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10 Attorneys for Plaintiff and the Class

11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**
13 **WESTERN DIVISION**

15 RICH HILL, individually and on
behalf of all others similarly
16 situated,

17 Plaintiff,

18 v.

19 VOLKSWAGEN GROUP OF
AMERICA, INC., a New Jersey
Corporation, and DOES 1 through
20 50, inclusive

21 Defendants.

Case No.

CLASS ACTION

COMPLAINT FOR:

1) FRAUD BY CONCEALMENT

2) BREACH OF CONTRACT

**3) VIOLATION OF THE CALIFORNIA
UNFAIR COMPETITION LAW [CAL.
BUS. & PROF. CODE § 17200, et seq.];**

**4) FALSE ADVERTISING [CAL. BUS. &
PROF. CODE § 17500, et seq.];**

**5) VIOLATION OF CALIFORNIA
CONSUMER LEGAL REMEDIES
ACT [CAL. CIV. CODE § 1750, et seq.];**

**6) BREACH OF EXPRESS
WARRANTY [CAL. COM. CODE § 2313]**

**7) VIOLATION OF SONG-BEVERLY
CONSUMER WARRANTY ACT [CAL.
CIV. CODE §§ 1791.1 & 1792]**

JURY TRIAL DEMANDED

1 Volkswagen's United States Division gave the following confession: "Let's be
2 clear about this. Our company was dishonest. With the EPA, and the California Air
3 Resources Board, and with all of you. And in my German words, we have totally
4 screwed up."

5 7. Volkswagen was able to fool consumers and regulatory bodies by
6 using what is called a "defeat device." The defeat device is secretly added to the
7 vehicle's software and can detect when the vehicle is being tested for emissions.
8 During that time, the vehicle's emission control systems engage and minimize
9 pollution to ensure that the vehicle passes the emissions test. However, as soon as
10 the vehicle returns to everyday driving, the defeat device disengages certain
11 emission controls, which increases performance but causes the vehicle to illegally
12 emit up to 40 times the legal limit of certain pollutants.

13 8. Volkswagen installed these defeat devices into over 482,000
14 "CleanDiesel" vehicles to evade state and federal clean air standards by concealing
15 the vehicles' emission of nitrogen oxide, which contributes to the creation of ozone
16 and smog. The full extent to which Volkswagen installed the defeat devices in its
17 vehicles is not yet clear, as it admitted on September 22, 2015 that it had installed
18 such devices in over 11 million of its vehicles worldwide.

19 9. On September 18, 2015, the United States Environmental Protection
20 Agency ("EPA") sent a Notice of Violation ("NOV") to Volkswagen concluding
21 that Volkswagen violated the Clean Air Act ("CAA") by manufacturing and
22 installing defeat devices in certain model year 2009 through 2015 diesel vehicles.

23 10. Also on September 18, 2015, the California Air Resources Board
24 ("CARB") notified Volkswagen that it initiated "an enforcement investigation of
25 VW regarding all model-year 2009 through 2015 light-duty diesel vehicles
26 equipped with 2.0 liter engines." CARB's discussions with Volkswagen
27 "culminated in VW's admission in early September 2015 that it has, since model
28

1 year 2009, employed a defeat device to circumvent CARB and the EPA emission
2 test procedures.”

3 11. Volkswagen knew what was right, but then did the opposite. In its
4 2014 Sustainability Report, Volkswagen states, “In the long term, a company can
5 only be successful if it acts with integrity, complies with statutory provisions
6 worldwide and stands by its voluntary undertakings and ethical principles even
7 when this is the harder choice.” Yet when faced with the seemingly simple choice
8 of honesty to consumers and regulators or engaging in illegal conduct that deceives
9 regulators and rips off consumers, Volkswagen chose the latter.

10 12. The federal and state investigations of Volkswagen are ongoing, and it
11 has been reported that Volkswagen could be facing civil penalties of over \$18
12 billion and criminal charges for its illegal and deceptive conduct.

13 **PARTIES**

14 **A. Plaintiff**

15 13. Plaintiff Rich Hill is a resident of Ventura County, California. Mr.
16 Hill purchased a 2015 Volkswagen Golf Sportwagen Diesel.

17 14. Mr. Hill’s purchased the 2015 Volkswagen Golf Sportwagen Diesel
18 based in part on its emissions ratings. He would not have purchased the vehicle or
19 would have paid significantly less had he known about the defeat device and that
20 the vehicle did not pass state and federal emissions standards.

21 **B. Defendant**

22 15. Volkswagen Group of America, Inc. is a New Jersey corporation. Its
23 principal place of business is located at 2200 Ferdinand Porsche Drive, Herndon,
24 Virginia 20171. At all times relevant to this action, Volkswagen operated in all 50
25 states plus the District of Columbia.

26 16. At all relevant times, Volkswagen and/or its agents designed,
27 manufactured, distributed, sold, leased, and warranted the Defective Vehicles under
28 the Volkswagen and Audi brand names throughout the United States. Volkswagen

1 and/or its agents designed the CleanDiesel engines, including the defeat device.
2 Volkswagen also developed and distributed the vehicles' owners' manuals,
3 advertisements, and other promotional materials relating to the vehicles.
4

5 FACTUAL ALLEGATIONS

6 A. Volkswagen's "CleanDiesel" Engine

7 17. Volkswagen installed the defeat device in the diesel models of at least
8 the following vehicles (collectively, "Defective Vehicles"):

- 9 a. Jetta (Model Years 2009-2015)
- 10 b. Beetle (Model Years 2009-2015)
- 11 c. Audi A3 (Model Years 2009-2015)
- 12 d. Golf (Model Years 2009-2015)
- 13 e. Passat (Model Years 2014-2015)

14 18. To win over consumers skeptical of diesel engines, Volkswagen
15 launched an intensive marketing campaign that branded the engines as
16 "CleanDiesel" and touted their "extreme efficiency," "turbocharged power," and
17 "eco-conscious[ness]."

18 19. For example, Volkswagen's website claimed: "This ain't your
19 daddy's diesel. Stinky, smoky, and sluggish. Those old diesel realities no longer
20 apply. Enter TDI Clean Diesel. Ultra-low-sulfur fuel, direct injection technology,
21 and extreme efficiency. We've ushered in a new era of diesel."

22 20. Volkswagen's website also preached that "Efficiency isn't just a word.
23 It's our philosophy. Our commitment to making vehicles that are eco-conscious is
24 part of bigger thinking. Because by building efficient vehicles that people actually
25 want to drive, we're also building a better future for all of us." Consistent with that
26 purported philosophy, a Volkswagen advertisement for the Jetta concluded with the
27 following tag-line: "Ultra low emissions. Jetta TDI Clean Diesel."
28

1 21. On the “Environment” page of its website, Volkswagen states that it
2 takes “environmental responsibility very seriously. When it comes to making our
3 cars as green as possible, Volkswagen has an integrated strategy focused on
4 reducing fuel consumption and emissions, building the world’s cleanest diesel
5 engines and developing totally new power systems, which utilize new fuel
6 alternatives.”

7 22. Volkswagen also sought to distinguish polluting diesels from its
8 “CleanDiesel” technology. One of its advertisements represented: “These are not
9 the kind of diesel engines that you find spewing sooty exhaust like an old 18-
10 wheeler. Clean diesel vehicles meet the strictest EPA standards in the U.S. Plus,
11 TDI technology helps reduce sooty emissions by up to 90%, giving you a fuel-
12 efficient and eco-conscious vehicle.”

13 23. Volkswagen boasted that its advertising campaign for “CleanDiesels”
14 was effective. In March 2013, Volkswagen released the results of its first annual
15 “Clean Diesel IQ Survey,” and noted that “[t]he survey found that clean diesel
16 drivers have an overwhelming commitment to clean diesel vehicles and are acutely
17 aware of its benefits[.]”

18 24. A few months later in August 2013, Volkswagen issued a press release
19 announcing a new “Clean Diesel engine.” Volkswagen’s General Manager of its
20 Energy and Environmental Office reported that “[t]he Volkswagen Group is a
21 leader in clean diesel technology,” and that with the introduction of the new engine,
22 “we are excited that our family of TDI Clean Diesel vehicles is continuing to
23 improve and will be even more clean, fuel efficient and powerful.”

24 25. And a brochure on the “all-new Audi A3 TDI Sedan” represented: “It
25 is a diesel without compromise, exactly the kind you should expect from Audi TDI
26 clean diesel.”

27
28

1 26. All of these representations are false. The diesel engines at issue in the
2 representations secretly contained the defeat devices and fail both state and federal
3 emissions standards, spewing up to 40 times the legal limit of nitrogen oxide.

4 27. Volkswagen marketed its CleanDiesel vehicles specifically to a market
5 willing to pay a *premium* for clean, efficient, and eco-friendly vehicles, and yet the
6 vehicles at issue cannot even pass state and federal emission standards. And
7 Volkswagen knew or should have known that its representations are false because it
8 designed and implemented the defeat devices to evade scrutiny by state and federal
9 regulators and trusting consumers.

10 28. The premium that Volkswagen charged for the Defective Vehicles is
11 significant. For example, for the 2015 Volkswagen Jetta, the base S model with a
12 gasoline engine has a starting MSRP of \$18,780 while the base TDI S CleanDiesel
13 has a starting MSRP of \$21,640, a price premium of \$2,860 or over 15%. And for
14 the highest trim Jetta model, the price premium is even higher. The Jetta SE has a
15 starting MSRP of \$20,095 while the CleanDiesel TDI SEL MSRP is \$26,410,
16 which is over 31% higher.

17 29. The price premiums that Volkswagen charged for “CleanDiesel”
18 engines occur across all models of Defective Vehicles, as shown by the table
19 below:

21 Model	Base Trim	Mid-Level Trim	Top-Line Trim
22 VW Jetta	\$2,860	\$4,300	\$6,315
23 VW Beetle	\$4,635	n/a	\$2,640
24 VW Golf	\$2,950	\$1,000	\$1,000
25 VW Passat	\$5,755	\$4,750	\$6,855
26 Audi A3	\$2,805	\$3,095	\$2,925

1 30. Volkswagen has now removed many of its “CleanDiesel”
2 advertisements from the Internet. For example, the “Diesel Old Wives’ Tales”
3 video advertisement on Volkswagen’s YouTube page was removed at
4 Volkswagen’s request, according to a media report. And the same article reported
5 that “a large number of other videos concerning diesels appears to have been
6 removed as well. Its ‘TV Commercials’ playlist now not only features missing
7 gaps where videos were deleted, but also where videos have been set to private by
8 the company.” The author noted, “The obvious implication is that Volkswagen’s
9 been scrubbing all of its promotional work for its diesel technology in the wake of
10 its use of defeat devices for EPA smog tests.”

11
12 **B. Volkswagen Evasion of State and Federal Emissions Standards**

13 31. The Clean Air Act seeks to protect human health and the environment
14 by reducing emissions of nitrogen oxides and other pollutants from mobile sources
15 of air pollution, such as vehicles. Nitrogen oxides are a family of highly reactive
16 gases that play a major role in the atmospheric reactions with volatile organic
17 compounds. Nitrogen oxide pollution contributes to nitrogen dioxide, ground-level
18 ozone, and fine particulate matter, and exposure to these pollutants has been linked
19 to a range of serious health effects, including increased asthma attacks and other
20 respiratory illnesses that can be serious enough to send people to the hospital.
21 Exposure to ozone and particulate matter have been associated with premature
22 death due to respiratory-related or cardiovascular-related effects.

23 32. The Clean Air Act requires vehicle manufacturers to certify to the EPA
24 that their products will meet applicable federal emission standards to control air
25 pollution, and every vehicle sold in the United States must be covered by an EPA-
26 issued certificate of conformity. Specifically, 40 C.F.R. Part 86 sets emission
27 standards and test procedures and section 203 of the CAA, 42 U.S.C. § 7522, sets
28

1 compliance provisions. Light-duty vehicles must satisfy emission standards for
2 certain air pollutants, including nitrogen oxides. 40 C.F.R. § 86.1811-04.

3 33. To obtain the required certification, a vehicle manufacturer must
4 submit a certificate of conformity application to the EPA for each test group of
5 vehicles that it intends to enter into United States commerce. The certificate of
6 conformity application must identify all auxiliary emission control devices installed
7 on the vehicles and include a justification for each explaining why it is not a defeat
8 device, which is defined as an auxiliary emission control device “that reduces the
9 effectiveness of the emission control system under conditions which may
10 reasonably be expected to be encountered in normal vehicle operation and use[.]”
11 Vehicles with defeat devices cannot be certified.

12 34. On September 18, 2015, the EPA issued a press release reporting the
13 issuance of a Notice of Violation alleging that over 482,000 four-cylinder
14 Volkswagen and Audi diesel vehicles from model years 2009-2015 include
15 software that circumvents EPA emission standards for certain air pollutants. The
16 EPA described the Volkswagen defeat devices as follows:

17 “Specifically, VW manufactured and installed software in the electronic
18 control module (ECM) of these vehicles that sensed when the vehicle was
19 being tested for compliance with EPA emission standards. For ease of
20 reference, the EPA is calling this the ‘switch.’ The ‘switch’ senses whether
21 the vehicle is being tested or not based on various inputs including the
22 position of the steering wheel, vehicle speed, the duration of the engine’s
23 operation, and barometric pressure. These inputs precisely track the
24 parameters of the federal test procedure used for emission testing for EPA
25 certification purposes. During EPA emission testing, the vehicles’ ECM ran
26 software which produced compliant emission results under an ECM
27 calibration that VW referred to as the ‘dyno calibration’ (referring to the
28 equipment used in emission 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

1 increased by a factor of 10 to 40 times above the EPA compliant levels,
2 depending on the type of drive cycle (e.g., city, highway).”

3 35. The EPA and CARB were first alerted to potential emissions problems
4 with the Defective Vehicles in May 2014 when the West Virginia University’s
5 Center for Alternative Fuels, Engines & Emissions published results of a study that
6 found significantly higher in-use emissions from a 2012 Jetta and a 2013 Passat.
7 Despite the study, Volkswagen continued to assert to the EPA and CARB that the
8 increased emissions were caused by various technical issues and unexpected in-use
9 conditions, and it issued a voluntary recall in December 2014 to address the issue.
10 However, CARB’s follow-up testing showed only a limited benefit to the recall.
11 Only when it became clear that the EPA and CARB would not approve certificates
12 of conformity for Volkswagen’s 2016 model year diesel vehicles until Volkswagen
13 could adequately explain the high emissions and ensure that the 2016 model year
14 vehicles would not have similar issues, did Volkswagen admit it had designed and
15 installed a defeat device in these vehicles.

16 36. The EPA found that Volkswagen “knew or should have known that its
17 ‘road calibration’ and ‘switch’ together bypass, defeat, or render inoperative
18 elements of the vehicle design related to compliance with the CAA emission
19 standards. This is apparent given the design of these defeat devices.”

20 37. The EPA’s Notice of Violation concluded that by making and selling
21 vehicles with defeat devices that allowed for higher levels of emissions during
22 every-day driving than were certified to EPA, Volkswagen violated two provisions
23 in the Clean Air Act. First, these defeat devices bypassed, defeated, or rendered
24 inoperative elements of the vehicles’ emission control system that exist to comply
25 with the Clean Air Act emission standards. As a result, the EPA concluded that
26 Volkswagen violated section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B).
27 Second, as a result of the presence of the defeat devices in the vehicles, they do not
28 conform in all material respects to the vehicle specifications described in the

1 applications for the certificates of conformity that purportedly cover them.
2 Accordingly, Volkswagen “violated section 203(a)(1) of the CAA, 42 U.S.C. §
3 7522(a)(1) by selling, offering for sale, introducing into commerce, delivering for
4 introduction into commerce, or importing these vehicles, or for causing any of the
5 foregoing acts.”

6 38. The EPA made clear that “[u]sing a defeat device in cars to evade
7 clean air standards is illegal and a threat to public health.” It described
8 Volkswagen’s defeat device as resulting “in cars that meet emissions standards in
9 the laboratory or testing station, but during normal operation, emit nitrogen oxides,
10 or NOx, at up to 40 times the standard.”

11 39. CARB also issued a letter on September 18, 2015 informing
12 Volkswagen that it had initiated an enforcement investigation regarding all model-
13 year 2009 through 2015 light-duty diesel vehicles equipped with 2.0 liter engines.
14 CARB recounted Volkswagen’s admission concerning the defeat devices:

15
16 “During a meeting on September 3, 2015, VW admitted to CARB and EPA
17 staff that these vehicles were designed and manufactured with a defeat device
18 to bypass, defeat, or render inoperative elements of the vehicles’ emission
19 control system. This defeat device was neither described nor justified in the
20 certification applications submitted to EPA and CARB. Therefore, each
21 vehicle so equipped would not be covered by a valid federal Certificate of
22 Conformity (COC) or CARB Executive Order (EO) and would be in
23 violation of federal and state law.”

24
25 40. Volkswagen knew what was right, but then did the opposite. In its
26 2014 Sustainability Report, Volkswagen states, “In the long term, a company can
27 only be successful if it acts with integrity, complies with statutory provisions
28 worldwide and stands by its voluntary undertakings and ethical principles even

1 when this is the harder choice.” Yet when faced with the seemingly simple choice
2 of honesty to consumers and regulators or engaging in illegal conduct that deceives
3 regulators and rips off consumers, Volkswagen chose the latter.

4 41. Volkswagen merely paid lip-service to its claim that “Climate
5 protection is at the heart of the Group’s environmental management philosophy,
6 spanning every stage of the value creation process.” Its defeat device fooled
7 consumers into paying more for a vehicle that was purportedly “eco-conscious”
8 when in fact they received a vehicle that produced emissions up to 40 times the
9 legal limit.

10 42. Even if Volkswagen recalls the Defective Vehicles to remove the
11 defeat device so they comply with EPA and state emissions regulations, Plaintiff
12 and other Class Members have and will continue to suffer significant harm. For
13 example, Volkswagen will not be able to make the Defective Vehicles comply with
14 emissions standards without substantially degrading their performance
15 characteristics, including horsepower and efficiency. As a result, even if
16 Volkswagen is able to make Plaintiff and other Class Members’ Defective Vehicles
17 compliant with federal and state emissions standards, Plaintiff and Class Members
18 will suffer actual harm and damages because their vehicles will no longer perform
19 as they did when purchased and as advertised.

20 43. In addition, Volkswagen’s use of the defeat device will necessarily
21 result in a diminution in value of every Defective Vehicle. Not only did Plaintiff
22 and other Class Members over pay for vehicles now worth substantially less, but
23 they will also pay more to fuel their less efficient vehicles over the years they own
24 or lease their vehicles.

1 agents, representatives, their family members, and members of the Court and its
2 staff.

3 49. Plaintiff does not assert claims in this action for any personal injuries
4 caused by increased emissions in question here. Rather, plaintiff, individually and
5 on behalf of the other Class members, seeks solely economic and injunctive relief
6 as a result of their purchase of Defective Vehicles.

7 50. The members of the Class are so numerous that joinder of all members
8 would be impracticable. Plaintiff does not know the exact size or identities of the
9 members of the proposed class because such information is in the exclusive control
10 of Volkswagen. The proposed Class likely includes hundreds of thousands of
11 members dispersed across the United States. The precise number of Class Members
12 can be ascertained through discovery, which will include records of Volkswagen's
13 sales, and other records and documents.

14 51. Based on the cost of the Vehicles, plaintiff believes the amount in
15 controversy exceeds \$5 million.

16 52. There are common questions of law and fact that predominate over any
17 questions affecting only individual Class members. These common legal and
18 factual questions, include, but are not limited to:

- 19 a. Whether the sale and lease of the Defective Vehicles violate state
20 and federal emissions standards;
- 21 b. Whether Volkswagen falsely labeled and advertised its Defective
22 Vehicles as being clean, eco-conscious, and compliant with state
23 and federal emission standards;
- 24 c. Whether any false representations regarding state and federal
25 emissions compliance were made knowingly and willfully;
- 26 d. Whether Volkswagen concealed and omitted material facts from its
27 communications with and disclosure to all class members regarding
28 the Defective Vehicles' compliance with state and federal

- 1 emissions standards;
- 2 e. Whether the CleanDiesel engines in the Defective Vehicles can be
- 3 made to comply with EPA and state emissions standards without
- 4 substantially degrading the performance and/or efficiency of the
- 5 Defective Vehicles;
- 6 f. Whether Volkswagen breached express warranties to class
- 7 members regarding the Defective Vehicles;
- 8 g. Whether Volkswagen’s misrepresentations or omissions constitute
- 9 unfair or deceptive practices under the California Unfair
- 10 Competition Law (“UCL”);
- 11 h. Whether Volkswagen’s representations that its Defective Vehicles
- 12 comply with state and federal emissions standards violate the
- 13 California False Advertising Law (“FAL”);
- 14 i. Whether Volkswagen’s conduct entitles Class Members to
- 15 injunctive relief under the Consumer Legal Remedies Act
- 16 (“CLRA”);
- 17 j. Whether the above practices caused Class members to suffer injury;
- 18 and
- 19 k. The proper measure of damages and the appropriate injunctive
- 20 relief.

21 53. Plaintiff’s claims are typical of the claims of the other Class Members.
22 Plaintiff and each of the other Class Members were exposed to the same uniform
23 misconduct and have been injured by the same wrongful practices of Volkswagen.

24 54. Plaintiff’s claims arise from the same practices and course of conduct
25 that give rise to the other Class Members’ claims and are based on the same legal
26 theories. Plaintiff will fully and adequately assert and protect the interests of the
27 other Class Members. In addition, plaintiff has retained class counsel who are
28 experienced and qualified in prosecuting class action cases similar to this one.

1 Neither plaintiff nor his attorneys have any interests contrary to or conflicting with
2 other Class members' interests.

3 55. A class action is the superior method for the fair and efficient
4 adjudication of plaintiff and the Class' claims against Volkswagen since joinder of
5 all of the members of the Class is impractical. Also, the adjudication of the
6 controversy through a class action will avoid the possibility of inconsistent and
7 potentially conflicting results. Given the similarity of the facts and claims at issue,
8 there will be no difficulty in the management of this action as a class action.

9
10 **STATUTE OF LIMITATIONS**

11 **A. Fraudulent Concealment Tolling**

12 56. Upon information and belief, Volkswagen has known that its
13 Defective Vehicles do not comply with state and federal emissions standards for
14 years, and has actively concealed from and failed to notify plaintiff, Class
15 Members, and the public of the true emission levels of its Defective Vehicles. Any
16 applicable statutes of limitation have been tolled by Volkswagen's knowing, active,
17 ongoing concealment of the defeat device and denial of the facts as alleged herein.
18 Plaintiff and the members of the Class have been kept ignorant by Volkswagen of
19 vital information essential to the pursuit of these claims, without any fault or lack of
20 diligence on their part. Plaintiff and the members of the Class could not reasonably
21 have discovered that Volkswagen's vehicles fail state and federal emissions
22 standards. Volkswagen has now admitted that it was dishonest with the EPA, the
23 CARB, and with its consumers.

24 **B. Estoppel**

25 57. Volkswagen was and is under a continuing duty to disclose to plaintiff
26 and the members of the Class the true character, quality, and nature of its Defective
27 Vehicle emissions. Volkswagen knowingly and affirmatively misrepresented and
28 actively concealed the true character and quality of its Defective Vehicles. Plaintiff

1 reasonably relied upon Volkswagen's knowing and affirmative misrepresentations
2 and/or active concealment. Based on the foregoing, Volkswagen is estopped from
3 relying on any statutes of limitation in defense of this action.

4 **C. Discovery Rule**

5 58. The causes of action alleged herein did not accrue until plaintiff and
6 the proposed class members discovered their Defective Vehicles do not comply
7 with state and federal emissions standards. Plaintiff and the proposed class
8 members had no realistic ability to discovery that the Defective Vehicles are
9 defective until—at the earliest—the EPA and CARB sent notices to Volkswagen
10 concerning their misconduct on September 18, 2015. Not only did Volkswagen fail
11 to notify plaintiff or the proposed class members about its Defective Vehicle's non-
12 compliance with state and federal emissions standards, Volkswagen denied any
13 wrongdoing and continued to assert to CARB and the EPA that the increased
14 emissions from the Defective Vehicles could be attributed to various technical
15 issues and unexpected driving conditions. Only recently did Volkswagen finally
16 admit that the increased emissions were caused by a Defeat Device that it had
17 secretly designed and installed in the Defective Vehicles. Thus plaintiff and the
18 proposed class members were not reasonably able to discover the Defective
19 Vehicle's non-compliance until well after they had purchased the Defective
20 Vehicles, despite their exercise of due diligence, and their causes of action did not
21 accrue until they discovered that their Defective Vehicles failed to comply with
22 state and federal emissions standards.

23
24 **CAUSES OF ACTION**

25 **FIRST CLAIM FOR RELIEF**

26 **FRAUD BY CONCEALMENT**

27 59. Plaintiff re-alleges and incorporates all paragraphs set forth above as
28 though fully set forth herein.

1 60. Volkswagen intentionally concealed and suppressed material facts
2 about the actual quality and character of the Defective Vehicles. As alleged above,
3 Volkswagen designed and installed a secret defeat device in the Defective Vehicles
4 to defraud consumers and fool state and federal emissions regulators. While
5 Volkswagen represented to consumers that the Defective Vehicles were “eco-
6 conscious,” “CleanDiesel,” and operated with “extreme efficiency,” the opposite
7 was true. The Defective Vehicles cannot even satisfy state and federal emission
8 standards, emitting up to 40 times more than the legal limit of certain pollutants.

9 61. The defeat device was programmed into the Defective Vehicle’s
10 software and was designed to evade detection. Volkswagen designed the defeat
11 device so that the vehicles’ emission control systems could sense when they were
12 being tested for emissions and would at that time engage emission controls. But
13 when the Defective Vehicle’s software detected that the emissions testing was
14 complete, it secretly disengaged certain features of the emission control system,
15 causing the vehicle to emit illegal level of certain pollutants.

16 62. On September 22, 2015, the head of Volkswagen’s United States
17 Division confessed, “Let’s be clear about this. Our company was dishonest. With
18 the EPA, and the California Air Resources Board, and with all of you. And in my
19 German words, we have totally screwed up.”

20 63. Plaintiff and the Class Members reasonably relied on Volkswagen’s
21 false representations. Volkswagen designed the defeat device to evade discovery
22 not only by consumers but also by state and federal emissions regulators from the
23 EPA and CARB. In fact, Volkswagen did not finally admit to installing the defeat
24 device on the Defective Vehicles until approximately six years after first selling
25 Defective Vehicles, having successfully evaded detection for all of those years.

26 64. Volkswagen’s false representations were material to consumers. Not
27 only did the representations relate to the value of the Defective Vehicles, but it also
28 concerned their compliance with state and federal emissions standards. Indeed,

1 Volkswagen's advertising campaign sought out customers who cared deeply about
2 the environment and were willing to pay a premium for a clean diesel vehicle.
3 While Volkswagen preached to consumers about its "commitment to making
4 vehicles that are eco-conscious," in fact Volkswagen cared only about boosting its
5 bottom line and maximizing corporate profits.

6 65. Volkswagen had a duty to disclose the details relating to the defeat
7 device to Plaintiff and the Class Members because the information was known
8 and/or accessible only to Volkswagen, Volkswagen had exclusive knowledge
9 relating to the design, implementation, and maintenance of the defeat device, and
10 Volkswagen knew that the facts concerning the defeat device were unknown to and
11 not reasonably discoverable by Plaintiff or the Class Members.

12 66. Volkswagen also had a duty to disclose the information because it
13 made affirmative misrepresentations concerning the qualities of its vehicles and
14 their compliance with state and federal emissions standards. Volkswagen's
15 marketing of the Defective Vehicles as "CleanDiesel," "eco-conscious," and
16 "extremely efficient," was deceptive, misleading, and incomplete without
17 disclosing the presence of the defeat device and the Defective Vehicles' actual
18 emissions. Having voluntarily provided information to Plaintiff and the Class
19 Members, Volkswagen had a duty to disclose the entire truth.

20 67. The facts that Volkswagen omitted and concealed from Plaintiff and
21 the Class Members were material. They went to the heart of Volkswagen's claim
22 that the Defective Vehicles were eco-conscious, that they complied with EPA and
23 CARB emission standards, and directly impacted the value of the Defective
24 Vehicles.

25 68. Because of Volkswagen's fraudulent concealment and/or suppression
26 of the true facts, Plaintiff and the other Class Members have sustained damages
27 because the Defective Vehicles that they own or lease are diminished in value as a
28 result of Volkswagen's concealment of the true quality and nature of the vehicle's

1 emissions. Had Plaintiff and the Class Members known the facts concerning
2 Volkswagen's evasion of federal and state emission standards, they would have
3 paid less for their vehicles or would not have purchased or leased them at all.

4 69. According, Volkswagen is liable to Plaintiff and the Class Members
5 for damages in an amount to be proven at trial.

6 70. Volkswagen's acts were done wantonly, maliciously, oppressively,
7 deliberately, with intent to defraud, and in reckless disregard of Plaintiff's and the
8 other Class Members rights and the representations that Volkswagen made to them,
9 in order to enrich Volkswagen. As a result, Volkswagen's conduct warrants an
10 assessment of punitive damages in an amount sufficient to deter such conduct in the
11 future, and in an amount to be determined according to proof.

12 71. Plaintiff and the other Class Members plead this count pursuant to the
13 law of Virginia, where Volkswagen has its headquarters. As necessary, and in the
14 alternative, Plaintiff may allege sub-classes to allege fraudulent concealment under
15 the laws of states other than Virginia based on the residences of Class Members.

16
17 **SECOND CLAIM FOR RELIEF**

18 **BREACH OF CONTRACT**

19 72. Plaintiff re-alleges and incorporates all paragraphs set forth above as
20 though fully set forth herein.

21 73. Volkswagen's misrepresentations and omissions alleged herein,
22 including its failure to disclose the existence of the defeat device caused Plaintiff
23 and the other Class Members to make their purchases or leases of the Defective
24 Vehicles. Absent those misrepresentations and omissions, Plaintiff and the other
25 Class Members would not have purchased or leased the Defective Vehicles, and/or
26 would not have purchased or leased the Defective Vehicles at the prices they paid.
27 Accordingly, Plaintiff and the Class Members overpaid for their Defective Vehicles
28 and did not receive the benefit of their bargain.

1 74. Each and every sale or lease of a Defective Vehicle constitutes a
2 contract between Volkswagen and the purchaser or lessee. Volkswagen breached
3 these contracts by selling or leasing Plaintiff and the Class Members the Defective
4 Vehicles and by misrepresenting or failing to disclose the existence of the defeat
5 device, including information known to Volkswagen rendering each Defective
6 Vehicle not emission compliant and therefore less valuable.

7 75. Plaintiff and the other Class Members fully performed their obligations
8 under the contract by paying all amounts due under the contracts.

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

13
14 **THIRD CLAIM FOR RELIEF**
15 **VIOLATION OF CALIFORNIA BUSINESS AND**
16 **PROFESSIONS CODE § 17200, et seq.**

17 77. Plaintiff re-alleges and incorporates all paragraphs set forth above as
18 though fully set forth herein.

19 78. California Business and Professions Code § 17200, et seq. prohibits
20 "unlawful, unfair, or fraudulent business act or practice." Cal. Bus. & Prof. Code
21 §§17200, 17203.

22 79. Volkswagen has engaged in unlawful business acts and/or practices by
23 selling and/or distributing Defective Vehicles in California that contain a defeat
24 device and fail EPA and CARB emission standards.

25 80. Volkswagen further engaged in unlawful business acts and/or practices
26 by representing that "Clean diesel vehicles meet the strictest EPA standards in the
27 U.S." These actions were misleading and deceptive, and violated the False
28

1 Advertising Law, California Business & Professions Code §§ 17500, et seq. and the
2 Consumer Legal Remedies Act, California Civil Code §§ 1750, et seq.

3 81. Volkswagen engaged in unlawful business acts and/or practices by
4 making untrue, deceptive, or misleading environmental marketing claims on
5 promotional materials including pages of the Volkswagen's website, in violation of
6 California's "Greenwashing" Statute, Cal. Bus. & Prof. Code § 17580.5. Such
7 claims include, but are not limited to: overstating the environmental attributes of
8 the Defective Vehicles it distributes in California. *See* Cal. Bus. & Prof. Code §
9 17580.5(a).

10 82. The acts, omissions, and practices alleged herein also constitute unfair
11 business acts and practices in that Volkswagen's conduct is immoral, unscrupulous,
12 and offends public policy by seeking to profit from the sale and lease of Defective
13 Vehicles that emit pollution in violation of California and federal law.

14 83. Plaintiff relied on Volkswagen's misrepresentations. As a direct result
15 of Volkswagen's unlawful, unfair, or fraudulent business acts and/or practices,
16 plaintiff and other Class Members suffered injury in fact and lost money or
17 property.

18 84. Volkswagen profited from its sales of its falsely and deceptively
19 advertised products to unwary customers.

20 85. Accordingly, plaintiff, on behalf of himself and all others similarly
21 situated, seek restitution, injunctive relief against Volkswagen in the form of an
22 order prohibiting Volkswagen from engaging in the alleged misconduct described
23 herein, and other relief as specifically prayed for herein.

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FOURTH CLAIM FOR RELIEF
VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS
CODE § 17500, et seq.

86. Plaintiff re-alleges and incorporates all paragraphs above as though fully set forth herein.

87. Volkswagen engaged in unlawful and/or fraudulent conduct under California Business & Professions Code §§ 17500, et seq. (“the False Advertising Law”), by engaging in the sale of the Defective Vehicles, and publically disseminating various advertisements that Volkswagen knew or reasonably should have known were untrue and misleading. Volkswagen committed such violations of the False Advertising Law with actual knowledge or knowledge fairly implied on the basis of objective circumstances.

88. Volkswagen’s advertisements, representations, and labeling as described herein were designed to, and did, result in the purchase, lease and use of the Defective Vehicles and Volkswagen profited from its sales of these products to unwary consumers.

89. Plaintiff reasonably relied on Volkswagen’s representations made in violation of California Business and Professions Code § 17500, et seq.

90. As a direct result of Volkswagen’s violations, plaintiff suffered injury in fact and lost money.

91. Accordingly, plaintiff, on behalf of himself and all others similarly situated, seek restitution and injunctive relief against Volkswagen in the form of an order prohibiting Volkswagen from engaging in the alleged misconduct described herein, and other relief as specifically prayed for herein.

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FIFTH CLAIM FOR RELIEF
VIOLATION OF CALIFORNIA CONSUMER LEGAL REMEDIES ACT,
CAL. CIV. CODE § 1750 et seq.

92. Plaintiff incorporates by reference all the above allegations as if fully set forth herein.

93. Defendant is a “person” within the meaning of California Civil Code §§ 1761(c) and 1770, and provides “goods” within the meaning of Civil Code §§ 1761(a) and 1770. Volkswagen’s customers, including plaintiff and Class members, are “consumers” within the meaning of Civil Code §§ 1761(d) and 1770. Each purchase of Volkswagen’s Defective Vehicles by plaintiff and each Class member constitutes a “transaction” within the meaning of Civil Code §§ 1761(e) and 1770.

94. Each class member purchased goods from Volkswagen that was primarily for personal, family, or household purposes.

95. The Consumer Legal Remedies Act makes it unlawful for a company to:

- a. Misrepresent the certification of goods. Cal. Civ. Code § 1770(a)(2)(3);
- b. Represent that goods have characteristics or approval which they do not have. Cal. Civ. Code § 1770(a)(5);
- c. Represent that goods are of a particular standard, quality, or grade, if they are of another. Cal. Civ. Code § 1770(a)(7);
- d. Advertise goods with intent not to sell them as advertised. Cal. Civ. Code § 1770(a)(9).
- e. Represent that the subject of a transaction has been supplied in accordance with a previous representation when it has not. Cal. Civ. Code § 1770(a)(16).

1 96. Volkswagen violated and continues to violate the above mentioned
2 provisions.

3 97. As a direct and proximate result of Volkswagen's violations, plaintiff
4 and other Class Members have suffered and are continuing to suffer irreparable
5 harm.

6 98. Volkswagen's wrongful business practices constituted, and constitute,
7 a continuing course of conduct in violation of the California Consumer Legal
8 Remedies Act because Volkswagen is still representing that the Defective Vehicles
9 have characteristics and qualifications which are false and misleading, and has
10 injured plaintiff and Class Members.

11 99. In accordance with Civil Code § 1780(a), plaintiff seeks injunctive and
12 equitable relief for Volkswagen's violations of the CLRA. In addition, after mailing
13 appropriate notice and demand in accordance with Civil Code § 1782(a) and (d),
14 plaintiff will amend this complaint to include a request for damages. Plaintiff
15 requests that this Court enter such orders or judgments as may be necessary to
16 restore to any person in interest any money which may have been acquired by
17 means of such unfair business practices, and for such other relief, including
18 attorneys' fees and costs, as provided in Civil Code §1780.

19
20 **SIXTH CLAIM FOR RELIEF**
21 **BREACH OF EXPRESS WARRANTY,**
22 **CAL. UNIFORM COM. CODE § 2313**

23 100. Plaintiff re-alleges and incorporates all paragraphs above as though
24 fully set forth herein.

25 101. Volkswagen has expressly warranted that its Defective Vehicles
26 comply with EPA and CARB emission standards and all other applicable laws and
27 regulations.
28

1 102. Volkswagen’s express warranty that its Defective Vehicles comply
2 with state and federal emission standards appears on Volkswagen’s website,
3 advertising materials, and instruction materials.

4 103. Volkswagen’s warranties became part of the basis of the bargain in
5 selling Defective Vehicles to plaintiff and other Class Members.

6 104. Volkswagen breached these express warranties by selling, and/or
7 distributing the Defective Vehicles, which fail to comply with state and federal
8 emissions standards.

9 105. Plaintiff and members of the Class paid money for vehicles that
10 complied with state and federal emissions standards. However, plaintiff and other
11 Class Members did not obtain the full value of the advertised products. If plaintiff
12 and other Class Members had known the true nature of the Defective Vehicles, they
13 would not have purchased the Defective Vehicles.

14 106. As a result of this breach, plaintiff and other Class Members suffered
15 injury and deserve to be compensated for the damages they suffered.

16 107. Plaintiff and the Class are therefore entitled to recover compensatory
17 damages, declaratory relief, and other relief as specifically prayed for herein.

18
19 **SEVENTH CLAIM FOR RELIEF**
20 **VIOLATION OF SONG-BEVERLY CONSUMER WARRANTY ACT FOR**
21 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY, CAL.**
22 **CIV. CODE §§ 1791.1 & 1792**

23 108. Plaintiff re-alleges and incorporates all paragraphs above as though
24 fully set forth herein.

25 109. Plaintiff and other Class Members who purchased or leased Defective
26 Vehicles in California are “buyers” within the meaning of Cal. Civ. Code §
27 1791(b).
28

1 110. The Defective Vehicles are “consumer goods” within the meaning of
2 Cal. Civ. Code § 1791(a).

3 111. Volkswagen is a “manufacturer” of the Defective Vehicles within the
4 meaning of Cal. Civ. Code § 1791(j).

5 112. Volkswagen impliedly warranted to Plaintiff and Class Members that
6 the Defective Vehicles were “merchantable” within the meaning of Cal. Civ. Code
7 §§ 1791.1(a) and 1792. However, the Defective Vehicles do not have the quality
8 that a buyer would reasonably expect.

9 113. Cal. Civ. Code § 1791.1(a) states:

10 “Implied warranty of merchantability” or “implied warranty that goods are
11 merchantable” means that the consumer goods meet each of the following:

12 (1) Pass without objection in the trade under the contract description.

13 (2) Are fit for the ordinary purposes for which such goods are used.

14 (3) Are adequately contained, packaged, and labeled.

15 (4) Conform to the promises or affirmations of fact made on the
16 container or label.

17 114. The Defective Vehicles would not pass without objection in the
18 automotive industry because they do not pass EPA and state emission regulations.

19 115. Because of the defeat device that Volkswagen designed and installed
20 in the Defective Vehicles, they emit up to 40 times the permitted level of nitrogen
21 oxide and thus are not fit for ordinary purposes.

22 116. The Defective Vehicles are not adequately labeled because their
23 labeling fails to disclose the defeat device that causes certain features of the
24 emissions systems to become inoperative during normal use.

25 117. Volkswagen breached the implied warranty of merchantability by
26 manufacturing and selling Defective Vehicles containing the defeat device. And
27 Volkswagen’s fraudulent use of the defeat device has caused Plaintiff and the other
28

1 Class Members not to receive the benefit of their bargain and caused the Defective
2 Vehicles to depreciate in value.

3 118. As a direct and proximate result of Volkswagen's breach of the
4 implied warranty of merchantability, Plaintiff and the other Class Members
5 received goods containing the defeat device that substantially impairs their value to
6 Plaintiff and the other Class Members. Plaintiff and the other Class Members have
7 been damaged as a result of the diminished value of Volkswagen's Defective
8 Vehicles, the Defective Vehicle's malfunctioning, and the nonuse of their Defective
9 Vehicles.

10 119. Pursuant to Cal. Civ. Code §§ 1791.1(d) and 1794, Plaintiff and the
11 other Class Members are entitled to damages and other legal and equitable relief
12 including, at their election, the purchase price of their Defective Vehicles, or the
13 overpayment or diminution in value of their Defective Vehicles.

14 120. Pursuant to Cal. Civ. Code § 1794, Plaintiff and the other Class
15 Members are entitled to costs and attorney's fees.

16
17 **PRAYER FOR RELIEF**

18 WHEREFORE plaintiff, on behalf of himself and all others similarly
19 situated, pray for relief and judgment against Volkswagen as follows:

- 20 A. Certification of this action as a class action and appointment of
21 plaintiff as the Class representative and the undersigned counsel as
22 Class counsel;
- 23 B. An Order awarding plaintiff and Class Members injunctive relief,
24 declaratory relief, statutory damages, and punitive damages against
25 Volkswagen as provided in California Business and Professions Code,
26 §§ 17202 and 17203, and California Civil Code § 1780;

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- C. An Order declaring the actions complained of herein to be in violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §17200, et seq.;
- D. Restitution of all money and/or property that plaintiff and Class Members provided to Volkswagen for the purchase of Volkswagen’s Defective Vehicles that were sold in violation of California Business and Professions Code § 17200 et seq.;
- E. An Order awarding plaintiff and Class members restitution and disgorgement of Volkswagen’s profits;
- F. Damages, including punitive damages, in an amount to be determined at trial;
- G. Pre and post-judgment interest;
- H. Reasonable attorneys’ fees and costs; and
- I. Such other and further relief as this Court finds just and proper.

Dated: September 24, 2015

Respectfully submitted,
MARC M. SELTZER
STEVEN G. SKLAVER
MATTHEW R. BERRY
SUSMAN GODFREY L.L.P.

By: */s/ Steven G. Sklaver*
Steven G. Sklaver
Attorneys for Plaintiff Rich Hill

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DEMAND FOR JURY TRIAL

Plaintiff, on behalf of himself and all others similarly situated, hereby demand a jury trial on all issues so triable.

Dated: September 24, 2015

Respectfully submitted,
MARC M. SELTZER
STEVEN G. SKLAVER
MATTHEW R. BERRY
SUSMAN GODFREY L.L.P.

By: */s/ Steven G. Sklaver*
Steven G. Sklaver
Attorneys for Plaintiff Rich Hill