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10 Attorneys for Plaintiffs and the Class

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

14 RICH HILL, ELVIS FOSTER, ROBERT
NESBITT, JOE HOWBERT, CALLUM
15 DOREY, DON CUNNINGHAM, ANGELYN
WOOD, MARCIA ANDRU MOSHE,
16 EDMUND STEPPAN, MIREYA PEREZ,
KRISTEN VAN DE BIEZENBOS, ANN
17 MARIE STIEF, WILLIAM STIEF, THOMAS
C. JORGENSEN, KARTIK PILLUTLA,
18 KATHRYN SUE VORDENBERG,
MICHAEL BROWN, CAROL SPINDEL,
19 JASON WELCH, THOMAS BASSETT,
JOSHUA R. GELLER, MICHELLE
20 GELLER, FRED M. FLORES, GARY
BUTTERWEI, TERRI BUTTERWEI,
21 THOMAS MICHAEL CARRAN, MICHAEL
FUERSTEIN, GRANT GARICA, HOWARD
22 KATZ, TIMOTHY P. YERKES BETH
GLASSMAN, STEPHANIE WADDOUPS,
23 MARY JONES, AND DIEGO ALBERTO
DIAZ, individually and on behalf of all others
24 similarly situated,

25 Plaintiffs,

26 v.

27 VOLKSWAGEN GROUP OF AMERICA,
INC., a New Jersey Corporation,
VOLKSWAGEN AG, and DOES 1 through
28 50, inclusive

Defendants.

Case No. 2:15-cv-07517-DOC-SP

CLASS ACTION

**AMENDED CLASS ACTION
COMPLAINT**

JURY TRIAL DEMANDED

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 F. GEORGIA PLAINTIFFS 6

 G. ILLINOIS PLAINTIFFS 8

 H. LOUISIANA PLAINTIFF 9

 I. MARYLAND PLAINTIFFS 10

 J. MASSACHUSETTS PLAINTIFF 10

 K. MINNESOTA PLAINTIFFS..... 10

 L. MISSISSIPPI PLAINTIFFS..... 11

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1 Martin Winterkorn, resigned, and the company suspended the leaders of the
2 Volkswagen, Audi, and Porsche research and development divisions and announced
3 a restructuring of its North American business unit.

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

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

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

22 7. Also on September 18, 2015, the California Air Resources Board
23 (“CARB”) notified Volkswagen that it initiated “an enforcement investigation of
24 VW regarding all model-year 2009 through 2015 light-duty diesel vehicles
25 equipped with 2.0 liter engines.” CARB’s discussions with Volkswagen
26 “culminated in VW’s admission in early September 2015 that it has, since model
27 year 2009, employed a defeat device to circumvent CARB and the EPA emission
28 test procedures.”

1 8. Volkswagen knew what was right, but then did the opposite. In its
2 2014 Sustainability Report, Volkswagen states, “In the long term, a company can
3 only be successful if it acts with integrity, complies with statutory provisions
4 worldwide and stands by its voluntary undertakings and ethical principles even
5 when this is the harder choice.” Yet when faced with the seemingly simple choice
6 of honesty to consumers and regulators or engaging in illegal conduct that deceives
7 regulators and rips off consumers, Volkswagen chose the latter.

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

11 10. Volkswagen’s deceitful conduct has already caused significant harm to
12 Plaintiffs and the Class. For example, Kelley Blue Book has reported that
13 Volkswagen’s conduct described in this amended complaint has already caused the
14 market value of used Volkswagen diesel vehicles to decrease by 13%.

15 **PARTIES**

16 **A. Arizona Plaintiff**

17 11. Plaintiff Thomas Michael Carran is a resident of Tucson, Arizona. Mr.
18 Carran purchased a 2012 Volkswagen Passat TDI from Larry Chapman
19 Volkswagen in Tucson, Arizona. Mr. Carran still owns the vehicle.

20 12. Mr. Carran purchased the diesel Volkswagen based in part on
21 Volkswagen’s representation that the vehicle’s CleanDiesel engine was
22 environmentally friendly—Mr. Carran wanted as “green” of a vehicle as he could
23 get. Mr. Carran would not have purchased the vehicle or would have paid
24 significantly less had he known about the defeat device and that the vehicle did not
25 pass state and federal emissions standards.
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1 **B. California Plaintiffs**

2 **(i) Rich Hill**

3 13. Plaintiff Rich Hill is a resident of Ventura County, California. Mr.
4 Hill purchased a 2015 Volkswagen Golf SportWagen Diesel. Mr. Hill still owns
5 the vehicle.

6 14. Mr. Hill's purchased the 2015 Volkswagen Golf SportWagen Diesel
7 based in part on its emissions ratings. He would not have purchased the vehicle or
8 would have paid significantly less had he known about the defeat device and that
9 the vehicle did not pass state and federal emissions standards.

10 **(ii) Joe Howbert**

11 15. Plaintiff Joe Howbert is a resident of Redding, California. Mr.
12 Howbert purchased a 2011 Volkswagen Jetta SportWagen TDI from Chico
13 Volkswagen in Chico, California. Mr. Howbert still owns the vehicle.

14 16. Mr. Howbert purchased the 2011 Volkswagen Jetta SportWagen TDI
15 based in part on Volkswagen's representations that the vehicle was environmentally
16 friendly and efficient. Mr. Howbert's family owned a diesel vehicle years ago and
17 he never wanted to own one because he perceived them as dirty vehicles that were
18 bad for the environment. But Volkswagen's advertising campaign convinced him
19 that the Volkswagen CleanDiesel engines were clean, powerful, and efficient. He
20 would not have purchased the vehicle or would have paid significantly less had he
21 known about the defeat device and that the vehicle did not pass state and federal
22 emissions standards.

23 **(iii) Marcia Andru Moshe**

24 17. Plaintiff Marcia Andru Moshe is a resident of Wading River, New
25 York. Ms. Moshe purchased a certified pre-owned 2011 Volkswagen Jetta TDI
26 from Volkswagen Kearny Mesa in San Diego, California. Ms. Andru still owns the
27 vehicle.

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1 18. Ms. Moshe purchased the diesel Volkswagen based in part on
2 Volkswagen's representations that the vehicle was environmentally friendly and
3 powerful. Ms. Moshe is an organic farmer and cares deeply about the environment.
4 She would not have purchased the vehicle or would have paid significantly less had
5 she known about the defeat device and that the vehicle did not pass state and federal
6 emissions standards.

7 **(iv) Mireya Perez**

8 19. Plaintiff Mireya Perez is a resident of San Diego, California. Ms.
9 Perez purchased a 2013 Volkswagen TDI SportWagen from Volkswagen Kearny
10 Mesa in San Diego, California. Ms. Perez still owns the vehicle.

11 20. Ms. Perez purchased the diesel Volkswagen based in part on
12 Volkswagen's representations that the vehicle was "green" and its power and fuel
13 efficiency. Ms. Perez would not have purchased the vehicle or would have paid
14 significantly less had she known about the defeat device and that the vehicle did not
15 pass state and federal emissions standards.

16 **(v) Kartik Pillutla**

17 21. Plaintiff Kartik Pillutla is a resident of Austin, Texas. Mr. Pillutla
18 purchased a 2012 Volkswagen Jetta TDI SportWagen from Dorito Brothers in
19 Walnut Creek, California. Mr. Pillutla still owns the vehicle.

20 22. Mr. Pillutla purchased the diesel Volkswagen based in part on
21 Volkswagen's representations concerning the vehicle's fuel efficiency and that its
22 CleanDiesel engine was environmentally friendly. Mr. Pillutla would not have
23 purchased the vehicle or would have paid significantly less had he known about the
24 defeat device and that the vehicle did not pass state and federal emissions standards.

25 **C. Colorado Plaintiff**

26 23. Plaintiff Callum Dorey is a resident of Lakewood, Colorado. Mr.
27 Dorey purchased a 2012 Volkswagen Golf TDI from Larry H. Miller Volkswagen
28 in Colorado. Mr. Callum still owns the vehicle.

1 24. Mr. Callum purchased the diesel Volkswagen based in part on
2 Volkswagen's representation that the vehicle's CleanDiesel engine was
3 environmentally friendly. Mr. Callum would not have purchased the vehicle or
4 would have paid significantly less had he known about the defeat device and that
5 the vehicle did not pass state and federal emissions standards.

6 **D. Connecticut Plaintiff**

7 25. Plaintiff Diego Alberto Diaz is a resident of New York, New York.
8 Mr. Diaz purchased a 2009 Jetta SportWagen TDI from Langan Volkswagen in
9 Meriden, Connecticut. Mr. Diaz still owns the vehicle.

10 26. Mr. Diaz purchased the diesel Volkswagen based in part on
11 Volkswagen's representations concerning the vehicle's fuel efficiency and that it
12 was an environmentally friendly vehicle. Mr. Diaz would not have purchased the
13 vehicle or would have paid significantly less had he known about the defeat device
14 and that the vehicle did not pass state and federal emissions standards.

15 **E. Delaware Plaintiff**

16 27. Plaintiff Timothy P. Yerkes is a resident of Clayton, Delaware. Mr.
17 Yerkes purchased a 2014 Volkswagen Jetta TDI from Winner Volkswagen in
18 Dover, Delaware. Mr. Yerkes still owns the vehicle.

19 28. Mr. Yerkes purchased the diesel Volkswagen based in part on
20 Volkswagen's representations concerning the vehicle's fuel efficiency and that it
21 was an eco-conscious vehicle. Mr. Yerkes would not have purchased the vehicle or
22 would have paid significantly less had he known about the defeat device and that
23 the vehicle did not pass state and federal emissions standards.

24 **F. Georgia Plaintiffs**

25 **(i) Michael Brown**

26 29. Plaintiff Michael Brown is a resident of Martinez, Georgia. Mr.
27 Brown purchased a 2014 Volkswagen Passat TDI from Gerald Jones Volkswagen
28 in Georgia. Mr. Brown still owns the vehicle.

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30. Mr. Brown purchased the diesel Volkswagen based in part on Volkswagen’s representations that the vehicle’s CleanDiesel engine was environmentally friendly and fuel efficient. Mr. Brown would not have purchased the vehicle or would have paid significantly less had he known about the defeat device and that the vehicle did not pass state and federal emissions standards.


(ii) Jason Welch

31. Plaintiff Jason Welch is a resident of Cumberland, Maryland. Mr. Welch purchased a 2010 Volkswagen Jetta TDI from Carl Gregory Volkswagen in Columbus, GA. Mr. Welch still owns the vehicle.

32. Mr. Welch purchased the diesel Volkswagen based in part on Volkswagen’s representations concerning the vehicle’s CleanDiesel engine was environmentally friendly, fuel efficient, and its performance. Mr. Welch would not have purchased the vehicle or would have paid significantly less had he known about the defeat device and that the vehicle did not pass state and federal emissions standards.

33. Below is the portion of the window sticker from Mr. Welch’s Volkswagen Jetta displaying representations concerning fuel efficiency and noting that “The People Want Good Clean Diesel Fun”:

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The People Want Good Clean Diesel Fun 

EPA Fuel Economy Estimates

These estimates reflect new EPA methods beginning with 2008 models.

CITY MPG 30 <small>Expected range for most drivers 24 to 36 MPG</small>	Estimated Annual Fuel Cost \$1,191 <small>based on 15,000 miles at \$2.70 per gallon</small>	HIGHWAY MPG 41 <small>Expected range for most drivers 34 to 48 MPG</small>
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Combined Fuel Economy
This Vehicle **34**
11 42
All Compact Cars

Your actual mileage will vary depending on how you drive and maintain your vehicle.

See the FREE Fuel Economy Guide at dealers or www.fueleconomy.gov

GOVERNMENT SAFETY RATINGS

Frontal Crash	Driver	★★★★
	Passenger	★★★★
<small>Star ratings based on the risk of injury in a frontal impact. Frontal ratings should ONLY be compared to other vehicles of similar size and weight.</small>		
Side Crash	Front Seat	★★★★★
	Rear Seat	★★★★★
<small>Star ratings based on the risk of injury in a side impact.</small>		
Rollover		★★★★
<small>Star ratings based on the risk of rollover in a single vehicle crash.</small>		
<small>Star ratings range from 1 to 5 stars (★★★★★) with 5 being the highest.</small>		
<small>Source: National Highway Traffic Safety Administration (NHTSA)</small>		
www.safercar.gov or 1-888-327-4236		

Who better to get you into a Volkswagen than us? Volkswagen Credit

Volkswagen of America, Inc.
SOLD TO: 407200
CARL GREGORY VOLKSWAGEN
3000 NORTH LAKE PARKWAY,BLDG. 300
COLUMBUS, GA 31909
SHIP TO: 407200
CARL GREGORY VOLKSWAGEN
3000 NORTH LAKE PARKWAY,BLDG. 300
COLUMBUS, GA 31909
VIN: 3VWJL7AJ2AM116078
Port of Entry: BRUNSWICK
Transportation Method: TRUCK
COMM NUM: 873762

G. Illinois Plaintiffs

(i) Edmund Stepan

34. Plaintiff Edmund Stepan is a resident of Saint Anne, Illinois. Mr. Stepan purchased a 2015 Volkswagen Passat TDI from Fletcher Jones Volkswagen in Chicago, Illinois. Mr. Stepan still owns the vehicle.

35. Mr. Stepan purchased the diesel Volkswagen based in part on Volkswagen’s representations concerning the vehicle’s fuel efficiency and that it was an environmentally friendly vehicle. Mr. Stepan would not have purchased the vehicle or would have paid significantly less had he known about the defeat device and that the vehicle did not pass state and federal emissions standards.

1 **(ii) Robert Nesbitt**

2 36. Plaintiff Robert Nesbitt is a resident of North Chicago, Illinois. Mr.
3 Nesbitt purchased a 2010 Volkswagen Jetta SportWagen TDI from Bill Jacobs
4 Volkswagen in Naperville, Illinois. Mr. Nesbitt still owns the vehicle.

5 37. Mr. Nesbitt purchased the diesel Volkswagen based in part on
6 Volkswagen's representations concerning the vehicle's fuel efficiency and that it
7 was an environmentally friendly vehicle. Mr. Nesbitt would not have purchased the
8 vehicle or would have paid significantly less had he known about the defeat device
9 and that the vehicle did not pass state and federal emissions standards.

10 **(iii) Thomas Bassett and Carol Spindel**

11 38. Plaintiffs Thomas Bassett and Carol Spindel are residents of Urbana,
12 Illinois. They purchased a 2015 Volkswagen TDI SportWagen from O'Brien
13 Volkswagen of Urbana in Illinois. Mr. Bassett and Ms. Spindel still jointly own the
14 vehicle.

15 39. Mr. Bassett and Ms. Spindel purchased the diesel Volkswagen based
16 in part on Volkswagen's representations concerning the vehicle's fuel efficiency
17 and that it was an environmentally friendly vehicle. They would not have
18 purchased the vehicle or would have paid significantly less had he known about the
19 defeat device and that the vehicle did not pass state and federal emissions standards.

20 **H. Louisiana Plaintiff**

21 40. Plaintiff Kristen van de Biezenbos is a resident of Lubbock, Texas.
22 Ms. van de Biezenbos purchased a 2011 Volkswagen Jetta TDI SportWagen from
23 Walker Volkswagen in Metairie, Louisiana. Ms. van de Biezenbos still owns the
24 vehicle.

25 41. Ms. van de Biezenbos conducted extensive research prior to
26 purchasing the vehicle, and she purchased the diesel Volkswagen based in part on
27 Volkswagen's representations that the vehicle was eco-conscious and its fuel
28 efficiency. Ms. van de Biezenbos would not have purchased the vehicle or would

1 have paid significantly less had she known about the defeat device and that the
2 vehicle did not pass state and federal emissions standards.

3 **I. Maryland Plaintiffs**

4 42. Plaintiffs Gary Butterwei and Terri Butterwei are a residents of
5 Stevensville, Maryland. They purchased a 2014 Volkswagen Passat TDI from
6 Antwerpen Volkswagen in Pasadena, Maryland, and they still own the vehicle.

7 43. Mr. and Mrs. Butterwei purchased the diesel Volkswagen based in part
8 on Volkswagen's representations concerning the vehicle's fuel efficiency and its
9 performance. They would not have purchased the vehicle or would have paid
10 significantly less had they known about the defeat device and that the vehicle (as it
11 exists today) will not pass state and federal emissions standards.

12 **J. Massachusetts Plaintiff**

13 44. Plaintiff Grant Garcia is a resident of Leominster, Massachusetts. Mr.
14 Garcia purchased a 2015 Golf Sportwagen TDI from Colonial Volkswagen in
15 Westborough, Massachusetts. Mr. Garcia still owns the vehicle.

16 45. Mr. Garcia purchased the diesel Volkswagen based in part on
17 Volkswagen's representations concerning the vehicle's fuel efficiency,
18 performance, and its low emissions. Mr. Garcia would not have purchased the
19 vehicle or would have paid significantly less had he known about the defeat device
20 and that the vehicle did not pass state and federal emissions standards.

21 **K. Minnesota Plaintiffs**

22 **(i) Michael Fuerstein**

23 46. Plaintiff Michael Fuerstein is a resident of Minneapolis, Minnesota.
24 Mr. Fuerstein purchased a 2013 Volkswagen Jetta TDI Diesel SportWagen at
25 Luther Volkswagen in St. Louis Park, MN. Mr. Fuerstein still owns the vehicle.

26 47. Mr. Fuerstein purchased the diesel Volkswagen based in part on
27 Volkswagen's representations concerning the vehicle's fuel efficiency and that it
28 was an environmentally friendly vehicle. Mr. Fuerstein would not have purchased

1 the vehicle or would have paid significantly less had he known about the defeat
2 device and that the vehicle did not pass state and federal emissions standards.

3 **(ii) Beth Glassman**

4 48. Plaintiff Beth Glassman is a resident of Minnetonka, Minnesota. Ms.
5 Glassman purchased a 2013 Volkswagen Passat TDI from Westside Volkswagen in
6 St. Louis Park, Minnesota. Ms. Glassman still owns the vehicle.

7 49. Ms. Glassman purchased the diesel Volkswagen based in part on
8 Volkswagen's representations concerning the vehicle's fuel efficiency, its
9 performance, and the fact that it was represented to be an environmentally friendly
10 vehicle. Ms. Glassman would not have purchased the vehicle or would have paid
11 significantly less had he known about the defeat device and that the vehicle did not
12 pass state and federal emissions standards.

13 **L. Mississippi Plaintiffs**

14 **(i) Dr. Howard Katz**

15 50. Plaintiff Dr. Howard Katz is a resident of Madison, Mississippi. Dr.
16 Katz purchased a 2014 Volkswagen Golf TDI from Volkswagen Jackson in
17 Jackson, Mississippi. Dr. Katz still owns the vehicle.

18 51. Dr. Katz purchased the diesel Volkswagen based in part on
19 Volkswagen's representations concerning the vehicle's fuel efficiency, its
20 performance, and the fact that it was represented to be an environmentally friendly
21 vehicle. Dr. Katz would not have purchased the vehicle had he known about the
22 defeat device and that the vehicle did not pass state and federal emissions standards.

23 **(ii) Mary Jones**

24 52. Plaintiff Mary Jones is a resident of Greenwood, Mississippi. Ms.
25 Jones purchased a 2014 Volkswagen SportWagen TDI from Volkswagen Jackson
26 in Jackson, Mississippi. Ms. Jones still owns the vehicle.

27 53. Ms. Jones purchased the diesel Volkswagen based in part on
28 Volkswagen's representations that the vehicle was eco-conscious and its fuel

1 efficiency. Ms. Jones would not have purchased the vehicle or would have paid
2 significantly less had she known about the defeat device and that the vehicle did not
3 pass state and federal emissions standards.

4 **M. New York Plaintiffs**

5 **(i) Thomas C. Jorgensen**

6 54. Plaintiff Thomas C. Jorgensen is a resident of Auburn, New York. Mr.
7 Jorgensen purchased a 2013 Volkswagen Passat TDI from Burdick Drivers Village
8 in New York. Mr. Jorgensen still owns the vehicle.

9 55. Mr. Jorgensen purchased the diesel Volkswagen based in part on
10 Volkswagen's representations concerning the vehicle's fuel efficiency and the
11 vehicle's performance. Mr. Jorgensen would not have purchased the vehicle or
12 would have paid significantly less had he known about the defeat device and that
13 the vehicle did not pass state and federal emissions standards.

14 **(ii) Joshua R. Geller and Michelle Geller**

15 56. Plaintiffs Joshua R. Geller and Michelle Geller are residents of
16 Brooklyn, New York. They purchased a 2011 Jetta SportWagen TDI from a
17 Volkswagen dealership in Kingston, NY. They still jointly own the vehicle.

18 57. Mr. and Mrs. Geller purchased the diesel Volkswagen based in part on
19 Volkswagen's representations that the vehicle's CleanDiesel engine was
20 environmentally friendly and fuel efficient, and because of its performance. They
21 would not have purchased the vehicle or would have paid significantly less had they
22 known about the defeat device and that the vehicle did not pass state and federal
23 emissions standards.

24 **N. Ohio Plaintiffs**

25 **(i) Ann Marie Stief**

26 58. Plaintiff Ann Marie Stief is a resident of Mentor, Ohio. Ms. Stief
27 purchased a 2014 Volkswagen Passat TDI from Classic Volkswagen in Mentor,
28 Ohio. Ms. Stief still owns the vehicle.

1 59. Ms. Stief purchased the diesel Volkswagen based in part on
2 Volkswagen’s representations that the vehicle was eco-conscious and its fuel
3 efficiency. Ms. Stief would not have purchased the vehicle or would have paid
4 significantly less had she known about the defeat device and that the vehicle did not
5 pass state and federal emissions standards.

6 **(ii) William Stief**

7 60. Plaintiff William Stief is a resident of Texas. Mr. Stief purchased a
8 2011 Volkswagen Jetta TDI from Classic Volkswagen in Mentor, Ohio. Mr. Stief
9 still owns the vehicle.

10 61. Mr. Stief purchased the diesel Volkswagen based in part on
11 Volkswagen’s representations concerning the vehicle’s fuel efficiency, its
12 performance, and the fact that it was represented to be a “green” vehicle. Mr. Stief
13 would not have purchased the vehicle or would have paid significantly less had he
14 known about the defeat device and that the vehicle did not pass state and federal
15 emissions standards.

16 **O. Oregon Plaintiff**

17 62. Plaintiff Kathryn Sue Vordenberg is a resident of Bend, Oregon. Ms.
18 Vordenberg purchased a 2010 Audi A3 Diesel from Carrera Motors in Bend,
19 Oregon. Ms. Vordenberg still owns the vehicle.

20 63. Ms. Vordenberg purchased the diesel Volkswagen based in part on
21 Volkswagen’s representations that the vehicle was eco-conscious and its fuel
22 efficiency. Ms. Vordenberg would not have purchased the vehicle or would have
23 paid significantly less had she known about the defeat device and that the vehicle
24 did not pass state and federal emissions standards.

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1 **P. Texas Plaintiffs**

2 **(i) Elvis Foster**

3 64. Plaintiff Elvis Foster is a resident of Houston, Texas. Mr. Foster
4 purchased a 2015 Volkswagen Passat TDI from Volkswagen of the Woodlands in
5 The Woodlands, Texas. Mr. Foster still owns the vehicle.

6 65. Mr. Foster purchased the diesel Volkswagen based in part on
7 Volkswagen's representations concerning the vehicle's fuel efficiency. Mr. Foster
8 would not have purchased the vehicle or would have paid significantly less had he
9 known about the defeat device and that the vehicle did not pass state and federal
10 emissions standards.

11 **(ii) Fred M. Flores**

12 66. Plaintiff Fred M. Flores is a resident of San Antonio, Texas. Mr.
13 Flores purchased a 2015 Volkswagen Jetta TDI from Autobahn Motor Imports, LP
14 in Fort Worth, Texas. Mr. Flores still owns the vehicle.

15 67. Mr. Flores purchased the diesel Volkswagen based in part on
16 Volkswagen's representations concerning the vehicle's fuel efficiency, its
17 performance, and its high resale value for the CleanDiesel vehicle. Mr. Flores
18 would not have purchased the vehicle or would have paid significantly less had he
19 known about the defeat device and that the vehicle did not pass state and federal
20 emissions standards.

21 **Q. Utah Plaintiffs**

22 68. Plaintiff Stephanie Waddoups is a resident of Salt Lake City, Utah.
23 Ms. Waddoups purchased a 2010 Audi A3 Diesel from Ken Garff Volkswagen in
24 Orem, Utah. Ms. Waddoups still owns the vehicle.

25 69. Ms. Waddoups purchased the diesel Audi based in part on
26 Volkswagen's representations that the vehicle was eco-conscious and its fuel
27 efficiency and performance. Ms. Waddoups would not have purchased the vehicle
28

1 or would have paid significantly less had she known about the defeat device and
2 that the vehicle did not pass state and federal emissions standards.

3 **R. Virginia Plaintiffs**

4 70. Plaintiffs Don Cunningham and Angelyn Wood are residents of Los
5 Angeles, California. They purchased a 2009 Volkswagen Jetta TDI from Stohlman
6 Volkswagen-Subaru in Vienna, Virginia. They still jointly own the vehicle.

7 71. Mr. Cunningham and Ms. Wood purchased the diesel Volkswagen
8 based in part on Volkswagen's representations concerning the vehicle's fuel
9 efficiency, low emissions, and performance. They would not have purchased the
10 vehicle or would have paid significantly less had he known about the defeat device
11 and that the vehicle did not pass state and federal emissions standards.

12 **S. Defendants**

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

17 73. Volkswagen AG is the parent corporation and sole owner of
18 Volkswagen Group of America, Inc. Volkswagen AG is based in Germany and
19 directly controls and directs the actions of Volkswagen Group of America, Inc.,
20 which acts as its agent in the United States. As a result, this Court has specific
21 jurisdiction over Volkswagen AG.

22 74. At all relevant times, Volkswagen and/or its agents designed,
23 manufactured, distributed, sold, leased, and warranted the Defective Vehicles under
24 the Volkswagen and Audi brand names throughout the United States. Volkswagen
25 and/or its agents designed the CleanDiesel engines, including the defeat device.
26 Volkswagen also developed and distributed the vehicles' owners' manuals,
27 advertisements, and other promotional materials relating to the vehicles.
28

1 **JURISDICTION AND VENUE**

2 75. This Court has subject matter jurisdiction under the Class Action
3 Fairness Act of 2005, 28 U.S.C. § 1332(d), because at least one class member is of
4 diverse citizenship from at least one defendant; there are more than 100 class
5 members nationwide; and the aggregate amount in controversy exceeds \$5 million.

6 76. This Court has personal jurisdiction over defendants because
7 defendants conduct business in California and has sufficient minimum contacts
8 with California. For example, Volkswagen operates the Volkswagen Electronic
9 Research Laboratory in Belmont, California.

10 77. Pursuant to 28 U.S.C. § 1391(b)(2), venue is proper in this district
11 because a substantial part of the acts giving rise to plaintiffs' claims occurred in this
12 district and because Volkswagen has caused harm to plaintiffs and other Class
13 Members residing in this District.

14 78. Volkswagen AG uses its agent Volkswagen Group of America, Inc. to
15 perform the critical work of designing, developing, manufacturing, distributing, and
16 marketing the vehicles at issue in this action in California and throughout the
17 United States. On information and belief, Volkswagen AG also directs the actions
18 of Volkswagen Group of America, Inc., including on decisions ranging from design
19 and operation of the production line, to budgets, sales goals, and marketing
20 strategies.

21 **FACTUAL ALLEGATIONS**

22 **A. Volkswagen's "CleanDiesel" Engine**

23 79. Volkswagen installed the defeat device in the diesel models of at least
24 the following vehicles, as reported by the EPA (collectively, "Defective Vehicles"):

- 25 a. Jetta (Model Years 2009-2015)
- 26 b. Jetta SportWagen (Model Years 2009-2015)
- 27 c. Beetle (Model Years 2012-2015)
- 28

- 1 d. Beetle Convertible (Model Years 2012-2015)
- 2 e. Audi A3 (Model Years 2010-2015)
- 3 f. Golf (Model Years 2010-2015)
- 4 g. Golf SportWagen (Model Year 2015)
- 5 h. Passat (Model Years 2012-2015)

6 80. To win over consumers skeptical of diesel engines, Volkswagen
7 launched an intensive marketing campaign that branded the engines as
8 “CleanDiesel” and touted their “extreme efficiency,” “turbocharged power,” and
9 “eco-conscious[ness].”

10 81. For example, Volkswagen’s website claimed: “This ain’t your
11 daddy’s diesel. Stinky, smoky, and sluggish. Those old diesel realities no longer
12 apply. Enter TDI Clean Diesel. Ultra-low-sulfur fuel, direct injection technology,
13 and extreme efficiency. We’ve ushered in a new era of diesel.”

14 82. Volkswagen’s website also preached that “Efficiency isn’t just a word.
15 It’s our philosophy. Our commitment to making vehicles that are eco-conscious is
16 part of bigger thinking. Because by building efficient vehicles that people actually
17 want to drive, we’re also building a better future for all of us.” Consistent with that
18 purported philosophy, a Volkswagen advertisement for the Jetta concluded with the
19 following tag-line: “Ultra low emissions. Jetta TDI Clean Diesel.”

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

26 84. Volkswagen also sought to distinguish polluting diesels from its
27 “CleanDiesel” technology. One of its advertisements represented: “These are not
28 the kind of diesel engines that you find spewing sooty exhaust like an old 18-

1 wheeler. Clean diesel vehicles meet the strictest EPA standards in the U.S. Plus,
2 TDI technology helps reduce sooty emissions by up to 90%, giving you a fuel-
3 efficient and eco-conscious vehicle.”

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

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

15 87. A brochure on the “all-new Audi A3 TDI Sedan” represented: “It is a
16 diesel without compromise, exactly the kind you should expect from Audi TDI
17 clean diesel.”

18 88. An Audi advertisement represented to consumers: “And thanks to
19 particulate filters that eliminate diesel soot and an *AdBlue* emissions system that
20 scrubs nitrous oxide emissions, our diesel engines comply with the world’s most
21 demanding emissions laws.”

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

25 90. Volkswagen marketed its CleanDiesel vehicles specifically to a market
26 willing to pay a *premium* for clean, efficient, and eco-friendly vehicles, and yet the
27 vehicles at issue cannot even pass state and federal emission standards. And
28 Volkswagen knew or should have known that its representations are false because it

1 designed and implemented the defeat devices to evade scrutiny by state and federal
2 regulators and trusting consumers.

3 91. The premium that Volkswagen charged for the Defective Vehicles is
4 significant. For example, for the 2015 Volkswagen Jetta, the base S model with a
5 gasoline engine has a starting MSRP of \$18,780 while the base TDI S CleanDiesel
6 has a starting MSRP of \$21,640, a price premium of \$2,860 or over 15%. And for
7 the highest trim Jetta model, the price premium is even higher. The Jetta SE has a
8 starting MSRP of \$20,095 while the CleanDiesel TDI SEL MSRP is \$26,410,
9 which is over 31% higher.

10 92. The price premiums that Volkswagen charged for “CleanDiesel”
11 engines occur across all models of Defective Vehicles, as shown by the table
12 below:

13	14	15	16	17	18	19
Model	Base Trim	Mid-Level Trim	Top-Line Trim			
VW Jetta	\$2,860	\$4,300	\$6,315			
VW Beetle	\$4,635	n/a	\$2,640			
VW Golf	\$2,950	\$1,000	\$1,000			
VW Passat	\$5,755	\$4,750	\$6,855			
Audi A3	\$2,805	\$3,095	\$2,925			

20
21 93. Volkswagen has now removed many of its “CleanDiesel”
22 advertisements from the Internet. For example, the “Diesel Old Wives’ Tales”
23 video advertisement on Volkswagen’s YouTube page was removed at
24 Volkswagen’s request, according to a media report. And the same article reported
25 that “a large number of other videos concerning diesels appears to have been
26 removed as well. Its ‘TV Commercials’ playlist now not only features missing
27 gaps where videos were deleted, but also where videos have been set to private by
28 the company.” The author noted, “The obvious implication is that Volkswagen’s

1 been scrubbing all of its promotional work for its diesel technology in the wake of
2 its use of defeat devices for EPA smog tests.”

3 **B. Volkswagen Evasion of State and Federal Emissions Standards**

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

14 95. The Clean Air Act requires vehicle manufacturers to certify to the EPA
15 that their products will meet applicable federal emission standards to control air
16 pollution, and every vehicle sold in the United States must be covered by an EPA-
17 issued certificate of conformity. Specifically, 40 C.F.R. Part 86 sets emission
18 standards and test procedures and section 203 of the CAA, 42 U.S.C. § 7522, sets
19 compliance provisions. Light-duty vehicles must satisfy emission standards for
20 certain air pollutants, including nitrogen oxides. 40 C.F.R. § 86.1811-04.

21 96. To obtain the required certification, a vehicle manufacturer must
22 submit a certificate of conformity application to the EPA for each test group of
23 vehicles that it intends to enter into United States commerce. The certificate of
24 conformity application must identify all auxiliary emission control devices installed
25 on the vehicles and include a justification for each explaining why it is not a defeat
26 device, which is defined as an auxiliary emission control device “that reduces the
27 effectiveness of the emission control system under conditions which may
28

1 reasonably be expected to be encountered in normal vehicle operation and use[.]”
2 Vehicles with defeat devices cannot be certified.

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

8 “Specifically, VW manufactured and installed software in the electronic
9 control module (ECM) of these vehicles that sensed when the vehicle was
10 being tested for compliance with EPA emission standards. For ease of
11 reference, the EPA is calling this the ‘switch.’ The ‘switch’ senses whether
12 the vehicle is being tested or not based on various inputs including the
13 position of the steering wheel, vehicle speed, the duration of the engine’s
14 operation, and barometric pressure. These inputs precisely track the
15 parameters of the federal test procedure used for emission testing for EPA
16 certification purposes. During EPA emission testing, the vehicles’ ECM ran
17 software which produced compliant emission results under an ECM
18 calibration that VW referred to as the ‘dyno calibration’ (referring to the
19 equipment used in emission testing, called a dynamometer). At all other
20 times during normal vehicle operation, the ‘switch’ was activated and the
21 vehicle ECM software ran a separate ‘road calibration’ which reduced the
22 effectiveness of the emission control system (specifically the selective
23 catalytic reduction or the lean NO_x trap). As a result, emissions of NO_x
24 increased by a factor of 10 to 40 times above the EPA compliant levels,
25 depending on the type of drive cycle (e.g., city, highway).”

26 98. The EPA and CARB were first alerted to potential emissions problems
27 with the Defective Vehicles in May 2014 when the West Virginia University’s
28 Center for Alternative Fuels, Engines & Emissions published results of a study that
found significantly higher in-use emissions from a 2012 Jetta and a 2013 Passat.
Despite the study, Volkswagen continued to assert to the EPA and CARB that the
increased emissions were caused by various technical issues and unexpected in-use
conditions, and it issued a voluntary recall in December 2014 to address the issue.

1 However, CARB's follow-up testing showed only a limited benefit to the recall.
2 Only when it became clear that the EPA and CARB would not approve certificates
3 of conformity for Volkswagen's 2016 model year diesel vehicles until Volkswagen
4 could adequately explain the high emissions and ensure that the 2016 model year
5 vehicles would not have similar issues, did Volkswagen admit it had designed and
6 installed a defeat device in these vehicles.

7 99. The EPA found that Volkswagen "knew or should have known that its
8 'road calibration' and 'switch' together bypass, defeat, or render inoperative
9 elements of the vehicle design related to compliance with the CAA emission
10 standards. This is apparent given the design of these defeat devices."

11 100. The EPA's Notice of Violation concluded that by making and selling
12 vehicles with defeat devices that allowed for higher levels of emissions during
13 every-day driving than were certified to EPA, Volkswagen violated two provisions
14 in the Clean Air Act. First, these defeat devices bypassed, defeated, or rendered
15 inoperative elements of the vehicles' emission control system that exist to comply
16 with the Clean Air Act emission standards. As a result, the EPA concluded that
17 Volkswagen violated section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B).
18 Second, as a result of the presence of the defeat devices in the vehicles, they do not
19 conform in all material respects to the vehicle specifications described in the
20 applications for the certificates of conformity that purportedly cover them.
21 Accordingly, Volkswagen "violated section 203(a)(1) of the CAA, 42 U.S.C. §
22 7522(a)(1) by selling, offering for sale, introducing into commerce, delivering for
23 introduction into commerce, or importing these vehicles, or for causing any of the
24 foregoing acts."

25 101. The EPA made clear that "[u]sing a defeat device in cars to evade
26 clean air standards is illegal and a threat to public health." It described
27 Volkswagen's defeat device as resulting "in cars that meet emissions standards in
28

1 the laboratory or testing station, but during normal operation, emit nitrogen oxides,
2 or NOx, at up to 40 times the standard.”

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

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

15
16 103. Volkswagen knew what was right, but then did the opposite. In its
17 2014 Sustainability Report, Volkswagen states, “In the long term, a company can
18 only be successful if it acts with integrity, complies with statutory provisions
19 worldwide and stands by its voluntary undertakings and ethical principles even
20 when this is the harder choice.” Yet when faced with the seemingly simple choice
21 of honesty to consumers and regulators or engaging in illegal conduct that deceives
22 regulators and rips off consumers, Volkswagen chose the latter.

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

1 105. Even if Volkswagen recalls the Defective Vehicles to remove the
2 defeat device so they comply with EPA and state emissions regulations, plaintiffs
3 and other Class Members have and will continue to suffer significant harm. For
4 example, Volkswagen will not be able to make the Defective Vehicles comply with
5 emissions standards without substantially degrading their performance
6 characteristics, including horsepower and efficiency. As a result, even if
7 Volkswagen is able to make plaintiffs and other Class Members' Defective
8 Vehicles compliant with federal and state emissions standards, plaintiffs and Class
9 Members will suffer actual harm and damages because their vehicles will no longer
10 perform as they did when purchased and as advertised.

11 106. In addition, Volkswagen's use of the defeat device will necessarily
12 result in a diminution in value of every Defective Vehicle. Not only did plaintiffs
13 and other Class Members over pay for vehicles now worth substantially less, but
14 they will also pay more to fuel their less efficient vehicles over the years they own
15 or lease their vehicles.

16 **C. Volkswagen Knew that its Representations of Eco-Conscious and**
17 **Emissions Compliant Vehicles Were False**

18 107. On information and belief, at all times relevant to this action,
19 Volkswagen knew or should have known that the Defective Vehicles employed a
20 defeat device to evade state and federal emission scrutiny and that the Defective
21 Vehicles would not pass CARB and EPA emissions tests without the defeat device.

22 108. Volkswagen admitted to both the EPA and CARB that it designed
23 and installed a defeat device. Volkswagen designed and installed the defeat device
24 to engage emissions controls under the particular circumstances present when a
25 vehicle is undergoing emission testing. And the software was designed to cause
26 certain emission control systems to disengage when the software determined that
27 the vehicle was not undergoing the emissions test procedure.
28

1 a Defective Vehicle as of September 18, 2015. Defective Vehicles
2 include without limitation: Model Year 2009-2015 VW Jetta; Model
3 Year 2009-2015 VW Jetta SportWagen; Model Year 2009-2015 VW
4 Beetle; Model Year 2009-2015 VW Golf; Model Year 2015 VW Golf
5 SportWagen; Model Year 2012-2015 VW Passat; and Model Year
6 2009-2015 Audi A3.

7 c. The California Subclass:

8 All persons or entities in the state of California who owned and/or
9 leased a Defective Vehicle as of September 18, 2015. Defective
10 Vehicles include without limitation: Model Year 2009-2015 VW Jetta;
11 Model Year 2009-2015 VW Jetta SportWagen; Model Year 2009-
12 2015 VW Beetle; Model Year 2009-2015 VW Golf; Model Year 2015
13 VW Golf SportWagen; Model Year 2012-2015 VW Passat; and Model
14 Year 2009-2015 Audi A3.

15 d. The Colorado Subclass:

16 All persons or entities in the state of Colorado who owned and/or
17 leased a Defective Vehicle as of September 18, 2015. Defective
18 Vehicles include without limitation: Model Year 2009-2015 VW Jetta;
19 Model Year 2009-2015 VW Jetta SportWagen; Model Year 2009-
20 2015 VW Beetle; Model Year 2009-2015 VW Golf; Model Year 2015
21 VW Golf SportWagen; Model Year 2012-2015 VW Passat; and Model
22 Year 2009-2015 Audi A3.

23 e. The Connecticut Subclass:

24 All persons or entities in the state of Connecticut who owned and/or
25 leased a Defective Vehicle as of September 18, 2015. Defective
26 Vehicles include without limitation: Model Year 2009-2015 VW Jetta;
27 Model Year 2009-2015 VW Jetta SportWagen; Model Year 2009-
28 2015 VW Beetle; Model Year 2009-2015 VW Golf; Model Year 2015

1 VW Golf SportWagen; Model Year 2012-2015 VW Passat; and Model
2 Year 2009-2015 Audi A3.

3 f. The Delaware Subclass:

4 All persons or entities in the state of Delaware who owned and/or
5 leased a Defective Vehicle as of September 18, 2015. Defective
6 Vehicles include without limitation: Model Year 2009-2015 VW Jetta;
7 Model Year 2009-2015 VW Jetta SportWagen; Model Year 2009-
8 2015 VW Beetle; Model Year 2009-2015 VW Golf; Model Year 2015
9 VW Golf SportWagen; Model Year 2012-2015 VW Passat; and Model
10 Year 2009-2015 Audi A3.

11 g. The Georgia Subclass:

12 All persons or entities in the state of Georgia who owned and/or leased
13 a Defective Vehicle as of September 18, 2015. Defective Vehicles
14 include without limitation: Model Year 2009-2015 VW Jetta; Model
15 Year 2009-2015 VW Jetta SportWagen; Model Year 2009-2015 VW
16 Beetle; Model Year 2009-2015 VW Golf; Model Year 2015 VW Golf
17 SportWagen; Model Year 2012-2015 VW Passat; and Model Year
18 2009-2015 Audi A3.

19 h. The Illinois Subclass:

20 All persons or entities in the state of Illinois who owned and/or leased
21 a Defective Vehicle as of September 18, 2015. Defective Vehicles
22 include without limitation: Model Year 2009-2015 VW Jetta; Model
23 Year 2009-2015 VW Jetta SportWagen; Model Year 2009-2015 VW
24 Beetle; Model Year 2009-2015 VW Golf; Model Year 2015 VW Golf
25 SportWagen; Model Year 2012-2015 VW Passat; and Model Year
26 2009-2015 Audi A3.

27 i. The Louisiana Subclass:

28 All persons or entities in the state of Louisiana who owned and/or

1 leased a Defective Vehicle as of September 18, 2015. Defective
2 Vehicles include without limitation: Model Year 2009-2015 VW Jetta;
3 Model Year 2009-2015 VW Jetta SportWagen; Model Year 2009-
4 2015 VW Beetle; Model Year 2009-2015 VW Golf; Model Year 2015
5 VW Golf SportWagen; Model Year 2012-2015 VW Passat; and Model
6 Year 2009-2015 Audi A3.

7 j. The Maryland Subclass:

8 All persons or entities in the state of Maryland who owned and/or
9 leased a Defective Vehicle as of September 18, 2015. Defective
10 Vehicles include without limitation: Model Year 2009-2015 VW Jetta;
11 Model Year 2009-2015 VW Jetta SportWagen; Model Year 2009-
12 2015 VW Beetle; Model Year 2009-2015 VW Golf; Model Year 2015
13 VW Golf SportWagen; Model Year 2012-2015 VW Passat; and Model
14 Year 2009-2015 Audi A3.

15 k. The Massachusetts Subclass:

16 All persons or entities in the state of Massachusetts who owned and/or
17 leased a Defective Vehicle as of September 18, 2015. Defective
18 Vehicles include without limitation: Model Year 2009-2015 VW Jetta;
19 Model Year 2009-2015 VW Jetta SportWagen; Model Year 2009-
20 2015 VW Beetle; Model Year 2009-2015 VW Golf; Model Year 2015
21 VW Golf SportWagen; Model Year 2012-2015 VW Passat; and Model
22 Year 2009-2015 Audi A3.

23 l. The Minnesota Subclass:

24 All persons or entities in the state of Minnesota who owned and/or
25 leased a Defective Vehicle as of September 18, 2015. Defective
26 Vehicles include without limitation: Model Year 2009-2015 VW Jetta;
27 Model Year 2009-2015 VW Jetta SportWagen; Model Year 2009-
28 2015 VW Beetle; Model Year 2009-2015 VW Golf; Model Year 2015

1 VW Golf SportWagen; Model Year 2012-2015 VW Passat; and Model
2 Year 2009-2015 Audi A3.

3 m. The Mississippi Subclass:

4 All persons or entities in the state of Mississippi who owned and/or
5 leased a Defective Vehicle as of September 18, 2015. Defective
6 Vehicles include without limitation: Model Year 2009-2015 VW Jetta;
7 Model Year 2009-2015 VW Jetta SportWagen; Model Year 2009-
8 2015 VW Beetle; Model Year 2009-2015 VW Golf; Model Year 2015
9 VW Golf SportWagen; Model Year 2012-2015 VW Passat; and Model
10 Year 2009-2015 Audi A3.

11 n. The New York Subclass:

12 All persons or entities in the state of New York who owned and/or
13 leased a Defective Vehicle as of September 18, 2015. Defective
14 Vehicles include without limitation: Model Year 2009-2015 VW Jetta;
15 Model Year 2009-2015 VW Jetta SportWagen; Model Year 2009-
16 2015 VW Beetle; Model Year 2009-2015 VW Golf; Model Year 2015
17 VW Golf SportWagen; Model Year 2012-2015 VW Passat; and Model
18 Year 2009-2015 Audi A3.

19 o. The Ohio Subclass:

20 All persons or entities in the state of Ohio who owned and/or leased a
21 Defective Vehicle as of September 18, 2015. Defective Vehicles
22 include without limitation: Model Year 2009-2015 VW Jetta; Model
23 Year 2009-2015 VW Jetta SportWagen; Model Year 2009-2015 VW
24 Beetle; Model Year 2009-2015 VW Golf; Model Year 2015 VW Golf
25 SportWagen; Model Year 2012-2015 VW Passat; and Model Year
26 2009-2015 Audi A3.

27 p. The Oregon Subclass:

28 All persons or entities in the state of Oregon who owned and/or leased

1 a Defective Vehicle as of September 18, 2015. Defective Vehicles
2 include without limitation: Model Year 2009-2015 VW Jetta; Model
3 Year 2009-2015 VW Jetta SportWagen; Model Year 2009-2015 VW
4 Beetle; Model Year 2009-2015 VW Golf; Model Year 2015 VW Golf
5 SportWagen; Model Year 2012-2015 VW Passat; and Model Year
6 2009-2015 Audi A3.

7 q. The Texas Subclass:

8 All persons or entities in the state of Texas who owned and/or leased a
9 Defective Vehicle as of September 18, 2015. Defective Vehicles
10 include without limitation: Model Year 2009-2015 VW Jetta; Model
11 Year 2009-2015 VW Jetta SportWagen; Model Year 2009-2015 VW
12 Beetle; Model Year 2009-2015 VW Golf; Model Year 2015 VW Golf
13 SportWagen; Model Year 2012-2015 VW Passat; and Model Year
14 2009-2015 Audi A3.

15 r. The Utah Subclass:

16 All persons or entities in the state of Utah who owned and/or leased a
17 Defective Vehicle as of September 18, 2015. Defective Vehicles
18 include without limitation: Model Year 2009-2015 VW Jetta; Model
19 Year 2009-2015 VW Jetta SportWagen; Model Year 2009-2015 VW
20 Beetle; Model Year 2009-2015 VW Golf; Model Year 2015 VW Golf
21 SportWagen; Model Year 2012-2015 VW Passat; and Model Year
22 2009-2015 Audi A3.

23 s. The Virginia Subclass:

24 All persons or entities in the state of Virginia who owned and/or leased
25 a Defective Vehicle as of September 18, 2015. Defective Vehicles
26 include without limitation: Model Year 2009-2015 VW Jetta; Model
27 Year 2009-2015 VW Jetta SportWagen; Model Year 2009-2015 VW
28 Beetle; Model Year 2009-2015 VW Golf; Model Year 2015 VW Golf

1 SportWagen; Model Year 2012-2015 VW Passat; and Model Year
2 2009-2015 Audi A3.

3 112. Excluded from the Classes are governmental entities, Volkswagen, its
4 affiliates and subsidiaries, its current or former employees, officers, directors,
5 agents, representatives, their family members, and members of the Court and its
6 staff.

7 113. Plaintiffs do not assert claims in this action for any personal injuries
8 caused by increased emissions in question here. Rather, plaintiff, individually and
9 on behalf of the other Class members, seeks solely economic and injunctive relief
10 as a result of their purchase of Defective Vehicles.

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

18 115. Based on the cost of the Defective Vehicles, plaintiffs believe the
19 amount in controversy exceeds \$5 million.

20 116. There are common questions of law and fact that predominate over any
21 questions affecting only individual Class members. These common legal and
22 factual questions, include, but are not limited to:

- 23 a. Whether the sale and lease of the Defective Vehicles violate state
24 and federal emissions standards;
- 25 b. Whether Volkswagen falsely labeled and advertised its Defective
26 Vehicles as being clean, eco-conscious, and compliant with state
27 and federal emission standards;
- 28 c. Whether any false representations regarding state and federal

- 1 emissions compliance were made knowingly and willfully;
- 2 d. Whether Volkswagen concealed and omitted material facts from its
- 3 communications with and disclosure to all class members regarding
- 4 the Defective Vehicles' compliance with state and federal
- 5 emissions standards;
- 6 e. Whether the CleanDiesel engines in the Defective Vehicles can be
- 7 made to comply with EPA and state emissions standards without
- 8 substantially degrading the performance and/or efficiency of the
- 9 Defective Vehicles;
- 10 f. Whether Volkswagen breached express warranties to class
- 11 members regarding the Defective Vehicles;
- 12 g. Whether Volkswagen's misrepresentations or omissions constitute
- 13 unfair or deceptive practices under state consumer protection laws;
- 14 h. Whether Volkswagen's representations that its Defective Vehicles
- 15 comply with state and federal emissions standards violate state false
- 16 advertising laws;
- 17 i. Whether Volkswagen's conduct entitles Class Members to
- 18 injunctive relief;
- 19 j. Whether the above practices caused Class members to suffer injury;
- 20 and
- 21 k. The proper measure of damages and the appropriate injunctive
- 22 relief.

23 117. Plaintiffs' claims are typical of the claims of the other Class Members.

24 Plaintiffs and each of the other Class Members were exposed to the same uniform

25 misconduct and have been injured by the same wrongful practices of Volkswagen.

26 118. Plaintiffs' claims arise from the same practices and course of conduct

27 that give rise to the other Class Members' claims and are based on the same legal

28 theories. Plaintiffs will fully and adequately assert and protect the interests of the

1 other Class Members. In addition, plaintiffs have retained class counsel who are
2 experienced and qualified in prosecuting class action cases similar to this one.
3 Neither plaintiffs nor their attorneys have any interests contrary to or conflicting
4 with other Class members' interests.

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

11 **STATUTE OF LIMITATIONS**

12 **A. Fraudulent Concealment Tolling**

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

1 **B. Estoppel**

2 121. Volkswagen was and is under a continuing duty to disclose to
3 plaintiffs and the members of the Class the true character, quality, and nature of its
4 Defective Vehicle emissions. Volkswagen knowingly and affirmatively
5 misrepresented and actively concealed the true character and quality of its
6 Defective Vehicles. Plaintiffs reasonably relied upon Volkswagen's knowing and
7 affirmative misrepresentations and/or active concealment. Based on the foregoing,
8 Volkswagen is estopped from relying on any statutes of limitation in defense of this
9 action.

10 **C. Discovery Rule**

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

3 **CAUSES OF ACTION**

4 **A. Claims Brought on Behalf of the Nationwide Class**

5 **FIRST CLAIM FOR RELIEF**

6 **FRAUD BY CONCEALMENT**

7
8 123. Plaintiffs re-alleges and incorporates all paragraphs set forth above as
9 though fully set forth herein.

10 124. This claim is brought on behalf of the Nationwide Class.

11 125. Volkswagen intentionally concealed and suppressed material facts
12 about the actual quality and character of the Defective Vehicles. As alleged above,
13 Volkswagen designed and installed a secret defeat device in the Defective Vehicles
14 to defraud consumers and fool state and federal emissions regulators. While
15 Volkswagen represented to consumers that the Defective Vehicles were “eco-
16 conscious,” “CleanDiesel,” and operated with “extreme efficiency,” the opposite
17 was true. The Defective Vehicles cannot even satisfy state and federal emission
18 standards, emitting up to 40 times more than the legal limit of certain pollutants.

19 126. The defeat device was programmed into the Defective Vehicle’s
20 software and was designed to evade detection. Volkswagen designed the defeat
21 device so that the vehicles’ emission control systems could sense when they were
22 being tested for emissions and would at that time engage emission controls. But
23 when the Defective Vehicle’s software detected that the emissions testing was
24 complete, it secretly disengaged certain features of the emission control system,
25 causing the vehicle to emit illegal levels of certain pollutants.

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

3 128. On October 8, 2015, Michael Horn, the then President and CEO of
4 Volkswagen North America, gave the following testimony before the House
5 Committee on Energy and Commerce Subcommittee on Oversight and
6 Investigations: “On behalf of our company, and my colleagues in Germany, I
7 would like to offer a sincere apology for Volkswagen’s use of a software program
8 that served to defeat the regular emissions testing regime.” He also testified that
9 “[t]hese events are deeply troubling. I did not think that something like this was
10 possible at the Volkswagen Group. We have broken the trust of our customers,
11 dealerships, and employees, as well as the public and regulators.”

12 129. Plaintiffs and the Class Members reasonably relied on Volkswagen’s
13 false representations. Volkswagen designed the defeat device to evade discovery
14 not only by consumers but also by state and federal emissions regulators from the
15 EPA and CARB. In fact, Volkswagen did not finally admit to installing the defeat
16 device on the Defective Vehicles until approximately six years after first selling
17 Defective Vehicles, having successfully evaded detection for all of those years.

18 130. Volkswagen’s false representations were material to consumers. Not
19 only did the representations relate to the value of the Defective Vehicles, but they
20 also concerned their compliance with state and federal emissions standards. Indeed,
21 Volkswagen’s advertising campaign sought out customers who cared deeply about
22 the environment and were willing to pay a premium for a clean diesel vehicle.
23 While Volkswagen preached to consumers about its “commitment to making
24 vehicles that are eco-conscious,” in fact Volkswagen cared only about boosting its
25 bottom line and maximizing corporate profits.

26 131. Volkswagen had a duty to disclose the details relating to the defeat
27 device to plaintiffs and the Class Members because the information was known
28 and/or accessible only to Volkswagen, Volkswagen had exclusive knowledge

1 relating to the design, implementation, and maintenance of the defeat device, and
2 Volkswagen knew that the facts concerning the defeat device were unknown to and
3 not reasonably discoverable by plaintiffs or the Class Members.

4 132. Volkswagen also had a duty to disclose the information because it
5 made affirmative misrepresentations concerning the qualities of its vehicles and
6 their compliance with state and federal emissions standards. Volkswagen's
7 marketing of the Defective Vehicles as "CleanDiesel," "eco-conscious," and
8 "extremely efficient," was deceptive, misleading, and incomplete without
9 disclosing the presence of the defeat device and the Defective Vehicles' actual
10 emissions. Having voluntarily provided information to plaintiffs and the Class
11 Members, Volkswagen had a duty to disclose the entire truth.

12 133. The facts that Volkswagen omitted and concealed from plaintiffs and
13 the Class Members were material. They went to the heart of Volkswagen's claim
14 that the Defective Vehicles were eco-conscious, that they complied with EPA and
15 CARB emission standards, and directly impacted the value of the Defective
16 Vehicles.

17 134. Volkswagen's deceitful conduct has already caused the value of the
18 Defective Vehicles to decrease significantly. For example, Kelley Blue Book
19 reported that Volkswagen's conduct has caused the fair market value of the
20 Defective Vehicles to decrease by 13%. If each the Defective Vehicles had an
21 average fair market value of approximately \$15,000, then a 13% drop in fair market
22 value alone has caused nearly a billion dollars in harm to the Class.

23 135. Because of Volkswagen's fraudulent concealment and/or suppression
24 of the true facts, plaintiffs and the other Class Members have sustained damages
25 because the Defective Vehicles that they own or lease are diminished in value as a
26 result of Volkswagen's concealment of the true quality and nature of the vehicle's
27 emissions. Had plaintiffs and the Class Members known the facts concerning
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1 Volkswagen's evasion of federal and state emission standards, they would have
2 paid less for their vehicles or would not have purchased or leased them at all.

3 136. According, Volkswagen is liable to plaintiffs and the Class Members
4 for damages in an amount to be proven at trial.

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

11 **SECOND CLAIM FOR RELIEF**

12 **BREACH OF CONTRACT**

13 138. Plaintiffs re-alleges and incorporates all paragraphs set forth above as
14 though fully set forth herein.

15 139. This claim is brought on behalf of the Nationwide Class.

16 140. Volkswagen's misrepresentations and omissions alleged herein,
17 including its failure to disclose the existence of the defeat device caused plaintiffs
18 and the other Class Members to make their purchases or leases of the Defective
19 Vehicles. Absent those misrepresentations and omissions, plaintiffs and the other
20 Class Members would not have purchased or leased the Defective Vehicles, and/or
21 would not have purchased or leased the Defective Vehicles at the prices they paid.
22 Accordingly, plaintiffs and the Class Members overpaid for their Defective
23 Vehicles and did not receive the benefit of their bargain.

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

3 142. Plaintiffs and the other Class Members fully performed their
4 obligations under the contract by paying all amounts due under the contracts.

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

9
10 **THIRD CLAIM FOR RELIEF**
11 **VIOLATION OF MAGNUSON-MOSS WARRANTY ACT**
12 **(15 U.S.C. § 2301, et seq.)**

13 144. Plaintiffs re-alleges and incorporates all paragraphs set forth above as
14 though fully set forth herein.

15 145. Plaintiffs bring this Count on behalf of the Nationwide Class.

16 146. Plaintiff and the other members of the class are "consumers" within
17 the meaning of the Magnusson-Moss Warranty Act, 15 U.S.C. § 2301(3).

18 147. Volkswagen is a "supplier" and "warrantor" within the meaning of 15
19 U.S.C. §§ 2301(4) – (5).

20 148. The Defective Vehicles constitute a "consumer product" within the
21 meaning of 15 U.S.C. § 2301(1).

22 149. Volkswagen's express warranties and written affirmations of fact
23 regarding the nature of the Defective Vehicles, including emissions compliance,
24 vehicular performance, and fuel economy, constitutes a written warranty within the
25 meaning of 15 U.S.C. § 2301(6).

26 150. The Defective Vehicles' implied warranties are covered under 15
27 U.S.C. § 2301(7).
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1 151. Volkswagen breached their warranties by designing, manufacturing,
2 marketing, selling, and/or distributing Defective Vehicles with the defeat device, as
3 described above.

4 152. Volkswagen's breaches deprived plaintiffs and the other Class
5 members of the benefit of their bargains.

6 153. The amount in controversy of plaintiffs' individual claims exceeds the
7 value of \$25. In addition, the amount in controversy exceeds the value of \$50,000
8 (exclusive of interest and costs) computed on the basis of all claims to be
9 determined in this action.

10 154. Plaintiffs and the other Nationwide Class members have had sufficient
11 direct dealings with Volkswagen and/or its agents to establish privity of contract
12 between Volkswagen and Plaintiffs and each of the other Nationwide Class
13 members. But privity is not required here because Plaintiffs and each of the other
14 Nationwide Class members are intended third-party beneficiaries of contracts
15 between Volkswagen and its dealers, and specifically, of Volkswagen's implied
16 warranties. The dealers were not intended to be the ultimate consumers of the
17 Defective Vehicles and have no rights under the warranty agreements provided with
18 the Defective Vehicles because the warranty agreements were designed for and
19 intended to benefit the consumers only.

20 155. Volkswagen has been notified of its breach of written and implied
21 warranties and has failed to adequately cure those breaches. Indeed, Volkswagen
22 has admitted that it will not even attempt to recall and fix Defective Vehicles until
23 at least 2016, and the process may take years.

24 156. As a direct and proximate result of Volkswagen's breaches of its
25 warranties, plaintiff and the other Class members sustained damages in amounts to
26 be determined at trial.

27 **B. Claims on Behalf of Arizona Subclass.**
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FIRST CLAIM FOR RELIEF
VIOLATIONS OF THE CONSUMER FRAUD ACT
(ARIZONA REVISED STATUTE §§ 44-1521, et seq.)

157. Plaintiffs re-allege and incorporate all paragraphs set forth above as though fully set forth herein.

158. Plaintiffs bring this Claim for Relief on behalf of the Arizona Subclass.

159. The Arizona Consumer Fraud Act (“Arizona CFA”) prohibits “[t]he act, use or employment by any person of any deception, deceptive act or practice, fraud, false pretense, false promise, misrepresentation, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise whether or not any person has in fact been misled, deceived or damaged thereby.” Arizona Revised Statute § 44-1522(A).

160. Arizona Plaintiff and Volkswagen are each “persons” under Arizona Revised Statute § 44-1521(6).

161. The Defective Vehicles are “merchandise” under Arizona Revised Statute § 44-1521(5).

162. Volkswagen violated the Arizona CFA by engaging in deceptive acts and practices, false pretenses, false promises, misrepresentations, and/or concealment, suppression and/or omission of material facts with the intent that consumers rely upon the concealment, suppression, and/or omission. As alleged above, Volkswagen made material statements about the safety, cleanliness, efficiency, and reliability of the Defective Vehicles that were deceptive, false, and/or misleading and concealed, suppressed, and omitted material facts with the intent that the Arizona Plaintiff and the Arizona Subclass rely on them. For example, Volkswagen represented that the Defective Vehicles are “eco-conscious,”

1 and satisfy the strictest emissions standards. These representations are false,
2 misleading, and deceptive.

3 163. Volkswagen owed Arizona Plaintiff and the Arizona Subclass a duty
4 to disclose the true safety, cleanliness, efficiency, and reliability of the Defective
5 Vehicles because Volkswagen:

- 6 a. Possessed exclusive knowledge that it was designing,
7 manufacturing, marketing, selling, and distributing vehicles
8 throughout the United States that did not comply with state and
9 federal emissions regulations;
- 10 b. Intentionally concealed the foregoing from Arizona Plaintiff and
11 the Arizona Subclass; and/or
- 12 c. Made incomplete representations about the safety, cleanliness,
13 efficiency and reliability of the Defective Vehicles generally,
14 and the use of the “defeat device” and true nature of the
15 CleanDiesel engines, while purposefully withholding material
16 facts that contradicted these representations.

17 164. In purchasing or leasing the Defective Vehicles, Arizona Plaintiff and
18 the other Arizona Subclass members were deceived by Volkswagen’s failure to
19 disclose that the Defective Vehicles contained the defeat device and that the
20 CleanDiesel engine failed state and federal emissions standards.

21 165. Volkswagen intentionally and knowingly misrepresented material facts
22 regarding the Defective Vehicles with an intent to mislead Arizona Plaintiff and the
23 Arizona Subclass.

24 166. Arizona Plaintiff reasonably relied on Volkswagen’s
25 misrepresentations. As a direct result of Volkswagen’s unlawful, unfair, or
26 fraudulent business acts and/or practices, Arizona Plaintiff and other Arizona
27 Subclass Members suffered injury in fact and lost money or property.
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1 167. Volkswagen knew or should have known that its conduct violated the
2 Arizona CFA.

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

5 169. Arizona Plaintiff and the other Arizona Subclass members were
6 injured as a result of Volkswagen's conduct. Arizona Plaintiff and the Arizona
7 Subclass members either would have paid less for their Defective Vehicles or
8 would not have purchased or leased them at all had they known the true facts.
9 Arizona Plaintiff and the Arizona Subclass did not receive the benefit of their
10 bargain, and their Defective Vehicles have suffered a diminution in value. These
11 injuries are the direct and natural consequence of Volkswagen's misrepresentations
12 and omissions.

13 170. For example, Volkswagen's unlawful, unfair, and/or fraudulent
14 business acts or practices have already caused the value of the Defective Vehicles
15 to decrease significantly. Kelley Blue Book reported that Volkswagen's conduct
16 has caused the fair market value of the Defective Vehicles to decrease by 13%. If
17 each the Defective Vehicles had an average fair market value of approximately
18 \$15,000, then a 13% drop in fair market value alone has caused nearly a billion
19 dollars in harm nationwide.

20 171. Volkswagen's violations present a continuing risk to Arizona Plaintiff
21 and the Arizona Subclass as well as to the general public. Volkswagen's unlawful
22 acts and practices described above affect the public interest.

23 172. Volkswagen profited from its sales of its falsely and deceptively
24 advertised products to unwary customers.

25 173. Accordingly, pursuant to the Arizona Consumer Fraud Act, Arizona
26 Plaintiff on behalf of himself and all others similarly situated, seeks to recover
27 actual damages, attorneys' fees, and any other just and proper relief available under
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1 the law, including but not limited to court costs and attorneys' fees under Arizona
2 Revised Statute § 12-341.01.

3 **SECOND CLAIM FOR RELIEF**

4 **BREACH OF CONTRACT (ARIZONA)**

5 174. Plaintiffs re-allege and incorporate all paragraphs above as though
6 fully set forth herein.

7 175. Plaintiffs bring this Claim for Relief on behalf of the Arizona
8 Subclass.

9 176. Volkswagen's misrepresentations and omissions alleged herein,
10 including its failure to disclose the existence of the defeat device caused Arizona
11 Plaintiff and the other Arizona Subclass Members to make their purchases or leases
12 of the Defective Vehicles. Absent those misrepresentations and omissions, Arizona
13 Plaintiff and the other Arizona Subclass Members would not have purchased or
14 leased the Defective Vehicles, and/or would not have purchased or leased the
15 Defective Vehicles at the prices they paid. Accordingly, Arizona Plaintiff and the
16 Arizona Subclass Members overpaid for their Defective Vehicles and did not
17 receive the benefit of their bargain.

18 177. Each and every sale or lease of a Defective Vehicle constitutes a
19 contract between Volkswagen and the purchaser or lessee. Volkswagen breached
20 these contracts by selling or leasing Arizona Plaintiff and the Arizona Subclass the
21 Defective Vehicles and by misrepresenting or failing to disclose the existence of the
22 defeat device, including information known to Volkswagen rendering each
23 Defective Vehicle not emission compliant and therefore less valuable.

24 178. Arizona Plaintiff and the other Arizona Subclass Members fully
25 performed their obligations under the contract by paying all amounts due under the
26 contracts.

27 179. As a direct and proximate result of Volkswagen's breach of contract,
28 Arizona Plaintiff and the other Arizona Subclass Members have been damaged in

1 an amount to be proven at trial, which shall include, but is not limited to, all
2 compensatory damages, incidental and consequential damages, and other damages
3 allowed by law.

4 **THIRD CLAIM FOR RELIEF**

5 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**

6 **(ARIZONA REVISED STATUTE § 47-2314)**

7 180. Plaintiffs re-allege and incorporate all paragraphs above as though
8 fully set forth herein.

9 181. Plaintiffs bring this Claim for Relief on behalf of the Arizona
10 Subclass.

11 182. Volkswagen is and was at all relevant times a merchant with respect to
12 the sale of motor vehicles, including the Defective Vehicles under Arizona Revised
13 Statute § 47-2014.

14 183. The law implies that the Defective Vehicles were in merchantable
15 condition in the instant transactions. These Defective Vehicles, when sold and at
16 all times thereafter, were not in merchantable condition and are not fit for the
17 ordinary purpose for which vehicles are used. Specifically, the Defective Vehicles
18 do not comply with federal and state emissions standards; have safety and
19 emissions functions that are inoperative; and their CleanDiesel engines was not
20 adequately designed, manufactured, and tested.

21 184. Volkswagen was provided notice of these issues by the investigations
22 conducted by the EPA and state regulators, numerous complaints filed against it,
23 and by numerous individual letters and communications sent by Class members
24 before or within a reasonable amount of time after the allegations relating to the
25 Defective Vehicle became public.

26 185. As a direct and proximate result of Volkswagen's breach of the
27 warranty of merchantability, Arizona Plaintiff and the other Arizona Subclass have
28 been damaged in an amount to be proven at trial.

FOURTH CLAIM FOR RELIEF

FRAUD BY CONCEALMENT (ARIZONA)

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3 186. Plaintiffs re-allege and incorporate all paragraphs above as though
4 fully set forth herein.

5 187. Plaintiffs bring this Claim for Relief on behalf of the Minnesota
6 Subclass.

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

15 189. The defeat device was programmed into the Defective Vehicle’s
16 software and was designed to evade detection. Volkswagen designed the defeat
17 device so that the vehicles’ emission control systems could sense when they were
18 being tested for emissions and would at that time engage emission controls. But
19 when the Defective Vehicle’s software detected that the emissions testing was
20 complete, it secretly disengaged certain features of the emission control system,
21 causing the vehicle to emit illegal levels of certain pollutants.

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

26 191. On October 8, 2015, Michael Horn, the then President and CEO of
27 Volkswagen North America, gave the following testimony before the House
28 Committee on Energy and Commerce Subcommittee on Oversight and

1 Investigations: “On behalf of our company, and my colleagues in Germany, I
2 would like to offer a sincere apology for Volkswagen’s use of a software program
3 that served to defeat the regular emissions testing regime.” He also testified that
4 “[t]hese events are deeply troubling. I did not think that something like this was
5 possible at the Volkswagen Group. We have broken the trust of our customers,
6 dealerships, and employees, as well as the public and regulators.”

7 192. Arizona Plaintiff and the Arizona Subclass reasonably relied on
8 Volkswagen’s false representations. Volkswagen designed the defeat device to
9 evade discovery not only by consumers but also by state and federal emissions
10 regulators from the EPA and CARB. In fact, Volkswagen did not finally admit to
11 installing the defeat device on the Defective Vehicles until approximately six years
12 after first selling Defective Vehicles, having successfully evaded detection for all of
13 those years.

14 193. Volkswagen’s false representations were material to consumers,
15 including to Arizona Plaintiff and the Arizona Subclass. Not only did the
16 representations relate to the value of the Defective Vehicles, but it also concerned
17 their compliance with state and federal emissions standards. Indeed, Volkswagen’s
18 advertising campaign sought out customers who cared deeply about the
19 environment and were willing to pay a premium for a clean diesel vehicle. While
20 Volkswagen preached to consumers about its “commitment to making vehicles that
21 are eco-conscious,” in fact Volkswagen cared only about boosting its bottom line
22 and maximizing corporate profits.

23 194. Volkswagen had a duty to disclose the details relating to the defeat
24 device to Arizona Plaintiff and the Arizona Subclass because the information was
25 known and/or accessible only to Volkswagen, Volkswagen had exclusive
26 knowledge relating to the design, implementation, and maintenance of the defeat
27 device, and Volkswagen knew that the facts concerning the defeat device were
28

1 unknown to and not reasonably discoverable by Arizona Plaintiff or the Arizona
2 Subclass.

3 195. Volkswagen also had a duty to disclose the information because it
4 made affirmative misrepresentations concerning the qualities of its vehicles and
5 their compliance with state and federal emissions standards. Volkswagen's
6 marketing of the Defective Vehicles as "CleanDiesel," "eco-conscious," and
7 "extremely efficient," was deceptive, misleading, and incomplete without
8 disclosing the presence of the defeat device and the Defective Vehicles' actual
9 emissions. Having voluntarily provided information to Arizona Plaintiff and the
10 Arizona Subclass, Volkswagen had a duty to disclose the entire truth.

11 196. The facts that Volkswagen omitted and concealed from Arizona
12 Plaintiff and the Arizona Subclass were material. They went to the heart of
13 Volkswagen's claim that the Defective Vehicles were eco-conscious, that they
14 complied with state and federal emissions standards, and directly impacted the
15 value of the Defective Vehicles.

16 197. Volkswagen's deceitful conduct has already caused the value of the
17 Defective Vehicles to decrease significantly. For example, Kelley Blue Book
18 reported that Volkswagen's conduct has caused the fair market value of the
19 Defective Vehicles to decrease by 13%. If each the Defective Vehicles had an
20 average fair market value of approximately \$15,000, then a 13% drop in fair market
21 value alone has caused nearly a billion dollars in harm nationwide.

22 198. Because of Volkswagen's fraudulent concealment and/or suppression
23 of the true facts, Arizona Plaintiff and the other Arizona Subclass Members have
24 sustained damages because the Defective Vehicles that they own or lease are
25 diminished in value as a result of Volkswagen's concealment of the true quality and
26 nature of the vehicle's emissions. Had Arizona Plaintiff and the Arizona Subclass
27 known the facts concerning Volkswagen's evasion of federal and state emission
28

1 standards, they would have paid less for their vehicles or would not have purchased
2 or leased them at all.

3 199. According, Volkswagen is liable to Arizona Plaintiff and the Arizona
4 Subclass Members for damages in an amount to be proven at trial.

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

12
13 **C. Claims on Behalf of California Subclass.**

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

17 201. California Plaintiffs re-allege and incorporate all paragraphs set forth
18 above as though fully set forth herein.

19 202. Plaintiffs bring this Claim for Relief on behalf of the California
20 Subclass.

21 203. California Business and Professions Code § 17200, et seq. prohibits
22 "unlawful, unfair, or fraudulent business act or practice." Cal. Bus. & Prof. Code
23 §§17200, 17203.

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

1 205. Volkswagen further engaged in unlawful business acts and/or practices
2 by representing that “Clean diesel vehicles meet the strictest EPA standards in the
3 U.S.” and that “our diesel engines comply with the world’s most demanding
4 emission laws.” These actions were misleading and deceptive, and violated the
5 False Advertising Law, California Business & Professions Code §§ 17500, *et seq.*
6 and the Consumer Legal Remedies Act, California Civil Code §§ 1750, *et seq.*

7 206. Volkswagen engaged in unlawful business acts and/or practices by
8 making untrue, deceptive, or misleading environmental marketing claims on
9 promotional materials including pages of the Volkswagen’s website, in violation of
10 California’s “Greenwashing” Statute, Cal. Bus. & Prof. Code § 17580.5. Such
11 claims include, but are not limited to: overstating the environmental attributes of
12 the Defective Vehicles it distributes in California. *See* Cal. Bus. & Prof. Code §
13 17580.5(a).

14 207. The acts, omissions, and practices alleged herein also constitute unfair
15 business acts and practices in that Volkswagen’s conduct is immoral, unscrupulous,
16 and offends public policy by seeking to profit from the sale and lease of Defective
17 Vehicles that emit pollution in violation of California and federal law.

18 208. California Plaintiffs relied on Volkswagen’s misrepresentations. As a
19 direct result of Volkswagen’s unlawful, unfair, or fraudulent business acts and/or
20 practices, California Plaintiffs and other California Subclass Members suffered
21 injury in fact and lost money or property.

22 209. Volkswagen’s unlawful, unfair, and/or fraudulent business acts or
23 practices have already caused the value of the Defective Vehicles to decrease
24 significantly. For example, Kelley Blue Book reported that Volkswagen’s conduct
25 has caused the fair market value of the Defective Vehicles to decrease by 13%. If
26 each the Defective Vehicles had an average fair market value of approximately
27 \$15,000, then a 13% drop in fair market value alone has caused nearly a billion
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1 dollars in harm to the Class nationwide, with a significant amount of that harm
2 arising in California.

3 210. Volkswagen profited from its sales of its falsely and deceptively
4 advertised products to unwary customers.

5 211. Accordingly, California Plaintiffs, on behalf of themselves and all
6 others similarly situated, seek restitution, injunctive relief against Volkswagen in
7 the form of an order prohibiting Volkswagen from engaging in the alleged
8 misconduct described herein, and other relief as specifically prayed for herein.

9
10 **SECOND CLAIM FOR RELIEF**

11 **VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS**

12 **CODE § 17500, et seq.**

13 212. California Plaintiffs re-allege and incorporate all paragraphs above as
14 though fully set forth herein.

15 213. Plaintiffs bring this Claim for Relief on behalf of the California
16 Subclass.

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

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

28

1 216. California Plaintiffs reasonably relied on Volkswagen's
2 representations made in violation of California Business and Professions Code §
3 17500, et seq.

4 217. As a direct result of Volkswagen's violations, California Plaintiffs
5 suffered injury in fact and lost money.

6 218. Volkswagen's unlawful and/or fraudulent conduct has already caused
7 the value of the Defective Vehicles to decrease significantly. For example, Kelley
8 Blue Book reported that Volkswagen's conduct has caused the fair market value of
9 the Defective Vehicles to decrease by 13%. If each the Defective Vehicles had an
10 average fair market value of approximately \$15,000, then a 13% drop in fair market
11 value alone has caused nearly a billion dollars in harm nationwide.

12 219. Accordingly, California Plaintiffs, on behalf of themselves and all
13 others similarly situated, seek restitution and injunctive relief against Volkswagen
14 in the form of an order prohibiting Volkswagen from engaging in the alleged
15 misconduct described herein, and other relief as specifically prayed for herein.

16
17 **THIRD CLAIM FOR RELIEF**
18 **VIOLATION OF CALIFORNIA CONSUMER LEGAL REMEDIES ACT,**
19 **CAL. CIV. CODE § 1750 et seq.**

20 220. California Plaintiffs incorporate by reference all the above allegations
21 as if fully set forth herein.

22 221. Plaintiffs bring this Claim for Relief on behalf of the California
23 Subclass.

24 222. Volkswagen is a "person" within the meaning of California Civil Code
25 §§ 1761(c) and 1770, and provides "goods" within the meaning of Civil Code
26 §§ 1761(a) and 1770. Volkswagen's customers, including plaintiffs and Class
27 members, are "consumers" within the meaning of Civil Code §§ 1761(d) and 1770.
28 Each purchase of Volkswagen's Defective Vehicles by California Plaintiffs and

1 each California Subclass member constitutes a “transaction” within the meaning of
2 Civil Code §§ 1761(e) and 1770.

3 223. Each California Subclass member purchased goods from Volkswagen
4 that was primarily for personal, family, or household purposes.

5 224. The Consumer Legal Remedies Act makes it unlawful for a company
6 to:

7 a. Misrepresent the certification of goods. Cal. Civ. Code
8 § 1770(a)(2)(3);

9 b. Represent that goods have characteristics or approval which they do
10 not have. Cal. Civ. Code § 1770(a)(5);

11 c. Represent that goods are of a particular standard, quality, or grade,
12 if they are of another. Cal. Civ. Code § 1770(a)(7);

13 d. Advertise goods with intent not to sell them as advertised. Cal. Civ.
14 Code § 1770(a)(9).

15 e. Represent that the subject of a transaction has been supplied in
16 accordance with a previous representation when it has not. Cal. Civ.
17 Code § 1770(a)(16).

18 225. Volkswagen violated and continues to violate the above mentioned
19 provisions.

20 226. As a direct and proximate result of Volkswagen’s violations,
21 California Plaintiffs and other California Subclass Members have suffered and are
22 continuing to suffer irreparable harm.

23 227. Volkswagen’s wrongful business practices constituted, and constitute,
24 a continuing course of conduct in violation of the California Consumer Legal
25 Remedies Act because Volkswagen is still representing that the Defective Vehicles
26 have characteristics and qualifications which are false and misleading, and has
27 injured California Plaintiffs and California Subclass Members.
28

1 231. California Plaintiffs and the other California Subclass Members fully
2 performed their obligations under the contract by paying all amounts due under the
3 contracts.

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

9
10 **FIFTH CLAIM FOR RELIEF**
11 **BREACH OF EXPRESS WARRANTY,**
12 **CALIFORNIA UNIFORM COM. CODE § 2313**

13 233. California Plaintiffs re-alleges and incorporates all paragraphs above
14 as though fully set forth herein.

15 234. Plaintiffs bring this Claim for Relief on behalf of the California
16 Subclass.

17 235. Volkswagen has expressly warranted that its Defective Vehicles
18 comply with EPA and CARB emission standards and all other applicable laws and
19 regulations.

20 236. Volkswagen's express warranty that its Defective Vehicles comply
21 with state and federal emission standards appears on Volkswagen's website,
22 advertising materials, and instruction materials.

23 237. Volkswagen's warranties became part of the basis of the bargain in
24 selling Defective Vehicles to California Plaintiffs and other California Subclass
25 Members.

26 238. Volkswagen breached these express warranties by selling, and/or
27 distributing the Defective Vehicles, which fail to comply with state and federal
28 emissions standards.

1 239. California Plaintiffs and California Subclass members paid money for
2 vehicles that complied with state and federal emissions standards. However,
3 California Plaintiffs and other California Subclass Members did not obtain the full
4 value of the advertised products. If California Plaintiffs and other California
5 Subclass Members had known the true nature of the Defective Vehicles, they would
6 not have purchased the Defective Vehicles.

7 240. As a result of this breach, California Plaintiffs and other California
8 Subclass Members suffered injury and deserve to be compensated for the damages
9 they suffered.

10 241. For example, Volkswagen's breach has already caused the value of the
11 Defective Vehicles to decrease significantly. Kelley Blue Book reported that
12 Volkswagen's conduct has caused the fair market value of the Defective Vehicles
13 to decrease by 13%. If each the Defective Vehicles had an average fair market
14 value of approximately \$15,000, then a 13% drop in fair market value alone has
15 caused nearly a billion dollars in harm nationwide.

16 242. California Plaintiffs and the California Subclass are therefore entitled
17 to recover compensatory damages, declaratory relief, and other relief as specifically
18 prayed for herein.

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

24 243. California Plaintiffs re-alleges and incorporates all paragraphs above
25 as though fully set forth herein.

26 244. Plaintiffs bring this Claim for Relief on behalf of the California
27 Subclass.
28

1 245. California Plaintiffs and other California Subclass Members who
2 purchased or leased Defective Vehicles in California are “buyers” within the
3 meaning of Cal. Civ. Code § 1791(b).

4 246. The Defective Vehicles are “consumer goods” within the meaning of
5 Cal. Civ. Code § 1791(a).

6 247. Volkswagen is a “manufacturer” of the Defective Vehicles within the
7 meaning of Cal. Civ. Code § 1791(j).

8 248. Volkswagen impliedly warranted to California Plaintiffs and
9 California Subclass Members that the Defective Vehicles were “merchantable”
10 within the meaning of Cal. Civ. Code §§ 1791.1(a) and 1792. However, the
11 Defective Vehicles do not have the quality that a buyer would reasonably expect.

12 249. Cal. Civ. Code § 1791.1(a) states:

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

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

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

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

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

20 250. The Defective Vehicles would not pass without objection in the
21 automotive industry because they do not pass EPA and state emission regulations.

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

25 252. The Defective Vehicles are not adequately labeled because their
26 labeling fails to disclose the defeat device that causes certain features of the
27 emissions systems to become inoperative during normal use.
28

1 253. Volkswagen breached the implied warranty of merchantability by
2 manufacturing and selling Defective Vehicles containing the defeat device. And
3 Volkswagen's fraudulent use of the defeat device has caused California Plaintiffs
4 and the other California Subclass Members not to receive the benefit of their
5 bargain and caused the Defective Vehicles to depreciate in value.

6 254. As a direct and proximate result of Volkswagen's breach of the
7 implied warranty of merchantability, California Plaintiffs and the other California
8 Subclass Members received goods containing the defeat device that substantially
9 impairs their value to California Plaintiffs and the other California Subclass
10 Members. California Plaintiffs and the other California Subclass Members have
11 been damaged as a result of the diminished value of Volkswagen's Defective
12 Vehicles, the Defective Vehicle's malfunctioning, and the nonuse of their Defective
13 Vehicles.

14 255. Pursuant to Cal. Civ. Code §§ 1791.1(d) and 1794, California
15 Plaintiffs and the other California Subclass Members are entitled to damages and
16 other legal and equitable relief including, at their election, the purchase price of
17 their Defective Vehicles, or the overpayment or diminution in value of their
18 Defective Vehicles.

19 256. Pursuant to Cal. Civ. Code § 1794, California Plaintiffs and the other
20 California Subclass Members are entitled to costs and attorney's fees.

21
22 **SEVENTH CLAIM FOR RELIEF**

23 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**

24 **CALIFORNIA COMMERCIAL CODE §§ 2314**

25 257. California Plaintiffs re-allege and incorporate all paragraphs above as
26 though fully set forth herein.

27 258. Plaintiffs bring this Claim for Relief on behalf of the California
28 Subclass.

1 259. Volkswagen is and was at all relevant times a merchant with respect to
2 the sale of motor vehicles, including the Defective Vehicles under California
3 Commercial Code § 2014.

4 260. The law implies that the Defective Vehicles were in merchantable
5 condition in the instant transactions. These Defective Vehicles, when sold and at
6 all times thereafter, were not in merchantable condition and are not fit for the
7 ordinary purpose for which vehicles are used. Specifically, the Defective Vehicles
8 do not comply with federal and state emissions standards; have safety and
9 emissions functions that are inoperative; and their CleanDiesel engines was not
10 adequately designed, manufactured, and tested.

11 261. Volkswagen was provided notice of these issues by the investigations
12 conducted by the EPA and state regulators, numerous complaints filed against it,
13 and by numerous individual letters and communications sent by Class members
14 before or within a reasonable amount of time after the allegations relating to the
15 Defective Vehicle became public.

16 262. As a direct and proximate result of Volkswagen's breach of the
17 warranty of merchantability, California Plaintiffs and the other California Subclass
18 Members have been damaged in an amount to be proven at trial.

19
20 **EIGHTH CLAIM FOR RELIEF**

21 **FRAUD BY CONCEALMENT (CALIFORNIA)**

22 263. California Plaintiffs re-allege and incorporate all paragraphs above as
23 though fully set forth herein.

24 264. Plaintiffs bring this Claim for Relief on behalf of the California
25 Subclass.

26 265. Volkswagen intentionally concealed and suppressed material facts
27 about the actual quality and character of the Defective Vehicles. As alleged above,
28 Volkswagen designed and installed a secret defeat device in the Defective Vehicles

1 to defraud consumers and fool state and federal emissions regulators. While
2 Volkswagen represented to consumers that the Defective Vehicles were “eco-
3 conscious,” “CleanDiesel,” and operated with “extreme efficiency,” the opposite
4 was true. The Defective Vehicles cannot even satisfy state and federal emission
5 standards, emitting up to 40 times more than the legal limit of certain pollutants.

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

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

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

24 269. Volkswagen’s false representations were material to consumers,
25 including to California Plaintiffs and the California Subclass. Not only did the
26 representations relate to the value of the Defective Vehicles, but it also concerned
27 their compliance with state and federal emissions standards. Indeed, Volkswagen’s
28 advertising campaign sought out customers who cared deeply about the

1 environment and were willing to pay a premium for a clean diesel vehicle. While
2 Volkswagen preached to consumers about its “commitment to making vehicles that
3 are eco-conscious,” in fact Volkswagen cared only about boosting its bottom line
4 and maximizing corporate profits.

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

12 271. 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 California Plaintiffs and the
19 California Subclass Members, Volkswagen had a duty to disclose the entire truth.

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

25 273. Volkswagen’s deceitful conduct has already caused the value of the
26 Defective Vehicles to decrease significantly. For example, Kelley Blue Book
27 reported that Volkswagen’s conduct has caused the fair market value of the
28 Defective Vehicles to decrease by 13%. If each the Defective Vehicles had an

1 average fair market value of approximately \$15,000, then a 13% drop in fair market
2 value alone has caused nearly a billion dollars in harm nationwide.

3 274. Because of Volkswagen's fraudulent concealment and/or suppression
4 of the true facts, California Plaintiffs and the other California Subclass Members
5 have sustained damages because the Defective Vehicles that they own or lease are
6 diminished in value as a result of Volkswagen's concealment of the true quality and
7 nature of the vehicle's emissions. Had California Plaintiffs and the California
8 Subclass Members known the facts concerning Volkswagen's evasion of federal
9 and state emission standards, they would have paid less for their vehicles or would
10 not have purchased or leased them at all.

11 275. According, Volkswagen is liable to California Plaintiffs and the
12 California Subclass Members for damages in an amount to be proven at trial.

13 276. Volkswagen's acts were done wantonly, maliciously, oppressively,
14 deliberately, with intent to defraud, and in reckless disregard of California
15 Plaintiff's and the other California Subclass Members rights and the representations
16 that Volkswagen made to them, in order to enrich Volkswagen. As a result,
17 Volkswagen's conduct warrants an assessment of punitive damages in an amount
18 sufficient to deter such conduct in the future, and in an amount to be determined
19 according to proof.

20
21 **D. Claims on Behalf of Colorado Subclass.**

22 **FIRST CLAIM FOR RELIEF**

23 **VIOLATION OF THE COLORADO CONSUMER PROTECTION ACT**

24 **(Colorado Revised Statute §§ 6-1-101, et seq.)**

25 277. Colorado Plaintiffs re-allege and incorporate all paragraphs set forth
26 above as though fully set forth herein.
27
28

1 278. Plaintiffs bring this Claim for Relief on behalf of the Colorado
2 Subclass.

3 279. Colorado’s Consumer Protection Act (the “CCPA”) prohibits a person
4 from engaging in a “deceptive trade practice,” which includes knowingly making “a
5 false representation as to the source, sponsorship, approval, or certification of
6 goods,” or “a false representation as to the characteristics, ingredients, uses,
7 benefits, alterations, or quantities of goods.” Colorado Revised Statute § 6-1-
8 105(1)(b), (e). The CCPA further prohibits “represent[ing] that goods ... are of a
9 particular standard, quality, or grade ... if he knows or should know that they are of
10 another,” and “advertis[ing] goods ... with intent not to sell them as advertised.”
11 Colorado Revised Statute§ 6-1-105(1)(g), (i).

12 280. Volkswagen is a “person” under § 6-1-102(6) of the Colorado CPA,
13 Colorado Revised Statute§ 6-1-101, et seq.

14 281. Colorado Plaintiffs and Colorado Subclass members are “consumers”
15 under Colorado Revised Statute § 6-1-113(1)(a) who purchased or leased one or
16 more Defective Vehicles.

17 282. Volkswagen has engaged in unlawful business acts and/or practices by
18 selling and/or distributing Defective Vehicles in Colorado that contain a defeat
19 device and fail EPA and CARB emission standards.

20 283. Volkswagen further engaged in unlawful business acts and/or practices
21 by representing that “Clean diesel vehicles meet the strictest EPA standards in the
22 U.S.” These actions were misleading and deceptive.

23 284. In purchasing or leasing the Defective Vehicles, Colorado Plaintiff and
24 the other Colorado Subclass members were deceived by Volkswagen’s failure to
25 disclose that the Defective Vehicles contained the defeat device and that the
26 CleanDiesel engine failed state and federal emissions standards.

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1 285. Volkswagen intentionally and knowingly misrepresented material facts
2 regarding the Defective Vehicles with an intent to mislead Colorado Plaintiff and
3 the Colorado Subclass.

4 286. Colorado Plaintiff reasonably relied on Volkswagen's
5 misrepresentations. As a direct result of Volkswagen's unlawful, unfair, or
6 fraudulent business acts and/or practices, Colorado Plaintiff and other Colorado
7 Subclass Members suffered injury in fact and lost money or property.

8 287. Volkswagen knew or should have known that its conduct violated the
9 Colorado CPA.

10 288. Volkswagen's actions as set forth above occurred in the conduct of
11 trade or commerce.

12 289. Volkswagen's conduct proximately caused injuries to Colorado
13 Plaintiff and the other Colorado Subclass members.

14 290. Colorado Plaintiff and the other Colorado Subclass members were
15 injured as a result of Volkswagen's conduct in that they overpaid for their Defective
16 Vehicles and did not receive the benefit of their bargain, and their Defective
17 Vehicles have suffered a diminution in value. These injuries are the direct and
18 natural consequence of Volkswagen's misrepresentations and omissions.

19 291. For example, Volkswagen's unlawful, unfair, and/or fraudulent
20 business acts or practices have already caused the value of the Defective Vehicles
21 to decrease significantly. Kelley Blue Book reported that Volkswagen's conduct
22 has caused the fair market value of the Defective Vehicles to decrease by 13%. If
23 each the Defective Vehicles had an average fair market value of approximately
24 \$15,000, then a 13% drop in fair market value alone has caused nearly a billion
25 dollars in harm to the Class nationwide.

26 292. Volkswagen profited from its sales of its falsely and deceptively
27 advertised products to unwary customers.
28

1 Members the Defective Vehicles and by misrepresenting or failing to disclose the
2 existence of the defeat device, including information known to Volkswagen
3 rendering each Defective Vehicle not emission compliant and therefore less
4 valuable.

5 299. Colorado Plaintiff and the other Colorado Subclass Members fully
6 performed their obligations under the contract by paying all amounts due under the
7 contracts.

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

13 **THIRD CLAIM FOR RELIEF**

14 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**

15 **COLORADO REVISED STATUTE § 4-2-314**

16 301. Plaintiffs re-allege and incorporate all paragraphs above as though
17 fully set forth herein.

18 302. Plaintiffs bring this Claim for Relief on behalf of the Colorado
19 Subclass.

20 303. Volkswagen is and was at all relevant times a merchant with respect to
21 the sale of motor vehicles, including the Defective Vehicles.

22 304. The law implies that the Defective Vehicles were in merchantable
23 condition in the instant transactions. These Defective Vehicles, when sold and at
24 all times thereafter, were not in merchantable condition and are not fit for the
25 ordinary purpose for which vehicles are used. Specifically, the Defective Vehicles
26 do not comply with federal and state emissions standards; have safety and
27

28

1 emissions functions that are inoperative; and their CleanDiesel engines was not
2 adequately designed, manufactured, and tested.

3 305. Volkswagen was provided notice of these issues by the investigations
4 conducted by the EPA and state regulators, numerous complaints filed against it,
5 and by numerous individual letters and communications sent by Class members
6 before or within a reasonable amount of time after the allegations relating to the
7 Defective Vehicle became public.

8 306. As a direct and proximate result of Volkswagen's breach of the
9 warranty of merchantability, plaintiff and the other Class Members have been
10 damaged in an amount to be proven at trial.

11 **FOURTH CLAIM FOR RELIEF**

12 **STRICT PRODUCT LIABILITY (COLORADO)**

13 307. Plaintiffs re-allege and incorporate all paragraphs above as though
14 fully set forth herein.

15 308. Plaintiffs bring this Claim for Relief on behalf of the Colorado
16 Subclass.

17 309. Colorado law recognizes a cause of action for product defects that
18 complements Colorado's Product Liability Statute, Colorado Revised Statute title
19 13, Article 21, Part 4.

20 310. Volkswagen is a "manufacturer" and "seller" of the Defective Vehicles
21 within the meaning of Colorado Revised Statute § 13-21-401(1).

22 311. Volkswagen manufactured and sold the Defective Vehicles in a
23 defective condition and in a condition that was unreasonably dangerous to drivers,
24 other motorists, pedestrians, and others or to their property, including persons who
25 may reasonably be expected to use, consume, or be affected by them, in at least the
26 following respects: (i) the Defective Vehicles were defectively designed,
27 assembled, produced, and constructed in that they contained a defeat device that
28

1 caused them to violate state and federal emissions standards; and (ii) the Defective
2 Vehicles were not accompanied by adequate warnings about their defective nature.

3 312. The Defective Vehicles were defective and unreasonably dangerous at
4 the time they were sold by Volkswagen and were intended to and did reach
5 Colorado Plaintiff and the other Colorado Subclass members in substantially the
6 same condition as they were in when they were manufactured, sold, and left the
7 control of Volkswagen.

8 313. Colorado Plaintiff and the other Colorado Subclass members are
9 persons who were reasonably expected to use, consume, or be affected by the
10 Defective Vehicles.

11 314. As a direct and proximate result of the defective and illegal conditions
12 of the Defective Vehicles, Colorado Plaintiff and the other Colorado Subclass
13 members have suffered damages in an amount to be proven at trial.

14 **FIFTH CLAIM FOR RELIEF**

15 **FRAUD BY CONCEALMENT (COLORADO)**

16 315. Plaintiffs re-allege and incorporate all paragraphs above as though
17 fully set forth herein.

18 316. Plaintiffs bring this Claim for Relief on behalf of the Colorado
19 Subclass.

20 317. Volkswagen intentionally concealed and suppressed material facts
21 about the actual quality and character of the Defective Vehicles. As alleged above,
22 Volkswagen designed and installed a secret defeat device in the Defective Vehicles
23 to defraud consumers and fool state and federal emissions regulators. While
24 Volkswagen represented to consumers that the Defective Vehicles were “eco-
25 conscious,” “CleanDiesel,” and operated with “extreme efficiency,” the opposite
26 was true. The Defective Vehicles cannot even satisfy state and federal emission
27 standards, emitting up to 40 times more than the legal limit of certain pollutants.
28

1 318. The defeat device was programmed into the Defective Vehicle’s
2 software and was designed to evade detection. Volkswagen designed the defeat
3 device so that the vehicles’ emission control systems could sense when they were
4 being tested for emissions and would at that time engage emission controls. But
5 when the Defective Vehicle’s software detected that the emissions testing was
6 complete, it secretly disengaged certain features of the emission control system,
7 causing the vehicle to emit illegal levels of certain pollutants.

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

12 320. On October 8, 2015, Michael Horn, the then President and CEO of
13 Volkswagen North America, gave the following testimony before the House
14 Committee on Energy and Commerce Subcommittee on Oversight and
15 Investigations: “On behalf of our company, and my colleagues in Germany, I
16 would like to offer a sincere apology for Volkswagen’s use of a software program
17 that served to defeat the regular emissions testing regime.” He also testified that
18 “[t]hese events are deeply troubling. I did not think that something like this was
19 possible at the Volkswagen Group. We have broken the trust of our customers,
20 dealerships, and employees, as well as the public and regulators.”

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

28

1 322. Volkswagen’s false representations were material to consumers,
2 including to Colorado Plaintiff and the Colorado Subclass. Not only did the
3 representations relate to the value of the Defective Vehicles, but it also concerned
4 their compliance with state and federal emissions standards. Indeed, Volkswagen’s
5 advertising campaign sought out customers who cared deeply about the
6 environment and were willing to pay a premium for a clean diesel vehicle. While
7 Volkswagen preached to consumers about its “commitment to making vehicles that
8 are eco-conscious,” in fact Volkswagen cared only about boosting its bottom line
9 and maximizing corporate profits.

10 323. Volkswagen had a duty to disclose the details relating to the defeat
11 device to Colorado Plaintiff and the Colorado Subclass Members because the
12 information was known and/or accessible only to Volkswagen, Volkswagen had
13 exclusive knowledge relating to the design, implementation, and maintenance of the
14 defeat device, and Volkswagen knew that the facts concerning the defeat device
15 were unknown to and not reasonably discoverable by Colorado Plaintiff or the
16 Colorado Subclass Members.

17 324. Volkswagen also had a duty to disclose the information because it
18 made affirmative misrepresentations concerning the qualities of its vehicles and
19 their compliance with state and federal emissions standards. Volkswagen’s
20 marketing of the Defective Vehicles as “CleanDiesel,” “eco-conscious,” and
21 “extremely efficient,” was deceptive, misleading, and incomplete without
22 disclosing the presence of the defeat device and the Defective Vehicles’ actual
23 emissions. Having voluntarily provided information to Colorado Plaintiff and the
24 Colorado Subclass Members, Volkswagen had a duty to disclose the entire truth.

25 325. The facts that Volkswagen omitted and concealed from Colorado
26 Plaintiff and the Colorado Subclass Members were material. They went to the heart
27 of Volkswagen’s claim that the Defective Vehicles were eco-conscious, that they
28

1 complied with EPA and CARB emission standards, and directly impacted the value
2 of the Defective Vehicles.

3 326. Volkswagen's deceitful conduct has already caused the value of the
4 Defective Vehicles to decrease significantly. For example, Kelley Blue Book
5 reported that Volkswagen's conduct has caused the fair market value of the
6 Defective Vehicles to decrease by 13%. If each the Defective Vehicles had an
7 average fair market value of approximately \$15,000, then a 13% drop in fair market
8 value alone has caused nearly a billion dollars in harm nationwide.

9 327. Because of Volkswagen's fraudulent concealment and/or suppression
10 of the true facts, Colorado Plaintiff and the other Colorado Subclass Members have
11 sustained damages because the Defective Vehicles that they own or lease are
12 diminished in value as a result of Volkswagen's concealment of the true quality and
13 nature of the vehicle's emissions. Had Colorado Plaintiff and the Colorado
14 Subclass Members known the facts concerning Volkswagen's evasion of federal
15 and state emission standards, they would have paid less for their vehicles or would
16 not have purchased or leased them at all.

17 328. According, Volkswagen is liable to Colorado Plaintiff and the
18 Colorado Subclass Members for damages in an amount to be proven at trial.

19 329. Volkswagen's acts were done wantonly, maliciously, oppressively,
20 deliberately, with intent to defraud, and in reckless disregard of Colorado Plaintiff's
21 and the other Colorado Subclass Members rights and the representations that
22 Volkswagen made to them, in order to enrich Volkswagen. As a result,
23 Volkswagen's conduct warrants an assessment of punitive damages in an amount
24 sufficient to deter such conduct in the future, and in an amount to be determined
25 according to proof.

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1 336. Volkswagen intentionally and knowingly misrepresented material facts
2 regarding the Defective Vehicles with an intent to mislead Connecticut Plaintiff and
3 the Connecticut Subclass.

4 337. Connecticut Plaintiff reasonably relied on Volkswagen's
5 misrepresentations. As a direct result of Volkswagen's unlawful, unfair, or
6 fraudulent business acts and/or practices, Connecticut Plaintiff and other
7 Connecticut Subclass Members suffered injury in fact and lost money or property.

8 338. Volkswagen owed Plaintiffs a duty to disclose the true safety,
9 cleanliness, efficiency and reliability of the Defective Vehicles and the devaluing of
10 environmental cleanliness and integrity at Volkswagen, because Volkswagen:

- 11 a. Possessed exclusive knowledge that it was designing,
12 manufacturing, marketing, selling, and distributing vehicles
13 throughout the United States that did not comply with state and
14 federal emissions regulations;
- 15 b. Intentionally concealed the foregoing from Connecticut
16 Plaintiffs and the Connecticut Subclass; and/or
- 17 c. Made incomplete representations about the safety, cleanliness,
18 efficiency, and reliability of the Defective Vehicles generally,
19 and the defeat device and true nature of the CleanDiesel engine
20 system, while purposefully withholding material facts from
21 Plaintiffs that contradicted these representations.

22 339. Volkswagen knew or should have known that its conduct violated the
23 Connecticut UTPA.

24 340. Volkswagen's actions as set forth above occurred in the conduct of
25 trade or commerce.

26 341. Volkswagen's conduct proximately caused injuries to Connecticut
27 Plaintiff and the other Connecticut Subclass members.

28

1 348. Plaintiffs bring this Claim for Relief on behalf of the Connecticut
2 Subclass.

3 349. Volkswagen's misrepresentations and omissions alleged herein,
4 including its failure to disclose the existence of the defeat device caused
5 Connecticut Plaintiff and the other Connecticut Subclass Members to make their
6 purchases or leases of the Defective Vehicles. Absent those misrepresentations and
7 omissions, Connecticut Plaintiff and the other Connecticut Subclass Members
8 would not have purchased or leased the Defective Vehicles, and/or would not have
9 purchased or leased the Defective Vehicles at the prices they paid. Accordingly,
10 Connecticut Plaintiff and the Connecticut Subclass Members overpaid for their
11 Defective Vehicles and did not receive the benefit of their bargain.

12 350. Each and every sale or lease of a Defective Vehicle constitutes a
13 contract between Volkswagen and the purchaser or lessee. Volkswagen breached
14 these contracts by selling or leasing Connecticut Plaintiff and the Connecticut
15 Subclass Members the Defective Vehicles and by misrepresenting or failing to
16 disclose the existence of the defeat device, including information known to
17 Volkswagen rendering each Defective Vehicle not emission compliant and
18 therefore less valuable.

19 351. Connecticut Plaintiff and the other Connecticut Subclass Members
20 fully performed their obligations under the contract by paying all amounts due
21 under the contracts.

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

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THIRD CLAIM FOR RELIEF

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

CONNECTICUT GENERAL STATUTE ANNOTATED § 42A-2-314

353. Plaintiffs re-allege and incorporate all paragraphs above as though fully set forth herein.

354. Plaintiffs bring this Claim for Relief on behalf of the Connecticut Subclass.

355. Volkswagen is and was at all relevant times a merchant with respect to the sale of motor vehicles, including the Defective Vehicles.

356. The law implies that the Defective Vehicles were in merchantable condition in the instant transactions. These Defective Vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which vehicles are used. Specifically, the Defective Vehicles do not comply with federal and state emissions standards; have safety and emissions functions that are inoperative; and their CleanDiesel engines was not adequately designed, manufactured, and tested.

357. Volkswagen was provided notice of these issues by the investigations conducted by the EPA and state regulators, numerous complaints filed against it, and by numerous individual letters and communications sent by Class members before or within a reasonable amount of time after the allegations relating to the Defective Vehicle became public.

358. As a direct and proximate result of Volkswagen's breach of the warranty of merchantability, plaintiff and the other Class Members have been damaged in an amount to be proven at trial.

FOURTH CLAIM FOR RELIEF

FRAUD BY CONCEALMENT (CONNECTICUT)

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3 359. Plaintiffs re-allege and incorporate all paragraphs above as though
4 fully set forth herein.

5 360. Plaintiffs bring this Claim for Relief on behalf of the Connecticut
6 Subclass.

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

15 362. The defeat device was programmed into the Defective Vehicle’s
16 software and was designed to evade detection. Volkswagen designed the defeat
17 device so that the vehicles’ emission control systems could sense when they were
18 being tested for emissions and would at that time engage emission controls. But
19 when the Defective Vehicle’s software detected that the emissions testing was
20 complete, it secretly disengaged certain features of the emission control system,
21 causing the vehicle to emit illegal levels of certain pollutants.

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

26 364. On October 8, 2015, Michael Horn, the then President and CEO of
27 Volkswagen North America, gave the following testimony before the House
28 Committee on Energy and Commerce Subcommittee on Oversight and

1 Investigations: “On behalf of our company, and my colleagues in Germany, I
2 would like to offer a sincere apology for Volkswagen’s use of a software program
3 that served to defeat the regular emissions testing regime.” He also testified that
4 “[t]hese events are deeply troubling. I did not think that something like this was
5 possible at the Volkswagen Group. We have broken the trust of our customers,
6 dealerships, and employees, as well as the public and regulators.”

7 365. Connecticut Plaintiff and the Connecticut Subclass Members
8 reasonably relied on Volkswagen’s false representations. Volkswagen designed the
9 defeat device to evade discovery not only by consumers but also by state and
10 federal emissions regulators from the EPA and CARB. In fact, Volkswagen did not
11 finally admit to installing the defeat device on the Defective Vehicles until
12 approximately six years after first selling Defective Vehicles, having successfully
13 evaded detection for all of those years.

14 366. Volkswagen’s false representations were material to consumers,
15 including to Connecticut Plaintiff and the Connecticut Subclass. Not only did the
16 representations relate to the value of the Defective Vehicles, but it also concerned
17 their compliance with state and federal emissions standards. Indeed, Volkswagen’s
18 advertising campaign sought out customers who cared deeply about the
19 environment and were willing to pay a premium for a clean diesel vehicle. While
20 Volkswagen preached to consumers about its “commitment to making vehicles that
21 are eco-conscious,” in fact Volkswagen cared only about boosting its bottom line
22 and maximizing corporate profits.

23 367. Volkswagen had a duty to disclose the details relating to the defeat
24 device to Connecticut Plaintiff and the Connecticut Subclass Members because the
25 information was known and/or accessible only to Volkswagen, Volkswagen had
26 exclusive knowledge relating to the design, implementation, and maintenance of the
27 defeat device, and Volkswagen knew that the facts concerning the defeat device
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1 were unknown to and not reasonably discoverable by Connecticut Plaintiff or the
2 Connecticut Subclass Members.

3 368. Volkswagen also had a duty to disclose the information because it
4 made affirmative misrepresentations concerning the qualities of its vehicles and
5 their compliance with state and federal emissions standards. Volkswagen's
6 marketing of the Defective Vehicles as "CleanDiesel," "eco-conscious," and
7 "extremely efficient," was deceptive, misleading, and incomplete without
8 disclosing the presence of the defeat device and the Defective Vehicles' actual
9 emissions. Having voluntarily provided information to Connecticut Plaintiff and
10 the Connecticut Subclass Members, Volkswagen had a duty to disclose the entire
11 truth.

12 369. The facts that Volkswagen omitted and concealed from Connecticut
13 Plaintiff and the Connecticut Subclass Members were material. They went to the
14 heart of Volkswagen's claim that the Defective Vehicles were eco-conscious, that
15 they complied with EPA and CARB emission standards, and directly impacted the
16 value of the Defective Vehicles.

17 370. Volkswagen's deceitful conduct has already caused the value of the
18 Defective Vehicles to decrease significantly. For example, Kelley Blue Book
19 reported that Volkswagen's conduct has caused the fair market value of the
20 Defective Vehicles to decrease by 13%. If each the Defective Vehicles had an
21 average fair market value of approximately \$15,000, then a 13% drop in fair market
22 value alone has caused nearly a billion dollars in harm nationwide.

23 371. Because of Volkswagen's fraudulent concealment and/or suppression
24 of the true facts, Connecticut Plaintiff and the other Connecticut Subclass Members
25 have sustained damages because the Defective Vehicles that they own or lease are
26 diminished in value as a result of Volkswagen's concealment of the true quality and
27 nature of the vehicle's emissions. Had Connecticut Plaintiff and the Connecticut
28 Subclass Members known the facts concerning Volkswagen's evasion of federal

1 and state emission standards, they would have paid less for their vehicles or would
2 not have purchased or leased them at all.

3 372. According, Volkswagen is liable to Connecticut Plaintiff and the
4 Connecticut Subclass Members for damages in an amount to be proven at trial.

5 373. Volkswagen's acts were done wantonly, maliciously, oppressively,
6 deliberately, with intent to defraud, and in reckless disregard of Connecticut
7 Plaintiff's and the other Connecticut Subclass Members rights and the
8 representations that Volkswagen made to them, in order to enrich Volkswagen. To
9 the extent permitted by applicable law, 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 **F. Claims on Behalf of Delaware Subclass.**

13 **FIRST CLAIM FOR RELIEF**

14 **VIOLATION OF THE DELAWARE CONSUMER FRAUD ACT**

15 **(6 DELAWARE CODE § 2513, et seq.)**

16 374. Delaware Plaintiffs re-allege and incorporate all paragraphs set forth
17 above as though fully set forth herein.

18 375. Plaintiffs bring this Claim for Relief on behalf of the Delaware
19 Subclass.

20 376. The Delaware Consumer Fraud Act ("Delaware CFA") prohibits the
21 "act, use or employment by any person of any deception, fraud, false pretense, false
22 promise, misrepresentation, or the concealment, suppression, or omission of any
23 material fact with intent that others rely upon such concealment, suppression or
24 omission, in connection with the sale, lease or advertisement of any merchandise,
25 whether or not any person has in fact been misled, deceived or damaged thereby."
26 6 Delaware Code § 2513(a).

27 377. Volkswagen is a "person" under 6 Delaware Code § 2511(7).
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1 378. Defective Vehicles are “merchandise” under 6 Delaware Code §
2 2511(6).

3 379. Volkswagen violated the Delaware CFA by engaging in acts of
4 deception, fraud, false pretense, false promise, and misrepresentation relating to its
5 design, manufacture, sale, lease, and advertisement of the Defective Vehicles as
6 described above. Volkswagen also violated the Delaware CFA by engaging in acts
7 of concealment, suppression, and omission of material facts relating to the design,
8 manufacture, sale, lease, and advertisement of Defective Vehicles. Volkswagen
9 intended that that Delaware Plaintiffs and the Delaware Subclass members rely
10 upon such concealment, suppression or omission.

11 380. Volkswagen further engaged in unlawful business acts and/or practices
12 by representing that “Clean diesel vehicles meet the strictest EPA standards in the
13 U.S.” These actions were false, misleading, and deceptive.

14 381. In purchasing or leasing the Defective Vehicles, Delaware Plaintiff
15 and the other Delaware Subclass members were deceived by Volkswagen’s failure
16 to disclose that the Defective Vehicles contained the defeat device and that the
17 CleanDiesel engine failed state and federal emissions standards.

18 382. Volkswagen intentionally and knowingly misrepresented material facts
19 regarding the Defective Vehicles with an intent to mislead Delaware Plaintiff and
20 the Delaware Subclass.

21 383. Delaware Plaintiff reasonably relied on Volkswagen’s
22 misrepresentations. As a direct result of Volkswagen’s unlawful, unfair, or
23 fraudulent business acts and/or practices, Delaware Plaintiff and other Delaware
24 Subclass Members suffered injury in fact and lost money or property.

25 384. Volkswagen owed Plaintiffs a duty to disclose the true safety,
26 cleanliness, efficiency and reliability of the Defective Vehicles and the devaluing of
27 environmental cleanliness and integrity at Volkswagen, because Volkswagen:
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- 1 a. Possessed exclusive knowledge that it was designing,
2 manufacturing, marketing, selling, and distributing vehicles
3 throughout the United States that did not comply with state and
4 federal emissions regulations;
- 5 b. Intentionally concealed the foregoing from Delaware Plaintiffs
6 and the Delaware Subclass; and/or
- 7 c. Made incomplete representations about the safety, cleanliness,
8 efficiency, and reliability of the Defective Vehicles generally,
9 and the defeat device and true nature of the CleanDiesel engine
10 system, while purposefully withholding material facts from
11 Plaintiffs that contradicted these representations.

12 385. Volkswagen knew or should have known that its conduct violated the
13 Delaware CFA.

14 386. Volkswagen's actions as set forth above occurred in the conduct of
15 trade or commerce.

16 387. Volkswagen's conduct proximately caused injuries to Delaware
17 Plaintiff and the other Delaware Subclass members.

18 388. Delaware Plaintiff and the other Delaware Subclass members were
19 injured as a result of Volkswagen's conduct in that they overpaid for their Defective
20 Vehicles and did not receive the benefit of their bargain, and their Defective
21 Vehicles have suffered a diminution in value. These injuries are the direct and
22 natural consequence of Volkswagen's misrepresentations and omissions.

23 389. For example, Volkswagen's unlawful, unfair, and/or fraudulent
24 business acts or practices have already caused the value of the Defective Vehicles
25 to decrease significantly. Kelley Blue Book reported that Volkswagen's conduct
26 has caused the fair market value of the Defective Vehicles to decrease by 13%. If
27 each the Defective Vehicles had an average fair market value of approximately
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1 \$15,000, then a 13% drop in fair market value alone has caused nearly a billion
2 dollars in harm to the Class nationwide.

3 390. Volkswagen profited from its sales of its falsely and deceptively
4 advertised products to unwary customers.

5 391. Accordingly, Delaware Plaintiff and Delaware Subclass seek damages
6 under the Delaware CFA for injury resulting from the direct and natural
7 consequences of Volkswagen's unlawful conduct. *See, e.g., Stephenson v. Capano*
8 *Dev., Inc.*, 462 A.2d 1069, 1077 (Del. 1983). Delaware Plaintiff and Delaware
9 Subclass also seek an order enjoining Volkswagen's unfair, unlawful, and/or
10 deceptive practices, declaratory relief, attorneys' fees, and any other just and proper
11 relief available under the Delaware CFA.

12 392. Volkswagen engaged in gross, oppressive or aggravated conduct
13 justifying the imposition of punitive damages.

14 **SECOND CLAIM FOR RELIEF**

15 **BREACH OF CONTRACT (DELAWARE)**

16 393. Plaintiffs re-allege and incorporate all paragraphs above as though
17 fully set forth herein.

18 394. Plaintiffs bring this Claim for Relief on behalf of the Delaware
19 Subclass.

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

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

10 397. Delaware Plaintiff and the other Delaware Subclass Members fully
11 performed their obligations under the contract by paying all amounts due under the
12 contracts.

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

18 **THIRD CLAIM FOR RELIEF**

19 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**

20 **6 DELAWARE CODE § 2-314**

21 399. Plaintiffs re-allege and incorporate all paragraphs above as though
22 fully set forth herein.

23 400. Plaintiffs bring this Claim for Relief on behalf of the Delaware
24 Subclass.

25 401. Volkswagen is and was at all relevant times a merchant with respect to
26 the sale of motor vehicles, including the Defective Vehicles.
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1 402. The law implies that the Defective Vehicles were in merchantable
2 condition in the instant transactions. These Defective Vehicles, when sold and at
3 all times thereafter, were not in merchantable condition and are not fit for the
4 ordinary purpose for which vehicles are used. Specifically, the Defective Vehicles
5 do not comply with federal and state emissions standards; have safety and
6 emissions functions that are inoperative; and their CleanDiesel engines was not
7 adequately designed, manufactured, and tested.

8 403. Volkswagen was provided notice of these issues by the investigations
9 conducted by the EPA and state regulators, numerous complaints filed against it,
10 and by numerous individual letters and communications sent by Class members
11 before or within a reasonable amount of time after the allegations relating to the
12 Defective Vehicle became public.

13 404. As a direct and proximate result of Volkswagen's breach of the
14 warranty of merchantability, plaintiff and the other Class Members have been
15 damaged in an amount to be proven at trial.

16 **FOURTH CLAIM FOR RELIEF**

17 **FRAUD BY CONCEALMENT (DELAWARE)**

18 405. Plaintiffs re-allege and incorporate all paragraphs above as though
19 fully set forth herein.

20 406. Plaintiffs bring this Claim for Relief on behalf of the Delaware
21 Subclass.

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

3 408. The defeat device was programmed into the Defective Vehicle's
4 software and was designed to evade detection. Volkswagen designed the defeat
5 device so that the vehicles' emission control systems could sense when they were
6 being tested for emissions and would at that time engage emission controls. But
7 when the Defective Vehicle's software detected that the emissions testing was
8 complete, it secretly disengaged certain features of the emission control system,
9 causing the vehicle to emit illegal levels of certain pollutants.

10 409. On September 22, 2015, the head of Volkswagen's United States
11 Division confessed, "Let's be clear about this. Our company was dishonest. With
12 the EPA, and the California Air Resources Board, and with all of you. And in my
13 German words, we have totally screwed up."

14 410. On October 8, 2015, Michael Horn, the then President and CEO of
15 Volkswagen North America, gave the following testimony before the House
16 Committee on Energy and Commerce Subcommittee on Oversight and
17 Investigations: "On behalf of our company, and my colleagues in Germany, I
18 would like to offer a sincere apology for Volkswagen's use of a software program
19 that served to defeat the regular emissions testing regime." He also testified that
20 "[t]hese events are deeply troubling. I did not think that something like this was
21 possible at the Volkswagen Group. We have broken the trust of our customers,
22 dealerships, and employees, as well as the public and regulators."

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

3 412. Volkswagen's false representations were material to consumers,
4 including to Delaware Plaintiff and the Delaware Subclass. Not only did the
5 representations relate to the value of the Defective Vehicles, but it also concerned
6 their compliance with state and federal emissions standards. Indeed, Volkswagen's
7 advertising campaign sought out customers who cared deeply about the
8 environment and were willing to pay a premium for a clean diesel vehicle. While
9 Volkswagen preached to consumers about its "commitment to making vehicles that
10 are eco-conscious," in fact Volkswagen cared only about boosting its bottom line
11 and maximizing corporate profits.

12 413. Volkswagen had a duty to disclose the details relating to the defeat
13 device to Delaware Plaintiff and the Delaware Subclass Members because the
14 information was known and/or accessible only to Volkswagen, Volkswagen had
15 exclusive knowledge relating to the design, implementation, and maintenance of the
16 defeat device, and Volkswagen knew that the facts concerning the defeat device
17 were unknown to and not reasonably discoverable by Delaware Plaintiff or the
18 Delaware Subclass Members.

19 414. Volkswagen also had a duty to disclose the information because it
20 made affirmative misrepresentations concerning the qualities of its vehicles and
21 their compliance with state and federal emissions standards. Volkswagen's
22 marketing of the Defective Vehicles as "CleanDiesel," "eco-conscious," and
23 "extremely efficient," was deceptive, misleading, and incomplete without
24 disclosing the presence of the defeat device and the Defective Vehicles' actual
25 emissions. Having voluntarily provided information to Delaware Plaintiff and the
26 Delaware Subclass Members, Volkswagen had a duty to disclose the entire truth.

27 415. The facts that Volkswagen omitted and concealed from Delaware
28 Plaintiff and the Delaware Subclass Members were material. They went to the

1 heart of Volkswagen's claim that the Defective Vehicles were eco-conscious, that
2 they complied with EPA and CARB emission standards, and directly impacted the
3 value of the Defective Vehicles.

4 416. Volkswagen's deceitful conduct has already caused the value of the
5 Defective Vehicles to decrease significantly. For example, Kelley Blue Book
6 reported that Volkswagen's conduct has caused the fair market value of the
7 Defective Vehicles to decrease by 13%. If each the Defective Vehicles had an
8 average fair market value of approximately \$15,000, then a 13% drop in fair market
9 value alone has caused nearly a billion dollars in harm nationwide.

10 417. Because of Volkswagen's fraudulent concealment and/or suppression
11 of the true facts, Delaware Plaintiff and the other Delaware Subclass Members have
12 sustained damages because the Defective Vehicles that they own or lease are
13 diminished in value as a result of Volkswagen's concealment of the true quality and
14 nature of the vehicle's emissions. Had Delaware Plaintiff and the Delaware
15 Subclass Members known the facts concerning Volkswagen's evasion of federal
16 and state emission standards, they would have paid less for their vehicles or would
17 not have purchased or leased them at all.

18 418. According, Volkswagen is liable to Delaware Plaintiff and the
19 Delaware Subclass Members for damages in an amount to be proven at trial.

20 419. Volkswagen's acts were done wantonly, maliciously, oppressively,
21 deliberately, with intent to defraud, and in reckless disregard of Delaware Plaintiff's
22 and the other Delaware Subclass Members rights and the representations that
23 Volkswagen made to them, in order to enrich Volkswagen. As a result,
24 Volkswagen's conduct warrants an assessment of punitive damages in an amount
25 sufficient to deter such conduct in the future, and in an amount to be determined
26 according to proof.

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1 425. Volkswagen, Georgia Plaintiffs, and the Georgia Subclass are
2 “persons” within the meaning of Georgia Uniform Deceptive Trade Practices Act
3 (“Georgia UDTPA”). Georgia Code Annotated § 10-1-371(5).

4 426. The Georgia UDTPA prohibits “deceptive trade practices,” which
5 include the “misrepresentation of standard or quality of goods or services,” and
6 “engaging in any other conduct which similarly creates a likelihood of confusion or
7 of misunderstanding.” Georgia Code Annotated § 10-1-372(a).

8 427. By fraudulently installing the “defeat device” to make it appear that its
9 CleanDiesel engines complied with state and federal emissions standards,
10 Volkswagen engaged in deceptive trade practices prohibited by the Georgia
11 UDTPA.

12 428. Volkswagen further engaged in deceptive trade practices by
13 representing that “Clean diesel vehicles meet the strictest EPA standards in the
14 U.S.” These actions were misleading and deceptive.

15 429. Volkswagen has known of its use of the defeat device and the true
16 nature of its CleanDiesel engine for at least six years, but concealed all of that
17 information from consumers and regulators until recently.

18 430. Volkswagen intentionally and knowingly misrepresented material facts
19 regarding the Defective Vehicles with an intent to mislead Georgia Plaintiffs and
20 the Georgia Subclass.

21 431. In purchasing or leasing the Defective Vehicles, Georgia Plaintiffs and
22 the other Georgia Subclass members were deceived by Volkswagen’s failure to
23 disclose that the Defective Vehicles contained the defeat device and that the
24 CleanDiesel engine failed state and federal emissions standards.

25 432. Georgia Plaintiffs reasonably relied on Volkswagen’s
26 misrepresentations. As a direct result of Volkswagen’s unlawful, unfair, or
27 fraudulent business acts and/or practices, Georgia Plaintiffs and other Georgia
28 Subclass Members suffered injury in fact and lost money or property.

1 433. Volkswagen knew or should have known that its conduct violated the
2 Georgia UDTPA.

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

- 6 a. Possessed exclusive knowledge that it was designing,
7 manufacturing, marketing, selling, and distributing vehicles
8 throughout the United States that did not comply with state and
9 federal emissions regulations;
- 10 b. Intentionally concealed the foregoing from Georgia Plaintiffs
11 and the Georgia Subclass; and/or
- 12 c. Made incomplete representations about the safety, cleanliness,
13 efficiency, and reliability of the Defective Vehicles generally,
14 and the defeat device and true nature of the CleanDiesel engine
15 system, while purposefully withholding material facts from
16 Plaintiffs that contradicted these representations.

17 435. Volkswagen's actions as set forth above occurred in the conduct of
18 trade or commerce.

19 436. Volkswagen's conduct proximately caused injuries to Georgia
20 Plaintiffs and the other Georgia Subclass members.

21 437. Volkswagen had an ongoing duty to all of its customers to refrain from
22 unfair and deceptive acts or practices under the Georgia UDTPA. Georgia
23 Plaintiffs and the other Georgia Subclass members were injured as a result of
24 Volkswagen's conduct in that they overpaid for their Defective Vehicles and did
25 not receive the benefit of their bargain, and their Defective Vehicles have suffered a
26 diminution in value. Georgia Plaintiffs and the Georgia Subclass either would have
27 paid less for their Defective Vehicles or would not have purchased or leased them
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1 at all. These injuries are the direct and natural consequence of Volkswagen's
2 misrepresentations and omissions.

3 438. For example, Volkswagen's unlawful, unfair, and/or fraudulent
4 business acts or practices have already caused the value of the Defective Vehicles
5 to decrease significantly. Kelley Blue Book reported that Volkswagen's conduct
6 has caused the fair market value of the Defective Vehicles to decrease by 13%. If
7 each the Defective Vehicles had an average fair market value of approximately
8 \$15,000, then a 13% drop in fair market value alone has caused nearly a billion
9 dollars in harm nationwide.

10 439. Volkswagen profited from its sales of its falsely and deceptively
11 advertised products to unwary customers.

12 440. Volkswagen's violations present a continuing risk to Georgia Plaintiffs
13 and the Georgia Subclass as well as to the general public. Volkswagen's unlawful
14 acts and practices described above affect the public interest.

15 441. Accordingly, pursuant to the Georgia UDTPA, § 10-1-373, Georgia
16 Plaintiffs, on behalf of themselves and all others similarly situated, seek an order
17 enjoining Volkswagen's unfair, unlawful, and/or deceptive practices, attorneys'
18 fees, and any other just and proper relief available under.

19 **THIRD CLAIM FOR RELIEF**

20 **BREACH OF CONTRACT (GEORGIA)**

21 442. Plaintiffs re-allege and incorporate all paragraphs above as though
22 fully set forth herein.

23 443. Plaintiffs bring this Claim for Relief on behalf of the Georgia
24 Subclass.

25 444. Volkswagen's misrepresentations and omissions alleged herein,
26 including its failure to disclose the existence of the defeat device caused Georgia
27 Plaintiffs and the other Georgia Subclass Members to make their purchases or
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1 leases of the Defective Vehicles. Absent those misrepresentations and omissions,
2 Georgia Plaintiffs and the other Georgia Subclass Members would not have
3 purchased or leased the Defective Vehicles, and/or would not have purchased or
4 leased the Defective Vehicles at the prices they paid. Accordingly, Georgia
5 Plaintiffs and the Georgia Subclass Members overpaid for their Defective Vehicles
6 and did not receive the benefit of their bargain.

7 445. Each and every sale or lease of a Defective Vehicle constitutes a
8 contract between Volkswagen and the purchaser or lessee. Volkswagen breached
9 these contracts by selling or leasing Georgia Plaintiffs and the Georgia Subclass the
10 Defective Vehicles and by misrepresenting or failing to disclose the existence of the
11 defeat device, including information known to Volkswagen rendering each
12 Defective Vehicle not emission compliant and therefore less valuable.

13 446. Georgia Plaintiffs and the other Georgia Subclass Members fully
14 performed their obligations under the contract by paying all amounts due under the
15 contracts.

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

21 **FOURTH CLAIM FOR RELIEF**

22 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**

23 **GEORGIA CODE ANNOTATED § 11-2-314**

24 448. Plaintiffs re-allege and incorporate all paragraphs above as though
25 fully set forth herein.

26 449. Plaintiffs bring this Claim for Relief on behalf of the Georgia
27 Subclass.
28

1 450. Volkswagen is and was at all relevant times a merchant with respect to
2 the sale of motor vehicles, including the Defective Vehicles.

3 451. The law implies that the Defective Vehicles were in merchantable
4 condition in the instant transactions. These Defective Vehicles, when sold and at
5 all times thereafter, were not in merchantable condition and are not fit for the
6 ordinary purpose for which vehicles are used. Specifically, the Defective Vehicles
7 do not comply with federal and state emissions standards; have safety and
8 emissions functions that are inoperative; and their CleanDiesel engines was not
9 adequately designed, manufactured, and tested.

10 452. Volkswagen was provided notice of these issues by the investigations
11 conducted by the EPA and state regulators, numerous complaints filed against it,
12 and by numerous individual letters and communications sent by Class members
13 before or within a reasonable amount of time after the allegations relating to the
14 Defective Vehicle became public.

15 453. As a direct and proximate result of Volkswagen's breach of the
16 warranty of merchantability, Georgia Plaintiffs and the other Georgia Subclass
17 Members have been damaged in an amount to be proven at trial.

18 **FIFTH CLAIM FOR RELIEF**

19 **FRAUD BY CONCEALMENT (GEORGIA)**

20 454. Plaintiffs re-allege and incorporate all paragraphs above as though
21 fully set forth herein.

22 455. Plaintiffs bring this Claim for Relief on behalf of the Georgia
23 Subclass.

24 456. Volkswagen intentionally concealed and suppressed material facts
25 about the actual quality and character of the Defective Vehicles. As alleged above,
26 Volkswagen designed and installed a secret defeat device in the Defective Vehicles
27 to defraud consumers and fool state and federal emissions regulators. While
28

1 Volkswagen represented to consumers that the Defective Vehicles were “eco-
2 conscious,” “CleanDiesel,” and operated with “extreme efficiency,” the opposite
3 was true. The Defective Vehicles cannot even satisfy state and federal emission
4 standards, emitting up to 40 times more than the legal limit of certain pollutants.

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

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

16 459. On October 8, 2015, Michael Horn, the then President and CEO of
17 Volkswagen North America, gave the following testimony before the House
18 Committee on Energy and Commerce Subcommittee on Oversight and
19 Investigations: “On behalf of our company, and my colleagues in Germany, I
20 would like to offer a sincere apology for Volkswagen’s use of a software program
21 that served to defeat the regular emissions testing regime.” He also testified that
22 “[t]hese events are deeply troubling. I did not think that something like this was
23 possible at the Volkswagen Group. We have broken the trust of our customers,
24 dealerships, and employees, as well as the public and regulators.”

25 460. Georgia Plaintiffs and the Georgia Subclass Members reasonably
26 relied on Volkswagen’s false representations. Volkswagen designed the defeat
27 device to evade discovery not only by consumers but also by state and federal
28 emissions regulators from the EPA and CARB. In fact, Volkswagen did not finally

1 admit to installing the defeat device on the Defective Vehicles until approximately
2 six years after first selling Defective Vehicles, having successfully evaded detection
3 for all of those years.

4 461. Volkswagen's false representations were material to consumers,
5 including to Georgia Plaintiffs and the Georgia Subclass. Not only did the
6 representations relate to the value of the Defective Vehicles, but it also concerned
7 their compliance with state and federal emissions standards. Indeed, Volkswagen's
8 advertising campaign sought out customers who cared deeply about the
9 environment and were willing to pay a premium for a clean diesel vehicle. While
10 Volkswagen preached to consumers about its "commitment to making vehicles that
11 are eco-conscious," in fact Volkswagen cared only about boosting its bottom line
12 and maximizing corporate profits.

13 462. Volkswagen had a duty to disclose the details relating to the defeat
14 device to Georgia Plaintiffs and the Georgia Subclass Members because the
15 information was known and/or accessible only to Volkswagen, Volkswagen had
16 exclusive knowledge relating to the design, implementation, and maintenance of the
17 defeat device, and Volkswagen knew that the facts concerning the defeat device
18 were unknown to and not reasonably discoverable by Georgia Plaintiffs or the
19 Georgia Subclass Members.

20 463. Volkswagen also had a duty to disclose the information because it
21 made affirmative misrepresentations concerning the qualities of its vehicles and
22 their compliance with state and federal emissions standards. Volkswagen's
23 marketing of the Defective Vehicles as "CleanDiesel," "eco-conscious," and
24 "extremely efficient," was deceptive, misleading, and incomplete without
25 disclosing the presence of the defeat device and the Defective Vehicles' actual
26 emissions. Having voluntarily provided information to Georgia Plaintiffs and the
27 Georgia Subclass Members, Volkswagen had a duty to disclose the entire truth.
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1 464. The facts that Volkswagen omitted and concealed from Georgia
2 Plaintiffs and the Georgia Subclass Members were material. They went to the heart
3 of Volkswagen's claim that the Defective Vehicles were eco-conscious, that they
4 complied with EPA and CARB emission standards, and directly impacted the value
5 of the Defective Vehicles.

6 465. Volkswagen's deceitful conduct has already caused the value of the
7 Defective Vehicles to decrease significantly. For example, Kelley Blue Book
8 reported that Volkswagen's conduct has caused the fair market value of the
9 Defective Vehicles to decrease by 13%. If each the Defective Vehicles had an
10 average fair market value of approximately \$15,000, then a 13% drop in fair market
11 value alone has caused nearly a billion dollars in harm nationwide.

12 466. Because of Volkswagen's fraudulent concealment and/or suppression
13 of the true facts, Georgia Plaintiffs and the other Georgia Subclass Members have
14 sustained damages because the Defective Vehicles that they own or lease are
15 diminished in value as a result of Volkswagen's concealment of the true quality and
16 nature of the vehicle's emissions. Had Georgia Plaintiffs and the Georgia Subclass
17 Members known the facts concerning Volkswagen's evasion of federal and state
18 emission standards, they would have paid less for their vehicles or would not have
19 purchased or leased them at all.

20 467. According, Volkswagen is liable to Georgia Plaintiffs and the Georgia
21 Subclass Members for damages in an amount to be proven at trial.

22 468. Volkswagen's acts were done wantonly, maliciously, oppressively,
23 deliberately, with intent to defraud, and in reckless disregard of Georgia Plaintiff's
24 and the other Georgia Subclass Members rights and the representations that
25 Volkswagen made to them, in order to enrich Volkswagen. As a result,
26 Volkswagen's conduct warrants an assessment of punitive damages in an amount
27 sufficient to deter such conduct in the future, and in an amount to be determined
28 according to proof.

1 476. As alleged above, Volkswagen made material statements about the
2 safety, cleanliness, efficiency, and reliability of the Defective Vehicles that were
3 false and/or misleading.

4 477. Volkswagen owed Illinois Plaintiffs and the Illinois Subclass a duty to
5 disclose the true safety, cleanliness, efficiency, and reliability of the Defective
6 Vehicles because Volkswagen:

- 7 a. Possessed exclusive knowledge that it was designing,
8 manufacturing, marketing, selling, and distributing vehicles
9 throughout the United States that did not comply with state and
10 federal emissions regulations;
- 11 b. Intentionally concealed the foregoing from Illinois Plaintiffs and
12 the Illinois Subclass; and/or
- 13 c. Made incomplete representations about the safety, cleanliness,
14 efficiency and reliability of the Defective Vehicles generally,
15 and the use of the “defeat device” and true nature of the
16 CleanDiesel engines, while purposefully withholding material
17 facts that contradicted these representations.

18 478. In purchasing or leasing the Defective Vehicles, Illinois Plaintiffs and
19 the other Illinois Subclass members were deceived by Volkswagen’s failure to
20 disclose that the Defective Vehicles contained the defeat device and that the
21 CleanDiesel engine failed state and federal emissions standards.

22 479. Volkswagen intentionally and knowingly misrepresented material facts
23 regarding the Defective Vehicles with an intent to mislead Illinois Plaintiffs and the
24 Illinois Subclass.

25 480. Illinois Plaintiffs reasonably relied on Volkswagen’s
26 misrepresentations. As a direct result of Volkswagen’s unlawful, unfair, or
27 fraudulent business acts and/or practices, Illinois Plaintiffs and other Illinois
28 Subclass Members suffered injury in fact and lost money or property.

1 481. Volkswagen knew or should have known that its conduct violated the
2 Illinois CFA.

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

5 483. Volkswagen's conduct proximately caused injuries to Illinois Plaintiffs
6 and the other Illinois Subclass members.

7 484. Illinois Plaintiffs and the other Illinois Subclass members were injured
8 as a result of Volkswagen's conduct. Illinois Plaintiffs and the Illinois Subclass
9 members either would have paid less for their Defective Vehicles or would not have
10 purchased or leased them at all had they known the true facts. Illinois Plaintiffs and
11 the Illinois Subclass did not receive the benefit of their bargain, and their Defective
12 Vehicles have suffered a diminution in value. These injuries are the direct and
13 natural consequence of Volkswagen's misrepresentations and omissions.

14 485. For example, Volkswagen's unlawful, unfair, and/or fraudulent
15 business acts or practices have already caused the value of the Defective Vehicles
16 to decrease significantly. Kelley Blue Book reported that Volkswagen's conduct
17 has caused the fair market value of the Defective Vehicles to decrease by 13%. If
18 each the Defective Vehicles had an average fair market value of approximately
19 \$15,000, then a 13% drop in fair market value alone has caused nearly a billion
20 dollars in harm nationwide.

21 486. Volkswagen's violations present a continuing risk to Illinois Plaintiffs
22 and the Illinois Subclass as well as to the general public. Volkswagen's unlawful
23 acts and practices described above affect the public interest.

24 487. Volkswagen profited from its sales of its falsely and deceptively
25 advertised products to unwary customers.

26 488. Accordingly, pursuant to 815 ILCS 505/10a(a), Illinois Plaintiffs, on
27 behalf of themselves and all others similarly situated, seek monetary relief against
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1 Volkswagen in the amount of actual damages, as well as punitive damages because
2 Volkswagen acted with fraud and/or malice and/or was grossly negligent.

3 489. Plaintiffs also seek an order enjoining Volkswagen's unfair, unlawful,
4 and/or deceptive practices, declaratory relief, attorneys' fees, and any other just and
5 proper relief available under the Illinois CFA.

6 **SECOND CLAIM FOR RELIEF**

7 **BREACH OF CONTRACT (ILLINOIS)**

8 490. Plaintiffs re-allege and incorporate all paragraphs above as though
9 fully set forth herein.

10 491. Plaintiffs bring this Claim for Relief on behalf of the Illinois Subclass.

11 492. Volkswagen's misrepresentations and omissions alleged herein,
12 including its failure to disclose the existence of the defeat device caused Illinois
13 Plaintiffs and the other Illinois Subclass Members to make their purchases or leases
14 of the Defective Vehicles. Absent those misrepresentations and omissions, Illinois
15 Plaintiffs and the other Illinois Subclass Members would not have purchased or
16 leased the Defective Vehicles, and/or would not have purchased or leased the
17 Defective Vehicles at the prices they paid. Accordingly, Illinois Plaintiffs and the
18 Illinois Subclass Members overpaid for their Defective Vehicles and did not receive
19 the benefit of their bargain.

20 493. Each and every sale or lease of a Defective Vehicle constitutes a
21 contract between Volkswagen and the purchaser or lessee. Volkswagen breached
22 these contracts by selling or leasing Illinois Plaintiffs and the Illinois Subclass the
23 Defective Vehicles and by misrepresenting or failing to disclose the existence of the
24 defeat device, including information known to Volkswagen rendering each
25 Defective Vehicle not emission compliant and therefore less valuable.
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1 494. Illinois Plaintiffs and the other Illinois Subclass Members fully
2 performed their obligations under the contract by paying all amounts due under the
3 contracts.

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

9
10 **THIRD CLAIM FOR RELIEF**
11 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
12 **(810 ILL. COMP. STAT. 5/2-314 AND 5/2A-212)**

13 496. Plaintiffs re-allege and incorporate all paragraphs above as though
14 fully set forth herein.

15 497. Plaintiffs bring this Claim for Relief on behalf of the Illinois Subclass.

16 498. Volkswagen is and was at all relevant times a merchant with respect to
17 the sale of motor vehicles, including the Defective Vehicles.

18 499. The law implies that the Defective Vehicles were in merchantable
19 condition in the instant transactions. These Defective Vehicles, when sold and at
20 all times thereafter, were not in merchantable condition and are not fit for the
21 ordinary purpose for which vehicles are used. Specifically, the Defective Vehicles
22 do not comply with federal and state emissions standards; have safety and
23 emissions functions that are inoperative; and their CleanDiesel engines was not
24 adequately designed, manufactured, and tested.

25 500. Volkswagen was provided notice of these issues by the investigations
26 conducted by the EPA and state regulators, numerous complaints filed against it,
27 and by numerous individual letters and communications sent by Class members
28

1 before or within a reasonable amount of time after the allegations relating to the
2 Defective Vehicle became public.

3 501. As a direct and proximate result of Volkswagen’s breach of the
4 warranty of merchantability, Illinois Plaintiffs and the other Illinois Subclass have
5 been damaged in an amount to be proven at trial.

6 **FOURTH CLAIM FOR RELIEF**

7 **FRAUD BY CONCEALMENT (ILLINOIS)**

8 502. Plaintiffs re-allege and incorporate all paragraphs above as though
9 fully set forth herein.

10 503. Plaintiffs bring this Claim for Relief on behalf of the Illinois Subclass.

11 504. Volkswagen intentionally concealed and suppressed material facts
12 about the actual quality and character of the Defective Vehicles. As alleged above,
13 Volkswagen designed and installed a secret defeat device in the Defective Vehicles
14 to defraud consumers and fool state and federal emissions regulators. While
15 Volkswagen represented to consumers that the Defective Vehicles were “eco-
16 conscious,” “CleanDiesel,” and operated with “extreme efficiency,” the opposite
17 was true. The Defective Vehicles cannot even satisfy state and federal emission
18 standards, emitting up to 40 times more than the legal limit of certain pollutants.

19 505. The defeat device was programmed into the Defective Vehicle’s
20 software and was designed to evade detection. Volkswagen designed the defeat
21 device so that the vehicles’ emission control systems could sense when they were
22 being tested for emissions and would at that time engage emission controls. But
23 when the Defective Vehicle’s software detected that the emissions testing was
24 complete, it secretly disengaged certain features of the emission control system,
25 causing the vehicle to emit illegal levels of certain pollutants.

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

3 507. On October 8, 2015, Michael Horn, the then President and CEO of
4 Volkswagen North America, gave the following testimony before the House
5 Committee on Energy and Commerce Subcommittee on Oversight and
6 Investigations: “On behalf of our company, and my colleagues in Germany, I
7 would like to offer a sincere apology for Volkswagen’s use of a software program
8 that served to defeat the regular emissions testing regime.” He also testified that
9 “[t]hese events are deeply troubling. I did not think that something like this was
10 possible at the Volkswagen Group. We have broken the trust of our customers,
11 dealerships, and employees, as well as the public and regulators.”

12 508. Illinois Plaintiffs and the Illinois Subclass reasonably relied on
13 Volkswagen’s false representations. Volkswagen designed the defeat device to
14 evade discovery not only by consumers but also by state and federal emissions
15 regulators from the EPA and CARB. In fact, Volkswagen did not finally admit to
16 installing the defeat device on the Defective Vehicles until approximately six years
17 after first selling Defective Vehicles, having successfully evaded detection for all of
18 those years.

19 509. Volkswagen’s false representations were material to consumers,
20 including to Illinois Plaintiffs and the Illinois Subclass. Not only did the
21 representations relate to the value of the Defective Vehicles, but it also concerned
22 their compliance with state and federal emissions standards. Indeed, Volkswagen’s
23 advertising campaign sought out customers who cared deeply about the
24 environment and were willing to pay a premium for a clean diesel vehicle. While
25 Volkswagen preached to consumers about its “commitment to making vehicles that
26 are eco-conscious,” in fact Volkswagen cared only about boosting its bottom line
27 and maximizing corporate profits.
28

1 510. Volkswagen had a duty to disclose the details relating to the defeat
2 device to Illinois Plaintiffs and the Illinois Subclass because the information was
3 known and/or accessible only to Volkswagen, Volkswagen had exclusive
4 knowledge relating to the design, implementation, and maintenance of the defeat
5 device, and Volkswagen knew that the facts concerning the defeat device were
6 unknown to and not reasonably discoverable by Illinois Plaintiffs or the Illinois
7 Subclass.

8 511. Volkswagen also had a duty to disclose the information because it
9 made affirmative misrepresentations concerning the qualities of its vehicles and
10 their compliance with state and federal emissions standards. Volkswagen's
11 marketing of the Defective Vehicles as "CleanDiesel," "eco-conscious," and
12 "extremely efficient," was deceptive, misleading, and incomplete without
13 disclosing the presence of the defeat device and the Defective Vehicles' actual
14 emissions. Having voluntarily provided information to Illinois Plaintiffs and the
15 Illinois Subclass, Volkswagen had a duty to disclose the entire truth.

16 512. The facts that Volkswagen omitted and concealed from Illinois
17 Plaintiffs and the Illinois Subclass were material. They went to the heart of
18 Volkswagen's claim that the Defective Vehicles were eco-conscious, that they
19 complied with state and federal emissions standards, and directly impacted the
20 value of the Defective Vehicles.

21 513. Volkswagen's deceitful conduct has already caused the value of the
22 Defective Vehicles to decrease significantly. For example, Kelley Blue Book
23 reported that Volkswagen's conduct has caused the fair market value of the
24 Defective Vehicles to decrease by 13%. If each the Defective Vehicles had an
25 average fair market value of approximately \$15,000, then a 13% drop in fair market
26 value alone has caused nearly a billion dollars in harm nationwide.

27 514. Because of Volkswagen's fraudulent concealment and/or suppression
28 of the true facts, Illinois Plaintiffs and the other Illinois Subclass Members have

1 sustained damages because the Defective Vehicles that they own or lease are
2 diminished in value as a result of Volkswagen’s concealment of the true quality and
3 nature of the vehicle’s emissions. Had Illinois Plaintiffs and the Illinois Subclass
4 known the facts concerning Volkswagen’s evasion of federal and state emission
5 standards, they would have paid less for their vehicles or would not have purchased
6 or leased them at all.

7 515. According, Volkswagen is liable to Illinois Plaintiffs and the Illinois
8 Subclass Members for damages in an amount to be proven at trial.

9 516. Volkswagen’s acts were done wantonly, maliciously, oppressively,
10 deliberately, with intent to defraud, and in reckless disregard of Illinois Plaintiffs’
11 and the other Illinois Subclass’ rights and the representations that Volkswagen
12 made to them, in order to enrich Volkswagen. As a result, Volkswagen’s conduct
13 warrants an assessment of punitive damages in an amount sufficient to deter such
14 conduct in the future, and in an amount to be determined according to proof.

15 **I. Claims on Behalf of Louisiana Subclass.**

16 **FIRST CLAIM FOR RELIEF**
17 **VIOLATION OF THE LOUISIANA UNFAIR TRADE PRACTICES AND**
18 **CONSUMER PROTECTION LAW**
19 **(LA. REV. STAT. § 51:1401, et seq.)**

20 517. Plaintiffs re-allege and incorporate all paragraphs set forth above as
21 though fully set forth herein.

22 518. Plaintiffs bring this Claim for Relief on behalf of the Louisiana
23 Subclass.

24 519. The Louisiana Unfair Trade Practices and Consumer Protection Law
25 (“Louisiana CPL”) makes unlawful “deceptive acts or practices in the conduct of
26 any trade or commerce.” Louisiana Revised Statute § 51:1405(A). Volkswagen
27 both participated in misleading, false, or deceptive acts that violated the Louisiana
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1 CPL. By fraudulently installing the “defeat device” to make it appear that its
2 CleanDiesel engine systems complied with EPA regulations, Volkswagen engaged
3 in deceptive business practices prohibited by the Louisiana CPL.

4 520. Volkswagen, Plaintiffs, and the Louisiana Subclass are “persons”
5 under Louisiana Revised Statute § 51:1402(8).

6 521. Louisiana Plaintiff and the Louisiana Subclass are “consumers” under
7 Louisiana Revised Statute § 51:1402(1).

8 522. Volkswagen engaged in “trade” or “commerce” within the meaning of
9 Louisiana Revised Statute § 51:1402(9).

10 523. Volkswagen violated the Louisiana CPA by engaging in misleading,
11 false, or deceptive acts by selling and/or distributing Defective Vehicles in
12 Louisiana that contain a defeat device and fail state and federal emissions standards.

13 524. Volkswagen further engaged in unlawful business acts and/or practices
14 by representing that “Clean diesel vehicles meet the strictest EPA standards in the
15 U.S.” These actions were misleading and deceptive.

16 525. As alleged above, Volkswagen made material statements about the
17 safety, cleanliness, efficiency, and reliability of the Defective Vehicles that were
18 deceptive, false, and/or misleading.

19 526. Volkswagen owed Louisiana Plaintiff and the Louisiana Subclass a
20 duty to disclose the true safety, cleanliness, efficiency, and reliability of the
21 Defective Vehicles because Volkswagen:

- 22 a. Possessed exclusive knowledge that it was designing,
23 manufacturing, marketing, selling, and distributing vehicles
24 throughout the United States that did not comply with state and
25 federal emissions regulations;
- 26 b. Intentionally concealed the foregoing from Louisiana Plaintiff
27 and the Louisiana Subclass; and/or
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1 c. Made incomplete representations about the safety, cleanliness,
2 efficiency and reliability of the Defective Vehicles generally,
3 and the use of the “defeat device” and true nature of the
4 CleanDiesel engines, while purposefully withholding material
5 facts that contradicted these representations.

6 527. In purchasing or leasing the Defective Vehicles, Louisiana Plaintiff
7 and the other Louisiana Subclass members were deceived by Volkswagen’s failure
8 to disclose that the Defective Vehicles contained the defeat device and that the
9 CleanDiesel engine failed state and federal emissions standards.

10 528. Volkswagen intentionally and knowingly misrepresented material facts
11 regarding the Defective Vehicles with an intent to mislead Louisiana Plaintiff and
12 the Louisiana Subclass.

13 529. Louisiana Plaintiff reasonably relied on Volkswagen’s
14 misrepresentations. As a direct result of Volkswagen’s unlawful, unfair, or
15 fraudulent business acts and/or practices, Louisiana Plaintiff and other Louisiana
16 Subclass Members suffered injury in fact and lost money or property.

17 530. Volkswagen knew or should have known that its conduct violated the
18 Louisiana CPA.

19 531. Volkswagen’s actions as set forth above occurred in the conduct of
20 trade or commerce.

21 532. Volkswagen’s conduct proximately caused injuries to Louisiana
22 Plaintiff and the other Louisiana Subclass members.

23 533. Louisiana Plaintiff and the other Louisiana Subclass members were
24 injured as a result of Volkswagen’s conduct. Louisiana Plaintiff and the Louisiana
25 Subclass members either would have paid less for their Defective Vehicles or
26 would not have purchased or leased them at all had they known the true facts.
27 Louisiana Plaintiff and the Louisiana Subclass did not receive the benefit of their
28 bargain, and their Defective Vehicles have suffered a diminution in value. These

1 injuries are the direct and natural consequence of Volkswagen's misrepresentations
2 and omissions.

3 534. For example, Volkswagen's unlawful, unfair, and/or fraudulent
4 business acts or practices have already caused the value of the Defective Vehicles
5 to decrease significantly. Kelley Blue Book reported that Volkswagen's conduct
6 has caused the fair market value of the Defective Vehicles to decrease by 13%. If
7 each the Defective Vehicles had an average fair market value of approximately
8 \$15,000, then a 13% drop in fair market value alone has caused nearly a billion
9 dollars in harm nationwide.

10 535. Volkswagen's violations present a continuing risk to Louisiana
11 Plaintiff and the Louisiana Subclass as well as to the general public. Volkswagen's
12 unlawful acts and practices described above affect the public interest.

13 536. Volkswagen profited from its sales of its falsely and deceptively
14 advertised products to unwary customers.

15 537. Accordingly, pursuant to Louisiana Revised Statute § 51:1409,
16 Louisiana Plaintiff, on behalf of themselves and all others similarly situated, seek to
17 recover actual damages in an amount to be determined at trial; treble damages for
18 Volkswagen's knowing violations of the Louisiana CPL; an order enjoining
19 Volkswagen's unfair, unlawful, and/or deceptive practices; declaratory relief;
20 attorneys' fees; and any other just and proper relief available under the law.

21 **SECOND CLAIM FOR RELIEF**

22 **BREACH OF CONTRACT (LOUISIANA)**

23 538. Plaintiffs re-allege and incorporate all paragraphs above as though
24 fully set forth herein.

25 539. Plaintiffs bring this Claim for Relief on behalf of the Louisiana
26 Subclass.
27
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1 540. Volkswagen’s misrepresentations and omissions alleged herein,
2 including its failure to disclose the existence of the defeat device caused Louisiana
3 Plaintiff and the other Louisiana Subclass Members to make their purchases or
4 leases of the Defective Vehicles. Absent those misrepresentations and omissions,
5 Louisiana Plaintiff and the other Louisiana Subclass Members would not have
6 purchased or leased the Defective Vehicles, and/or would not have purchased or
7 leased the Defective Vehicles at the prices they paid. Accordingly, Louisiana
8 Plaintiff and the Louisiana Subclass Members overpaid for their Defective Vehicles
9 and did not receive the benefit of their bargain.

10 541. Each and every sale or lease of a Defective Vehicle constitutes a
11 contract between Volkswagen and the purchaser or lessee. Volkswagen breached
12 these contracts by selling or leasing Louisiana Plaintiffs and the Louisiana Subclass
13 the Defective Vehicles and by misrepresenting or failing to disclose the existence of
14 the defeat device, including information known to Volkswagen rendering each
15 Defective Vehicle not emission compliant and therefore less valuable.

16 542. Louisiana Plaintiff and the other Louisiana Subclass Members fully
17 performed their obligations under the contract by paying all amounts due under the
18 contracts.

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

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THIRD CLAIM FOR RELIEF
BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY
(Louisiana Civil Code Article 2315)

544. Plaintiffs re-allege and incorporate all paragraphs above as though fully set forth herein.

545. Plaintiffs bring this Claim for Relief on behalf of the Louisiana Subclass.

546. Volkswagen is and was at all relevant times a merchant with respect to the sale of motor vehicles, including the Defective Vehicles.

547. The law implies that the Defective Vehicles were in merchantable condition in the instant transactions. These Defective Vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which vehicles are used. Specifically, the Defective Vehicles do not comply with federal and state emissions standards; have safety and emissions functions that are inoperative; and their CleanDiesel engines was not adequately designed, manufactured, and tested.

548. Volkswagen was provided notice of these issues by the investigations conducted by the EPA and state regulators, numerous complaints filed against it, and by numerous individual letters and communications sent by Class members before or within a reasonable amount of time after the allegations relating to the Defective Vehicle became public.

549. As a direct and proximate result of Volkswagen's breach of the warranty of merchantability, Louisiana Plaintiff and the other Louisiana Subclass have been damaged in an amount to be proven at trial.

FOURTH CLAIM FOR RELIEF

FRAUD BY CONCEALMENT (LOUISIANA)

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3 550. Plaintiffs re-allege and incorporate all paragraphs above as though
4 fully set forth herein.

5 551. Plaintiffs bring this Claim for Relief on behalf of the Louisiana
6 Subclass.

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

15 553. The defeat device was programmed into the Defective Vehicle’s
16 software and was designed to evade detection. Volkswagen designed the defeat
17 device so that the vehicles’ emission control systems could sense when they were
18 being tested for emissions and would at that time engage emission controls. But
19 when the Defective Vehicle’s software detected that the emissions testing was
20 complete, it secretly disengaged certain features of the emission control system,
21 causing the vehicle to emit illegal levels of certain pollutants.

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

26 555. Louisiana Plaintiff and the Louisiana Subclass reasonably relied on
27 Volkswagen’s false representations. Volkswagen designed the defeat device to
28 evade discovery not only by consumers but also by state and federal emissions

1 regulators from the EPA and CARB. In fact, Volkswagen did not finally admit to
2 installing the defeat device on the Defective Vehicles until approximately six years
3 after first selling Defective Vehicles, having successfully evaded detection for all of
4 those years.

5 556. Volkswagen's false representations were material to consumers,
6 including to Louisiana Plaintiff and the Louisiana Subclass. Not only did the
7 representations relate to the value of the Defective Vehicles, but it also concerned
8 their compliance with state and federal emissions standards. Indeed, Volkswagen's
9 advertising campaign sought out customers who cared deeply about the
10 environment and were willing to pay a premium for a clean diesel vehicle. While
11 Volkswagen preached to consumers about its "commitment to making vehicles that
12 are eco-conscious," in fact Volkswagen cared only about boosting its bottom line
13 and maximizing corporate profits.

14 557. Volkswagen had a duty to disclose the details relating to the defeat
15 device to Louisiana Plaintiff and the Louisiana Subclass because the information
16 was known and/or accessible only to Volkswagen, Volkswagen had exclusive
17 knowledge relating to the design, implementation, and maintenance of the defeat
18 device, and Volkswagen knew that the facts concerning the defeat device were
19 unknown to and not reasonably discoverable by Louisiana Plaintiff or the Louisiana
20 Subclass.

21 558. Volkswagen also had a duty to disclose the information because it
22 made affirmative misrepresentations concerning the qualities of its vehicles and
23 their compliance with state and federal emissions standards. Volkswagen's
24 marketing of the Defective Vehicles as "CleanDiesel," "eco-conscious," and
25 "extremely efficient," was deceptive, misleading, and incomplete without
26 disclosing the presence of the defeat device and the Defective Vehicles' actual
27 emissions. Having voluntarily provided information to Louisiana Plaintiff and the
28 Louisiana Subclass, Volkswagen had a duty to disclose the entire truth.

1 559. The facts that Volkswagen omitted and concealed from Louisiana
2 Plaintiff and the Louisiana Subclass were material. They went to the heart of
3 Volkswagen's claim that the Defective Vehicles were eco-conscious, that they
4 complied with state and federal emissions standards, and directly impacted the
5 value of the Defective Vehicles.

6 560. Volkswagen's deceitful conduct has already caused the value of the
7 Defective Vehicles to decrease significantly. For example, Kelley Blue Book
8 reported that Volkswagen's conduct has caused the fair market value of the
9 Defective Vehicles to decrease by 13%. If each the Defective Vehicles had an
10 average fair market value of approximately \$15,000, then a 13% drop in fair market
11 value alone has caused nearly a billion dollars in harm nationwide.

12 561. Because of Volkswagen's fraudulent concealment and/or suppression
13 of the true facts, Louisiana Plaintiff and the other Louisiana Subclass Members
14 have sustained damages because the Defective Vehicles that they own or lease are
15 diminished in value as a result of Volkswagen's concealment of the true quality and
16 nature of the vehicle's emissions. Had Louisiana Plaintiff and the Louisiana
17 Subclass known the facts concerning Volkswagen's evasion of federal and state
18 emission standards, they would have paid less for their vehicles or would not have
19 purchased or leased them at all.

20 562. According, Volkswagen is liable to Louisiana Plaintiff and the
21 Louisiana Subclass Members for damages in an amount to be proven at trial.

22 563. Volkswagen's acts were done wantonly, maliciously, oppressively,
23 deliberately, with intent to defraud, and in reckless disregard of Louisiana
24 Plaintiff's and the other Louisiana Subclass' rights and the representations that
25 Volkswagen made to them, in order to enrich Volkswagen. As a result,
26 Volkswagen's conduct warrants an assessment of punitive damages in an amount
27 sufficient to deter such conduct in the future, and in an amount to be determined
28 according to proof.

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J. Claims on Behalf of Maryland Subclass.

FIRST CLAIM FOR RELIEF

VIOLATIONS OF THE MARYLAND CONSUMER PROTECTION ACT

(MARYLAND CODE COMMERCIAL LAW § 13-101, et seq.)

564. Plaintiffs re-allege and incorporate all paragraphs set forth above as though fully set forth herein.

565. Plaintiffs bring this Claim for Relief on behalf of the Maryland Subclass.

566. The Maryland Consumer Protection Act (“Maryland CPA”) prohibits any person from engaging in unfair or deceptive trade practice in the sale of any consumer good. § 13-303. Volkswagen violated the Maryland CPA by engaging in misleading, false, or deceptive acts. By installing the defeat device into the Defective Vehicles’ software, Volkswagen mislead its consumers, made false representations, and engaged in deceptive acts.

567. Volkswagen, Maryland Plaintiff, and the Maryland Subclass are “persons” under the Maryland CPA. § 13-101(h).

568. Volkswagen violated the Maryland CPA by engaging in unlawful trade practices, including by representing that Defective Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Defective Vehicles are of a particular standard and quality when they are not; advertising Defective Vehicles with the intent not to sell them as advertised; and engaging in other unfair or deceptive conduct in the marketing, dissemination, and sale of Defective Vehicles.

569. Volkswagen also engaged in unlawful trade practices and violated the Maryland CPA by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact

1 with intent that others rely upon such concealment, suppression or omission, in
2 connection with the sale of Defective Vehicles.

3 570. As alleged above, Volkswagen made material statements about the
4 safety, cleanliness, efficiency, and reliability of the Defective Vehicles that were
5 deceptive, false, and/or misleading.

6 571. Volkswagen owed Maryland Plaintiffs and the Maryland Subclass a
7 duty to disclose the true safety, cleanliness, efficiency, and reliability of the
8 Defective Vehicles because Volkswagen:

- 9 a. Possessed exclusive knowledge that it was designing,
10 manufacturing, marketing, selling, and distributing vehicles
11 throughout the United States that did not comply with state and
12 federal emissions regulations;
- 13 b. Intentionally concealed the foregoing from Maryland Plaintiffs
14 and the Maryland Subclass; and/or
- 15 c. Made incomplete representations about the safety, cleanliness,
16 efficiency and reliability of the Defective Vehicles generally,
17 and the use of the “defeat device” and true nature of the
18 CleanDiesel engines, while purposefully withholding material
19 facts that contradicted these representations.

20 572. In purchasing or leasing the Defective Vehicles, Maryland Plaintiffs
21 and the other Maryland Subclass members were deceived by Volkswagen’s failure
22 to disclose that the Defective Vehicles contained the defeat device and that the
23 CleanDiesel engine failed state and federal emissions standards.

24 573. Volkswagen intentionally and knowingly misrepresented material facts
25 regarding the Defective Vehicles with an intent to mislead Maryland Plaintiffs and
26 the Maryland Subclass.

27 574. Maryland Plaintiffs reasonably relied on Volkswagen’s
28 misrepresentations. As a direct result of Volkswagen’s unlawful, unfair, or

1 fraudulent business acts and/or practices, Maryland Plaintiffs and other Maryland
2 Subclass Members suffered injury in fact and lost money or property.

3 575. Volkswagen knew or should have known that its conduct violated the
4 Maryland CPA.

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

7 577. Maryland Plaintiffs and the other Maryland Subclass members were
8 injured as a result of Volkswagen's conduct. Maryland Plaintiffs and the Maryland
9 Subclass members either would have paid less for their Defective Vehicles or
10 would not have purchased or leased them at all had they known the true facts.
11 Maryland Plaintiffs and the Maryland Subclass did not receive the benefit of their
12 bargain, and their Defective Vehicles have suffered a diminution in value. These
13 injuries are the direct and natural consequence of Volkswagen's misrepresentations
14 and omissions.

15 578. For example, Volkswagen's unlawful, unfair, and/or fraudulent
16 business acts or practices have already caused the value of the Defective Vehicles
17 to decrease significantly. Kelley Blue Book reported that Volkswagen's conduct
18 has caused the fair market value of the Defective Vehicles to decrease by 13%. If
19 each the Defective Vehicles had an average fair market value of approximately
20 \$15,000, then a 13% drop in fair market value alone has caused nearly a billion
21 dollars in harm nationwide.

22 579. Volkswagen's violations present a continuing risk to Maryland
23 Plaintiffs and the Maryland Subclass as well as to the general public.
24 Volkswagen's unlawful acts and practices described above affect the public
25 interest.

26 580. Volkswagen profited from its sales of its falsely and deceptively
27 advertised products to unwary customers.
28

1 586. Maryland Plaintiffs and the other Maryland Subclass Members fully
2 performed their obligations under the contract by paying all amounts due under the
3 contracts.

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

9
10 **THIRD CLAIM FOR RELIEF**

11 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**

12 **(MARYLAND CODE COMMERCIAL LAW § 2-314)**

13 588. Plaintiffs re-allege and incorporate all paragraphs above as though
14 fully set forth herein.

15 589. Plaintiffs bring this Claim for Relief on behalf of the Maryland
16 Subclass.

17 590. Volkswagen is and was at all relevant times a merchant with respect to
18 the sale of motor vehicles, including the Defective Vehicles.

19 591. The law implies that the Defective Vehicles were in merchantable
20 condition in the instant transactions. These Defective Vehicles, when sold and at
21 all times thereafter, were not in merchantable condition and are not fit for the
22 ordinary purpose for which vehicles are used. Specifically, the Defective Vehicles
23 do not comply with federal and state emissions standards; have safety and
24 emissions functions that are inoperative; and their CleanDiesel engines was not
25 adequately designed, manufactured, and tested.

26 592. Volkswagen was provided notice of these issues by the investigations
27 conducted by the EPA and state regulators, numerous complaints filed against it,
28 and by numerous individual letters and communications sent by Class members

1 before or within a reasonable amount of time after the allegations relating to the
2 Defective Vehicle became public.

3 593. As a direct and proximate result of Volkswagen’s breach of the
4 warranty of merchantability, Maryland Plaintiffs and the other Maryland Subclass
5 have been damaged in an amount to be proven at trial.

6 **FOURTH CLAIM FOR RELIEF**

7 **FRAUD BY CONCEALMENT (MARYLAND)**

8 594. Plaintiffs re-allege and incorporate all paragraphs above as though
9 fully set forth herein.

10 595. Plaintiffs bring this Claim for Relief on behalf of the Maryland
11 Subclass.

12 596. Volkswagen intentionally concealed and suppressed material facts
13 about the actual quality and character of the Defective Vehicles. As alleged above,
14 Volkswagen designed and installed a secret defeat device in the Defective Vehicles
15 to defraud consumers and fool state and federal emissions regulators. While
16 Volkswagen represented to consumers that the Defective Vehicles were “eco-
17 conscious,” “CleanDiesel,” and operated with “extreme efficiency,” the opposite
18 was true. The Defective Vehicles cannot even satisfy state and federal emission
19 standards, emitting up to 40 times more than the legal limit of certain pollutants.

20 597. The defeat device was programmed into the Defective Vehicle’s
21 software and was designed to evade detection. Volkswagen designed the defeat
22 device so that the vehicles’ emission control systems could sense when they were
23 being tested for emissions and would at that time engage emission controls. But
24 when the Defective Vehicle’s software detected that the emissions testing was
25 complete, it secretly disengaged certain features of the emission control system,
26 causing the vehicle to emit illegal levels of certain pollutants.

27
28

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

5 599. On October 8, 2015, Michael Horn, the then President and CEO of
6 Volkswagen North America, gave the following testimony before the House
7 Committee on Energy and Commerce Subcommittee on Oversight and
8 Investigations: “On behalf of our company, and my colleagues in Germany, I
9 would like to offer a sincere apology for Volkswagen’s use of a software program
10 that served to defeat the regular emissions testing regime.” He also testified that
11 “[t]hese events are deeply troubling. I did not think that something like this was
12 possible at the Volkswagen Group. We have broken the trust of our customers,
13 dealerships, and employees, as well as the public and regulators.”

14 600. Maryland Plaintiffs and the Maryland Subclass reasonably relied on
15 Volkswagen’s false representations. Volkswagen designed the defeat device to
16 evade discovery not only by consumers but also by state and federal emissions
17 regulators from the EPA and CARB. In fact, Volkswagen did not finally admit to
18 installing the defeat device on the Defective Vehicles until approximately six years
19 after first selling Defective Vehicles, having successfully evaded detection for all of
20 those years.

21 601. Volkswagen’s false representations were material to consumers,
22 including to Maryland Plaintiffs and the Maryland Subclass. Not only did the
23 representations relate to the value of the Defective Vehicles, but it also concerned
24 their compliance with state and federal emissions standards. Indeed, Volkswagen’s
25 advertising campaign sought out customers who cared deeply about the
26 environment and were willing to pay a premium for a clean diesel vehicle. While
27 Volkswagen preached to consumers about its “commitment to making vehicles that
28

1 are eco-conscious,” in fact Volkswagen cared only about boosting its bottom line
2 and maximizing corporate profits.

3 602. Volkswagen had a duty to disclose the details relating to the defeat
4 device to Maryland Plaintiffs and the Maryland Subclass because the information
5 was known and/or accessible only to Volkswagen, Volkswagen had exclusive
6 knowledge relating to the design, implementation, and maintenance of the defeat
7 device, and Volkswagen knew that the facts concerning the defeat device were
8 unknown to and not reasonably discoverable by Maryland Plaintiffs or the
9 Maryland Subclass.

10 603. Volkswagen also had a duty to disclose the information because it
11 made affirmative misrepresentations concerning the qualities of its vehicles and
12 their compliance with state and federal emissions standards. Volkswagen’s
13 marketing of the Defective Vehicles as “CleanDiesel,” “eco-conscious,” and
14 “extremely efficient,” was deceptive, misleading, and incomplete without
15 disclosing the presence of the defeat device and the Defective Vehicles’ actual
16 emissions. Having voluntarily provided information to Maryland Plaintiffs and the
17 Maryland Subclass, Volkswagen had a duty to disclose the entire truth.

18 604. The facts that Volkswagen omitted and concealed from Maryland
19 Plaintiffs and the Maryland Subclass were material. They went to the heart of
20 Volkswagen’s claim that the Defective Vehicles were eco-conscious, that they
21 complied with state and federal emissions standards, and directly impacted the
22 value of the Defective Vehicles.

23 605. Volkswagen’s deceitful conduct has already caused the value of the
24 Defective Vehicles to decrease significantly. For example, Kelley Blue Book
25 reported that Volkswagen’s conduct has caused the fair market value of the
26 Defective Vehicles to decrease by 13%. If each the Defective Vehicles had an
27 average fair market value of approximately \$15,000, then a 13% drop in fair market
28 value alone has caused nearly a billion dollars in harm nationwide.

1 conduct of any trade or commerce.” Massachusetts General Laws Chapter 93A, §
2 2(1). Plaintiff intends to send a demand letter in satisfaction of Massachusetts
3 General Laws Chapter 93A, § 9(3), and may amend this Amended Complaint to
4 assert claims under the MCPA once the 30-day period has elapsed. This paragraph
5 is included for purposes of notice only and is not intended to actually assert a claim
6 under the MCPA.

7
8 **SECOND CLAIM FOR RELIEF**

9 **BREACH OF CONTRACT (MASSACHUSETTS)**

10 611. Plaintiffs re-allege and incorporate all paragraphs above as though
11 fully set forth herein.

12 612. Plaintiffs bring this Claim for Relief on behalf of the Massachusetts
13 Subclass.

14 613. Volkswagen’s misrepresentations and omissions alleged herein,
15 including its failure to disclose the existence of the defeat device caused
16 Massachusetts Plaintiff and the other Massachusetts Subclass Members to make
17 their purchases or leases of the Defective Vehicles. Absent those
18 misrepresentations and omissions, Massachusetts Plaintiff and the other
19 Massachusetts Subclass Members would not have purchased or leased the
20 Defective Vehicles, and/or would not have purchased or leased the Defective
21 Vehicles at the prices they paid. Accordingly, Massachusetts Plaintiff and the
22 Massachusetts Subclass Members overpaid for their Defective Vehicles and did not
23 receive the benefit of their bargain.

24 614. Each and every sale or lease of a Defective Vehicle constitutes a
25 contract between Volkswagen and the purchaser or lessee. Volkswagen breached
26 these contracts by selling or leasing Massachusetts Plaintiff and the Massachusetts
27 Subclass Members the Defective Vehicles and by misrepresenting or failing to
28 disclose the existence of the defeat device, including information known to

1 Volkswagen rendering each Defective Vehicle not emission compliant and
2 therefore less valuable.

3 615. Delaware Plaintiff and the other Massachusetts Subclass Members
4 fully performed their obligations under the contract by paying all amounts due
5 under the contracts.

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

11 **THIRD CLAIM FOR RELIEF**

12 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**

13 **MASSACHUSETTS GENERAL LAWS ANNOTATED**

14 **CHAPTER 106, §§ 2-314 – 318 (Uniform Commercial Code)**

15 617. Plaintiffs re-allege and incorporate all paragraphs above as though
16 fully set forth herein.

17 618. Plaintiffs bring this Claim for Relief on behalf of the Massachusetts
18 Subclass.

19 619. Volkswagen is and was at all relevant times a merchant with respect to
20 the sale of motor vehicles, including the Defective Vehicles.

21 620. The law implies that the Defective Vehicles were in merchantable
22 condition in the instant transactions. These Defective Vehicles, when sold and at
23 all times thereafter, were not in merchantable condition and are not fit for the
24 ordinary purpose for which vehicles are used. Specifically, the Defective Vehicles
25 do not comply with federal and state emissions standards; have safety and
26 emissions functions that are inoperative; and their CleanDiesel engines was not
27 adequately designed, manufactured, and tested.
28

1 621. Volkswagen was provided notice of these issues by the investigations
2 conducted by the EPA and state regulators, numerous complaints filed against it,
3 and by numerous individual letters and communications sent by Class members
4 before or within a reasonable amount of time after the allegations relating to the
5 Defective Vehicle became public.

6 622. As a direct and proximate result of Volkswagen's breach of the
7 warranty of merchantability, plaintiff and the other Class Members have been
8 damaged in an amount to be proven at trial.

9
10 **FOURTH CLAIM FOR RELIEF**

11 **FRAUD BY CONCEALMENT (MASSACHUSETTS)**

12 623. Plaintiffs re-allege and incorporate all paragraphs above as though
13 fully set forth herein.

14 624. Plaintiffs bring this Claim for Relief on behalf of the Massachusetts
15 Subclass.

16 625. Volkswagen intentionally concealed and suppressed material facts
17 about the actual quality and character of the Defective Vehicles. As alleged above,
18 Volkswagen designed and installed a secret defeat device in the Defective Vehicles
19 to defraud consumers and fool state and federal emissions regulators. While
20 Volkswagen represented to consumers that the Defective Vehicles were "eco-
21 conscious," "CleanDiesel," and operated with "extreme efficiency," the opposite
22 was true. The Defective Vehicles cannot even satisfy state and federal emission
23 standards, emitting up to 40 times more than the legal limit of certain pollutants.

24 626. The defeat device was programmed into the Defective Vehicle's
25 software and was designed to evade detection. Volkswagen designed the defeat
26 device so that the vehicles' emission control systems could sense when they were
27 being tested for emissions and would at that time engage emission controls. But
28 when the Defective Vehicle's software detected that the emissions testing was

1 complete, it secretly disengaged certain features of the emission control system,
2 causing the vehicle to emit illegal levels of certain pollutants.

3 627. On September 22, 2015, the head of Volkswagen's United States
4 Division confessed, "Let's be clear about this. Our company was dishonest. With
5 the EPA, and the California Air Resources Board, and with all of you. And in my
6 German words, we have totally screwed up."

7 628. On October 8, 2015, Michael Horn, the then President and CEO of
8 Volkswagen North America, gave the following testimony before the House
9 Committee on Energy and Commerce Subcommittee on Oversight and
10 Investigations: "On behalf of our company, and my colleagues in Germany, I
11 would like to offer a sincere apology for Volkswagen's use of a software program
12 that served to defeat the regular emissions testing regime." He also testified that
13 "[t]hese events are deeply troubling. I did not think that something like this was
14 possible at the Volkswagen Group. We have broken the trust of our customers,
15 dealerships, and employees, as well as the public and regulators."

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

23 630. Volkswagen's false representations were material to consumers,
24 including to Massachusetts Plaintiff and the Massachusetts Subclass. Not only did
25 the representations relate to the value of the Defective Vehicles, but it also
26 concerned their compliance with state and federal emissions standards. Indeed,
27 Volkswagen's advertising campaign sought out customers who cared deeply about
28 the environment and were willing to pay a premium for a clean diesel vehicle.

1 While Volkswagen preached to consumers about its “commitment to making
2 vehicles that are eco-conscious,” in fact Volkswagen cared only about boosting its
3 bottom line and maximizing corporate profits.

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

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

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

25 634. Volkswagen’s deceitful conduct has already caused the value of the
26 Defective Vehicles to decrease significantly. For example, Kelley Blue Book
27 reported that Volkswagen’s conduct has caused the fair market value of the
28 Defective Vehicles to decrease by 13%. If each the Defective Vehicles had an

1 average fair market value of approximately \$15,000, then a 13% drop in fair market
2 value alone has caused nearly a billion dollars in harm nationwide.

3 635. Because of Volkswagen's fraudulent concealment and/or suppression
4 of the true facts, Massachusetts Plaintiff and the other Massachusetts Subclass
5 Members have sustained damages because the Defective Vehicles that they own or
6 lease are diminished in value as a result of Volkswagen's concealment of the true
7 quality and nature of the vehicle's emissions. Had Massachusetts Plaintiff and the
8 Massachusetts Subclass Members known the facts concerning Volkswagen's
9 evasion of federal and state emission standards, they would have paid less for their
10 vehicles or would not have purchased or leased them at all.

11 636. According, Volkswagen is liable to Massachusetts Plaintiff and the
12 Massachusetts Subclass Members for damages in an amount to be proven at trial.

13 637. Volkswagen's acts were done knowingly, intentionally, with malice,
14 and demonstrated a complete lack of care in reckless disregard of Massachusetts
15 Plaintiff's and the other Massachusetts Subclass Members rights and the
16 representations that Volkswagen made to them, in order to enrich Volkswagen. As
17 a result, Volkswagen's conduct warrants an assessment of punitive damages in an
18 amount to be determined according to proof.

19 **L. Claims on Behalf of Minnesota Subclass.**

20 **FIRST CLAIM FOR RELIEF**
21 **VIOLATION OF MINNESOTA PREVENTION OF**
22 **CONSUMER FRAUD ACT**
23 **(MINNESOTA STATUTE § 325F.68, et seq.)**

24 638. Plaintiffs re-allege and incorporate all paragraphs set forth above as
25 though fully set forth herein.

26 639. Plaintiffs bring this Claim for Relief on behalf of the Minnesota
27 Subclass.
28

1 640. The Minnesota Prevention of Consumer Fraud Act (“Minnesota
2 CFA”) prohibits “[t]he act, use, or employment by any person of any fraud, false
3 pretense, false promise, misrepresentation, misleading statement or deceptive
4 practice, with the intent that others rely thereon in connection with the sale of any
5 merchandise, whether or not any person has in fact been misled, deceived, or
6 damaged thereby . . .” Minnesota Statute § 325F.69(1). Volkswagen violated the
7 CFA by engaging in misleading, false, or deceptive acts relating to its use of the
8 defeat device in the Defective Vehicles.

9 641. The Defective Vehicles constitute “merchandise” under Minnesota
10 Statute § 325F.68(2).

11 642. Volkswagen violated the Minnesota CFA by engaging in fraud, false
12 pretense, misrepresentations, misleading statements and/or deceptive practices
13 relating to the Defective Vehicles. As alleged above, Volkswagen made material
14 statements about the safety, cleanliness, efficiency, and reliability of the Defective
15 Vehicles that were deceptive, false, and/or misleading. For example, Volkswagen
16 represented that the vehicles are “eco-conscious,” and satisfy the strictest emissions
17 standards. These representations are false, misleading, and deceptive.

18 643. Volkswagen owed Minnesota Plaintiff and the Minnesota Subclass a
19 duty to disclose the true safety, cleanliness, efficiency, and reliability of the
20 Defective Vehicles because Volkswagen:

- 21 a. Possessed exclusive knowledge that it was designing,
22 manufacturing, marketing, selling, and distributing vehicles
23 throughout the United States that did not comply with state and
24 federal emissions regulations;
- 25 b. Intentionally concealed the foregoing from Minnesota Plaintiff
26 and the Minnesota Subclass; and/or
- 27 c. Made incomplete representations about the safety, cleanliness,
28 efficiency and reliability of the Defective Vehicles generally,

1 and the use of the “defeat device” and true nature of the
2 CleanDiesel engines, while purposefully withholding material
3 facts that contradicted these representations.

4 644. In purchasing or leasing the Defective Vehicles, Minnesota Plaintiff
5 and the other Minnesota Subclass members were deceived by Volkswagen’s failure
6 to disclose that the Defective Vehicles contained the defeat device and that the
7 CleanDiesel engine failed state and federal emissions standards.

8 645. Volkswagen intentionally and knowingly misrepresented material facts
9 regarding the Defective Vehicles with an intent to mislead Minnesota Plaintiff and
10 the Minnesota Subclass.

11 646. Minnesota Plaintiff reasonably relied on Volkswagen’s
12 misrepresentations. As a direct result of Volkswagen’s unlawful, unfair, or
13 fraudulent business acts and/or practices, Minnesota Plaintiff and other Minnesota
14 Subclass Members suffered injury in fact and lost money or property.

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

17 648. Volkswagen’s actions as set forth above occurred in the conduct of
18 trade or commerce.

19 649. Minnesota Plaintiff and the other Minnesota Subclass members were
20 injured as a result of Volkswagen’s conduct. Minnesota Plaintiff and the
21 Minnesota Subclass members either would have paid less for their Defective
22 Vehicles or would not have purchased or leased them at all had they known the true
23 facts. Minnesota Plaintiff and the Minnesota Subclass did not receive the benefit of
24 their bargain, and their Defective Vehicles have suffered a diminution in value.
25 These injuries are the direct and natural consequence of Volkswagen’s
26 misrepresentations and omissions.

27 650. For example, Volkswagen’s unlawful, unfair, and/or fraudulent
28 business acts or practices have already caused the value of the Defective Vehicles

1 to decrease significantly. Kelley Blue Book reported that Volkswagen's conduct
2 has caused the fair market value of the Defective Vehicles to decrease by 13%. If
3 each the Defective Vehicles had an average fair market value of approximately
4 \$15,000, then a 13% drop in fair market value alone has caused nearly a billion
5 dollars in harm nationwide.

6 651. Volkswagen's violations present a continuing risk to Minnesota
7 Plaintiff and the Minnesota Subclass as well as to the general public.
8 Volkswagen's unlawful acts and practices described above affect the public
9 interest.

10 652. Volkswagen profited from its sales of its falsely and deceptively
11 advertised products to unwary customers.

12 653. Accordingly, pursuant to Minnesota Statute § 8.31(3A), Minnesota
13 Plaintiff, on behalf of themselves and all others similarly situated, seek to recover
14 actual damages attorneys' fees, and any other just and proper relief available under
15 the law.

16 654. Plaintiffs also seek punitive damages under Minnesota Statute §
17 549.20(1)(a) given the clear and convincing evidence that Volkswagen acted with
18 deliberate disregard for the rights or safety of others.

19
20 **SECOND CLAIM FOR RELIEF**
21 **VIOLATION OF MINNESOTA UNIFORM DECEPTIVE**
22 **TRADE PRACTICES ACT**
23 **(MINNESOTA STATUTE § 325D.43-48, et seq.)**

24 655. Plaintiffs re-allege and incorporate all paragraphs above as though
25 fully set forth herein.

26 656. Plaintiffs bring this Claim for Relief on behalf of the Minnesota
27 Subclass.
28

1 657. The Minnesota Deceptive Trade Practices Act (“Minnesota DTPA”)
2 prohibits deceptive trade practices, which include, among other acts, when a person
3 “(5) represents that goods or services have sponsorship, approval, characteristics,
4 ingredients, uses, benefits, or quantities that they do not have or that a person has a
5 sponsorship, approval, status, affiliation, or connection that the person does not
6 have;” “(7) represents that goods or services are of a particular standard, quality, or
7 grade, or that goods are of a particular style or model, if they are of another;” and
8 “(9) advertises goods or services with intent not to sell them as advertised.”
9 Minnesota Statute § 325D.44.

10 658. Volkswagen violated the Minnesota DTPA by (a) representing that the
11 Defective Vehicles have sponsorship, approval, characteristics, and benefits that
12 they do not have; (b) representing that the Defective Vehicles are of a particular
13 standard, quality, or grade when in fact they are of another; and (c) advertising the
14 Defective Vehicles with the intent not to sell them as advertised. For example,
15 Volkswagen represented and advertised that the vehicles are “eco-conscious,” and
16 satisfy the strictest emissions standards. These representations and advertisements
17 are false, misleading, and deceptive.

18 659. Volkswagen owed Minnesota Plaintiff and the Minnesota Subclass a
19 duty to disclose the true safety, cleanliness, efficiency, and reliability of the
20 Defective Vehicles because Volkswagen:

- 21 a. Possessed exclusive knowledge that it was designing,
22 manufacturing, marketing, selling, and distributing vehicles
23 throughout the United States that did not comply with state and
24 federal emissions regulations;
- 25 b. Intentionally concealed the foregoing from Minnesota Plaintiff
26 and the Minnesota Subclass; and/or
- 27 c. Made incomplete representations about the safety, cleanliness,
28 efficiency and reliability of the Defective Vehicles generally,

1 and the use of the “defeat device” and true nature of the
2 CleanDiesel engines, while purposefully withholding material
3 facts that contradicted these representations.

4 660. In purchasing or leasing the Defective Vehicles, Minnesota Plaintiff
5 and the other Minnesota Subclass members were deceived by Volkswagen’s failure
6 to disclose that the Defective Vehicles contained the defeat device and that the
7 CleanDiesel engine failed state and federal emissions standards.

8 661. Volkswagen intentionally and knowingly misrepresented material facts
9 regarding the Defective Vehicles with an intent to mislead Minnesota Plaintiff and
10 the Minnesota Subclass.

11 662. Minnesota Plaintiff reasonably relied on Volkswagen’s
12 misrepresentations. As a direct result of Volkswagen’s unlawful, unfair, or
13 fraudulent business acts and/or practices, Minnesota Plaintiff and other Minnesota
14 Subclass Members suffered injury in fact and lost money or property.

15 663. Volkswagen knew or should have known that its conduct violated the
16 Minnesota DTPA.

17 664. Volkswagen’s actions as set forth above occurred in the conduct of
18 trade or commerce.

19 665. Minnesota Plaintiff and the other Minnesota Subclass members were
20 injured as a result of Volkswagen’s conduct. Minnesota Plaintiff and the
21 Minnesota Subclass members either would have paid less for their Defective
22 Vehicles or would not have purchased or leased them at all had they known the true
23 facts. Minnesota Plaintiff and the Minnesota Subclass did not receive the benefit of
24 their bargain, and their Defective Vehicles have suffered a diminution in value.
25 These injuries are the direct and natural consequence of Volkswagen’s
26 misrepresentations and omissions.

27 666. For example, Volkswagen’s unlawful, unfair, and/or fraudulent
28 business acts or practices have already caused the value of the Defective Vehicles

1 to decrease significantly. Kelley Blue Book reported that Volkswagen's conduct
2 has caused the fair market value of the Defective Vehicles to decrease by 13%. If
3 each the Defective Vehicles had an average fair market value of approximately
4 \$15,000, then a 13% drop in fair market value alone has caused nearly a billion
5 dollars in harm nationwide.

6 667. Volkswagen's violations present a continuing risk to Minnesota
7 Plaintiff and the Minnesota Subclass as well as to the general public.
8 Volkswagen's unlawful acts and practices described above affect the public
9 interest.

10 668. Volkswagen profited from its sales of its falsely and deceptively
11 advertised products to unwary customers.

12 669. Accordingly, pursuant to Minnesota Statute § 8.31(3A), Minnesota
13 Plaintiff, on behalf of themselves and all others similarly situated, seek to recover
14 actual damages attorneys' fees, and any other just and proper relief available under
15 the law.

16 670. Plaintiffs also seek punitive damages under Minnesota Statute §
17 549.20(1)(a) given the clear and convincing evidence that Volkswagen acted with
18 deliberate disregard for the rights or safety of others.

19 **THIRD CLAIM FOR RELIEF**

20 **BREACH OF CONTRACT (MINNESOTA)**

21 671. Plaintiffs re-allege and incorporate all paragraphs above as though
22 fully set forth herein.

23 672. Plaintiffs bring this Claim for Relief on behalf of the Minnesota
24 Subclass.

25 673. Volkswagen's misrepresentations and omissions alleged herein,
26 including its failure to disclose the existence of the defeat device caused Minnesota
27 Plaintiff and the other Minnesota Subclass Members to make their purchases or
28

1 leases of the Defective Vehicles. Absent those misrepresentations and omissions,
2 Minnesota Plaintiff and the other Minnesota Subclass Members would not have
3 purchased or leased the Defective Vehicles, and/or would not have purchased or
4 leased the Defective Vehicles at the prices they paid. Accordingly, Minnesota
5 Plaintiff and the Minnesota Subclass Members overpaid for their Defective
6 Vehicles and did not receive the benefit of their bargain.

7 674. Each and every sale or lease of a Defective Vehicle constitutes a
8 contract between Volkswagen and the purchaser or lessee. Volkswagen breached
9 these contracts by selling or leasing Minnesota Plaintiff and the Minnesota Subclass
10 the Defective Vehicles and by misrepresenting or failing to disclose the existence of
11 the defeat device, including information known to Volkswagen rendering each
12 Defective Vehicle not emission compliant and therefore less valuable.

13 675. Minnesota Plaintiff and the other Minnesota Subclass Members fully
14 performed their obligations under the contract by paying all amounts due under the
15 contracts.

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

21 **FOURTH CLAIM FOR RELIEF**

22 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**

23 **(MINNESOTA STATUTE § 336.2-314)**

24 677. Plaintiffs re-allege and incorporate all paragraphs above as though
25 fully set forth herein.

26 678. Plaintiffs bring this Claim for Relief on behalf of the Minnesota
27 Subclass.
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1 679. Volkswagen is and was at all relevant times a merchant with respect to
2 the sale of motor vehicles, including the Defective Vehicles.

3 680. The law implies that the Defective Vehicles were in merchantable
4 condition in the instant transactions. These Defective Vehicles, when sold and at
5 all times thereafter, were not in merchantable condition and are not fit for the
6 ordinary purpose for which vehicles are used. Specifically, the Defective Vehicles
7 do not comply with federal and state emissions standards; have safety and
8 emissions functions that are inoperative; and their CleanDiesel engines was not
9 adequately designed, manufactured, and tested.

10 681. Volkswagen was provided notice of these issues by the investigations
11 conducted by the EPA and state regulators, numerous complaints filed against it,
12 and by numerous individual letters and communications sent by Class members
13 before or within a reasonable amount of time after the allegations relating to the
14 Defective Vehicle became public.

15 682. As a direct and proximate result of Volkswagen's breach of the
16 warranty of merchantability, Minnesota Plaintiff and the other Minnesota Subclass
17 have been damaged in an amount to be proven at trial.

18 **FIFTH CLAIM FOR RELIEF**

19 **FRAUD BY CONCEALMENT (MINNESOTA)**

20 683. Plaintiffs re-allege and incorporate all paragraphs above as though
21 fully set forth herein.

22 684. Plaintiffs bring this Claim for Relief on behalf of the Minnesota
23 Subclass.

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

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

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

16 688. On October 8, 2015, Michael Horn, the then President and CEO of
17 Volkswagen North America, gave the following testimony before the House
18 Committee on Energy and Commerce Subcommittee on Oversight and
19 Investigations: “On behalf of our company, and my colleagues in Germany, I
20 would like to offer a sincere apology for Volkswagen’s use of a software program
21 that served to defeat the regular emissions testing regime.” He also testified that
22 “[t]hese events are deeply troubling. I did not think that something like this was
23 possible at the Volkswagen Group. We have broken the trust of our customers,
24 dealerships, and employees, as well as the public and regulators.”

25 689. Minnesota Plaintiff and the Minnesota Subclass reasonably relied on
26 Volkswagen’s false representations. Volkswagen designed the defeat device to
27 evade discovery not only by consumers but also by state and federal emissions
28 regulators from the EPA and CARB. In fact, Volkswagen did not finally admit to

1 installing the defeat device on the Defective Vehicles until approximately six years
2 after first selling Defective Vehicles, having successfully evaded detection for all of
3 those years.

4 690. Volkswagen's false representations were material to consumers,
5 including to Minnesota Plaintiff and the Minnesota Subclass. Not only did the
6 representations relate to the value of the Defective Vehicles, but it also concerned
7 their compliance with state and federal emissions standards. Indeed, Volkswagen's
8 advertising campaign sought out customers who cared deeply about the
9 environment and were willing to pay a premium for a clean diesel vehicle. While
10 Volkswagen preached to consumers about its "commitment to making vehicles that
11 are eco-conscious," in fact Volkswagen cared only about boosting its bottom line
12 and maximizing corporate profits.

13 691. Volkswagen had a duty to disclose the details relating to the defeat
14 device to Minnesota Plaintiff and the Minnesota Subclass because the information
15 was known and/or accessible only to Volkswagen, Volkswagen had exclusive
16 knowledge relating to the design, implementation, and maintenance of the defeat
17 device, and Volkswagen knew that the facts concerning the defeat device were
18 unknown to and not reasonably discoverable by Minnesota Plaintiff or the
19 Minnesota Subclass.

20 692. Volkswagen also had a duty to disclose the information because it
21 made affirmative misrepresentations concerning the qualities of its vehicles and
22 their compliance with state and federal emissions standards. Volkswagen's
23 marketing of the Defective Vehicles as "CleanDiesel," "eco-conscious," and
24 "extremely efficient," was deceptive, misleading, and incomplete without
25 disclosing the presence of the defeat device and the Defective Vehicles' actual
26 emissions. Having voluntarily provided information to Minnesota Plaintiff and the
27 Minnesota Subclass, Volkswagen had a duty to disclose the entire truth.

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1 693. The facts that Volkswagen omitted and concealed from Minnesota
2 Plaintiff and the Minnesota Subclass were material. They went to the heart of
3 Volkswagen's claim that the Defective Vehicles were eco-conscious, that they
4 complied with state and federal emissions standards, and directly impacted the
5 value of the Defective Vehicles.

6 694. Volkswagen's deceitful conduct has already caused the value of the
7 Defective Vehicles to decrease significantly. For example, Kelley Blue Book
8 reported that Volkswagen's conduct has caused the fair market value of the
9 Defective Vehicles to decrease by 13%. If each the Defective Vehicles had an
10 average fair market value of approximately \$15,000, then a 13% drop in fair market
11 value alone has caused nearly a billion dollars in harm nationwide.

12 695. Because of Volkswagen's fraudulent concealment and/or suppression
13 of the true facts, Minnesota Plaintiff and the other Minnesota Subclass Members
14 have sustained damages because the Defective Vehicles that they own or lease are
15 diminished in value as a result of Volkswagen's concealment of the true quality and
16 nature of the vehicle's emissions. Had Minnesota Plaintiff and the Minnesota
17 Subclass known the facts concerning Volkswagen's evasion of federal and state
18 emission standards, they would have paid less for their vehicles or would not have
19 purchased or leased them at all.

20 696. According, Volkswagen is liable to Minnesota Plaintiff and the
21 Minnesota Subclass Members for damages in an amount to be proven at trial.

22 697. Volkswagen's acts were done wantonly, maliciously, oppressively,
23 deliberately, with intent to defraud, and in reckless disregard of Minnesota
24 Plaintiff's and the other Minnesota Subclass' rights and the representations that
25 Volkswagen made to them, in order to enrich Volkswagen. To the extent permitted
26 under applicable law, Volkswagen's conduct warrants an assessment of punitive
27 damages in an amount sufficient to deter such conduct in the future, and in an
28 amount to be determined according to proof.

1 the EPA, and the California Air Resources Board, and with all of you. And in my
2 German words, we have totally screwed up.”

3 715. Mississippi Plaintiffs and the Mississippi Subclass reasonably relied
4 on Volkswagen’s false representations. Volkswagen designed the defeat device to
5 evade discovery not only by consumers but also by state and federal emissions
6 regulators from the EPA and CARB. In fact, Volkswagen did not finally admit to
7 installing the defeat device on the Defective Vehicles until approximately six years
8 after first selling Defective Vehicles, having successfully evaded detection for all of
9 those years.

10 716. Volkswagen’s false representations were material to consumers,
11 including to Mississippi Plaintiffs and the Mississippi Subclass. Not only did the
12 representations relate to the value of the Defective Vehicles, but it also concerned
13 their compliance with state and federal emissions standards. Indeed, Volkswagen’s
14 advertising campaign sought out customers who cared deeply about the
15 environment and were willing to pay a premium for a clean diesel vehicle. While
16 Volkswagen preached to consumers about its “commitment to making vehicles that
17 are eco-conscious,” in fact Volkswagen cared only about boosting its bottom line
18 and maximizing corporate profits.

19 717. Volkswagen had a duty to disclose the details relating to the defeat
20 device to Mississippi Plaintiffs and the Mississippi Subclass because the
21 information was known and/or accessible only to Volkswagen, Volkswagen had
22 exclusive knowledge relating to the design, implementation, and maintenance of the
23 defeat device, and Volkswagen knew that the facts concerning the defeat device
24 were unknown to and not reasonably discoverable by Mississippi Plaintiffs or the
25 Mississippi Subclass.

26 718. Volkswagen also had a duty to disclose the information because it
27 made affirmative misrepresentations concerning the qualities of its vehicles and
28 their compliance with state and federal emissions standards. Volkswagen’s

1 marketing of the Defective Vehicles as “CleanDiesel,” “eco-conscious,” and
2 “extremely efficient,” was deceptive, misleading, and incomplete without
3 disclosing the presence of the defeat device and the Defective Vehicles’ actual
4 emissions. Having voluntarily provided information to Mississippi Plaintiffs and
5 the Mississippi Subclass, Volkswagen had a duty to disclose the entire truth.

6 719. The facts that Volkswagen omitted and concealed from Mississippi
7 Plaintiffs and the Mississippi Subclass were material. They went to the heart of
8 Volkswagen’s claim that the Defective Vehicles were eco-conscious, that they
9 complied with state and federal emissions standards, and directly impacted the
10 value of the Defective Vehicles.

11 720. Volkswagen’s deceitful conduct has already caused the value of the
12 Defective Vehicles to decrease significantly. For example, Kelley Blue Book
13 reported that Volkswagen’s conduct has caused the fair market value of the
14 Defective Vehicles to decrease by 13%. If each the Defective Vehicles had an
15 average fair market value of approximately \$15,000, then a 13% drop in fair market
16 value alone has caused nearly a billion dollars in harm nationwide.

17 721. Because of Volkswagen’s fraudulent concealment and/or suppression
18 of the true facts, Mississippi Plaintiffs and the other Mississippi Subclass Members
19 have sustained damages because the Defective Vehicles that they own or lease are
20 diminished in value as a result of Volkswagen’s concealment of the true quality and
21 nature of the vehicle’s emissions. Had Mississippi Plaintiffs and the Mississippi
22 Subclass known the facts concerning Volkswagen’s evasion of federal and state
23 emission standards, they would have paid less for their vehicles or would not have
24 purchased or leased them at all.

25 722. According, Volkswagen is liable to Mississippi Plaintiffs and the
26 Mississippi Subclass Members for damages in an amount to be proven at trial.

27 723. Volkswagen’s acts were done wantonly, maliciously, oppressively,
28 deliberately, with intent to defraud, and in reckless disregard of Mississippi

1 Plaintiff's and the other Mississippi Subclass' rights and the representations that
2 Volkswagen made to them, in order to enrich Volkswagen. To the extent permitted
3 under applicable law, Volkswagen's conduct warrants an assessment of punitive
4 damages in an amount sufficient to deter such conduct in the future, which amount
5 is to be determined according to proof.

6 **N. Claims on Behalf of New York Subclass.**

7 **FIRST CLAIM FOR RELIEF**

8 **VIOLATIONS OF NEW YORK GENERAL BUSINESS LAW § 349**

9 724. Plaintiffs re-allege and incorporate all paragraphs set forth above as
10 though fully set forth herein.

11 725. Plaintiffs bring this Claim for Relief on behalf of the New York
12 Subclass.

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

15 727. Volkswagen violated New York's General Business Law § 349 by
16 engaging in unfair methods of competition, unconscionable acts or practices, and
17 unfair or deceptive acts or practices, including by representing that Defective
18 Vehicles have characteristics, uses, benefits, and qualities which they do not have;
19 representing that Defective Vehicles are of a particular standard and quality when
20 they are not; advertising Defective Vehicles with the intent not to sell them as
21 advertised; and otherwise engaging in conduct likely to deceive.

22 728. For example, Volkswagen violated New York's General Business Law
23 § 349 by selling, marketing, and/or distributing Defective Vehicles in New York
24 that contain a defeat device and fail state and federal emissions standards.
25 Volkswagen represented that these Defective Vehicles "meet the strictest EPA
26 standards in the U.S." These representations were false, misleading, and deceptive.
27 In addition, as alleged above, Volkswagen made material statements about the
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1 safety, cleanliness, efficiency, and reliability of the Defective Vehicles that were
2 deceptive, false, and/or misleading.

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

5 730. Because Volkswagen's deception takes place in the context of
6 automobile safety, its deception affects the public interest. Further, Volkswagen's
7 use of a defeat device constitutes unfair acts or practices that have the capacity to
8 deceive consumers, and that have a broad impact on consumers at large.

9 731. Volkswagen's conduct proximately caused injuries to New York
10 Plaintiffs and the other New York Subclass members.

11 732. Because of Volkswagen's deception and/or suppression of the true
12 facts, New York Plaintiffs and the other New York Subclass Members have
13 sustained damages because the Defective Vehicles that they own or lease are
14 diminished in value as a result of Volkswagen's concealment of the true quality and
15 nature of the vehicle's emissions. Had New York Plaintiffs and the New York
16 Subclass known the facts concerning Volkswagen's evasion of federal and state
17 emission standards, they would have paid less for their vehicles or would not have
18 purchased or leased them at all.

19 733. For example, Volkswagen's unlawful, unfair, and/or fraudulent
20 business acts or practices have already caused the value of the Defective Vehicles
21 to decrease significantly. Kelley Blue Book reported that Volkswagen's conduct
22 has caused the fair market value of the Defective Vehicles to decrease by 13%. If
23 each the Defective Vehicles had an average fair market value of approximately
24 \$15,000, then a 13% drop in fair market value alone has caused nearly a billion
25 dollars in harm nationwide.

26 734. These injuries are the direct and natural consequence of Volkswagen's
27 misrepresentations and omissions described above.
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1 746. Plaintiffs bring this Claim for Relief on behalf of the New York
2 Subclass.

3 747. Volkswagen's misrepresentations and omissions alleged herein,
4 including its failure to disclose the existence of the defeat device caused New York
5 Plaintiffs and the other New York Subclass Members to make their purchases or
6 leases of the Defective Vehicles. Absent those misrepresentations and omissions,
7 New York Plaintiffs and the other New York Subclass Members would not have
8 purchased or leased the Defective Vehicles, and/or would not have purchased or
9 leased the Defective Vehicles at the prices they paid. Accordingly, New York
10 Plaintiffs and the New York Subclass Members overpaid for their Defective
11 Vehicles and did not receive the benefit of their bargain.

12 748. Each and every sale or lease of a Defective Vehicle constitutes a
13 contract between Volkswagen and the purchaser or lessee. Volkswagen breached
14 these contracts by selling or leasing New York Plaintiffs and the New York
15 Subclass the Defective Vehicles and by misrepresenting or failing to disclose the
16 existence of the defeat device, including information known to Volkswagen
17 rendering each Defective Vehicle not emission compliant and therefore less
18 valuable.

19 749. New York Plaintiffs and the other New York Subclass Members fully
20 performed their obligations under the contract by paying all amounts due under the
21 contracts.

22 750. As a direct and proximate result of Volkswagen's breach of contract,
23 New York Plaintiffs and the other New York Subclass Members have been
24 damaged in an amount to be proven at trial, which shall include, but is not limited
25 to, all compensatory damages, incidental and consequential damages, and other
26 damages allowed by law.

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1 **FOURTH CLAIM FOR RELIEF**

2 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**

3 **(New York U.C.C. § 2-314)**

4 751. Plaintiffs re-allege and incorporate all paragraphs above as though
5 fully set forth herein.

6 752. Plaintiffs bring this Claim for Relief on behalf of the New York
7 Subclass.

8 753. Volkswagen is and was at all relevant times a merchant with respect to
9 the sale of motor vehicles, including the Defective Vehicles.

10 754. The law implies that the Defective Vehicles were in merchantable
11 condition in the instant transactions. These Defective Vehicles, when sold and at
12 all times thereafter, were not in merchantable condition and are not fit for the
13 ordinary purpose for which vehicles are used. Specifically, the Defective Vehicles
14 do not comply with federal and state emissions standards; have safety and
15 emissions functions that are inoperative; and their CleanDiesel engines was not
16 adequately designed, manufactured, and tested.

17 755. Volkswagen was provided notice of these issues by the investigations
18 conducted by the EPA and state regulators, numerous complaints filed against it,
19 and by numerous individual letters and communications sent by Class members
20 before or within a reasonable amount of time after the allegations relating to the
21 Defective Vehicle became public.

22 756. As a direct and proximate result of Volkswagen's breach of the
23 warranty of merchantability, New York Plaintiffs and the other New York Subclass
24 have been damaged in an amount to be proven at trial.

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FIFTH CLAIM FOR RELIEF

FRAUD BY CONCEALMENT (NEW YORK)

757. Plaintiffs re-allege and incorporate all paragraphs above as though fully set forth herein.

758. Plaintiffs bring this Claim for Relief on behalf of the New York Subclass.

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

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

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

762. On October 8, 2015, Michael Horn, the then President and CEO of Volkswagen North America, gave the following testimony before the House Committee on Energy and Commerce Subcommittee on Oversight and

1 Investigations: “On behalf of our company, and my colleagues in Germany, I
2 would like to offer a sincere apology for Volkswagen’s use of a software program
3 that served to defeat the regular emissions testing regime.” He also testified that
4 “[t]hese events are deeply troubling. I did not think that something like this was
5 possible at the Volkswagen Group. We have broken the trust of our customers,
6 dealerships, and employees, as well as the public and regulators.”

7 763. New York Plaintiffs and the New York Subclass reasonably relied on
8 Volkswagen’s false representations. Volkswagen designed the defeat device to
9 evade discovery not only by consumers but also by state and federal emissions
10 regulators from the EPA and CARB. In fact, Volkswagen did not finally admit to
11 installing the defeat device on the Defective Vehicles until approximately six years
12 after first selling Defective Vehicles, having successfully evaded detection for all of
13 those years.

14 764. Volkswagen’s false representations were material to consumers,
15 including to New York Plaintiffs and the New York Subclass. Not only did the
16 representations relate to the value of the Defective Vehicles, but it also concerned
17 their compliance with state and federal emissions standards. Indeed, Volkswagen’s
18 advertising campaign sought out customers who cared deeply about the
19 environment and were willing to pay a premium for a clean diesel vehicle. While
20 Volkswagen preached to consumers about its “commitment to making vehicles that
21 are eco-conscious,” in fact Volkswagen cared only about boosting its bottom line
22 and maximizing corporate profits.

23 765. Volkswagen had a duty to disclose the details relating to the defeat
24 device to New York Plaintiffs and the New York Subclass because the information
25 was known and/or accessible only to Volkswagen, Volkswagen had exclusive
26 knowledge relating to the design, implementation, and maintenance of the defeat
27 device, and Volkswagen knew that the facts concerning the defeat device were
28

1 unknown to and not reasonably discoverable by New York Plaintiffs or the New
2 York Subclass.

3 766. Volkswagen also had a duty to disclose the information because it
4 made affirmative misrepresentations concerning the qualities of its vehicles and
5 their compliance with state and federal emissions standards. Volkswagen's
6 marketing of the Defective Vehicles as "CleanDiesel," "eco-conscious," and
7 "extremely efficient," was deceptive, misleading, and incomplete without
8 disclosing the presence of the defeat device and the Defective Vehicles' actual
9 emissions. Having voluntarily provided information to New York Plaintiffs and the
10 New York Subclass, Volkswagen had a duty to disclose the entire truth.

11 767. The facts that Volkswagen omitted and concealed from New York
12 Plaintiffs and the New York Subclass were material. They went to the heart of
13 Volkswagen's claim that the Defective Vehicles were eco-conscious, that they
14 complied with state and federal emissions standards, and directly impacted the
15 value of the Defective Vehicles.

16 768. Volkswagen's deceitful conduct has already caused the value of the
17 Defective Vehicles to decrease significantly. For example, Kelley Blue Book
18 reported that Volkswagen's conduct has caused the fair market value of the
19 Defective Vehicles to decrease by 13%. If each the Defective Vehicles had an
20 average fair market value of approximately \$15,000, then a 13% drop in fair market
21 value alone has caused nearly a billion dollars in harm nationwide.

22 769. Because of Volkswagen's fraudulent concealment and/or suppression
23 of the true facts, New York Plaintiffs and the other New York Subclass Members
24 have sustained damages because the Defective Vehicles that they own or lease are
25 diminished in value as a result of Volkswagen's concealment of the true quality and
26 nature of the vehicle's emissions. Had New York Plaintiffs and the New York
27 Subclass known the facts concerning Volkswagen's evasion of federal and state
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1 emission standards, they would have paid less for their vehicles or would not have
2 purchased or leased them at all.

3 770. According, Volkswagen is liable to New York Plaintiffs and the New
4 York Subclass Members for damages in an amount to be proven at trial.

5 771. Volkswagen's conduct was knowing, intentional, with malice,
6 demonstrated a complete lack of care, and was in reckless disregard for the rights of
7 Plaintiffs and the other Class members. Plaintiffs and the other Class members are
8 therefore entitled to an award of punitive damages.

9 **O. Claims on Behalf of Ohio Subclass.**

10 **FIRST CLAIM FOR RELIEF**

11 **VIOLATION OF THE OHIO CONSUMER SALES PRACTICES ACT**

12 **(OHIO REVISED CODE §§ 1345.01, et seq.)**

13 772. Plaintiffs re-allege and incorporate all paragraphs set forth above as
14 though fully set forth herein.

15 773. Plaintiffs bring this Claim for Relief on behalf of the Ohio Subclass.

16 774. The Ohio Consumer Sales Practices Act (Ohio "CSPA") prohibits a
17 supplier from committing an unfair or deceptive act or practice in connection with a
18 consumer transaction. Ohio Rev. Code § 1345.02(A). The Ohio CSPA further
19 provides that "a consumer" has a private cause of action for violations of the
20 statute. Ohio Rev. Code § 1345.09.

21 775. Volkswagen is a "supplier" as defined by the Ohio CSPA. Ohio
22 Revised Code § 1345.09 (C).

23 776. Ohio Plaintiffs and the Ohio Subclass are "consumers" under the Ohio
24 CSPA. Ohio Revised Code § 1345.09 (D).

25 777. Volkswagen had a statutory duty to refrain from unfair or deceptive
26 acts or practices in the design, development, promotion, sale and/or manufacture of
27 the unlawful Defective Vehicles.
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1 778. Volkswagen marketed the Defective Vehicles for personal, family, or
2 household purposes.

3 779. Volkswagen engaged in unfair and deceptive practices by representing
4 that the Defective Vehicles have characteristics, uses, benefits, and qualities that
5 they do not have, such as low emissions; and by intentionally failing to disclose
6 and/or concealing the known defects of the Defective Vehicles.

7 780. Volkswagen had no reasonable basis in fact for the representations it
8 made that the Defective Vehicles “CleanDiesel,” complied with state and federal
9 emissions standards, or offered efficient fuel economy and environmentally friendly
10 emissions combined with excellent performance. Indeed, Volkswagen intentionally
11 designed the defeat device and then actively concealed it from consumers and
12 regulators.

13 781. The facts that Volkswagen concealed and/or failed to disclose to Ohio
14 Plaintiffs and the Ohio Subclass are material facts that a reasonable person would
15 have considered important in deciding whether or not to purchase a Defective
16 Vehicle.

17 782. In purchasing or leasing the Defective Vehicles, Ohio Plaintiffs and
18 the other Ohio Subclass members were deceived by Volkswagen’s failure to
19 disclose that the Defective Vehicles contained the defeat device and that the
20 CleanDiesel engine failed state and federal emissions standards.

21 783. Ohio Plaintiffs reasonably relied on Volkswagen’s misrepresentations.
22 As a direct result of Volkswagen’s deception and/or suppression of the true facts,
23 Ohio Plaintiffs and the other Ohio Subclass members have sustained damages. The
24 Defective Vehicles that they own or lease are diminished in value as a result of
25 Volkswagen’s concealment of the true quality and nature of the vehicle’s
26 emissions. Had Ohio Plaintiffs and the Ohio Subclass known the facts concerning
27 Volkswagen’s evasion of federal and state emission standards, they would have
28 paid less for their vehicles or would not have purchased or leased them at all.

1 784. For example, Volkswagen's unlawful, unfair, and/or fraudulent
2 business acts or practices have already caused the value of the Defective Vehicles
3 to decrease significantly. Kelley Blue Book reported that Volkswagen's conduct
4 has caused the fair market value of the Defective Vehicles to decrease by 13%. If
5 each the Defective Vehicles had an average fair market value of approximately
6 \$15,000, then a 13% drop in fair market value alone has caused nearly a billion
7 dollars in harm nationwide.

8 785. As Volkswagen's unlawful actions damaged Ohio Plaintiffs and the
9 Ohio Subclass, they are entitled to damages and other relief, including attorneys'
10 fees, as provided under the Ohio CSPA.

11 **SECOND CLAIM FOR RELIEF**

12 **BREACH OF CONTRACT (OHIO)**

13 786. Plaintiffs re-allege and incorporate all paragraphs above as though
14 fully set forth herein.

15 787. Plaintiffs bring this Claim for Relief on behalf of the Ohio Subclass.

16 788. Volkswagen's misrepresentations and omissions alleged herein,
17 including its failure to disclose the existence of the defeat device caused Ohio
18 Plaintiffs and the other Ohio Subclass Members to make their purchases or leases
19 of the Defective Vehicles. Absent those misrepresentations and omissions, Ohio
20 Plaintiffs and the other Ohio Subclass Members would not have purchased or
21 leased the Defective Vehicles, and/or would not have purchased or leased the
22 Defective Vehicles at the prices they paid. Accordingly, Ohio Plaintiffs and the
23 Ohio Subclass Members overpaid for their Defective Vehicles and did not receive
24 the benefit of their bargain.

25 789. Each and every sale or lease of a Defective Vehicle constitutes a
26 contract between Volkswagen and the purchaser or lessee. Volkswagen breached
27 these contracts by selling or leasing Ohio Plaintiffs and the Ohio Subclass the
28

1 Defective Vehicles and by misrepresenting or failing to disclose the existence of the
2 defeat device, including information known to Volkswagen rendering each
3 Defective Vehicle not emission compliant and therefore less valuable.

4 790. Ohio Plaintiffs and the other Ohio Subclass Members fully performed
5 their obligations under the contract by paying all amounts due under the contracts.

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

11 **THIRD CLAIM FOR RELIEF**

12 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**

13 **(OHIO REVISED CODE ANNOTATED § 1302.27)**

14 792. Plaintiffs re-allege and incorporate all paragraphs above as though
15 fully set forth herein.

16 793. Plaintiffs bring this Claim for Relief on behalf of the Ohio Subclass.

17 794. Volkswagen is and was at all relevant times a merchant with respect to
18 the sale of motor vehicles, including the Defective Vehicles.

19 795. The law implies that the Defective Vehicles were in merchantable
20 condition in the instant transactions. These Defective Vehicles, when sold and at
21 all times thereafter, were not in merchantable condition and are not fit for the
22 ordinary purpose for which vehicles are used. Specifically, the Defective Vehicles
23 do not comply with federal and state emissions standards; have safety and
24 emissions functions that are inoperative; and their CleanDiesel engines was not
25 adequately designed, manufactured, and tested.

26 796. Volkswagen was provided notice of these issues by the investigations
27 conducted by the EPA and state regulators, numerous complaints filed against it,
28

1 and by numerous individual letters and communications sent by Class members
2 before or within a reasonable amount of time after the allegations relating to the
3 Defective Vehicle became public.

4 797. As a direct and proximate result of Volkswagen's breach of the
5 warranty of merchantability, Ohio Plaintiff and the other Ohio Subclass have been
6 damaged in an amount to be proven at trial.

7
8 **FOURTH CLAIM FOR RELIEF**
9 **FRAUD BY CONCEALMENT (OHIO)**

10 798. Plaintiffs re-allege and incorporate all paragraphs above as though
11 fully set forth herein.

12 799. Plaintiffs bring this Claim for Relief on behalf of the Ohio Subclass.

13 800. Volkswagen intentionally concealed and suppressed material facts
14 about the actual quality and character of the Defective Vehicles. As alleged above,
15 Volkswagen designed and installed a secret defeat device in the Defective Vehicles
16 to defraud consumers and fool state and federal emissions regulators. While
17 Volkswagen represented to consumers that the Defective Vehicles were "eco-
18 conscious," "CleanDiesel," and operated with "extreme efficiency," the opposite
19 was true. The Defective Vehicles cannot even satisfy state and federal emission
20 standards, emitting up to 40 times more than the legal limit of certain pollutants.

21 801. The defeat device was programmed into the Defective Vehicle's
22 software and was designed to evade detection. Volkswagen designed the defeat
23 device so that the vehicles' emission control systems could sense when they were
24 being tested for emissions and would at that time engage emission controls. But
25 when the Defective Vehicle's software detected that the emissions testing was
26 complete, it secretly disengaged certain features of the emission control system,
27 causing the vehicle to emit illegal levels of certain pollutants.
28

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

5 803. Ohio Plaintiffs and the Ohio Subclass reasonably relied on
6 Volkswagen’s false representations. Volkswagen designed the defeat device to
7 evade discovery not only by consumers but also by state and federal emissions
8 regulators from the EPA and CARB. In fact, Volkswagen did not finally admit to
9 installing the defeat device on the Defective Vehicles until approximately six years
10 after first selling Defective Vehicles, having successfully evaded detection for all of
11 those years.

12 804. Volkswagen’s false representations were material to consumers,
13 including to Ohio Plaintiffs and the Ohio Subclass. Not only did the
14 representations relate to the value of the Defective Vehicles, but it also concerned
15 their compliance with state and federal emissions standards. Indeed, Volkswagen’s
16 advertising campaign sought out customers who cared deeply about the
17 environment and were willing to pay a premium for a clean diesel vehicle. While
18 Volkswagen preached to consumers about its “commitment to making vehicles that
19 are eco-conscious,” in fact Volkswagen cared only about boosting its bottom line
20 and maximizing corporate profits.

21 805. Volkswagen had a duty to disclose the details relating to the defeat
22 device to Ohio Plaintiffs and the Ohio Subclass because the information was known
23 and/or accessible only to Volkswagen, Volkswagen had exclusive knowledge
24 relating to the design, implementation, and maintenance of the defeat device, and
25 Volkswagen knew that the facts concerning the defeat device were unknown to and
26 not reasonably discoverable by Ohio Plaintiffs or the Ohio Subclass.

27 806. Volkswagen also had a duty to disclose the information because it
28 made affirmative misrepresentations concerning the qualities of its vehicles and

1 their compliance with state and federal emissions standards. Volkswagen's
2 marketing of the Defective Vehicles as "CleanDiesel," "eco-conscious," and
3 "extremely efficient," was deceptive, misleading, and incomplete without
4 disclosing the presence of the defeat device and the Defective Vehicles' actual
5 emissions. Having voluntarily provided information to Ohio Plaintiffs and the Ohio
6 Subclass, Volkswagen had a duty to disclose the entire truth.

7 807. The facts that Volkswagen omitted and concealed from Ohio Plaintiffs
8 and the Ohio Subclass were material. They went to the heart of Volkswagen's
9 claim that the Defective Vehicles were eco-conscious, that they complied with state
10 and federal emissions standards, and directly impacted the value of the Defective
11 Vehicles.

12 808. Volkswagen's deceitful conduct has already caused the value of the
13 Defective Vehicles to decrease significantly. For example, Kelley Blue Book
14 reported that Volkswagen's conduct has caused the fair market value of the
15 Defective Vehicles to decrease by 13%. If each the Defective Vehicles had an
16 average fair market value of approximately \$15,000, then a 13% drop in fair market
17 value alone has caused nearly a billion dollars in harm nationwide.

18 809. Because of Volkswagen's fraudulent concealment and/or suppression
19 of the true facts, Ohio Plaintiffs and the other Ohio Subclass Members have
20 sustained damages because the Defective Vehicles that they own or lease are
21 diminished in value as a result of Volkswagen's concealment of the true quality and
22 nature of the vehicle's emissions. Had Ohio Plaintiffs and the Ohio Subclass
23 known the facts concerning Volkswagen's evasion of federal and state emission
24 standards, they would have paid less for their vehicles or would not have purchased
25 or leased them at all.

26 810. Accordingly, Volkswagen is liable to Ohio Plaintiffs and the Ohio
27 Subclass Members for damages in an amount to be proven at trial.
28

1 811. Volkswagen’s acts were done wantonly, maliciously, oppressively,
2 deliberately, with intent to defraud, and in reckless disregard of Ohio Plaintiff’s and
3 the other Ohio Subclass’ rights and the representations that Volkswagen made to
4 them, in order to enrich Volkswagen. As a result, Volkswagen’s conduct warrants
5 an assessment of punitive damages in an amount sufficient to deter such conduct in
6 the future, and in an amount to be determined according to proof.

7 **P. Claims on Behalf of Oregon Subclass.**

8 **FIRST CLAIM FOR RELIEF**

9 **VIOLATION OF THE OREGON UNLAWFUL TRADE PRACTICES ACT**

10 **(OREGON REVISED STATUTE §§ 646.605, et seq.)**

11 812. Plaintiffs re-allege and incorporate all paragraphs set forth above as
12 though fully set forth herein.

13 813. Plaintiffs bring this Claim for Relief on behalf of the Oregon Subclass.

14 814. The Oregon Unfair Trade Practices Act (“Oregon UTPA”), §
15 646.608(1), prohibits a person from, in the course of the person’s business, doing
16 any of the following:

- 17 a. “Represent[ing] that ... goods ... have ... characteristics ...
18 uses, benefits, ... or qualities that they do not have”;
19 b. “Represent[ing] that ... goods ... are of a particular standard
20 [or] quality ... if they are of another”;
21 c. “Advertis[ing] ... goods or services with intent not to provide
22 them as advertised;” and
23 d. “engag[ing] in any other unfair or deceptive conduct in trade or
24 commerce.” Oregon Revised Statute § 646.608(1).

25 815. Volkswagen is a person under Oregon Revised Statute § 646.605(4).

26 816. The Defective Vehicles at issue are “goods” obtained primarily for
27 personal family or household purposes under Oregon Revised Statute § 646.605(6).
28

1 817. Volkswagen violated the Oregon UTPA by engaging in unlawful trade
2 practices, including by representing that Defective Vehicles have characteristics,
3 uses, benefits, and qualities which they do not have; representing that Defective
4 Vehicles are of a particular standard and quality when they are not; advertising
5 Defective Vehicles with the intent not to sell them as advertised; and engaging in
6 other unfair or deceptive conduct in the marketing, dissemination, and sale of
7 Defective Vehicles.

8 818. Volkswagen also engaged in unlawful trade practices and violated the
9 Oregon UTPA by employing deception, deceptive acts or practices, fraud,
10 misrepresentations, or concealment, suppression or omission of any material fact
11 with intent that others rely upon such concealment, suppression or omission, in
12 connection with the sale of Defective Vehicles.

13 819. As alleged above, Volkswagen made material statements about the
14 safety, cleanliness, efficiency, and reliability of the Defective Vehicles that were
15 deceptive, false, and/or misleading.

16 820. Volkswagen owed Oregon Plaintiff and the Oregon Subclass a duty to
17 disclose the true safety, cleanliness, efficiency, and reliability of the Defective
18 Vehicles because Volkswagen:

- 19 a. Possessed exclusive knowledge that it was designing,
20 manufacturing, marketing, selling, and distributing vehicles
21 throughout the United States that did not comply with state and
22 federal emissions regulations;
- 23 b. Intentionally concealed the foregoing from Oregon Plaintiff and
24 the Oregon Subclass; and/or
- 25 c. Made incomplete representations about the safety, cleanliness,
26 efficiency and reliability of the Defective Vehicles generally,
27 and the use of the “defeat device” and true nature of the
28

1 CleanDiesel engines, while purposefully withholding material
2 facts that contradicted these representations.

3 821. In purchasing or leasing the Defective Vehicles, Oregon Plaintiff and
4 the other Oregon Subclass members were deceived by Volkswagen's failure to
5 disclose that the Defective Vehicles contained the defeat device and that the
6 CleanDiesel engine failed state and federal emissions standards.

7 822. Volkswagen intentionally and knowingly misrepresented material facts
8 regarding the Defective Vehicles with an intent to mislead Oregon Plaintiff and the
9 Oregon Subclass.

10 823. Oregon Plaintiff reasonably relied on Volkswagen's
11 misrepresentations. As a direct result of Volkswagen's unlawful, unfair, or
12 fraudulent business acts and/or practices, Oregon Plaintiff and other Oregon
13 Subclass Members suffered injury in fact and lost money or property.

14 824. Volkswagen knew or should have known that its conduct violated the
15 Oregon UTPA.

16 825. Volkswagen's actions as set forth above occurred in the conduct of
17 trade or commerce.

18 826. Oregon Plaintiff and the other Oregon Subclass members were injured
19 as a result of Volkswagen's conduct. Oregon Plaintiff and the Oregon Subclass
20 members either would have paid less for their Defective Vehicles or would not have
21 purchased or leased them at all had they known the true facts. Oregon Plaintiff and
22 the Oregon Subclass did not receive the benefit of their bargain, and their Defective
23 Vehicles have suffered a diminution in value. These injuries are the direct and
24 natural consequence of Volkswagen's misrepresentations and omissions.

25 827. For example, Volkswagen's unlawful, unfair, and/or fraudulent
26 business acts or practices have already caused the value of the Defective Vehicles
27 to decrease significantly. Kelley Blue Book reported that Volkswagen's conduct
28 has caused the fair market value of the Defective Vehicles to decrease by 13%. If

1 each the Defective Vehicles had an average fair market value of approximately
2 \$15,000, then a 13% drop in fair market value alone has caused nearly a billion
3 dollars in harm nationwide.

4 828. Volkswagen's violations present a continuing risk to Oregon Plaintiff
5 and the Oregon Subclass as well as to the general public. Volkswagen's unlawful
6 acts and practices described above affect the public interest.

7 829. Volkswagen profited from its sales of its falsely and deceptively
8 advertised products to unwary customers.

9 830. Oregon Plaintiff and the Oregon Subclass are entitled to recover the
10 greater of actual damages or \$200 pursuant to Oregon Revised Statute §
11 646.638(1). Oregon Plaintiff and the Oregon Subclass are also entitled to punitive
12 damages because Volkswagen engaged in conduct amounting to a particularly
13 aggravated, deliberate disregard of the rights of others.

14
15 **SECOND CLAIM FOR RELIEF**

16 **BREACH OF CONTRACT (OREGON)**

17 831. Plaintiffs re-allege and incorporate all paragraphs above as though
18 fully set forth herein.

19 832. Plaintiffs bring this Claim for Relief on behalf of the Oregon Subclass.

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

1 emissions functions that are inoperative; and their CleanDiesel engines was not
2 adequately designed, manufactured, and tested.

3 841. Volkswagen was provided notice of these issues by the investigations
4 conducted by the EPA and state regulators, numerous complaints filed against it,
5 and by numerous individual letters and communications sent by Class members
6 before or within a reasonable amount of time after the allegations relating to the
7 Defective Vehicle became public.

8 842. As a direct and proximate result of Volkswagen's breach of the
9 warranty of merchantability, Oregon Plaintiff and the other Oregon Subclass have
10 been damaged in an amount to be proven at trial.

11 **FOURTH CLAIM FOR RELIEF**

12 **FRAUD BY CONCEALMENT (OREGON)**

13 843. Plaintiffs re-allege and incorporate all paragraphs above as though
14 fully set forth herein.

15 844. Plaintiffs bring this Claim for Relief on behalf of the Oregon Subclass.

16 845. Volkswagen intentionally concealed and suppressed material facts
17 about the actual quality and character of the Defective Vehicles. As alleged above,
18 Volkswagen designed and installed a secret defeat device in the Defective Vehicles
19 to defraud consumers and fool state and federal emissions regulators. While
20 Volkswagen represented to consumers that the Defective Vehicles were "eco-
21 conscious," "CleanDiesel," and operated with "extreme efficiency," the opposite
22 was true. The Defective Vehicles cannot even satisfy state and federal emission
23 standards, emitting up to 40 times more than the legal limit of certain pollutants.

24 846. The defeat device was programmed into the Defective Vehicle's
25 software and was designed to evade detection. Volkswagen designed the defeat
26 device so that the vehicles' emission control systems could sense when they were
27 being tested for emissions and would at that time engage emission controls. But
28

1 when the Defective Vehicle's software detected that the emissions testing was
2 complete, it secretly disengaged certain features of the emission control system,
3 causing the vehicle to emit illegal levels of certain pollutants.

4 847. On September 22, 2015, the head of Volkswagen's United States
5 Division confessed, "Let's be clear about this. Our company was dishonest. With
6 the EPA, and the California Air Resources Board, and with all of you. And in my
7 German words, we have totally screwed up."

8 848. On October 8, 2015, Michael Horn, the then President and CEO of
9 Volkswagen North America, gave the following testimony before the House
10 Committee on Energy and Commerce Subcommittee on Oversight and
11 Investigations: "On behalf of our company, and my colleagues in Germany, I
12 would like to offer a sincere apology for Volkswagen's use of a software program
13 that served to defeat the regular emissions testing regime." He also testified that
14 "[t]hese events are deeply troubling. I did not think that something like this was
15 possible at the Volkswagen Group. We have broken the trust of our customers,
16 dealerships, and employees, as well as the public and regulators."

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

24 850. Volkswagen's false representations were material to consumers,
25 including to Oregon Plaintiff and the Oregon Subclass. Not only did the
26 representations relate to the value of the Defective Vehicles, but it also concerned
27 their compliance with state and federal emissions standards. Indeed, Volkswagen's
28 advertising campaign sought out customers who cared deeply about the

1 environment and were willing to pay a premium for a clean diesel vehicle. While
2 Volkswagen preached to consumers about its “commitment to making vehicles that
3 are eco-conscious,” in fact Volkswagen cared only about boosting its bottom line
4 and maximizing corporate profits.

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

12 852. 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 Oregon Plaintiff and the
19 Oregon Subclass, Volkswagen had a duty to disclose the entire truth.

20 853. The facts that Volkswagen omitted and concealed from Oregon
21 Plaintiff and the Oregon Subclass were material. They went to the heart of
22 Volkswagen’s claim that the Defective Vehicles were eco-conscious, that they
23 complied with state and federal emissions standards, and directly impacted the
24 value of the Defective Vehicles.

25 854. Volkswagen’s deceitful conduct has already caused the value of the
26 Defective Vehicles to decrease significantly. For example, Kelley Blue Book
27 reported that Volkswagen’s conduct has caused the fair market value of the
28 Defective Vehicles to decrease by 13%. If each the Defective Vehicles had an

1 average fair market value of approximately \$15,000, then a 13% drop in fair market
2 value alone has caused nearly a billion dollars in harm nationwide.

3 855. Because of Volkswagen’s fraudulent concealment and/or suppression
4 of the true facts, Oregon Plaintiff and the other Oregon Subclass Members have
5 sustained damages because the Defective Vehicles that they own or lease are
6 diminished in value as a result of Volkswagen’s concealment of the true quality and
7 nature of the vehicle’s emissions. Had Oregon Plaintiff and the Oregon Subclass
8 known the facts concerning Volkswagen’s evasion of federal and state emission
9 standards, they would have paid less for their vehicles or would not have purchased
10 or leased them at all.

11 856. According, Volkswagen is liable to Oregon Plaintiff and the Oregon
12 Subclass Members for damages in an amount to be proven at trial.

13 857. Volkswagen’s acts were done wantonly, maliciously, oppressively,
14 deliberately, with intent to defraud, and in reckless disregard of Oregon Plaintiff’s
15 and the other Oregon Subclass’ rights and the representations that Volkswagen
16 made to them, in order to enrich Volkswagen. As a result, Volkswagen’s conduct
17 warrants an assessment of punitive damages in an amount sufficient to deter such
18 conduct in the future, and in an amount to be determined according to proof.

19 **Q. Claims on Behalf of Texas Subclass.**

20 **FIRST CLAIM FOR RELIEF**

21 **VIOLATION OF THE TEXAS DECEPTIVE TRADE PRACTICES ACT**

22 **(TEXAS BUSINESS & COMMERCIAL CODE §§ 17.41, et seq.)**

23 858. Plaintiffs re-allege and incorporate all paragraphs set forth above as
24 though fully set forth herein.

25 859. Texas Plaintiffs intend to assert a claim under the Texas Deceptive
26 Trade Practices Act (“Texas DTPA”), which makes it unlawful to commit “[f]alse,
27 misleading, or deceptive acts or practices in the conduct of any trade or commerce.”
28

1 Texas Business & Commercial Code § 17.46. Texas Plaintiffs will make a demand
2 in satisfaction of § 17.45(2), and may amend this Amended Complaint to assert
3 claims under the Texas DTPA once the required 60 days have elapsed. This
4 paragraph is included for notice purposes only and is not intended to actually assert
5 a claim for relief under the Texas DTPA.

6
7 **SECOND CLAIM FOR RELIEF**
8 **BREACH OF CONTRACT (TEXAS)**

9 860. Plaintiffs re-allege and incorporate all paragraphs above as though
10 fully set forth herein.

11 861. Plaintiffs bring this Claim for Relief on behalf of the Texas Subclass.

12 862. Volkswagen's misrepresentations and omissions alleged herein,
13 including its failure to disclose the existence of the defeat device caused Texas
14 Plaintiffs and the other Texas Subclass Members to make their purchases or leases
15 of the Defective Vehicles. Absent those misrepresentations and omissions, Texas
16 Plaintiffs and the other Texas Subclass Members would not have purchased or
17 leased the Defective Vehicles, and/or would not have purchased or leased the
18 Defective Vehicles at the prices they paid. Accordingly, Texas Plaintiffs and the
19 Texas Subclass Members overpaid for their Defective Vehicles and did not receive
20 the benefit of their bargain.

21 863. Each and every sale or lease of a Defective Vehicle constitutes a
22 contract between Volkswagen and the purchaser or lessee. Volkswagen breached
23 these contracts by selling or leasing Texas Plaintiffs and the Texas Subclass the
24 Defective Vehicles and by misrepresenting or failing to disclose the existence of the
25 defeat device, including information known to Volkswagen rendering each
26 Defective Vehicle not emission compliant and therefore less valuable.

1 864. Texas Plaintiffs and the other Texas Subclass Members fully
2 performed their obligations under the contract by paying all amounts due under the
3 contracts.

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

9
10 **THIRD CLAIM FOR RELIEF**

11 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**

12 **(TEXAS BUSINESS & COMMERCIAL CODE § 2.314)**

13 866. Plaintiffs re-allege and incorporate all paragraphs above as though
14 fully set forth herein.

15 867. Plaintiffs bring this Claim for Relief on behalf of the Texas Subclass.

16 868. Volkswagen is and was at all relevant times a merchant with respect to
17 the sale of motor vehicles, including the Defective Vehicles.

18 869. The law implies that the Defective Vehicles were in merchantable
19 condition in the instant transactions. These Defective Vehicles, when sold and at
20 all times thereafter, were not in merchantable condition and are not fit for the
21 ordinary purpose for which vehicles are used. Specifically, the Defective Vehicles
22 do not comply with federal and state emissions standards; have safety and
23 emissions functions that are inoperative; and their CleanDiesel engines was not
24 adequately designed, manufactured, and tested.

25 870. Volkswagen was provided notice of these issues by the investigations
26 conducted by the EPA and state regulators, numerous complaints filed against it,
27 and by numerous individual letters and communications sent by Class members
28

1 before or within a reasonable amount of time after the allegations relating to the
2 Defective Vehicle became public.

3 871. As a direct and proximate result of Volkswagen’s breach of the
4 warranty of merchantability, Texas Plaintiffs and the other Texas Subclass have
5 been damaged in an amount to be proven at trial.

6
7 **FOURTH CLAIM FOR RELIEF**
8 **FRAUD BY CONCEALMENT (TEXAS)**

9 872. Plaintiffs re-allege and incorporate all paragraphs above as though
10 fully set forth herein.

11 873. Plaintiffs bring this Claim for Relief on behalf of the Texas Subclass.

12 874. Volkswagen intentionally concealed and suppressed material facts
13 about the actual quality and character of the Defective Vehicles. As alleged above,
14 Volkswagen designed and installed a secret defeat device in the Defective Vehicles
15 to defraud consumers and fool state and federal emissions regulators. While
16 Volkswagen represented to consumers that the Defective Vehicles were “eco-
17 conscious,” “CleanDiesel,” and operated with “extreme efficiency,” the opposite
18 was true. The Defective Vehicles cannot even satisfy state and federal emission
19 standards, emitting up to 40 times more than the legal limit of certain pollutants.

20 875. The defeat device was programmed into the Defective Vehicle’s
21 software and was designed to evade detection. Volkswagen designed the defeat
22 device so that the vehicles’ emission control systems could sense when they were
23 being tested for emissions and would at that time engage emission controls. But
24 when the Defective Vehicle’s software detected that the emissions testing was
25 complete, it secretly disengaged certain features of the emission control system,
26 causing the vehicle to emit illegal levels of certain pollutants.

27 876. On September 22, 2015, the head of Volkswagen’s United States
28 Division confessed, “Let’s be clear about this. Our company was dishonest. With

1 the EPA, and the California Air Resources Board, and with all of you. And in my
2 German words, we have totally screwed up.”

3 877. On October 8, 2015, Michael Horn, the then President and CEO of
4 Volkswagen North America, gave the following testimony before the House
5 Committee on Energy and Commerce Subcommittee on Oversight and
6 Investigations: “On behalf of our company, and my colleagues in Germany, I
7 would like to offer a sincere apology for Volkswagen’s use of a software program
8 that served to defeat the regular emissions testing regime.” He also testified that
9 “[t]hese events are deeply troubling. I did not think that something like this was
10 possible at the Volkswagen Group. We have broken the trust of our customers,
11 dealerships, and employees, as well as the public and regulators.”

12 878. Texas Plaintiffs and the Texas Subclass reasonably relied on
13 Volkswagen’s false representations. Volkswagen designed the defeat device to
14 evade discovery not only by consumers but also by state and federal emissions
15 regulators. In fact, Volkswagen did not finally admit to installing the defeat device
16 on the Defective Vehicles until approximately six years after first selling Defective
17 Vehicles, having successfully evaded detection for all of those years.

18 879. Volkswagen’s false representations were material to consumers,
19 including to Texas Plaintiffs and the Texas Subclass. Not only did the
20 representations relate to the value of the Defective Vehicles, but it also concerned
21 their compliance with state and federal emissions standards. Indeed, Volkswagen’s
22 advertising campaign sought out customers who cared deeply about the
23 environment and were willing to pay a premium for a clean diesel vehicle. While
24 Volkswagen preached to consumers about its “commitment to making vehicles that
25 are eco-conscious,” in fact Volkswagen cared only about boosting its bottom line
26 and maximizing corporate profits.

27 880. Volkswagen had a duty to disclose the details relating to the defeat
28 device to Texas Plaintiffs and the Texas Subclass because the information was

1 known and/or accessible only to Volkswagen, Volkswagen had exclusive
2 knowledge relating to the design, implementation, and maintenance of the defeat
3 device, and Volkswagen knew that the facts concerning the defeat device were
4 unknown to and not reasonably discoverable by Texas Plaintiffs or the Texas
5 Subclass.

6 881. Volkswagen also had a duty to disclose the information because it
7 made affirmative misrepresentations concerning the qualities of its vehicles and
8 their compliance with state and federal emissions standards. Volkswagen's
9 marketing of the Defective Vehicles as "CleanDiesel," "eco-conscious," and
10 "extremely efficient," was deceptive, misleading, and incomplete without
11 disclosing the presence of the defeat device and the Defective Vehicles' actual
12 emissions. Having voluntarily provided information to Texas Plaintiffs and the
13 Texas Subclass, Volkswagen had a duty to disclose the entire truth.

14 882. The facts that Volkswagen omitted and concealed from Texas
15 Plaintiffs and the Texas Subclass were material. They went to the heart of
16 Volkswagen's claim that the Defective Vehicles were eco-conscious, that they
17 complied with state and federal emissions standards, and directly impacted the
18 value of the Defective Vehicles.

19 883. Volkswagen's deceitful conduct has already caused the value of the
20 Defective Vehicles to decrease significantly. For example, Kelley Blue Book
21 reported that Volkswagen's conduct has caused the fair market value of the
22 Defective Vehicles to decrease by 13%. If each the Defective Vehicles had an
23 average fair market value of approximately \$15,000, then a 13% drop in fair market
24 value alone has caused nearly a billion dollars in harm nationwide.

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

1 nature of the vehicle’s emissions. Had Texas Plaintiffs and the Texas Subclass
2 known the facts concerning Volkswagen’s evasion of federal and state emission
3 standards, they would have paid less for their vehicles or would not have purchased
4 or leased them at all.

5 885. According, Volkswagen is liable to Texas Plaintiffs and the Texas
6 Subclass Members for damages in an amount to be proven at trial.

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

13 **R. Claims on Behalf of Utah Subclass.**

14 **FIRST CLAIM FOR RELIEF**

15 **VIOLATION OF UTAH CONSUMER SALES PRACTICES ACT**

16 **(UTAH CODE ANNOTATED § 13-11-1, et seq.)**

17 887. Plaintiffs re-allege and incorporate all paragraphs set forth above as
18 though fully set forth herein.

19 888. Plaintiffs bring this Claim for Relief on behalf of the Utah Subclass.

20 889. The Utah Consumer Sales Practices Act (“Utah CSPA”) makes
21 unlawful any “deceptive act or practice by a supplier in connection with a consumer
22 transaction.” Utah Code Annotated § 13-11-4. It provides that “a supplier commits
23 a deceptive act or practice if the supplier knowingly or intentionally: (a) indicates
24 that the subject of a consumer transaction has sponsorship, approval, performance
25 characteristics, accessories, uses, or benefits, if it has not” or “(b) indicates that the
26 subject of a consumer transaction is of a particular standard, quality, grade, style, or
27 model, if it is not.” Utah Code Annotated § 13-11-4. “An unconscionable act or
28

1 practice by a supplier in connection with a consumer transaction” also violates the
2 Utah CSPA. Utah Code Annotated § 13-11-5.

3 890. Volkswagen is a “supplier” under the Utah CSPA. Utah Code
4 Annotated § 13-11-3.

5 891. Utah Plaintiff and Utah Subclass Members are “persons” under Utah
6 Code Annotated § 13-11-3.

7 892. The sale of the Defective Vehicles to the Utah Plaintiff and Utah
8 Subclass Members was a “consumer transaction” under Utah Code Annotated § 13-
9 11-3.

10 893. Volkswagen violated the Utah CSPA by engaging in acts of deception,
11 fraud, false pretense, false promise, and misrepresentation relating to its design,
12 manufacture, sale, lease, and advertisement of the Defective Vehicles. Volkswagen
13 represented that the Defective Vehicles complied with state and federal emissions
14 standards and were “CleanDiesel” with low emissions, high fuel efficiency, and
15 superior performance. These representations are false, misleading, and deceptive.

16 894. In purchasing or leasing the Defective Vehicles, Utah Plaintiff and the
17 other Utah Subclass members were deceived by Volkswagen’s failure to disclose
18 that the Defective Vehicles contained the defeat device and that the CleanDiesel
19 engine failed state and federal emissions standards.

20 895. Volkswagen intentionally and knowingly misrepresented material facts
21 regarding the Defective Vehicles with an intent to mislead Utah Plaintiff and the
22 Utah Subclass.

23 896. Utah Plaintiff reasonably relied on Volkswagen’s misrepresentations.
24 As a direct result of Volkswagen’s unlawful, unfair, or fraudulent business acts
25 and/or practices, Utah Plaintiff and other Utah Subclass Members suffered injury in
26 fact and lost money or property.

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1 897. Volkswagen owed Plaintiffs a duty to disclose the true safety,
2 cleanliness, efficiency and reliability of the Defective Vehicles and the devaluing of
3 environmental cleanliness and integrity at Volkswagen, because Volkswagen:

- 4 a. Possessed exclusive knowledge that it was designing,
5 manufacturing, marketing, selling, and distributing vehicles
6 throughout the United States that did not comply with state and
7 federal emissions regulations;
- 8 b. Intentionally concealed the foregoing from Utah Plaintiffs and
9 the Utah Subclass; and/or
- 10 c. Made incomplete representations about the safety, cleanliness,
11 efficiency, and reliability of the Defective Vehicles generally,
12 and the defeat device and true nature of the CleanDiesel engine
13 system, while purposefully withholding material facts from
14 Plaintiffs that contradicted these representations.

15 898. Volkswagen knew or should have known that its conduct violated the
16 Utah CSPA.

17 899. Volkswagen's actions as set forth above occurred in the conduct of
18 trade or commerce.

19 900. Volkswagen's conduct proximately caused injuries to Utah Plaintiff
20 and the other Utah Subclass members.

21 901. Utah Plaintiff and the other Utah Subclass members were injured as a
22 result of Volkswagen's conduct in that they overpaid for their Defective Vehicles
23 and did not receive the benefit of their bargain, and their Defective Vehicles have
24 suffered a diminution in value. These injuries are the direct and natural
25 consequence of Volkswagen's misrepresentations and omissions.

26 902. For example, Volkswagen's unlawful, unfair, and/or fraudulent
27 business acts or practices have already caused the value of the Defective Vehicles
28 to decrease significantly. Kelley Blue Book reported that Volkswagen's conduct

1 has caused the fair market value of the Defective Vehicles to decrease by 13%. If
2 each the Defective Vehicles had an average fair market value of approximately
3 \$15,000, then a 13% drop in fair market value alone has caused nearly a billion
4 dollars in harm to the Class nationwide.

5 903. Volkswagen profited from its sales of its falsely and deceptively
6 advertised products to unwary customers.

7 904. Accordingly, pursuant to Utah Code Annotated § 13-11-4, Utah
8 Plaintiff and the Utah Subclass seek monetary relief against Volkswagen measured
9 as the greater of (a) actual damages in an amount to be determined at trial and (b)
10 statutory damages in the amount of \$2,000 for each Utah Plaintiff and each Utah
11 Subclass member, reasonable attorneys' fees, and any other just and proper relief
12 available under applicable law.

13 **SECOND CLAIM FOR RELIEF**

14 **BREACH OF CONTRACT (UTAH)**

15 905. Plaintiffs re-allege and incorporate all paragraphs above as though
16 fully set forth herein.

17 906. Plaintiffs bring this Claim for Relief on behalf of the Utah Subclass.

18 907. Volkswagen's misrepresentations and omissions alleged herein,
19 including its failure to disclose the existence of the defeat device caused Utah
20 Plaintiff and the other Utah Subclass Members to make their purchases or leases of
21 the Defective Vehicles. Absent those misrepresentations and omissions, Utah
22 Plaintiff and the other Utah Subclass Members would not have purchased or leased
23 the Defective Vehicles, and/or would not have purchased or leased the Defective
24 Vehicles at the prices they paid. Accordingly, Utah Plaintiff and the Utah Subclass
25 Members overpaid for their Defective Vehicles and did not receive the benefit of
26 their bargain.
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1 emissions functions that are inoperative; and their CleanDiesel engines was not
2 adequately designed, manufactured, and tested.

3 915. Volkswagen was provided notice of these issues by the investigations
4 conducted by the EPA and state regulators, numerous complaints filed against it,
5 and by numerous individual letters and communications sent by Class members
6 before or within a reasonable amount of time after the allegations relating to the
7 Defective Vehicle became public.

8 916. As a direct and proximate result of Volkswagen's breach of the
9 warranty of merchantability, plaintiff and the other Class Members have been
10 damaged in an amount to be proven at trial.

11 **FOURTH CLAIM FOR RELIEF**
12 **FRAUD BY CONCEALMENT (UTAH)**

13 917. Plaintiffs re-allege and incorporate all paragraphs above as though
14 fully set forth herein.

15 918. Plaintiffs bring this Claim for Relief on behalf of the Utah Subclass.

16 919. Volkswagen intentionally concealed and suppressed material facts
17 about the actual quality and character of the Defective Vehicles. As alleged above,
18 Volkswagen designed and installed a secret defeat device in the Defective Vehicles
19 to defraud consumers and fool state and federal emissions regulators. While
20 Volkswagen represented to consumers that the Defective Vehicles were "eco-
21 conscious," "CleanDiesel," and operated with "extreme efficiency," the opposite
22 was true. The Defective Vehicles cannot even satisfy state and federal emission
23 standards, emitting up to 40 times more than the legal limit of certain pollutants.

24 920. The defeat device was programmed into the Defective Vehicle's
25 software and was designed to evade detection. Volkswagen designed the defeat
26 device so that the vehicles' emission control systems could sense when they were
27 being tested for emissions and would at that time engage emission controls. But
28

1 when the Defective Vehicle's software detected that the emissions testing was
2 complete, it secretly disengaged certain features of the emission control system,
3 causing the vehicle to emit illegal levels of certain pollutants.

4 921. On September 22, 2015, the head of Volkswagen's United States
5 Division confessed, "Let's be clear about this. Our company was dishonest. With
6 the EPA, and the California Air Resources Board, and with all of you. And in my
7 German words, we have totally screwed up."

8 922. On October 8, 2015, Michael Horn, the then President and CEO of
9 Volkswagen North America, gave the following testimony before the House
10 Committee on Energy and Commerce Subcommittee on Oversight and
11 Investigations: "On behalf of our company, and my colleagues in Germany, I
12 would like to offer a sincere apology for Volkswagen's use of a software program
13 that served to defeat the regular emissions testing regime." He also testified that
14 "[t]hese events are deeply troubling. I did not think that something like this was
15 possible at the Volkswagen Group. We have broken the trust of our customers,
16 dealerships, and employees, as well as the public and regulators."

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

24 924. Volkswagen's false representations were material to consumers,
25 including to Utah Plaintiff and the Utah Subclass. Not only did the representations
26 relate to the value of the Defective Vehicles, but it also concerned their compliance
27 with state and federal emissions standards. Indeed, Volkswagen's advertising
28 campaign sought out customers who cared deeply about the environment and were

1 willing to pay a premium for a clean diesel vehicle. While Volkswagen preached to
2 consumers about its “commitment to making vehicles that are eco-conscious,” in
3 fact Volkswagen cared only about boosting its bottom line and maximizing
4 corporate profits.

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

12 926. 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 Utah Plaintiff and the Utah
19 Subclass Members, Volkswagen had a duty to disclose the entire truth.

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

25 928. Volkswagen’s deceitful conduct has already caused the value of the
26 Defective Vehicles to decrease significantly. For example, Kelley Blue Book
27 reported that Volkswagen’s conduct has caused the fair market value of the
28 Defective Vehicles to decrease by 13%. If each the Defective Vehicles had an

1 average fair market value of approximately \$15,000, then a 13% drop in fair market
2 value alone has caused nearly a billion dollars in harm nationwide.

3 929. Because of Volkswagen's fraudulent concealment and/or suppression
4 of the true facts, Utah Plaintiff and the other Utah Subclass Members have
5 sustained damages because the Defective Vehicles that they own or lease are
6 diminished in value as a result of Volkswagen's concealment of the true quality and
7 nature of the vehicle's emissions. Had Utah Plaintiff and the Utah Subclass
8 Members known the facts concerning Volkswagen's evasion of federal and state
9 emission standards, they would have paid less for their vehicles or would not have
10 purchased or leased them at all.

11 930. According, Volkswagen is liable to Utah Plaintiff and the Utah
12 Subclass Members for damages in an amount to be proven at trial.

13 931. Volkswagen's acts were done wantonly, maliciously, oppressively,
14 deliberately, with intent to defraud, and in reckless disregard of Utah Plaintiff's and
15 the other Utah Subclass Members rights and the representations that Volkswagen
16 made to them, in order to enrich Volkswagen. To the extent permitted by
17 applicable law, Volkswagen's conduct warrants an assessment of punitive damages
18 in an amount sufficient to deter such conduct in the future, and in an amount to be
19 determined according to proof.

20 **S. Claims Brought on Behalf of Virginia Subclass.**

21 **FIRST CLAIM FOR RELIEF**

22 **FRAUD BY CONCEALMENT (VIRGINIA)**

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

25 933. This claim is brought on behalf of the Virginia Subclass.

26 934. Volkswagen intentionally concealed and suppressed material facts
27 about the actual quality and character of the Defective Vehicles. As alleged above,
28

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

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

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

18 937. On October 8, 2015, Michael Horn, the then President and CEO of
19 Volkswagen North America, gave the following testimony before the House
20 Committee on Energy and Commerce Subcommittee on Oversight and
21 Investigations: “On behalf of our company, and my colleagues in Germany, I
22 would like to offer a sincere apology for Volkswagen’s use of a software program
23 that served to defeat the regular emissions testing regime.” He also testified that
24 “[t]hese events are deeply troubling. I did not think that something like this was
25 possible at the Volkswagen Group. We have broken the trust of our customers,
26 dealerships, and employees, as well as the public and regulators.”

27 938. Virginia Plaintiffs and the Virginia Subclass Members reasonably
28 relied on Volkswagen’s false representations. Volkswagen designed the defeat

1 device to evade discovery not only by consumers but also by state and federal
2 emissions regulators from the EPA and CARB. In fact, Volkswagen did not finally
3 admit to installing the defeat device on the Defective Vehicles until approximately
4 six years after first selling Defective Vehicles, having successfully evaded detection
5 for all of those years.

6 939. Volkswagen's false representations were material to consumers. Not
7 only did the representations relate to the value of the Defective Vehicles, but they
8 also concerned their compliance with state and federal emissions standards. Indeed,
9 Volkswagen's advertising campaign sought out customers who cared deeply about
10 the environment and were willing to pay a premium for a clean diesel vehicle.
11 While Volkswagen preached to consumers about its "commitment to making
12 vehicles that are eco-conscious," in fact Volkswagen cared only about boosting its
13 bottom line and maximizing corporate profits.

14 940. Volkswagen had a duty to disclose the details relating to the defeat
15 device to Virginia Plaintiffs and the Virginia Subclass Members because the
16 information was known and/or accessible only to Volkswagen, Volkswagen had
17 exclusive knowledge relating to the design, implementation, and maintenance of the
18 defeat device, and Volkswagen knew that the facts concerning the defeat device
19 were unknown to and not reasonably discoverable by Virginia Plaintiffs and the
20 Virginia Subclass Members.

21 941. Volkswagen also had a duty to disclose the information because it
22 made affirmative misrepresentations concerning the qualities of its vehicles and
23 their compliance with state and federal emissions standards. Volkswagen's
24 marketing of the Defective Vehicles as "CleanDiesel," "eco-conscious," and
25 "extremely efficient," was deceptive, misleading, and incomplete without
26 disclosing the presence of the defeat device and the Defective Vehicles' actual
27 emissions. Having voluntarily provided information to Virginia Plaintiffs and the
28 Virginia Subclass Members, Volkswagen had a duty to disclose the entire truth.

1 942. The facts that Volkswagen omitted and concealed from Virginia
2 Plaintiffs and the Virginia Subclass Members were material. They went to the heart
3 of Volkswagen's claim that the Defective Vehicles were eco-conscious, that they
4 complied with EPA and CARB emission standards, and directly impacted the value
5 of the Defective Vehicles.

6 943. Volkswagen's deceitful conduct has already caused the value of the
7 Defective Vehicles to decrease significantly. For example, Kelley Blue Book
8 reported that Volkswagen's conduct has caused the fair market value of the
9 Defective Vehicles to decrease by 13%. If each the Defective Vehicles had an
10 average fair market value of approximately \$15,000, then a 13% drop in fair market
11 value alone has caused nearly a billion dollars in harm to the Class.

12 944. Because of Volkswagen's fraudulent concealment and/or suppression
13 of the true facts, Virginia Plaintiffs and the Virginia Subclass Members have
14 sustained damages because the Defective Vehicles that they own or lease are
15 diminished in value as a result of Volkswagen's concealment of the true quality and
16 nature of the vehicle's emissions. Had Virginia Plaintiffs and the Virginia Subclass
17 Members known the facts concerning Volkswagen's evasion of federal and state
18 emission standards, they would have paid less for their vehicles or would not have
19 purchased or leased them at all.

20 945. According, Volkswagen is liable to Virginia Plaintiffs and the Virginia
21 Subclass Members for damages in an amount to be proven at trial.

22 946. Volkswagen's acts were done wantonly, maliciously, oppressively,
23 deliberately, with intent to defraud, and in reckless disregard of Virginia Plaintiffs'
24 and the Virginia Subclass Members' rights and the representations that Volkswagen
25 made to them, in order to enrich Volkswagen. As a result, Volkswagen's conduct
26 warrants an assessment of punitive damages in an amount sufficient to deter such
27 conduct in the future, and in an amount to be determined according to proof.
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SECOND CLAIM FOR RELIEF
BREACH OF CONTRACT (VIRGINIA)

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3 947. Plaintiffs re-alleges and incorporates all paragraphs set forth above as
4 though fully set forth herein.

5 948. This claim is brought on behalf of the Virginia Subclass.

6 949. Volkswagen's misrepresentations and omissions alleged herein,
7 including its failure to disclose the existence of the defeat device caused
8 Nationwide Class and Members to make their purchases or leases of the Defective
9 Vehicles. Absent those misrepresentations and omissions, Nationwide Class and
10 Members would not have purchased or leased the Defective Vehicles, and/or would
11 not have purchased or leased the Defective Vehicles at the prices they paid.
12 Accordingly, Nationwide Class and Members overpaid for their Defective Vehicles
13 and did not receive the benefit of their bargain.

14 950. Each and every sale or lease of a Defective Vehicle constitutes a
15 contract between Volkswagen and the purchaser or lessee. Volkswagen breached
16 these contracts by selling or leasing Nationwide Class and Members the Defective
17 Vehicles and by misrepresenting or failing to disclose the existence of the defeat
18 device, including information known to Volkswagen rendering each Defective
19 Vehicle not emission compliant and therefore less valuable.

20 951. Nationwide Class and Members fully performed their obligations
21 under the contract by paying all amounts due under the contracts.

22 952. As a direct and proximate result of Volkswagen's breach of contract,
23 Nationwide Class and Members have been damaged in an amount to be proven at
24 trial, which shall include, but is not limited to, all compensatory damages,
25 incidental and consequential damages, and other damages allowed by law.

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THIRD CLAIM FOR RELIEF
VIOLATION OF THE VIRGINIA CONSUMER PROTECTION ACT
VIRGINIA CODE §§ 59.1 – 196, et seq.

953. Plaintiffs re-alleges and incorporates all paragraphs set forth above as though fully set forth herein.

954. This claim is brought on behalf of the Virginia Subclass.

955. The Virginia Consumer Protection Act (Code Ann. § 59.1-200(A)) prohibits, *inter alia*:

- a. misrepresenting that goods or services have certain quantities, characteristics, ingredients, uses, or benefits;
- b. misrepresenting that goods or services are of a particular standard, quality, grade, style, or model;
- c. advertising goods or services with intent not to sell them as advertised; and
- d. using any other deception, fraud, false pretense, false promise, or misrepresentation in connection with a consumer transaction.

956. Defendants are each a “person” as defined by Virginia Code Annotated § 59.1-198. The transactions resulting in the sale or lease of the Defective Vehicles between plaintiffs and the other Class members and Volkswagen are “consumer transactions” as defined by Virginia Code Annotated § 59.1-198, because the Defective Vehicles were purchased or leased primarily for personal, family, or household purposes.

957. Volkswagen willfully failed to disclose and actively concealed the defeat device in Defective Vehicles as described above. Accordingly, Volkswagen engaged in acts and practices that violate Virginia Code Annotated § 59.1-200(A), including representing that Defective Vehicles have characteristics, uses, benefits, and qualities that they do not have; representing that Defective Vehicles are of a particular standard and quality when they are not; advertising Defective Vehicles

1 with the intent not to sell them as advertised; and otherwise engaging in conduct
2 likely to deceive consumers.

3 958. Volkswagen's actions as described above occurred in the conduct of
4 trade or commerce.

5 959. Volkswagen's misconduct proximately caused injuries to plaintiffs and
6 the other Class members.

7 960. Virginia Plaintiffs and the Virginia Subclass members were injured as
8 a result of Volkswagen's misconduct because they overpaid for their Defective
9 Vehicles and did not receive the benefit of their bargain, and their Defective
10 Vehicles have suffered a diminution in value. These injuries are the direct and
11 natural consequence of Volkswagen's misrepresentations and omissions.

12 961. Volkswagen actively and willfully concealed and/or suppressed the
13 material facts regarding the defeat device in the Defective Vehicles, in whole or in
14 part, with the intent to deceive and mislead Virginia Plaintiffs and the Virginia
15 Subclass members and to induce Virginia Plaintiffs and the Virginia Subclass
16 members to purchase or lease Defective Vehicles at an inflated price that was
17 higher than the Defective Vehicles' true value. Virginia Plaintiffs and the Virginia
18 Subclass members therefore seek treble damages.

19 **FOURTH CLAIM FOR RELIEF**

20 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**

21 **VIRGINIA CODE ANN. § 8.2-314**

22 962. Plaintiffs re-alleges and incorporates all paragraphs set forth above as
23 though fully set forth herein.

24 963. Plaintiffs bring this Count on behalf of the Virginia Subclass.

25 964. Volkswagen is and was at all relevant times a merchant with respect to
26 the sale of motor vehicles, including the Defective Vehicles.
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- E. An order awarding plaintiffs and class members restitution and disgorgement of Volkswagen’s profits;
- F. An order awarding plaintiffs and class members damages, including punitive and/or treble damages, and disgorgement 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: October 20, 2015

Respectfully submitted,

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

By: */s/ Steven G. Sklaver*

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DEMAND FOR JURY TRIAL

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

Dated: October 20, 2015

Respectfully submitted,

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

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