its dealerships, or
28

1 consumers. A reasonable and diligent investigation would not have disclosed that
2 Volkswagen possessed information, which Volkswagen chose to conceal, about its
3 “defeat device” scheme to evade emission standards. Plaintiffs learned of the “defeat
4 device” installed on their respective Volkswagen vehicles shortly after news of
5 Volkswagen’s actions made headlines on the national media in September 2015.
6

7
8 45. For these reasons, all applicable statutes of limitation have been tolled by
9 operation of the discovery rule with respect as to all the Non-compliant Vehicles.
10

11 **B. Fraudulent Concealment Tolling**

12 46. Volkswagen’s knowing and active fraudulent concealment and denial of
13 the facts alleged herein, have tolled all applicable statutes of limitations.
14

15 47. Volkswagen falsely represented that its vehicles: complied with and
16 exceeded federal and state emission standards; emitted NOx and other pollutants at
17 levels in compliance or below federal and state standards; and were eco-conscious.
18

19 **C. Tolling by Estoppel**

20 48. Volkswagen was under a continuous duty to disclose to Plaintiffs and the
21 Classes the true character, quality, and nature of the Non-compliant Vehicles’
22 emissions, emission control system, and the compliance of the emission control
23 system with applicable federal and state law.
24

25 49. Volkswagen knowingly, affirmatively, and actively concealed the true
26 nature, quality, and character of the Non-compliant Vehicles’ emissions and emission
27 control system.
28

1 50. At all times, Volkswagen was under a continuous duty to disclose to
2 Plaintiffs and the Classes that it engaged in the fraudulent actions detailed herein to
3 evade federal and state emission and clean air standards and to artificially enhance
4 the road performance of the Non-compliant Vehicles.
5

6 51. Based on the foregoing, Volkswagen is estopped from relying on any
7 statutes of limitations in defense of this action.
8

9 **VI. CLASS ACTION ALLEGATIONS**

10 52. Plaintiffs bring this action pursuant to Federal Rules of Civil Procedure
11 23(a), (b)(2) and/or (b)(3) on behalf of the following Classes: (i) All persons and
12 entities that purchased, leased or own the Non-compliant Vehicles in the United
13 States (the “Nationwide Class”); and (ii) All persons or entities that purchased, leased
14 or own the Non-compliant Vehicles in the states of Alaska, Arizona, Arkansas,
15 California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia,
16 Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland,
17 Massachusetts, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Hampshire,
18 New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio,
19 Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Texas, Utah,
20 Vermont, Virginia, Washington, West Virginia, Wisconsin and Wyoming (the
21 “Consumer Protection Statute Class”).
22
23
24
25

26 53. Excluded from the Classes are individuals who have personal injury
27 claims resulting from the “defeat device” in a Recalled Vehicle. Also excluded from
28

1 the Classes, are Volkswagen and its parent, subsidiaries and affiliates. Plaintiffs
2 reserve the right to revise the definition of the Classes based upon subsequently
3 discovered information.
4

5 54. The Classes are so numerous that joinder of all members is impracticable.

6 55. A Class action is superior to all other available methods for the fair and
7 efficient adjudication of this controversy.
8

9 56. Plaintiffs' claims are typical of the claims of the Classes. As alleged
10 herein, Plaintiffs and members of the Classes all sustained damages arising out of the
11 Defendant's same course of unlawful conduct.
12

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

- 16 • Whether Volkswagen sold the Non-compliant Vehicles with a "defeat
17 device";
- 18 • Whether Volkswagen sold the Non-compliant Vehicles with a "defeat
19 device" in order to circumvent federal and state clean air statutes and
20 emission regulations;
- 21 • Whether Volkswagen's use of the "defeat device" manipulated the
22 performance and/or fuel efficiency of the Non-compliant Vehicles;
- 23 • Whether Volkswagen's misrepresentations and omissions concerning
24 the use of a "defeat device" were likely to deceive a reasonable person;
- 25 • Whether Volkswagen's Clean Diesel marketing campaign included false
26
27
28

1 and misleading statements by failing to disclose Volkswagen's use of a
2 "defeat device" in the Non-compliant Vehicles;

- 3
- 4 • Whether Volkswagen's Clean Diesel marketing campaign was likely to
5 deceive a reasonable person;
 - 6 • Whether Volkswagen's Clean Diesel marketing campaign included false
7 and misleading statements by claiming that the Non-compliant Vehicles
8 were environmentally friendly and/or failing to disclose that the Non-
9 compliant Vehicles fail to meet federal and state emission standards
 - 10 • Whether a reasonable customer would pay less for a Non-compliant
11 Vehicle if the use of a "defeat device" was disclosed at the time of
12 purchase or lease;
 - 13 • Whether a reasonable customer would pay less for a Non-compliant
14 Vehicle that did not comply with federal and state clean air statutes and
15 emission regulations;
 - 16 • Whether damages, restitution, equitable, injunctive, compulsory, or
17 other relief is warranted; and
 - 18 • Whether injunctive relief enjoining the reoccurrence of Defendant's
19 conduct and/or declaratory relief that such conduct is unlawful, is
20 warranted.
- 21
22
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25
26

27 58. The interest of Class members in individually controlling the prosecution
28

1 of separate actions is theoretical and not practical. The Classes have a high degree of
2 similarity and are cohesive. Moreover, individual litigation creates a potential for
3 inconsistent or contradictory judgments, and increases the delay and expense to all
4 parties and the courts. Plaintiffs anticipate no difficulty in the management of this
5 matter as a class action.
6

7
8 59. Class action status is also warranted under Rule 23(b)(2) because
9 Defendant has acted or refused to act on grounds generally applicable to the Classes,
10 thereby making appropriate final injunctive relief or corresponding declaratory relief
11 with respect to the Classes as a whole.
12

13 60. Class action status is also warranted under Rule 23(b)(3) because
14 questions of law or fact common to the members of the Classes predominate over any
15 questions affecting only individual members, and a class action is superior to other
16 available methods for the fair and efficient adjudication of this controversy.
17

18 61. Plaintiffs are adequate representatives who have selected highly
19 competent counsel who are fully qualified to represent the Classes. Plaintiffs intend
20 to prosecute this action vigorously.
21

22 **VII. CLAIMS FOR RELIEF**

23 **FIRST CLAIM**

24 **Common Law Breach of Contract** 25 **On behalf of the Nationwide Class**

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

1 effectiveness of the Non-compliant Vehicles' emission control system as well as their
2 road performance.

3
4 70. Defendant had a duty to disclose that these vehicles were defective in that
5 the vehicles were subject to a "defeat device" that would reduce the effectiveness of
6 the vehicles' emission control system.

7
8 71. The aforementioned concealment was material because if it had been
9 disclosed Plaintiffs and the Class would not have purchased or leased the vehicles at
10 the price they paid, or would not have purchased or leased the vehicles at all.

11
12 72. The aforementioned representations were material because they were
13 facts that would typically be relied upon by a person purchasing or leasing a motor
14 vehicle – including vehicles sold under a Clean Diesel marketing campaign.
15 Defendant knew or recklessly disregarded that its representations as to the Non-
16 compliant Vehicles were false and or omitted material information. Defendant
17 intentionally made the false statements in order to induce Plaintiffs and the Class to
18 purchase or lease the Non-compliant Vehicles.

19
20
21 73. Plaintiffs and the Class relied upon Volkswagen's representations and
22 omissions in purchasing or leasing the Non-compliant Vehicles.

23
24 74. As a result of their reliance, Plaintiffs and the Class have been injured in
25 an amount to be proven at trial, including, but not limited to, their lost benefit of the
26 bargain and overpayment at the time of purchase and/or the diminished value of their
27 vehicles.
28

1 75. Defendant's conduct was knowing, intentional, with malice,
2 demonstrated a complete lack of care, and was in reckless disregard for the rights of
3 Plaintiffs. Plaintiffs and the Class are therefore entitled to an award of punitive
4 damages.
5

6 **THIRD CLAIM**
7 **Unjust Enrichment,**
8 **On behalf of the Nationwide Class**

9 76. Plaintiffs repeat and reallege each and every allegation contained above
10 as if fully set forth herein.
11

12 77. Plaintiffs and the Class paid the value of vehicles that have fully
13 operational emission control systems that comply with federal and state emission
14 standards, would not be compromised by the need for repairs, and could be legally
15 operated, but were provided with vehicles that are defective, needed repairs, and
16 could not be legally operated.
17

18 78. As such, Plaintiffs and the Class conferred a windfall upon Volkswagen,
19 which knew of the windfall and has unjustly retained such benefits.
20

21 79. As a direct and proximate result of Volkswagen's unjust enrichment,
22 Plaintiffs and the Class have suffered and continue to suffer various damages,
23 including, but not limited to, restitution of all amounts by which Defendant was
24 enriched through its misconduct.
25
26
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28

FOURTH CLAIM
Violations of State Consumer Protection
and Unfair Competition Statutes
On behalf of the Consumer Protection Statute Class

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

81. Defendant engaged in unfair competition or unfair, unconscionable, deceptive, or fraudulent acts or practices with respect to the sale of the Non-compliant Vehicles in violation of the following state consumer protection and unfair competition statutes.

82. Defendant has violated Alaska Stat. § 45-50-471 *et seq.*

83. Defendant has violated Ariz. Rev. Stat. § 44-1521 *et seq.*

84. Defendant has violated Arkansas Code § 4-88-101 *et seq.*

85. Defendant has violated Cal. Civ. Code § 1770 *et seq.*, Cal. Bus. & Prof. Code § 17200 *et seq.*, and Cal. Bus. & Prof. Code § 17070.

86. Defendant has violated Colo. Rev. Stat. § 6-1-101 *et seq.*

87. Defendant has violated Conn. Gen. Stat. § 42-110A, *et seq.*

88. Defendant has violated 6 Del. Code § 2513 *et seq.* and 6 Del. Code § 2532 *et seq.*

89. Defendant has violated D.C. Code Ann. § 28-3901 *et seq.*

90. Defendant has violated Florida Stat. § 501.201 *et seq.*

91. Defendant has violated Ga. Code Ann. § 10-1-370 *et seq.*

1 92. Defendant has violated Haw. Rev. Stat. Ann. § 481A-3.

2 93. Defendant has violated Idaho Code § 48-601 *et seq.*

3
4 94. Defendant has violated 815 Ill. Comp. Stat. 505/1 *et seq.* and 815 Ill.
5 Comp. Stat. 510/1 *et seq.*

6 95. Defendant has violated Ind. Code § 24-5-0.5-3.

7
8 96. Defendant has violated Iowa Code § 714H.1 *et seq.*

9 97. Defendant has violated Kan. Stat. Ann. § 50-623 *et seq.*

10 98. Defendant has violated Ky. Rev. Stat. § 367.110 *et seq.*

11
12 99. Defendant has violated Me. Rev. Stat. Ann. Tit. 5 § 205-A *et seq.*

13 100. Defendant has violated Md. Code Com. Law § 13-101 *et seq.*

14 101. Defendant has violated Mass. Gen. Laws chapter 93A § 1 *et seq.*

15 102. Defendant has violated Mich. Comp. Laws § 445.901.

16
17 103. Defendant has violated Minn. Stat. § 325F.69 *et seq.* and Minn. Stat. §
18 325D.43 *et seq.*

19
20 104. Defendant has violated Mo. Ann. Stat. 407.020.

21 105. Defendant has violated Neb. Rev. Stat. § 87-302 and Neb. Rev. Stat. §
22 59-1601 *et seq.*

23 106. Defendant has violated Nev. Rev. Stat. § 598.0903 *et seq.*

24 107. Defendant has violated New Hampshire Rev. Stat. § 358-A:1 *et seq.*

25 108. Defendant has violated N.J. Stat. Ann. § 56:8-1, *et seq.*

26
27 109. Defendant has violated New Mexico Stat. Ann. § 57-12-1 *et seq.*
28

1 110. Defendant has violated N.Y. Gen. Bus. Law § 349 *et seq.*

2 111. Defendant has violated North Carolina Gen. Stat. § 75-1.1 *et seq.*

3 112. Defendant has violated N.D. Cent. Code § 51-15-02.

4 113. Defendant has violated Ohio Rev. Code Ann. § 1345.01 *et seq.* and Ohio
5 Rev. Code Ann. § 4165.01 *et seq.*

6 114. Defendant has violated Okla. Stat. Tit. 15 § 751 *et seq.* and 78 Okla. Stat.
7 Ann. § 51 *et seq.*

8 115. Defendant has violated Or. Rev. Stat. § 646.605 *et seq.*

9 116. Defendant has violated 73 Pa. Stat. § 201-1 *et seq.*

10 117. Defendant has violated Rhode Island Gen. Laws § 6-13.1-1 *et seq.*

11 118. Defendant has violated S.D. Codified Laws § 37-24-6 *et seq.*

12 119. Defendant has violated Tex. Bus. & Com. Code § 17.41 *et seq.*

13 120. Defendant has violated Utah Code Ann. § 13-11-1 *et seq.*

14 121. Defendant has violated Vt. Stat. Ann. Tit. 9, § 2451 *et seq.*

15 122. Defendant has violated Va. Code Ann. 59.1-200 *et seq.*

16 123. Defendant has violated Rev. Code Wash. Ann. § 19.86.010 *et seq.*

17 124. Defendant has violated W. Va. Code § 46A-1-101 *et seq.*

18 125. Defendant has violated Wisc. Stat. § 100.18 *et seq.*

19 126. Defendant has violated Wyo. Stat. § 45-12-105 *et seq.*

20 127. Defendant's misrepresentations and omissions regarding the emission
21 compliance of its vehicles as set forth in this Complaint were likely to deceive a
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1 reasonable consumer, and the information would be material to a reasonable
2 consumer.
3

4 128. Defendant's intentional and purposeful acts, described above, were
5 intended to and did cause Plaintiffs and the Class to pay artificially inflated prices for
6 Non-Compliant Vehicles purchased or leased in the states (and the District of
7 Columbia) listed above.
8

9 129. As a direct and proximate result of Defendant's unlawful conduct,
10 Plaintiffs and Class members have been injured in their business and property in that
11 they paid more for the Non-compliant Vehicles than they otherwise would have paid
12 in the absence of Defendant's unlawful conduct.
13

14 130. All of the wrongful conduct alleged herein occurred in the conduct of
15 Defendant's business. Defendant's wrongful conduct is part of a pattern or
16 generalized course of conduct that was perpetrated nationwide.
17

18 131. Plaintiffs and Class members are therefore entitled to all appropriate
19 relief as provided for by the laws of the states listed above, including but not limited
20 to, actual damages, injunctive relief, attorneys' fees, and equitable relief, such as
21 restitution and/or disgorgement of all revenues, earnings, profits, compensation, and
22 benefits which may have been obtained by Defendant as a result of its unlawful
23 conduct.
24

25 **VIII. PRAYER FOR RELIEF**

26
27 132. WHEREFORE, Plaintiffs request that this Court enter a judgment against
28

1 Defendant and in favor of Plaintiffs and the Classes and award the following relief:

2 A. That this action be certified as a class action pursuant to Rule 23 of the
3 Federal Rules of Civil Procedure, declaring Plaintiffs as the representatives of the
4 Classes and Plaintiffs' counsel as counsel for the Classes;
5

6 B. That the conduct alleged herein be declared, adjudged and decreed to be
7 unlawful;
8

9 C. Compensatory, consequential, and general damages in an amount to be
10 determined at trial;
11

12 D. Costs and disbursements of the action;

13 E. Restitution and/or disgorgement of Defendant's ill-gotten gains, and the
14 imposition of an equitable constructive trust over all such amounts for the benefit of
15 the Classes;
16

17 F. Pre- and post-judgment interest;

18 G. Reasonable attorneys' fees;

19 H. That Defendant be enjoined from the conduct challenged herein;

20 I. Such monetary, injunctive other relief to each of the subclasses that is
21 provided for by the state statutes pursuant to each Count alleged; and
22

23 J. Such other and further relief as this Court may deem just and proper.
24
25
26
27
28

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury as to all claims in this action.

///

DATED: September 21, 2015

**KESSLER TOPAZ
MELTZER & CHECK, LLP**

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*Attorneys for Plaintiffs Michael E. Johnson Sr.
and Michael E. Johnson Jr. and the proposed
Class*

EXHIBIT A



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

SEP 18 2015

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

*VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED*

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

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

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

Re: Notice of Violation

Dear Mr. Geanacopoulos and Mr. Johnson:

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

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

Law Governing Alleged Violations

This NOV arises under Part A of Title II of the CAA, 42 U.S.C. §§ 7521–7554, and the regulations promulgated thereunder. In creating the CAA, Congress found, in part, that “the increasing use of motor vehicles . . . has resulted in mounting dangers to the public health and welfare.” CAA § 101(a)(2), 42 U.S.C. § 7401(a)(2). Congress’ purpose in creating the CAA, in part, was “to protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare and the productive capacity of its population,” and “to initiate and accelerate a national research and development program to achieve the prevention and control of air pollution.” CAA § 101(b)(1)–(2), 42 U.S.C. § 7401(b)(1)–(2). The CAA and the regulations promulgated thereunder aim to protect human health and the environment by reducing emissions of nitrogen oxides (NOx) and other pollutants from mobile sources of air pollution. Nitrogen oxides are a family of highly reactive gases that play a major role in the atmospheric reactions with volatile organic compounds (VOCs) that produce ozone (smog) on hot summer days. Breathing ozone can trigger a variety of health problems including chest pain, coughing, throat irritation, and congestion. Breathing ozone can also worsen bronchitis, emphysema, and asthma. Children are at greatest risk of experiencing negative health impacts from exposure to ozone.

The EPA’s allegations here concern light-duty motor vehicles for which 40 C.F.R. Part 86 sets emission standards and test procedures and section 203 of the CAA, 42 U.S.C. § 7522, sets compliance provisions. Light-duty vehicles must satisfy emission standards for certain air pollutants, including NOx. 40 C.F.R. § 86.1811-04. The EPA administers a certification program to ensure that every vehicle introduced into United States commerce satisfies applicable emission standards. Under this program, the EPA issues certificates of conformity (COCs), and thereby approves the introduction of vehicles into United States commerce.

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

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

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

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

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

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

Alleged Violations

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

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

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

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

VW's "road calibration" and "switch" are AECDs¹ that were neither described nor justified in the applicable COC applications, and are illegal defeat devices. Therefore each vehicle identified by the table below does not conform in a material respect to the vehicle specifications described in the COC application. As such, VW violated section 203(a)(1) of the CAA, 42 U.S.C. § 7522(a)(1), each time it sold, offered for sale, introduced into commerce, delivered for introduction into commerce, or imported (or caused any of the foregoing with respect to) one of the hundreds of thousands of new motor vehicles within these test groups. Additionally, VW

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

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

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

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

Enforcement

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

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

^[1] \$2,750 for violations occurring prior to January 13, 2009.

^[2] \$32,500 for violations occurring prior to January 13, 2009.

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

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

Sincerely,

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

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

Copy:

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

EXHIBIT B

ARB LETTER TO VW



Matthew Rodriguez
Secretary for
Environmental Protection

Air Resources Board

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



Edmund G. Brown Jr.
Governor

Reference No. IUC-2015-007

September 18, 2015

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

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

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

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

Dear Mr. Geanacopoulos and Mr. Johnson:

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

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our website: <http://www.arb.ca.gov>.

California Environmental Protection Agency

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Exhibit B
Page 10

Mr. Geanakopoulos and Mr. Johnson:
September 18, 2015
Page 2

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

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

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

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

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

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Exhibit B
Page 11

Mr. Geanacopoulos and Mr. Johnson:
September 18, 2015
Page 3

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

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

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

Sincerely,



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

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

Mr. Linc Wehrly, Director
Environmental Protection Agency
Light-Duty Vehicle Center
2000 Traverwood Drive
Ann Arbor, MI 48105

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

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Exhibit B
Page 12

EXHIBIT C

A

Get from A to B. But don't forget to stop at points C, M, and Z. And of course Toledo.

A car that can drive a long way should still make you want to, well, drive it a long way. Volkswagen TDI Clean Diesel is the line of high-mileage vehicles that lets you stop at the filling station less often, so you can spend more time enjoying all the paths you take. And with six models in the TDI family, there's an enjoyable high-mileage vehicle for everyone.



Volkswagen
TDI® Clean Diesel



Joyride further.

TDI vehicles use clean diesel fuel and advanced engineering to achieve up to 43 miles per gallon with a range of up to 795 miles. That's up to 30% better fuel economy than comparable gas engines. You'll probably notice it when you take up to 30% fewer trips to the pump. Visit thinkblue.volkswagen.com to learn driving tips that can help you save even more fuel.

High mileage doesn't mean low fun.

Get better fuel economy without sacrificing the joy of driving. With a Volkswagen TDI vehicle, you'll get the performance, style, safety, and quality of a turbocharged German vehicle. It's just that you'll get those qualities in a high-mileage vehicle.



Not that kind of diesel.

These are not the kind of diesel engines that you find spewing sooty exhaust like an old 18-wheeler. Clean diesel vehicles meet the strictest EPA standards in the U.S. Plus, TDI technology helps reduce sooty emissions by up to 90%, giving you a fuel-efficient and eco-conscious vehicle.



Think Blue.®

Think beyond green. TDI represents one part of the Volkswagen Think Blue initiative, our goal of creating and encouraging eco-conscious products and behaviors. Join us in being more responsible on the road and on the planet.

Exhibit C
Page 14

That's the Power of German Engineering. Das Auto.



Volkswagen offers more clean diesel vehicles than any other manufacturer.
With six models, there's a TDI option for every driver.

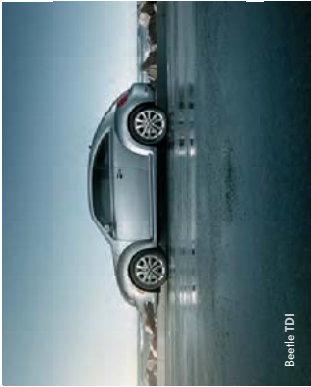
Jetta TDI • Jetta SportWagen TDI • Golf TDI
Passat TDI • Beetle TDI • Touareg TDI



Das Auto.

VW.COM

*2013 Beetle 2.5L 16V Clean Diesel, manual transmission, 28 city/41 highway mpg. 2013 Jetta 2.5L 16V Clean Diesel, manual transmission, 28 city/41 highway mpg. 2013 Jetta SportWagen 2.5L 16V Clean Diesel, manual transmission, 28 city/41 highway mpg. 2013 Golf TDI 2.0L 16V Clean Diesel, manual transmission, 30 city/41 highway mpg. 2013 Passat TDI 2.0L 16V Clean Diesel, manual transmission, 30 city/41 highway mpg. 2013 Touareg TDI 3.0L V6 Clean Diesel, manual transmission, 24 city/34 highway mpg. 2013 Beetle TDI 2.0L 16V Clean Diesel, manual transmission, 30 city/41 highway mpg. 2013 Jetta TDI 2.0L 16V Clean Diesel, manual transmission, 30 city/41 highway mpg. 2013 Jetta SportWagen TDI 2.0L 16V Clean Diesel, manual transmission, 30 city/41 highway mpg. 2013 Golf TDI 2.0L 16V Clean Diesel, manual transmission, 30 city/41 highway mpg. 2013 Passat TDI 2.0L 16V Clean Diesel, manual transmission, 30 city/41 highway mpg. 2013 Touareg TDI 3.0L V6 Clean Diesel, manual transmission, 24 city/34 highway mpg. EPA estimates. For mileage and fuel economy, visit www.vw.com.



Results may vary greatly. And awesomely.

Maybe even enough to double the range of a Passat. Mileage experts John and Helen Taylor recently did just that when they went almost halfway across the country on a single tank of diesel fuel. We gave the Taylors a 2012 Volkswagen Passat TDI SE for their trip and they drove it from Houston, TX, to Sterling, VA, on one tank of diesel – that's 1,626.1 miles at a whopping 84.1 miles per gallon. And we thought 43 highway miles per gallon was impressive!



Exhibit C
Page 15

EXHIBIT D



Release 08-55
FOR IMMEDIATE RELEASE
 June 19, 2008

Dimitri Stanich
 (916)322-2825
www.arb.ca.gov

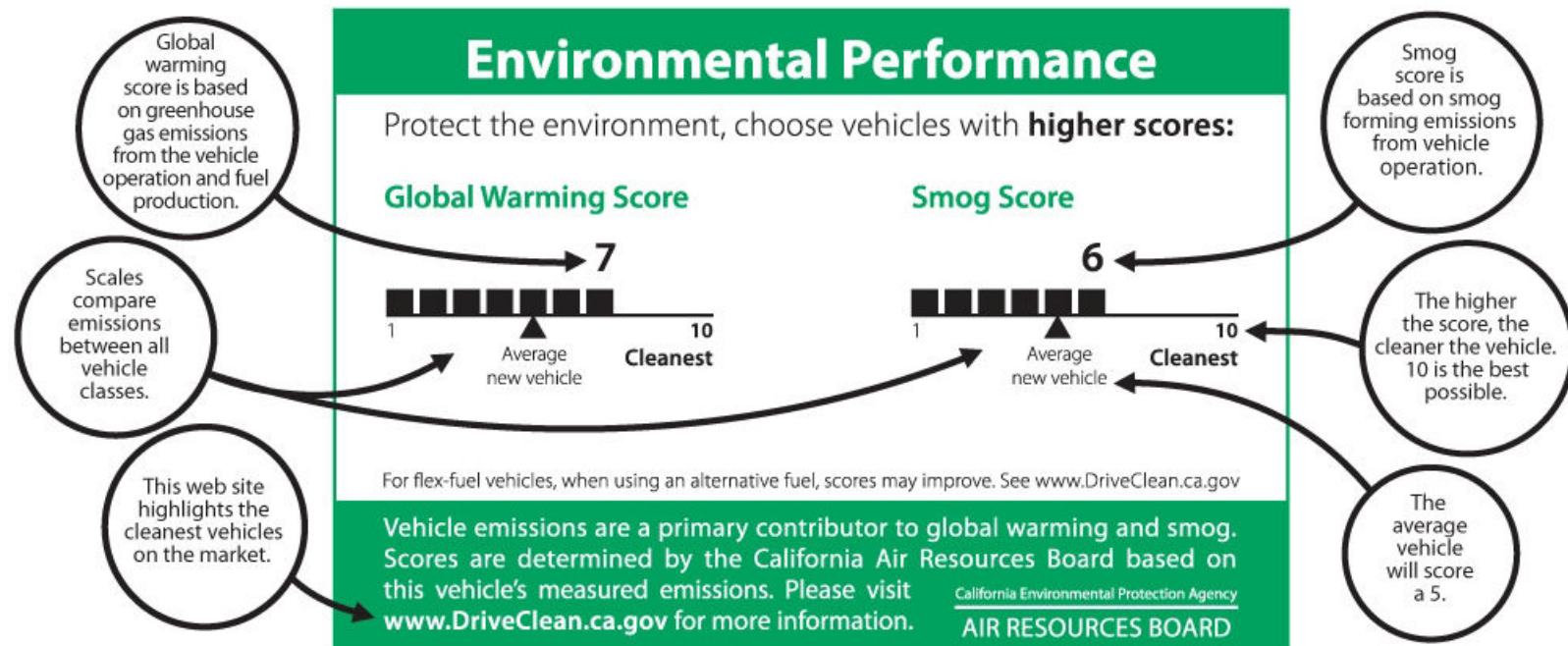
New car label makes it easier to choose clean, efficient transportation
Smog and global warming impacts posted for all to compare

SACRAMENTO: Beginning January 1, 2009 all new cars sold in California will carry a label which clearly informs consumers of the state's assessment of the vehicle's environmental impact.

The new regulation signed into law this week by the Secretary of State, creates a simple ranking system that will provide consumers with practical information that can be used to choose the most environmentally friendly vehicle that meets their transportation needs. Showroom models could start showing these labels as early as July 2008.

"This label will arm consumers with the information they need to choose a vehicle that saves gas, reduces greenhouse gas emissions and helps fight smog all at once," said Mary Nichols. "Consumer choice is an especially powerful tool in our fight against climate change. We look forward to seeing these stickers on 2009 model cars as they start hitting the showrooms in the coming months."

The environmental performance label will provide two scores on a scale of 1-10, a Smog Score and a Global Warming Score. The average new car will score five on both scales. The higher the score the less impact the car has on the environment. The California Air Resources Board also hosts a consumer web site, www.DriveClean.ca.gov, that provides information on the cleanest, most efficient cars on the market.



The Air Resources Board is a department of the California Environmental Protection Agency. ARB's mission is to promote and protect public health, welfare, and ecological resources through effective reduction of air pollutants while recognizing and considering effects on the economy. The ARB oversees all air pollution control efforts in California to attain and maintain health based air quality standards.

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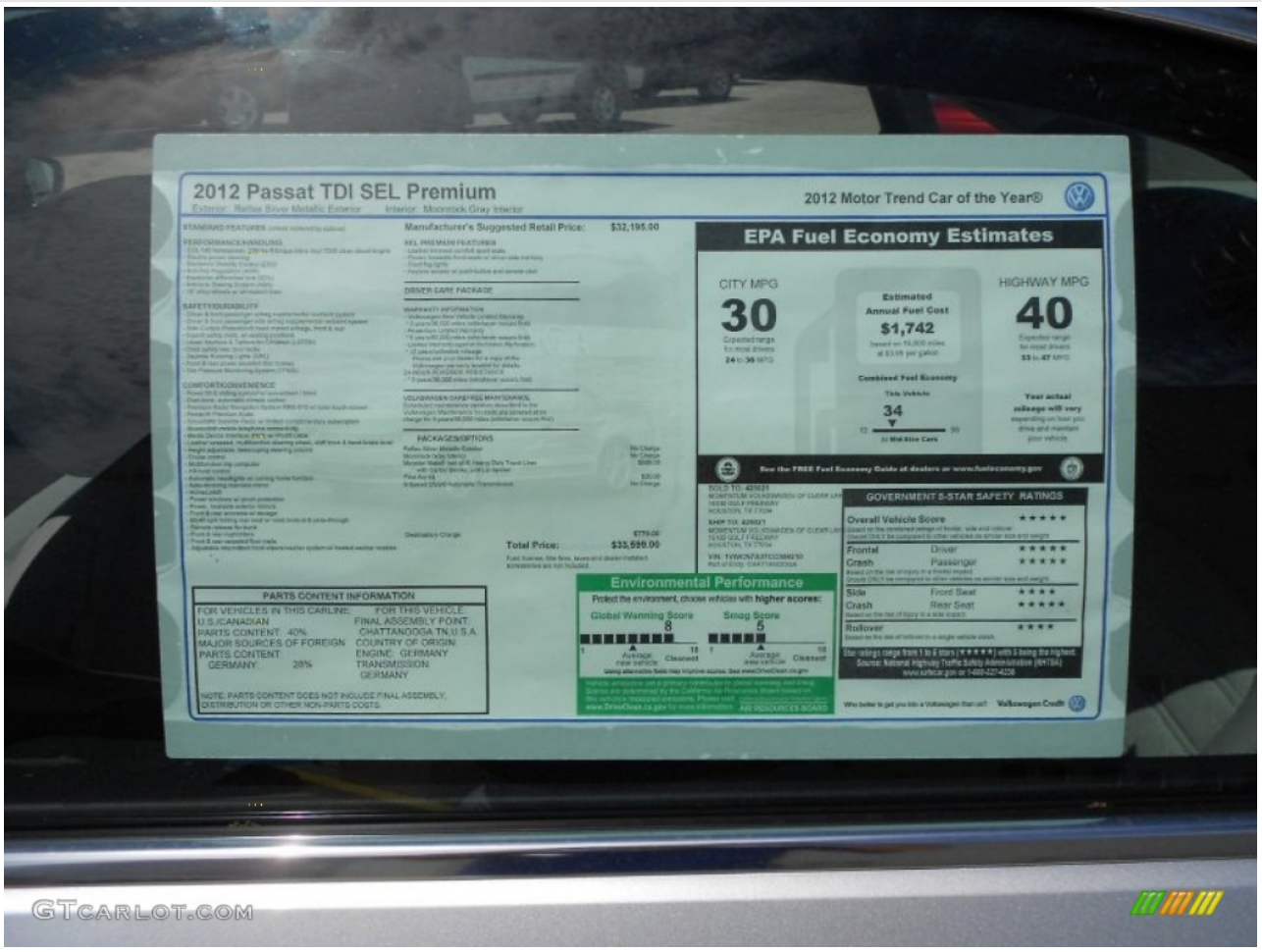
EXHIBIT E

(/)

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2012 Volkswagen Passat TDI SEL Window Sticker Photo #62697023



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