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6 UNITED STATES DISTRICT COURT
7 NORTHERN DISTRICT OF CALIFORNIA
8 SAN FRANCISCO DIVISION
9

10
11 IN RE: VOLKSWAGEN 'CLEAN DIESEL'
MARKETING, SALES PRACTICES, AND
12 PRODUCTS LIABILITY LITIGATION

MDL 2672 CRB (JSC)

13 This Document Relates to:

14 ALL CONSUMER ACTIONS

**AMENDED CONSOLIDATED
CONSUMER CLASS ACTION
COMPLAINT**

JURY TRIAL DEMANDED

15
16
17 LENA BROOK, *et al.*, on behalf of themselves
18 and all others similarly on behalf of all others
similarly situated,

19 Plaintiffs,

20 v.

21 VOLKSWAGEN GROUP OF AMERICA,
22 INC., VOLKSWAGEN AG, AUDI AG, AUDI
OF AMERICA, LLC, DR. ING. H.C. F.
23 PORSCHE AG, PORSCHE CARS NORTH
AMERICA, INC., MARTIN WINTERKORN,
24 MATTHIAS MÜLLER, MICHAEL HORN,
RUPERT STADLER, ROBERT BOSCH
25 GMBH, ROBERT BOSCH, LLC, and
VOLKMAR DENNER,
26

27 Defendants.
28

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1 Plaintiffs bring this action on behalf of themselves and all others similarly situated,
 2 against (1) the Defendants collectively known as “Volkswagen”: Volkswagen Aktiengesellschaft
 3 (“VW AG”), Volkswagen Group of America, Inc. (“VW America”) (together, “VW”), Audi
 4 Aktiengesellschaft (“Audi AG”), Audi of America, LLC (“Audi America”) (together, “Audi”),
 5 Dr. Ing. h.c. F. Porsche Aktiengesellschaft (“Porsche AG”), Porsche Cars North America, Inc.
 6 (“Porsche America”) (together, “Porsche”), Martin Winterkorn (“Winterkorn”), Matthias Müller
 7 (“Müller”), Michael Horn (“Horn”), and Rupert Stadler (“Stadler”); and (2) the Defendants
 8 collectively known as “Bosch”: Robert Bosch GmbH (“Bosch GmbH”), Robert Bosch, LLC
 9 (“Bosch LLC”), and Volkmar Denner (“Denner”) (together, “Bosch”).¹ Plaintiffs allege the
 10 following based upon information and belief, the investigation of counsel, and personal
 11 knowledge as to the factual allegations pertaining to themselves.

INTRODUCTION

13 1. This case arises out of one of the most brazen corporate crimes in history, a
 14 cautionary tale about winning at any cost. Volkswagen cheated its way to the top of the
 15 automotive food chain and spared no victim along the way, targeting its customers, U.S. and
 16 foreign regulators, and even the very air we breathe. The linchpin of Volkswagen’s fraudulent
 17 scheme was the deliberate use of a “defeat device,” a secretly embedded software algorithm that,
 18 as Volkswagen has since admitted, was designed and installed to cheat emission tests, thereby
 19 fooling the Environmental Protection Agency (“EPA”), among other regulators, into approving
 20 for sale hundreds of thousands of non-compliant cars (the “Class Vehicles,” defined below). For
 21 years, Volkswagen got away with it, and the Class Vehicles were sold at record numbers into our
 22 stream of commerce. Once on the roads, these cars spewed millions of tons of harmful nitrogen
 23 oxide (“NOx”) pollutants into our air at a rate of up to 40 times the legal limit. All the while,
 24 Volkswagen pitched itself to the American public as the world’s foremost innovator of “clean”
 25

26 ¹ VW AG, Audi AG, and Porsche AG are sometimes collectively referred to as the “German
 27 Volkswagen Defendants,” and VW America, Audi America, and Porsche America are
 28 collectively referred to as the “American Volkswagen Defendants.” Winterkorn, Horn, Müller,
 and Stadler are collectively referred to as the “Volkswagen Individual Defendants,” and
 inclusively with Denner as the “Individual Defendants.”

1 diesel technology, duping hundreds of thousands of environmentally-conscious consumers who
2 were willing to pay a premium for “clean” diesel vehicles.

3 2. Fraud fueled Volkswagen’s success, and its only real “clean” diesel innovation
4 was how it played dirty. Its ingeniously-designed defeat devices, software installed on engine
5 management systems supplied by defendant Bosch, detected when its dirty diesel engines were
6 being tested in a laboratory or smog station and triggered performance-sapping controls to
7 simulate compliance with emission laws. But when the test ended, and the driver returned to the
8 road under normal operation and use, the performance—and the illegal belch of pollution—
9 returned. Everything about Volkswagen’s fraudulent scheme was coolly calculated, as defendant
10 Horn, CEO of VW America, confessed in the fall of 2015 at Congressional hearings: “[the defeat
11 device] was installed for this purpose, yes.”²

12 3. Volkswagen promised low-emission, environmentally friendly vehicles, with high
13 fuel economy and exceptional performance. Consumers believed Volkswagen and bought
14 Volkswagen’s VW-, Audi-, and Porsche-branded “clean” diesel vehicles in record numbers. In
15 fact, during the relevant time period, Volkswagen sold more diesel cars in the U.S. than every
16 other automaker combined.³ From 2009 to 2015, Volkswagen sold and/or leased approximately
17 580,000 dirty diesels that its defeat device disguised as clean. In doing so, Volkswagen secretly
18 turned the most environmentally-conscious consumers into some of the biggest polluters on the
19 road—and charged them a premium in the process.

20 4. As a result, there are over half a million cars on American roads with illegal
21 emission systems that never should have left the factory, and would not have, but for
22 Volkswagen’s fraudulently obtained EPA Certificates of Conformity (“COCs”), as well as
23 California Air Resources Board (“CARB”) Executive Orders (“EOs”). Since the revelation of
24 Volkswagen’s scheme, the Department of Justice (“DOJ”) has filed a complaint alleging
25

26 ² See Bill Chappell, ‘It Was Installed For This Purpose,’ VW’s U.S. CEO Tells Congress About
27 Defeat Device, NPR (Oct. 8, 2015), available at [http://www.npr.org/sections/thetwo-
28 way/2015/10/08/446861855/volkswagen-us-ceo-faces-questions-on-capitol-hill](http://www.npr.org/sections/thetwo-way/2015/10/08/446861855/volkswagen-us-ceo-faces-questions-on-capitol-hill).

³ *Clean Diesel*, Volkswagen (last visited Feb. 8, 2016), previously available at, <http://www.vw.com/features/clean-diesel/>.

1 numerous violations of the Clean Air Act (“CAA”), California and other state attorneys general
 2 have announced investigations or filed lawsuits concerning Defendants’ fraudulent scheme, and
 3 countless other government entities have launched criminal and civil investigations around the
 4 globe.

5 5. Volkswagen’s fraud has also taken a human toll. According to statistical models,
 6 the pollution spewed by the Class Vehicles will cause “somewhere between 16 and 94 deaths
 7 over seven years, with the annual count increasing more recently as more of the diesels were on
 8 the road.”⁴ Meanwhile a peer-reviewed study by researchers at MIT and Harvard University has
 9 estimated that the pollution from the illegal Vehicles will cause 59 early deaths and result in
 10 environmental costs exceeding \$450 million.⁵

11 6. Plaintiffs and Class members (defined below) are individuals and businesses that
 12 purchased or leased a Class Vehicle in the U.S. The Class Vehicles include the following:

2.0-liter Class Vehicles	
Volkswagen Jetta TDI	2009-2015
Volkswagen Jetta SportWagen TDI	2009-2014
Volkswagen Beetle TDI	2012-2015
Volkswagen Beetle Convertible TDI	2012-2015
Audi A3 TDI	2010-2015
Volkswagen Golf TDI	2010-2015
Volkswagen Golf SportWagen TDI	2015
Volkswagen Passat TDI	2012-2015
3.0-liter Class Vehicles	
Volkswagen Touareg TDI	2009-2016
Porsche Cayenne Diesel	2013-2016
Audi A6 Quattro TDI	2014-2016
Audi A7 Quattro TDI	2014-2016
Audi A8 TDI	2014-2016
Audi A8L TDI	2014-2016
Audi Q5 TDI	2014-2016
Audi Q7 TDI	2009-2016

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⁴ Seth Borenstein, *AP analysis: VW evasion likely leads to dozens of deaths*, Associated Press (Oct. 5, 2015), <http://bigstory.ap.org/article/1670ed00be824b4cbbf414ed1d637428/ap-analysis-vw-evasion-likely-led-dozens-deaths>.

⁵ Stephen R. H. Barrett, *et al.*, *Impact of the Volkswagen emissions control defeat device on US public health*, IOPScience (Oct. 29, 2015), http://iopscience.iop.org/article/10.1088/1748326/10/11/114005/meta?mbid=synd_flipboard.

1 7. Volkswagen induced Plaintiffs and Class members to purchase or lease the Class
2 Vehicles, which are illegal because they violate the CAA (among other laws) and, on top of that,
3 admittedly do not perform as represented. No one would—or could—have purchased the Class
4 Vehicles but for Volkswagen’s fraudulent scheme, because Volkswagen obtained EPA COCs
5 (and CARB EOs) only by cheating. In addition to now owning illegal, dirty diesels, Plaintiffs
6 have suffered economic damages due to the steep diminution in value of their Class Vehicles,
7 which pollute the environment at levels far in excess of the legal limits, cannot pass required
8 emissions tests, and are subject to a planned recall in the indefinite future (even though no
9 complete fix has yet been announced). To the extent the Class Vehicles can be repaired or
10 retrofitted to pass federal and state emission requirements, they will, absent a full and
11 comprehensive compensation program by Defendants, continue to suffer in diminution in value
12 and cause economic loss. This is so because any such repairs or retrofits will reduce mileage per
13 gallon, increase costs of operation, and cause the vehicles to suffer lower performance, durability,
14 and reliability, reducing market value and increasing cost of ownership and operation.

15 8. On behalf of themselves, the Nationwide Class, and the respective State Classes,
16 Plaintiffs hereby bring this action for violations of the federal Racketeer Influenced and Corrupt
17 Organizations Act (18 U.S.C. § 1961, *et seq.* (“RICO”)); the federal Magnuson-Moss Warranty
18 Act (15 U.S.C. § 2301, *et seq.* (“MMWA”)); common law fraud, contract, warranty, unjust
19 enrichment, and consumer protection laws of all 50 states and the District of Columbia.

20 9. Plaintiffs seek a buy-back program for the Class Vehicles, monetary damages
21 (including treble damages under RICO), appropriate restitution, pollution mitigation, business
22 reforms, and injunctive and other equitable relief. In addition, Plaintiffs and Class members are
23 entitled to a significant award of punitive or exemplary damages, given that, for years,
24 Volkswagen deliberately, and with malice, deceived Plaintiffs and Class members, disregarded
25 their rights, and used them as unwitting puppets in a scheme that jeopardized the safety of the
26 American public.

JURISDICTION AND VENUE

1
2 10. This Amended Consolidated Consumer Class Action Complaint amends and
3 supersedes the Consolidated Consumer Class Action Complaint filed as an original action in this
4 District on February 22, 2016, and as the Consolidated Consumer Class Action Complaint in the
5 MDL No. 2672 proceedings, pursuant to Pretrial Order No. 7 therein.

6 11. This Court has jurisdiction over this action pursuant to the Class Action Fairness
7 Act (“CAFA”), 28 U.S.C. § 1332(d), because at least one Class member is of diverse citizenship
8 from one Defendant, there are more than 100 Class members, and the aggregate amount in
9 controversy exceeds \$5,000,000, exclusive of interest and costs. Subject-matter jurisdiction also
10 arises under 28 U.S.C. § 1331 based upon the federal RICO claims asserted under 18 U.S.C.
11 § 1961 *et seq.* and the Magnuson-Moss Warranty Act claims asserted under 15 U.S.C. § 2301, *et*
12 *seq.* The Court has personal jurisdiction over Defendants pursuant to 18 U.S.C. §§ 1965(b) and
13 (d), and Cal. Code Civ. P. § 410.10, and supplemental jurisdiction over the state-law claims
14 pursuant to 28 U.S.C. § 1367.

15 12. Venue is proper in this District under 28 U.S.C. § 1391(b) because a substantial
16 part of the events or omissions giving rise to Plaintiffs’ claims occurred in this District.
17 Volkswagen has marketed, advertised, sold, and leased the Class Vehicles, and Defendants
18 otherwise conducted extensive business within this District. Several named Plaintiffs and
19 proposed Class representatives, as well as tens of thousands of Class members, purchased their
20 Class Vehicles from the multiple Volkswagen dealers located in this District. Indeed, from 2009
21 through the present, approximately 24,311 Class Vehicles were registered in the District and
22 24,650 Class Vehicles were in operation in this District. This amounts to just under 5% of the
23 *nationwide* totals in each category. If this District were a state, it would have the sixth most Class
24 Vehicles in the entire country. Further, CARB maintains a significant presence in this District
25 through its Bay Area Air Quality Management District branch. CARB played an important initial
26 role in investigating and, ultimately, in revealing Volkswagen’s illegal use of the defeat devices.

INTRADISTRICT ASSIGNMENT

13. This action is properly assigned to the San Francisco Division of this District pursuant to N.D. Cal. L.R. 3-2, because a substantial part of the events or omissions giving rise to Plaintiffs' claims arose in the counties served by the San Francisco Division. Several named Plaintiffs and proposed Class representatives, as well as thousands of Class members, purchased and maintain their Class Vehicles in the counties served by this Division. Moreover, Volkswagen conducts substantial business in the counties served by this Division, has marketed, advertised, sold and leased the Class Vehicles in those counties, and has caused harm to Class members residing in those counties. Finally, this Amended Consolidated Consumer Class Action Complaint amends and supersedes the Consolidated Consumer Class Action Complaint filed as an original action in this District and as the Consolidated Consumer Class Action in the MDL No. 2672 proceedings, which have been consolidated before Judge Charles R. Breyer, presiding in the San Francisco Division of this District.

PARTIES

A. Individual and Representative Plaintiffs

14. For ease of reference, the following chart identifies and organizes the individual and representative Plaintiffs by the state in which they purchased or leased their Class Vehicles:

No.	Class Representative	State	Model Year	Make	Model
1	McIntosh, Marion	Alabama	2013	Volkswagen	Passat TDI
2	Rutland, L. Cooper	Alabama	2015	Volkswagen	Passat TDI
3	Scharein, Arthur A.	Alabama	2014	Volkswagen	Beetle Convertible TDI
4	Hill, Jason	Alaska	2015	Volkswagen	Passat TDI
5	Preciado, Ray	Arizona	2015	Volkswagen	Passat TDI
6	Tarrence, Susan	Arizona	2011	Audi	A3 TDI
7	Thornton, Steven R.	Arizona	2014	Volkswagen	Passat TDI

No.	Class Representative	State	Model Year	Make	Model
8	Rima, Vickie	Arkansas	2013	Volkswagen	Beetle TDI
9	Alba, Romeo James	California	2010	Audi	A3 TDI
10	Argento, Anne Duncan	California	2013	Volkswagen	Jetta TDI
11	Beaven, Simon W.	California	2011	Audi	A3 TDI
12	Brodie, Juliet	California	2014	Volkswagen	Jetta TDI
13	Brook, Lena	California	2015	Audi	Q5 TDI
14	Burt, Sarah	California	2011	Volkswagen	Golf TDI
15	Clark, Phillip	California	2014	Volkswagen	Touareg TDI
16	Dodge, William S.	California	2015	Volkswagen	Jetta TDI
17	Epstein, Aimee	California	2010	Volkswagen	Jetta SportWagen TDI
18	Farquar, George	California	2010	Volkswagen	Jetta TDI
19	Fohet, Jerome	California	2014	Porsche	Cayenne Diesel
20	Hoag, Caroline	California	2011	Volkswagen	Jetta SportWagen TDI
21	Houle, Mark	California	2015	Volkswagen	Passat TDI
22	Kaplan, Rebecca	California	2012	Volkswagen	Golf TDI
23	Kosik-Westly, Helen	California	2011	Volkswagen	Golf TDI
24	Krein, Raymond	California	2014	Volkswagen	Jetta SportWagen TDI
25	McGuire, Margaret Jane	California	2015	Volkswagen	Beetle TDI
26	Meyler, Bernadette and Smith, Matthew	California	2013	Volkswagen	Passat TDI
27	Pellegrini, Rhonnda	California	2014	Volkswagen	Passat TDI
28	Truong, Ted	California	2014	Audi	Q5 TDI
29	Verner, Stephen	California	2013	Volkswagen	Golf TDI

No.	Class Representative	State	Model Year	Make	Model
30	Winternitz, Leo	California	2009	Volkswagen	Jetta SportWagen TDI
31	Doege, Marcus Alexander	Colorado	2012 2012	Volkswagen Volkswagen	Jetta TDI Touareg TDI
32	Reiser, Mary	Colorado	2015	Volkswagen	Golf TDI
33	Zvyagelsky, Roman	Colorado	2016	Audi	Q5 TDI
34	MacLise-Kane, Leslie	Connecticut	2013	Volkswagen	Jetta TDI
35	Watson, Timothy	Connecticut	2015	Audi	A3 TDI
36	Willingham, Brian	Connecticut	2015	Volkswagen	Golf TDI
37	Fox, DeWayne	Delaware	2010	VW	Jetta SportWagen TDI
38	Shelton, Celia	Delaware	2014	Audi	A6 TDI
39	Terrell, China Boak	District of Columbia	2010	Volkswagen	Jetta TDI
40	Bell, Farrah P.	Florida	2015	Audi	A3 TDI
41	Lawhon, Jerry	Florida	2013	Volkswagen	Passat TDI
42	Pejsa, Jason Daniel	Georgia	2015	Volkswagen	Jetta TDI
43	Ray, Laura Lee	Georgia	2010	VW	Jetta SportWagen TDI
44	Terry, Michael	Georgia	2013	Volkswagen	Passat TDI
45	Cruise, Michael R.	Hawaii	2012	Audi	A3 TDI
46	Inoue, Duane V.	Hawaii	2010	Audi	A3 TDI
47	Kettley, Sean Alexander	Hawaii	2012	Volkswagen	Golf TDI
48	Dufurrena, John C.	Idaho	2013	Volkswagen	Jetta TDI
49	Anderson, Scott Clifford	Illinois	2012	Volkswagen	Passat TDI
50	Bahr, Scott	Illinois	2015	Volkswagen	Golf TDI

No.	Class Representative	State	Model Year	Make	Model
51	Clark, Samuel M.	Illinois	2014	Volkswagen	Touareg TDI
52	Fry, Karl	Illinois	2012	Volkswagen	Jetta TDI
53	Olmos, Cesar	Indiana	2014	Volkswagen	Passat TDI
54	Priest, James	Indiana	2014	Volkswagen	Jetta TDI
55	Foote, Benjamin	Iowa	2014	Volkswagen	Jetta SportWagen TDI
56	Gardner, Aaron Patrick	Idaho	2013	VW	Passat TDI
57	Lucht, Tracy and Soucy, Paul	Iowa	2014	Volkswagen	Passat TDI
58	Manternach, Herbert John	Iowa	2012	Volkswagen	Passat TDI
59	Schnathorst, Britney Lynne	Iowa	2014	Volkswagen	Passat TDI
60	Berg, Carla	Kansas	2014	Volkswagen	Passat TDI
61	Joy, Aaron	Kansas	2013	Volkswagen	Jetta TDI
62	Rice, Ashley	Kansas	2013	VW	Jetta TDI
63	Kannapel, Andrew J.	Kentucky	2014	Volkswagen	Jetta TDI
64	Wagner, Robert	Kentucky	2015	Volkswagen	Golf SportWagen TDI
65	White, Eric Davidson	Louisiana	2014	Volkswagen	Golf TDI
66	Malone, Thomas A.	Louisiana	2011	Volkswagen	Jetta SportWagen TDI
67	Warren, Floyd Beck	Louisiana	2015	Volkswagen	Passat TDI
68	Buchberger, Thomas J.	Maine	2012	Volkswagen	Jetta SportWagen TDI
69	Evans, Russell and Evans, Elizabeth	Maine	2014	Volkswagen	Jetta TDI
70	Rubin, Carmel	Maine	2012	Volkswagen	Jetta SportWagen TDI

No.	Class Representative	State	Model Year	Make	Model
71	Sullivan, Daniel	Maine	2014	VW	Passat TDI
72	Cure, Matthew	Maryland	2015	Volkswagen	Golf TDI
73	DeFiesta, Denise	Maryland	2013	Volkswagen	Passat TDI
74	Hoffman, Michael C.	Maryland	2012	Audi	A3 TDI
75	Rovner, Mark	Maryland	2015	Volkswagen	Golf TDI
76	Walsh, Koreen	Maryland	2015	Audi	A3 TDI
77	Broadbent, Ericsson	Massachusetts	2011	Volkswagen	Jetta TDI
78	Cunningham, Willard D.	Massachusetts	2014	Volkswagen	Passat TDI
79	Garcia, Grant Robert	Massachusetts	2015 2010 2009	Volkswagen Volkswagen Volkswagen	Golf SportWagen TDI Jetta SportWagen TDI Jetta SportWagen TDI
80	Matthews, Sarah	Massachusetts	2014	Volkswagen	Jetta TDI
81	Steudel, Wolfgang	Massachusetts	2013 2015	Volkswagen Volkswagen	Golf TDI Jetta TDI
82	Scolnick, Jeffrey	Massachusetts	2014	Volkswagen	Passat TDI
83	Gotta, Gregory	Massachusetts New Hampshire	2014 2014	Audi Porsche	A6 TDI Cayenne Diesel
84	Heilmann, Michael	Michigan	2015	Volkswagen	Touareg TDI
85	Kingman, Bryan Michael	Michigan	2015	Volkswagen	Passat TDI
86	Matthews, Susan	Michigan	2011	Volkswagen	Jetta SportWagen TDI
87	Cyrankowski, Edward	Minnesota	2016	Audi	Q5 TDI
88	Johnson, Christopher	Minnesota	2016	Audi	A6 TDI
89	Mahle, Anne and McCarthy, David	Minnesota	2010 2015	Volkswagen Volkswagen	Jetta SportWagen Golf TDI

No.	Class Representative	State	Model Year	Make	Model
90	Moen, Scott	Minnesota	2013 2010	Volkswagen Volkswagen	Golf TDI Jetta TDI
91	Page, Khamshin	Minnesota	2009	Volkswagen	Jetta SportWagen TDI
92	Schuette, Ryan Joseph	Minnesota	2013	Volkswagen	Passat TDI
93	Haxton, Richardson Ayres	Mississippi	2014	Volkswagen	Passat TDI
94	Katz, Howard	Mississippi	2014	Volkswagen	Golf TDI
95	Walawender, Megan	Missouri	2014	Volkswagen	Passat TDI
96	Morrey, Joseph	Missouri	2015	Volkswagen	Passat TDI
97	Zucker, Bryce	Missouri	2014	Volkswagen	Jetta TDI
98	Di Mauro, Sandra	Montana	2013	Volkswagen	Jetta SportWagen TDI
99	Lorenz, Michael	Montana	2012	VW	Jetta TDI
100	Schram, Sara	Nebraska	2013	VW	Passat TDI
101	Stirek, Nancy L.	Nebraska	2011	VW	Jetta SportWagen TDI
102	Berman, Brian K.	Nevada	2009	Volkswagen	Jetta TDI
103	Perlmutter, Rebecca	Nevada	2012 2015	Volkswagen Volkswagen	Jetta TDI Golf SportWagen TDI
104	Peterson, Jonathan	Nevada	2015	Volkswagen	Golf TDI
105	Minott, Addison	New Hampshire	2009	Volkswagen	Jetta SportWagen TDI
106	Grogan, Richard	New Hampshire	2015	Volkswagen	Golf TDI
107	Bandics, Alan	New Jersey	2013	Volkswagen	Passat TDI
108	Christiana, Charles	New Jersey	2012	Volkswagen	Passat TDI
109	Greczylo, David	New Jersey	2012	VW	Golf TDI
110	Laspina, Carrie	New Jersey	2010	Volkswagen	Jetta TDI

No.	Class Representative	State	Model Year	Make	Model
111	Forbes, Nathan Giles	New Jersey	2012	Volkswagen	Touareg TDI
112	Converse, Alvin	New Mexico	2013	Volkswagen	Jetta TDI
113	Farmer, Melani Buchanan	New Mexico	2012	Volkswagen	Jetta TDI
114	Hart Hoxeng, Carmelina	New Mexico	2009	VW	Jetta TDI
115	Root, Daniel and Root, Wanpen	New Mexico	2014	Volkswagen	Touareg TDI
116	Bedard, Kevin and Bedard, Elizabeth	New York	2015	Audi	A3 TDI
117	Eslick, Robert	New York	2013	Volkswagen	Passat TDI
118	Kirtland, Cynthia R.	New York	2014	VW	Jetta SportWagen TDI
119	Kolpan, Steven	New York	2015	Volkswagen	Passat TDI
120	Pagano, Yvette	New York	2014	Volkswagen	Jetta SportWagen TDI
121	Shaw, Marjorie Hodges	New York	2012	Volkswagen	Jetta SportWagen TDI
122	Dowd, Matthew	North Carolina	2015	Audi	Q7 TDI
123	Krimmelbein, Michael Charles	North Carolina	2015	Volkswagen	Passat TDI
124	Alexander, Christian	North Carolina	2012	VW	Jetta TDI
125	Harlan, Will	North Carolina North Carolina	2011 2014	Volkswagen Volkswagen	Jetta TDI Jetta TDI
126	Gramling, Michelle	North Dakota	2015	Volkswagen	Jetta TDI
127	Greitzer, Michael J.	Ohio	2013	Volkswagen	Passat TDI
128	Stewart, Marc	Ohio	2010	Volkswagen	Jetta TDI
129	Vigran, Gary	Ohio	2014	Porsche	Cayenne Diesel
130	Greenfield, Heather	Oklahoma	2010	Volkswagen	Jetta TDI

No.	Class Representative	State	Model Year	Make	Model
131	Ayala, Thomas W.	Oregon	2014	Volkswagen	Passat TDI
132	Cohen, Coby and Jaffee, Miriam A.	Oregon	2016	Audi	Q5 TDI
133	Yussim, Herbert	Oregon	2015	Volkswagen	Passat TDI
134	Bond, Nicholas	Oregon	2013	Volkswagen	Jetta SportWagen TDI
135	Bialecki, Brian J.	Pennsylvania	2014 2012	Volkswagen Volkswagen	Passat TDI Jetta TDI
136	Labbate, Karen	Pennsylvania	2015	Volkswagen	Passat TDI
137	Pratt III, J. Wesley	Pennsylvania	2014 2013	Volkswagen Volkswagen	Touareg TDI Jetta TDI
138	Urbaniak, James J.	Rhode Island	2014	Volkswagen	Jetta SportWagen TDI
139	Mehls, Katherine	Rhode Island	2015	Volkswagen	Golf SportWagen TDI
140	Oxendine, Perry	South Carolina	2014	Porsche	Cayenne Diesel
141	Powers, Whitney	South Carolina	2011	Volkswagen	Jetta SportWagen TDI
142	Goeman, Rodney	South Dakota	2014	VW	Passat TDI
143	Johnson, Robin A.	Tennessee	2013	Volkswagen	Beetle TDI
144	Andrews, Carol	Tennessee	2012	Volkswagen	Jetta TDI
145	Hess, Jason	Tennessee	2015	Volkswagen	Passat TDI
146	Esquivel, Lori	Texas	2014	Volkswagen	Jetta TDI
147	Fitzpatrick, Timothy S.	Texas	2015	Volkswagen	Golf SportWagen TDI
148	McNeal, Roy	Texas	2014	Volkswagen	Passat TDI
149	Nosrat, Amin	Texas	2014	Audi	A6 TDI
150	Alters, Brett	Utah	2012	Volkswagen	Golf TDI
151	King, Kelly R.	Utah	2013	Volkswagen	Jetta TDI

No.	Class Representative	State	Model Year	Make	Model
152	Otto, Rachel	Utah	2015	Volkswagen	Golf SportWagen TDI
153	Wilson, William Andrew	Utah	2013	Volkswagen	Passat TDI
154	Ebenstein, David	Vermont	2015	Volkswagen	Golf TDI
155	Malloy, James	Vermont Vermont	2014 2011	Volkswagen Volkswagen	Passat TDI Golf TDI
156	Ford, Walter	Virginia	2013	Volkswagen	Passat TDI
157	Meintzschel, Michael	Virginia	2015	Volkswagen	Golf SportWagen TDI
158	Schumacher, Mark	Virginia	2012	Volkswagen	Passat TDI
159	Staby, John	Virginia	2014	Audi	A6 TDI
160	Taylor, Scott	Virginia	2013	Volkswagen	Passat TDI
161	Brier, Steven E.	Virginia Virginia	2010 2014	Volkswagen Volkswagen	Jetta TDI Jetta SportWagen TDI
162	Clements, Dan	Washington	2012	Volkswagen	Touareg TDI
163	Dial, Chad	Washington	2014	Volkswagen	Passat TDI
164	Herr, Joseph	Washington	2015	Volkswagen	Passat TDI
165	Mallery, Kurt	Washington	2010	Volkswagen	Golf TDI
166	Lanham, Richard	West Virginia	2014	Volkswagen	Jetta TDI
167	Moore, Marion B.	West Virginia	2014	Volkswagen	Jetta TDI
168	Niegelsen, Chad M.	Wisconsin	2009	Volkswagen	Jetta SportWagen TDI
169	Swenson, Laura	Wisconsin	2014	Volkswagen	Jetta SportWagen TDI
170	Mills, Brian Nicholas	Wyoming	2015	Volkswagen	Passat TDI
171	Tempest, Rone	Wyoming	2009	Volkswagen	Jetta TDI

1 **1. Alabama Plaintiffs**

2 15. Plaintiff MARION MCINTOSH (for the purpose of this paragraph, “Plaintiff”) is
3 a citizen of Alabama domiciled in Camden, Alabama. On or about June 7, 2013, Plaintiff
4 purchased a new 2013 Volkswagen Passat TDI, VIN 1VWCN7A31DC116194 (for the purpose of
5 this paragraph, the “Class Vehicle”), from Jack Ingram Motors in Montgomery, Alabama.
6 Plaintiff worked as a teacher, coach and principal for the Monroe County Board of Education for
7 thirty years prior to retiring. Before purchasing the Class Vehicle, Plaintiff saw numerous
8 television ads billing Volkswagen’s “clean” diesel vehicles as environmentally-friendly and fuel-
9 efficient. The emission representations, in combination with the advertised fuel efficiency and
10 performance, as well as the vehicle’s reputation for maintaining a high resale value, induced
11 Plaintiff to purchase the Class Vehicle. Unbeknownst to Plaintiff, at the time of acquisition, the
12 Class Vehicle contained a defeat device designed to bypass emission standards and deceive
13 consumers and regulators. Consequently, the Class Vehicle could not deliver the advertised
14 combination of low emissions, high performance, and fuel economy—and was illegal. Plaintiff
15 has suffered concrete injury as a direct and proximate result of Defendants’ conduct, and would
16 not have purchased the Class Vehicle, had Defendants not concealed the illegal defeat device.
17 Plaintiff has not utilized his Class Vehicle in approximately six months because he is concerned
18 that the illegal levels of noxious pollutants it emits may adversely impact his health.

19 16. Plaintiff COOPER RUTLAND JR. (for the purpose of this paragraph, “Plaintiff”)
20 is a citizen of Alabama domiciled in Fitzpatrick, Alabama. On or about March 30, 2015, Plaintiff
21 purchased a new 2015 Volkswagen Passat TDI, VIN 1VWBV7A36FC057500 (for the purpose of
22 this paragraph, the “Class Vehicle”), from Jack Ingram Motors in Montgomery, Alabama.
23 Plaintiff has been the sole proprietor of a law firm in Alabama for approximately the past twenty
24 years. Before purchasing the Class Vehicle, Plaintiff viewed numerous television ads extolling
25 the virtues of Volkswagen “clean” diesel vehicles, including but not limited to their purported
26 fuel efficiency and low emissions. The emission representations, in combination with the
27 advertised fuel efficiency and performance, as well as the vehicle’s reputation for maintaining a
28 high resale value, induced Plaintiff to purchase the Class Vehicle. Unbeknownst to Plaintiff, at

1 the time of acquisition, the Class Vehicle contained a defeat device designed to bypass emission
2 standards and deceive consumers and regulators. Consequently, the Class Vehicle could not
3 deliver the advertised combination of low emissions, high performance, and fuel economy—and
4 was illegal. Plaintiff has suffered concrete injury as a direct and proximate result of Defendants’
5 conduct, and would not have purchased the Class Vehicle, had Defendants not concealed the
6 illegal defeat device.

7 17. Plaintiff ARTHUR SCHAREIN (for the purpose of this paragraph, “Plaintiff”) is a
8 citizen of Alabama domiciled in Decatur, Alabama. On or about November 20, 2014, Plaintiff
9 purchased a new 2014 Volkswagen Beetle Convertible TDI Premium, VIN
10 3VW5L7AT9EM818522 (for the purpose of this paragraph, the “Class Vehicle”), from Hiley
11 Volkswagen in Huntsville, Alabama. Plaintiff is a veteran who currently works as Chief of
12 International Armaments Cooperation for the United States Department of Defense. Before
13 purchasing the Class Vehicle, Plaintiff explored various vehicle options through online research
14 and by reading Car & Driver magazine. Additionally, Plaintiff frequently received emails from
15 Hiley Volkswagen touting Volkswagen’s vehicles as fuel efficient and “green.” The emission
16 representations, in combination with the advertised fuel efficiency and performance, as well as
17 the vehicle’s reputation for maintaining a high resale value, induced Plaintiff to purchase the
18 Class Vehicle. Unbeknownst to Plaintiff, at the time of acquisition, the Class Vehicle contained a
19 defeat device designed to bypass emission standards and deceive consumers and regulators.
20 Consequently, the Class Vehicle could not deliver the advertised combination of low emissions,
21 high performance, and fuel economy—and was illegal. Plaintiff has suffered concrete injury as a
22 direct and proximate result of Defendants’ conduct, and would not have purchased the Class
23 Vehicle, had Defendants not concealed the illegal defeat device.

24 2. Alaska Plaintiffs

25 18. Plaintiff JASON HILL (for the purpose of this paragraph, “Plaintiff”) is a citizen
26 of Alaska domiciled in Eagle River, Alaska. On or about February 2013, Plaintiff purchased a
27 new 2013 Jetta TDI, VIN 1VWAT7A31FC075338 (for the purpose of this paragraph, the “Class
28 Vehicle”), from Kendall Volkswagen of Anchorage in Anchorage, Alaska. Plaintiff is currently

1 serving as a Fuels Distribution Supervisor for the United States Air Force at joint Base
2 Elmendorf-Richardson. Before purchasing the Class Vehicle, Plaintiff thoroughly researched
3 “clean” diesel vehicles and was told the Jetta TDI was a “clean” diesel, good for the environment,
4 and best in class for emissions and gas mileage. At the dealership, virtually every other sentence
5 about the car included the term “clean” diesel. The emission representations, in combination with
6 the advertised fuel efficiency and performance, as well as the vehicle’s reputation for maintaining
7 a high resale value, induced Plaintiff to purchase the Class Vehicle. Unbeknownst to Plaintiff, at
8 the time of acquisition, the Class Vehicle contained a defeat device designed to bypass emission
9 standards and deceive consumers and regulators. Consequently, the Class Vehicle could not
10 deliver the advertised combination of low emissions, high performance, and fuel economy—and
11 was illegal. Plaintiff has suffered concrete injury as a direct and proximate result of Defendants’
12 conduct, and would not have purchased the Class Vehicle had Defendants not concealed the
13 illegal defeat device. Plaintiff traded in his vehicle in October 2015. Despite the fact that the
14 vehicle was in pristine condition, he only received \$17,000 for it.

15 **3. Arizona Plaintiffs**

16 19. Plaintiff RAY PRECIADO (for the purpose of this paragraph, “Plaintiff”) is a
17 citizen of Arizona domiciled in Benson, Arizona. On or about September 17, 2015, Plaintiff
18 purchased a new 2015 Volkswagen Passat TDI, VIN 1VWCV7A33FC066160 (for the purpose of
19 this paragraph, the “Class Vehicle”), from San Tan Volkswagen in Gilbert, Arizona. Plaintiff is
20 the owner of Boxing Inc. University, a fitness franchise, and has dedicated his professional career
21 to promoting health. He is also concerned with environmental preservation and renewable energy
22 sources. Before purchasing the Class Vehicle, Plaintiff exhaustively researched Volkswagen’s
23 “clean” diesel vehicles, viewed Volkswagen’s representations about the emissions and fuel
24 performance, and ultimately traded in a hybrid vehicle to purchase his “clean” diesel Passat. The
25 emission representations, in combination with the advertised fuel efficiency and performance, as
26 well as the vehicle’s reputation for maintaining a high resale value, induced Plaintiff to purchase
27 the Class Vehicle, instead of other vehicles he was considering, including gas/electric hybrid
28 models. Unbeknownst to Plaintiff, at the time of acquisition, the Class Vehicle contained a defeat

1 device designed to bypass emission standards and deceive consumers and regulators.
2 Consequently, the Class Vehicle could not deliver the advertised combination of low emissions,
3 high performance, and fuel economy—and was illegal. Plaintiff has suffered concrete injury as a
4 direct and proximate result of Defendants’ conduct, and would not have purchased the Class
5 Vehicle, had Defendants not concealed the illegal defeat device. Plaintiff is appalled and
6 embarrassed that the Class Vehicle has polluted, and continues to pollute, at levels many times
7 greater than the legal limit.

8 20. Plaintiff SUSAN TARRENCE (for the purpose of this paragraph, “Plaintiff”) is a
9 citizen of Arizona domiciled in Tucson, Arizona. On or about August 2010, Plaintiff purchased a
10 new 2011 Audi A3 TDI, VIN WAUKJBFMXBA025669 (for the purpose of this paragraph, the
11 “Class Vehicle”), from Chapman Audi in Tucson, Arizona. Plaintiff is a retired professional who
12 is conscious of environmental preservation and renewable energy sources. It was critical to her
13 that whatever vehicle she purchased be environmentally-friendly. Before purchasing the Class
14 Vehicle, Plaintiff exhaustively researched the “clean” diesel vehicles, viewed Audi’s
15 representations about the emissions and fuel performance, and ultimately chose her “clean” diesel
16 Audi A3 because the specific make and model was awarded “Green Car of the Year” by Green
17 Car Journal. The emission representations, in combination with the advertised fuel efficiency and
18 performance, as well as the vehicle’s reputation for maintaining a high resale value, induced
19 Plaintiff to purchase the Class Vehicle, instead of the others she was considering, including
20 gas/electric hybrid models. Unbeknownst to Plaintiff, at the time of acquisition, the Class
21 Vehicle contained a defeat device designed to bypass emission standards and deceive consumers
22 and regulators. Consequently, the Class Vehicle could not deliver the advertised combination of
23 low emissions, high performance, and fuel economy—and was illegal. Plaintiff has suffered
24 concrete injury as a direct and proximate result of Defendants’ conduct, and would not have
25 purchased the Class Vehicle, had Defendants not concealed the illegal defeat device. Plaintiff is
26 appalled and embarrassed that the Class Vehicle has polluted, and continues to pollute, at levels
27 many times greater than the legal limit.
28

1 21. Plaintiff STEVEN R. THORNTON (for the purpose of this paragraph, “Plaintiff”)
2 is a citizen of Georgia domiciled in Atlanta, Georgia. On or about April 5, 2014, Plaintiff
3 purchased a new 2014 Volkswagen Passat TDI, VIN 1VWBN7A30EC062979 (for the purpose of
4 this paragraph, the “Class Vehicle”), from Larry M. Miller Volkswagen in Avondale, Arizona.
5 Plaintiff is a mortgage underwriter with an undergraduate degree in journalism who is familiar
6 with conducting research, and conscious of environmental preservation and renewable energy
7 sources. It was critical to him that whatever vehicle he purchased be environmentally-friendly.
8 Before purchasing the Class Vehicle, Plaintiff exhaustively researched Volkswagen’s “clean”
9 diesel vehicles, viewed Volkswagen’s representations about the emissions and fuel performance,
10 and ultimately purchased his Passat because of these misrepresentations. The emission
11 representations, in combination with the advertised fuel efficiency and performance, as well as
12 the vehicle’s reputation for maintaining a high resale value, induced Plaintiff to purchase the
13 Class Vehicle instead of the other, “eco-friendly” vehicles he was considering. Unbeknownst to
14 Plaintiff, at the time of acquisition, the Class Vehicle contained a defeat device designed to
15 bypass emission standards and deceive consumers and regulators. Consequently, the Class
16 Vehicle could not deliver the advertised combination of low emissions, high performance, and
17 fuel economy—and was illegal. Plaintiff has suffered concrete injury as a direct and proximate
18 result of Defendants’ conduct, and would not have purchased the Class Vehicle, had Defendants
19 not concealed the illegal defeat device. Plaintiff is appalled and embarrassed that the Class
20 Vehicle has polluted, and continues to pollute, at levels many times greater than the legal limit.

21 **4. Arkansas Plaintiffs**

22 22. Plaintiff VICKIE RIMA (for the purpose of this paragraph, “Plaintiff”) is a citizen
23 of Arkansas domiciled in Hot Springs National Park, Arkansas. On or about June 13, 2013,
24 Plaintiff purchased a new 2013 Volkswagen Beetle TDI, VIN 3VW5L7AT0DM825888 (for the
25 purpose of this paragraph, the “Class Vehicle”), from Owens Murphy Volkswagen in Little Rock,
26 Arkansas. Plaintiff is retired, and when she was looking for a car, she and her family sought out
27 an environmentally-friendly, reliable, durable and cost-efficient vehicle for her retirement years.
28 Before purchasing the Class Vehicle, Plaintiff and her family researched “clean” diesel vehicles

1 and viewed Volkswagen’s representations regarding their reliability, fuel economy and low
2 emissions. The emission representations, in combination with the advertised fuel efficiency and
3 performance, as well as the vehicle’s reputation for maintaining a high resale value, induced
4 Plaintiff to purchase the Class Vehicle. Unbeknownst to Plaintiff, at the time of acquisition, the
5 Class Vehicle contained a defeat device designed to bypass emission standards and deceive
6 consumers and regulators. Consequently, the Class Vehicle could not deliver the advertised
7 combination of low emissions, high performance, and fuel economy—and was illegal. Plaintiff
8 has suffered concrete injury as a direct and proximate result of Defendants’ conduct, and would
9 not have purchased the Class Vehicle, had Defendants not concealed the illegal defeat device.

10 **5. California Plaintiffs**

11 23. Plaintiff ROMEO JAMES ALBA (for the purpose of this paragraph, “Plaintiff”) is
12 a citizen of California domiciled in Lake Balboa, California. On or about February 8, 2010,
13 Plaintiff purchased a new 2010 Audi A3 TDI, VIN WAUKJAFM9AA091719 (for the purpose of
14 this paragraph, the “Class Vehicle”), from the Auto Gallery in Woodland Hills, California.
15 Plaintiff is an environmental engineer, and he wanted an environmentally-friendly vehicle that
16 was also luxurious, fuel efficient, and high-performing. Before purchasing the Class Vehicle,
17 Plaintiff reviewed advertisements for Audi’s “clean” diesel vehicles, which led him to believe
18 that the Class Vehicle was good for the environment, and different from a traditional diesel
19 vehicle. The emission representations, in combination with the advertised fuel efficiency and
20 performance, as well as the vehicle’s reputation for maintaining a high resale value, induced
21 Plaintiff to purchase the Class Vehicle. Unbeknownst to Plaintiff, at the time of acquisition, the
22 Class Vehicle contained a defeat device designed to bypass emission standards and deceive
23 consumers and regulators. Consequently, the Class Vehicle could not deliver the advertised
24 combination of low emissions, high performance, and fuel economy—and was illegal. Plaintiff
25 has suffered concrete injury as a direct and proximate result of Defendants’ conduct, and would
26 not have purchased the Class Vehicle, had Defendants not concealed the illegal defeat device.
27 Plaintiff is frustrated and appalled that Defendants deliberately installed software in the Class
28 Vehicle to bypass emissions regulations.

1 24. Plaintiff ANNE DUNCAN ARGENTO (for the purpose of this paragraph,
2 “Plaintiff”) is a citizen of California domiciled in Santa Monica, California. On or about May 11,
3 2013, Plaintiff purchased a new 2013 Volkswagen Jetta TDI, VIN 3VWLL7AJ7DM402814 (for
4 the purpose of this paragraph, the “Class Vehicle”), from Volkswagen Santa Monica in Santa
5 Monica, California. Plaintiff works in the field of sustainability, and she wanted an
6 environmentally-friendly car that was fuel efficient and had low emissions. Before purchasing
7 the Class Vehicle, researched Volkswagen’s “clean” diesel vehicles, and was led to believe that
8 the Class Vehicle was environmentally-friendly, and would perform better than a hybrid vehicle.
9 The emission representations, in combination with the advertised fuel efficiency and
10 performance, as well as the vehicle’s reputation for maintaining a high resale value, induced
11 Plaintiff to purchase the Class Vehicle. Unbeknownst to Plaintiff, at the time of acquisition, the
12 Class Vehicle contained a defeat device designed to bypass emission standards and deceive
13 consumers and regulators. Consequently, the Class Vehicle could not deliver the advertised
14 combination of low emissions, high performance, and fuel economy—and was illegal. Plaintiff
15 has suffered concrete injury as a direct and proximate result of Defendants’ conduct, and would
16 not have purchased the Class Vehicle, had Defendants not concealed the illegal defeat device.
17 Plaintiff has made a conscious effort to drive the Class Vehicle less, due to her concerns about the
18 vehicle’s emissions. Plaintiff requested her Volkswagen dealer to buy back the Class Vehicle
19 shortly after she learned about the “clean” diesel emissions scandal, but the dealer did not agree to
20 buy back the vehicle.

21 25. Plaintiff SIMON BEAVEN (for the purpose of this paragraph, “Plaintiff”) is a
22 citizen of California domiciled in Westlake Village, California. On or about May 15, 2011,
23 Plaintiff purchased a new 2011 Audi A3 TDI, VIN WAUKJAFMXBA151685 (for the purpose of
24 this paragraph, the “Class Vehicle”), from Audi Newport Beach in Newport Beach, California.
25 Plaintiff is an Assistant Professor of Medicine at the David Geffen School of Medicine at the
26 University of California, Los Angeles, and he wanted an environmentally-friendly vehicle that
27 was fuel efficient and high-performing. Before purchasing the Class Vehicle, Plaintiff researched
28 the Class Vehicle and relied on representations from the Audi website, Audi advertisements, and

1 the Audi dealer. The emission representations, in combination with the advertised fuel efficiency
2 and performance, as well as the vehicle’s reputation for maintaining a high resale value, induced
3 Plaintiff to purchase the Class Vehicle. Unbeknownst to Plaintiff, at the time of acquisition, the
4 Class Vehicle contained a defeat device designed to bypass emission standards and deceive
5 consumers and regulators. Consequently, the Class Vehicle could not deliver the advertised
6 combination of low emissions, high performance, and fuel economy—and was illegal. Plaintiff
7 has suffered concrete injury as a direct and proximate result of Defendants’ conduct, and would
8 not have purchased the Class Vehicle, had Defendants not concealed the illegal defeat device.
9 Plaintiff is frustrated and appalled that Defendants deliberately installed software in the Class
10 Vehicle to bypass emissions regulations. Plaintiff requested his local Audi dealer to buy back the
11 Class Vehicle shortly after learning about the “clean” diesel emissions scandal, but he was given
12 an offer below the fair market value.

13 26. Plaintiff JULIET BRODIE (for the purpose of this paragraph, “Plaintiff”) is a
14 citizen of California domiciled in Menlo Park, California. On or about December 28, 2013,
15 Plaintiff purchased a new 2014 Volkswagen Jetta SportWagen TDI, VIN
16 3VWPL7AJ0EM607734 (for the purpose of this paragraph, the “Class Vehicle”), from Sunnyvale
17 Volkswagen in Sunnyvale, California. Plaintiff is a Professor and Associate Dean at Stanford
18 Law School who is concerned about protecting the environment. She wanted an
19 environmentally-friendly vehicle that was fuel efficient and high-performing. Before purchasing
20 the Class Vehicle, Plaintiff researched the Class Vehicle and was led to believe that it would be a
21 “clean” and “green” vehicle that would not compromise performance or fuel efficiency. The
22 emission representations, in combination with the advertised fuel efficiency and performance, as
23 well as the vehicle’s reputation for maintaining a high resale value, induced Plaintiff to purchase
24 the Class Vehicle. Unbeknownst to Plaintiff, at the time of acquisition, the Class Vehicle
25 contained a defeat device designed to bypass emission standards and deceive consumers and
26 regulators. Consequently, the Class Vehicle could not deliver the advertised combination of low
27 emissions, high performance, and fuel economy—and was illegal. Plaintiff has suffered concrete
28 injury as a direct and proximate result of Defendants’ conduct, and would not have purchased the

1 Class Vehicle, had Defendants not concealed the illegal defeat device. Plaintiff is frustrated and
2 appalled that Volkswagen deliberately installed software in the Class Vehicle to bypass emissions
3 regulations, and is now ashamed to be seen driving the car.

4 27. Plaintiff LENA BROOK (for the purpose of this paragraph, “Plaintiff”) is a citizen
5 of California domiciled in San Francisco, California. On or about March 23, 2015, Plaintiff
6 purchased a new 2015 Audi Q5 TDI, VIN WA1DMAFP6FA091904 (for the purpose of this
7 paragraph, the “Class Vehicle”), from California-based Cartelligent and Palo Alto Audi in Palo
8 Alto, California. Plaintiff works for the Natural Resources Defense Council, and has a Masters
9 degree in Environmental Studies from the Yale School of Forestry & Environmental Studies.
10 Before purchasing the Class Vehicle, Plaintiff researched the Class Vehicle through various
11 sources, including Audi’s website, and was led to believe that the Class Vehicle was an excellent
12 environmental choice. The emission representations, in combination with the advertised fuel
13 efficiency and performance, as well as the vehicle’s reputation for maintaining a high resale
14 value, induced Plaintiff to purchase the Class Vehicle. Unbeknownst to Plaintiff, at the time of
15 acquisition, the Class Vehicle contained a defeat device designed to bypass emission standards
16 and deceive consumers and regulators. Consequently, the Class Vehicle could not deliver the
17 advertised combination of low emissions, high performance, and fuel economy—and was illegal.
18 Plaintiff has suffered concrete injury as a direct and proximate result of Defendants’ conduct, and
19 would not have purchased the Class Vehicle, had Defendants not concealed the illegal defeat
20 device. Prior to learning of the “clean” diesel emissions scandal, Plaintiff was a loyal Audi
21 customer. She has since become frustrated and appalled that Defendants deliberately installed
22 software in the Class Vehicle to bypass emission regulations. She now tries to drive the Class
23 Vehicle as little as possible, and is highly concerned with the vehicle’s emissions.

24 28. Plaintiff SARAH BURT (for the purpose of this paragraph, “Plaintiff”) is a citizen
25 of California domiciled in Berkeley, California. On or about May 22, 2011, Plaintiff purchased a
26 new 2011 Volkswagen Golf TDI, VIN WVWDM7AJ4BW209117 (for the purpose of this
27 paragraph, the “Class Vehicle”), from Sonnen Motorcars in San Rafael, California. Plaintiff is an
28 environmental lawyer who has dedicated her life to protecting the environment. Before

1 purchasing the Class Vehicle, Plaintiff researched the Class Vehicle and was led to believe that
2 the Class Vehicle provided high fuel efficiency and low emission of pollutants. The emission
3 representations, in combination with the advertised fuel efficiency and performance, as well as
4 the vehicle's reputation for maintaining a high resale value, induced Plaintiff to purchase the
5 Class Vehicle. Unbeknownst to Plaintiff, at the time of acquisition, the Class Vehicle contained a
6 defeat device designed to bypass emission standards and deceive consumers and regulators.
7 Consequently, the Class Vehicle could not deliver the advertised combination of low emissions,
8 high performance, and fuel economy—and was illegal. Plaintiff has suffered concrete injury as a
9 direct and proximate result of Defendants' conduct, and would not have purchased the Class
10 Vehicle, had Defendants not concealed the illegal defeat device. Plaintiff now tries to minimize
11 her driving in the Class Vehicle, and uses her bicycle for transportation when possible.

12 29. Plaintiff PHILLIP CLARK (for the purpose of this paragraph, "Plaintiff") is a
13 citizen of California domiciled in Daly City, California. On or about December 1, 2014, Plaintiff
14 leased a new 2014 Volkswagen Touareg TDI, VIN WVGDP9BP8ED013893 (for the purpose of
15 this paragraph, the "Class Vehicle"), from Serramonte VW in Daly City, California. Before
16 leasing the Class Vehicle, Plaintiff researched the Class Vehicle, and was led to believe that he
17 would be making an environmentally conscious decision by leasing the Class Vehicle. The
18 emission representations, in combination with the advertised fuel efficiency and performance, as
19 well as the vehicle's reputation for maintaining a high resale value, induced Plaintiff to lease the
20 Class Vehicle. Unbeknownst to Plaintiff, at the time of acquisition, the Class Vehicle contained a
21 defeat device designed to bypass emission standards and deceive consumers and regulators.
22 Consequently, the Class Vehicle could not deliver the advertised combination of low emissions,
23 high performance, and fuel economy—and was illegal. Plaintiff has suffered concrete injury as a
24 direct and proximate result of Defendants' conduct, and would not have leased the Class Vehicle,
25 had Defendants not concealed the illegal defeat device.

26 30. Plaintiff WILLIAM S. DODGE (for the purpose of this paragraph, "Plaintiff") is a
27 citizen of California domiciled in Oakland, California. On or about February 16, 2015, Plaintiff
28 purchased a new 2015 Volkswagen Jetta TDI, VIN 3VWLA7AJXFM291619 (for the purpose of

1 this paragraph, the “Class Vehicle”), from Volkswagen of Oakland in Oakland, California.
2 Plaintiff is a Professor of Law at the University of California, Davis School of Law, and he
3 wanted a vehicle that would provide good gas mileage, and reduce the environmental impact of
4 his lengthy commute. Before purchasing the Class Vehicle, Plaintiff researched the Class
5 Vehicle, including reviewing Volkswagen’s website and advertisements, and was led to believe
6 that the Class Vehicle provided high fuel efficiency and low emission of pollutants. The emission
7 representations, in combination with the advertised fuel efficiency and performance, as well as
8 the vehicle’s reputation for maintaining a high resale value, induced Plaintiff to purchase the
9 Class Vehicle. Unbeknownst to Plaintiff, at the time of acquisition, the Class Vehicle contained a
10 defeat device designed to bypass emission standards and deceive consumers and regulators.
11 Consequently, the Class Vehicle could not deliver the advertised combination of low emissions,
12 high performance, and fuel economy—and was illegal. Plaintiff has suffered concrete injury as a
13 direct and proximate result of Defendants’ conduct, and would not have purchased the Class
14 Vehicle, had Defendants not concealed the illegal defeat device.

15 31. Plaintiff AIMEE EPSTEIN (for the purpose of this paragraph, “Plaintiff”) is a
16 citizen of California domiciled in San Francisco, California. On or about December 27, 2009,
17 Plaintiff purchased a new 2010 Volkswagen Jetta SportWagen TDI, VIN
18 3VWPL8AJ2AM639326 (for the purpose of this paragraph, the “Class Vehicle”), from
19 Sunnyvale Volkswagen in Sunnyvale, California. Plaintiff is a Stanford-educated environmental
20 scientist who has dedicated her professional and academic career to environmental preservation
21 and renewable energy. It was critical to her that whatever vehicle she purchased be
22 environmentally-friendly. Before purchasing the Class Vehicle, Plaintiff exhaustively researched
23 the “clean” diesel vehicles, viewed Volkswagen’s representations about the emissions and fuel
24 performance, and even compared the advertised emissions to those of comparable, gasoline-
25 powered vehicles listed on the EPA website. The emission representations, in combination with
26 the advertised fuel efficiency and performance, as well as the vehicle’s reputation for maintaining
27 a high resale value, induced Plaintiff to purchase the Class Vehicle. Unbeknownst to Plaintiff, at
28 the time of acquisition, the Class Vehicle contained a defeat device designed to bypass emission

1 standards and deceive consumers and regulators. Consequently, the Class Vehicle could not
2 deliver the advertised combination of low emissions, high performance, and fuel economy—and
3 was illegal. Plaintiff has suffered concrete injury as a direct and proximate result of Defendants’
4 conduct, and would not have purchased the Class Vehicle, had Defendants not concealed the
5 illegal defeat device. Plaintiff is appalled and embarrassed that the Class Vehicle has polluted,
6 and continues to pollute, up to forty times the legal limits.

7 32. Plaintiff GEORGE FARQUAR (for the purpose of this paragraph, “Plaintiff”) is a
8 citizen of California domiciled in Livermore, California. On or about December 19, 2009,
9 Plaintiff purchased a new 2010 Volkswagen Jetta TDI, VIN 3VWRL7AJ8AM062563 (for the
10 purpose of this paragraph, the “Class Vehicle”), from Sunnyvale Volkswagen in Sunnyvale,
11 California. Plaintiff has a Ph.D. in physical chemistry, and performs scientific consulting and
12 detection of environmental and toxic chemicals. Before purchasing the Class Vehicle, Plaintiff
13 researched the Class Vehicle, and chose the Class Vehicle over other hybrid vehicles he was
14 considering, based on its advertised fuel economy, performance, and “clean” diesel engine. The
15 emission representations, in combination with the advertised fuel efficiency and performance, as
16 well as the vehicle’s reputation for maintaining a high resale value, induced Plaintiff to purchase
17 the Class Vehicle. Unbeknownst to Plaintiff, at the time of acquisition, the Class Vehicle
18 contained a defeat device designed to bypass emission standards and deceive consumers and
19 regulators. Consequently, the Class Vehicle could not deliver the advertised combination of low
20 emissions, high performance, and fuel economy—and was illegal. Plaintiff has suffered concrete
21 injury as a direct and proximate result of Defendants’ conduct, and would not have purchased the
22 Class Vehicle, had Defendants not concealed the illegal defeat device.

23 33. Plaintiff JEROME FOHET (for the purpose of this paragraph, “Plaintiff”) is a
24 citizen of California domiciled in San Jose, California. On or about January 31, 2014, Plaintiff
25 purchased a new 2014 Porsche Cayenne Diesel, VIN WP1AF2A22ELA44682 (for the purpose of
26 this paragraph, the “Class Vehicle”), from Porsche of Fremont in Fremont, California. Before
27 purchasing the Class Vehicle, Plaintiff researched the Class Vehicle, and was led to believe that
28 the “clean” diesel engine would be more fuel efficient and environmentally-friendly than a gas

1 engine vehicle. The emission representations, in combination with the advertised fuel efficiency
2 and performance, as well as the vehicle's reputation for maintaining a high resale value, induced
3 Plaintiff to purchase the Class Vehicle. Unbeknownst to Plaintiff, at the time of acquisition, the
4 Class Vehicle contained a defeat device designed to bypass emission standards and deceive
5 consumers and regulators. Consequently, the Class Vehicle could not deliver the advertised
6 combination of low emissions, high performance, and fuel economy—and was illegal. Plaintiff
7 has suffered concrete injury as a direct and proximate result of Defendants' conduct, and would
8 not have purchased the Class Vehicle, had Defendants not concealed the illegal defeat device.

9 34. Plaintiff CAROLINE HOAG (for the purpose of this paragraph, "Plaintiff") is a
10 citizen of California domiciled in El Cajon, California. On or about January 30, 2011, Plaintiff
11 purchased a new 2011 Volkswagen Jetta SportWagen TDI, VIN 3VWPL8AJ6BM651240 (for the
12 purpose of this paragraph, the "Class Vehicle"), from South Bay Volkswagen in National City,
13 California. Before purchasing the Class Vehicle, Plaintiff researched the Class Vehicle and
14 Volkswagen's brochures, and was led to believe that the "clean" diesel engine would provide
15 good performance and fuel efficiency, while also being environmentally-friendly. The emission
16 representations, in combination with the advertised fuel efficiency and performance, as well as
17 the vehicle's reputation for maintaining a high resale value, induced Plaintiff to purchase the
18 Class Vehicle. Unbeknownst to Plaintiff, at the time of acquisition, the Class Vehicle contained a
19 defeat device designed to bypass emission standards and deceive consumers and regulators.
20 Consequently, the Class Vehicle could not deliver the advertised combination of low emissions,
21 high performance, and fuel economy—and was illegal. Plaintiff has suffered concrete injury as a
22 direct and proximate result of Defendants' conduct, and would not have purchased the Class
23 Vehicle, had Defendants not concealed the illegal defeat device. Plaintiff now tries to minimize
24 her driving to reduce the emissions from the Class Vehicle.

25 35. Plaintiff HON. MARK D. HOULE (for the purpose of this paragraph, "Plaintiff")
26 is a citizen of California domiciled in Laguna Hills, California. On or about May 8, 2015,
27 Plaintiff purchased a new 2015 Volkswagen Passat TDI, VIN 1VWBG7A33FC090180 (for the
28 purpose of this paragraph, the "Class Vehicle"), from Capistrano Volkswagen in San Juan

1 Capistrano, CA. Plaintiff is a federal bankruptcy judge in the United States Bankruptcy Court,
2 Central District of California. Before purchasing the Class Vehicle, Plaintiff researched the Class
3 Vehicle and reviewed an extensive amount of advertising, reviews, and the Volkswagen website
4 regarding the Class Vehicle. Plaintiff also received materials from the dealer regarding
5 Volkswagen’s “clean” diesel vehicles, and the emission representations, in combination with the
6 advertised fuel efficiency and performance, as well as the vehicle’s reputation for maintaining a
7 high resale value, induced Plaintiff to purchase the Class Vehicle. Unbeknownst to Plaintiff, at
8 the time of acquisition, the Class Vehicle contained a defeat device designed to bypass emission
9 standards and deceive consumers and regulators. Consequently, the Class Vehicle could not
10 deliver the advertised combination of low emissions, high performance, and fuel economy—and
11 was illegal. Plaintiff has suffered concrete injury as a direct and proximate result of Defendants’
12 conduct, and would not have purchased the Class Vehicle, had Defendants not concealed the
13 illegal defeat device.

14 36. Plaintiff REBECCA KAPLAN (for the purpose of this paragraph, “Plaintiff”) is a
15 citizen of California domiciled in Oakland, California. On or about September 27, 2011, Plaintiff
16 purchased a new 2012 Volkswagen Golf TDI, VIN WVWDM7AJ4CW074979 (for the purpose
17 of this paragraph, the “Class Vehicle”), from Volkswagen of Oakland in Oakland, California.
18 Plaintiff is the Vice Mayor and Councilmember At-Large for the City of Oakland, California.
19 She has been a lifelong environmental advocate, and has actively worked to reduce emissions and
20 promote clean air in Oakland. Before purchasing the Class Vehicle, Plaintiff researched the Class
21 Vehicle, and relied on Volkswagen’s advertising and representations from the dealership
22 regarding the benefits of its “clean” diesel vehicles. The emission representations, in combination
23 with the advertised fuel efficiency and performance, as well as the vehicle’s reputation for
24 maintaining a high resale value, induced Plaintiff to purchase the Class Vehicle. Unbeknownst to
25 Plaintiff, at the time of acquisition, the Class Vehicle contained a defeat device designed to
26 bypass emission standards and deceive consumers and regulators. Consequently, the Class
27 Vehicle could not deliver the advertised combination of low emissions, high performance, and
28 fuel economy—and was illegal. Plaintiff has suffered concrete injury as a direct and proximate

1 result of Defendants' conduct, and would not have purchased the Class Vehicle, had Defendants
2 not concealed the illegal defeat device. After learning about Volkswagen's "clean" diesel
3 emissions scandal, Plaintiff contacted her dealer to request a buy-back, but the dealer denied her
4 request. Plaintiff no longer drives the Class Vehicle in light of its true level of emissions, and has
5 registered the car as nonoperational. It is now stored in a parking/storage facility, and Plaintiff
6 must pay a monthly fee to maintain the storage.

7 37. Plaintiff HELEN KOSIK-WESTLY (for the purpose of this paragraph, "Plaintiff")
8 is a citizen of California domiciled in Monterey, California. On or about December 20, 2011
9 Plaintiff purchased a new 2011 Volkswagen Golf TDI, VIN WVWBM7AJ8BW130699 (for the
10 purpose of this paragraph, the "Class Vehicle"), from Volkswagen of Santa Cruz in Santa Cruz,
11 California. Plaintiff actively involved in her community, and is dedicated to protecting the
12 environment. She needed a car to perform her "Meals On Wheels" deliveries in the community,
13 and wanted a car that was environmentally-friendly. Before purchasing the Class Vehicle,
14 Plaintiff researched the Class Vehicle and reviewed Volkswagen's advertising, including
15 television commercials, a Volkswagen brochure, and a newspaper review. She also viewed the
16 car at an auto show at the Moscone Center in San Francisco where she spoke to a sales
17 representative for Volkswagen. The emission representations, in combination with the advertised
18 fuel efficiency and performance, induced Plaintiff to purchase the Class Vehicle instead of the
19 other, "hybrid" vehicles she was considering. Unbeknownst to Plaintiff, at the time of
20 acquisition, the Class Vehicle contained a defeat device designed to bypass emission standards
21 and deceive consumers and regulators. Consequently, the Class Vehicle could not deliver the
22 advertised combination of low emissions, high performance, and fuel economy—and was illegal.
23 Plaintiff has suffered concrete injury as a direct and proximate result of Defendants' conduct, and
24 would not have purchased the Class Vehicle, had Defendants not concealed the illegal defeat
25 device.

26 38. Plaintiff RAYMOND KREIN (for the purpose of this paragraph, "Plaintiff") is a
27 citizen of California domiciled in San Francisco, California. On or about December 31, 2014,
28 Plaintiff purchased a new 2014 Volkswagen Jetta SportWagen TDI, VIN

1 3VWPL7AJ5EM627641 (for the purpose of this paragraph, the “Class Vehicle”), from
2 Serramonte Volkswagen in Daly City, California. Plaintiff is a federal revenue agent with the
3 Internal Revenue Service, and he had been a loyal Volkswagen customer for over ten years.
4 Before purchasing the Class Vehicle, Plaintiff researched the Class Vehicle, and relied on
5 Volkswagen’s advertising and representations from the dealership regarding the benefits of its
6 “clean” diesel vehicles. The emission representations, in combination with the advertised fuel
7 efficiency and performance, as well as the vehicle’s reputation for maintaining a high resale
8 value, induced Plaintiff to purchase the Class Vehicle. Unbeknownst to Plaintiff, at the time of
9 acquisition, the Class Vehicle contained a defeat device designed to bypass emission standards
10 and deceive consumers and regulators. Consequently, the Class Vehicle could not deliver the
11 advertised combination of low emissions, high performance, and fuel economy—and was illegal.
12 Plaintiff has suffered concrete injury as a direct and proximate result of Defendants’ conduct, and
13 would not have purchased the Class Vehicle, had Defendants not concealed the illegal defeat
14 device.

15 39. Plaintiff MARGARET JANE MCGUIRE (for the purpose of this paragraph,
16 “Plaintiff”) is a citizen of California domiciled in Oakland, California. On or about July 2015,
17 Plaintiff purchased a new 2015 Volkswagen Beetle TDI, VIN 3VWRA7AT7FM633989 (for the
18 purpose of this paragraph, the “Class Vehicle”), from Dirito Brothers in Walnut Creek,
19 California. Plaintiff is the Executive Director of the Women’s Cancer Resource Center, and is an
20 environmentally-conscious consumer. Before purchasing the Class Vehicle, Plaintiff researched
21 the Class Vehicle, and was lead to believe that the Class Vehicle would combine fuel efficiency
22 with low environmental impact. The emission representations, in combination with the
23 advertised fuel efficiency and performance, as well as the vehicle’s reputation for maintaining a
24 high resale value, induced Plaintiff to purchase the Class Vehicle. Unbeknownst to Plaintiff, at
25 the time of acquisition, the Class Vehicle contained a defeat device designed to bypass emission
26 standards and deceive consumers and regulators. Consequently, the Class Vehicle could not
27 deliver the advertised combination of low emissions, high performance, and fuel economy—and
28 was illegal. Plaintiff has suffered concrete injury as a direct and proximate result of Defendants’

1 conduct, and would not have purchased the Class Vehicle, had Defendants not concealed the
2 illegal defeat device. Plaintiff now limits her driving of the Class Vehicle because its emissions
3 and environmental impact, and she relies on friends for alternative transportation when possible.

4 40. Plaintiffs BERNADETTE MEYLER and MATTHEW SMITH (for the purpose of
5 this paragraph, “Plaintiffs”) are citizens of California domiciled in Stanford, California. On or
6 about July 15, 2013, Plaintiffs purchased a new 2013 Volkswagen Passat TDI, VIN
7 1VWCN7A3XDC148996 (for the purpose of this paragraph, the “Class Vehicle”), from
8 Broadway Volkswagen in Redwood City, California. Plaintiffs are both professors at Stanford
9 University, and they are environmentally-conscious consumers. Before purchasing the Class
10 Vehicle, Plaintiffs conducted extensive research on the Class Vehicle and competing vehicles,
11 and were led to believe that the Class Vehicle was a fuel efficient, high-performing, and
12 environmentally-friendly vehicle. The emission representations, in combination with the
13 advertised fuel efficiency and performance, as well as the vehicle’s reputation for maintaining a
14 high resale value, induced Plaintiff to purchase the Class Vehicle. Unbeknownst to Plaintiffs, at
15 the time of acquisition, the Class Vehicle contained a defeat device designed to bypass emission
16 standards and deceive consumers and regulators. Consequently, the Class Vehicle could not
17 deliver the advertised combination of low emissions, high performance, and fuel economy—and
18 was illegal. Plaintiffs have suffered concrete injury as a direct and proximate result of
19 Defendants’ conduct, and would not have purchased the Class Vehicle, had Defendants not
20 concealed the illegal defeat device.

21 41. Plaintiff RHONNDA PELLEGRINI (for the purpose of this paragraph, “Plaintiff”) is
22 a citizen of California domiciled in Carlotta, California. On or about February 16, 2014,
23 Plaintiff purchased a new 2014 Volkswagen Passat TDI, VIN 1VWCN7A32EC027378 (for the
24 purpose of this paragraph, the “Class Vehicle”), from Chico Volkswagen in Chico, California.
25 Plaintiff is a retired United States Marine service member who is an environmentally-conscious
26 consumer. Before purchasing the Class Vehicle, Plaintiff conducted extensive research on the
27 Class Vehicle, including reviewing Volkswagen’s advertising materials, speaking with
28 Volkswagen dealerships, and reading reviews on the vehicle. The emission representations, in

1 combination with the advertised fuel efficiency and performance, as well as the vehicle's
2 reputation for maintaining a high resale value, induced Plaintiff to purchase the Class Vehicle.
3 Unbeknownst to Plaintiff, at the time of acquisition, the Class Vehicle contained a defeat device
4 designed to bypass emission standards and deceive consumers and regulators. Consequently, the
5 Class Vehicle could not deliver the advertised combination of low emissions, high performance,
6 and fuel economy—and was illegal. Plaintiff has suffered concrete injury as a direct and
7 proximate result of Defendants' conduct, and would not have purchased the Class Vehicle, had
8 Defendants not concealed the illegal defeat device.

9 42. Plaintiff TED TRUONG (for the purpose of this paragraph, "Plaintiff") is a citizen
10 of California domiciled in San Francisco, California. On or about June 29, 2014, Plaintiff
11 purchased a new 2014 Audi Q5 TDI, VIN WA1CMAFP2EA122625 (for the purpose of this
12 paragraph, the "Class Vehicle"), from Oakland Audi in Oakland, California. Plaintiff Ted Truong
13 attended the University of California, Davis, and is the Director of Client Services at a research
14 company in Northern California. Before purchasing the Class Vehicle, Plaintiff extensively
15 researched the Class Vehicle, and discovered that the Class Vehicle received extremely high
16 marks for performance and efficiency, higher than Audi's then-available hybrid options. The
17 emission representations, in combination with the advertised fuel efficiency and performance, as
18 well as the vehicle's reputation for maintaining a high resale value, induced Plaintiff to purchase
19 the Class Vehicle. Unbeknownst to Plaintiff, at the time of acquisition, the Class Vehicle
20 contained a defeat device designed to bypass emission standards and deceive consumers and
21 regulators. Consequently, the Class Vehicle could not deliver the advertised combination of low
22 emissions, high performance, and fuel economy—and was illegal. Plaintiff has suffered concrete
23 injury as a direct and proximate result of Defendants' conduct, and would not have purchased the
24 Class Vehicle, had Defendants not concealed the illegal defeat device. Plaintiff now hardly
25 drives the Class Vehicle at all, and instead drives his other car, which runs on gasoline.

26 43. Plaintiff STEPHEN VERNER (for the purpose of this paragraph, "Plaintiff") is a
27 citizen of California domiciled in Oakland, California. On or about May 1, 2013, Plaintiff
28 purchased a new 2013 Volkswagen Golf TDI, VIN WVWNM7AJ3DW122154 (for the purpose

1 of this paragraph, the “Class Vehicle”), from Royal Motors in San Francisco, California. Plaintiff
2 is a graduate of the U.S. Naval Academy and the University of Pennsylvania, and is a veteran of
3 the navy. He runs his own architectural firm in Oakland, California. Before purchasing the Class
4 Vehicle, Plaintiff extensively researched the Class Vehicle. After attending car shows,
5 researching online, and analyzing the vehicle’s EPA rating, Plaintiff chose the Class Vehicle over
6 other “Clean Diesel” and hybrid cars because he believed that this was the best option from a
7 green and performance perspective. The emissions representations, in combination with the
8 advertised fuel efficiency and performance, as well as the vehicle’s reputation for maintaining a
9 high resale value, induced Plaintiff to purchase the Class Vehicle. Unbeknownst to Plaintiff, at
10 the time of acquisition, the Class Vehicle contained a defeat device designed to bypass emission
11 standards and deceive consumers and regulators. Consequently, the Class Vehicle could not
12 deliver the advertised combination of low emissions, high performance, and fuel economy—and
13 was illegal. Plaintiff has suffered concrete injury as a direct and proximate result of Defendants’
14 conduct, and would not have purchased the Class Vehicle, had Defendants not concealed the
15 illegal defeat device. In the wake of the revelations about the defeat device, Plaintiff minimizes
16 driving his vehicle, driving his wife’s car and/or taking alternative transportation. As an architect
17 focused on sustainability, Plaintiff’s clients are beginning to wonder whether Plaintiff will get rid
18 of the vehicle.

19 44. Plaintiff LEO WINTERNITZ (for the purpose of this paragraph, “Plaintiff”) is a
20 citizen of California domiciled in Carmichael, California. On or about July 24, 2009, Plaintiff
21 purchased a new 2009 Volkswagen Jetta SportWagen TDI, VIN 3VWPL71K99M359207 (for the
22 purpose of this paragraph, the “Class Vehicle”), from Niello Volkswagen, in Sacramento,
23 California. Plaintiff is an environmental scientist and a board member of the American River
24 Parkway Foundation, which coordinates the efforts of hundreds of volunteers to restore, maintain,
25 and improve the American River Parkway. Before purchasing the Class Vehicle, Plaintiff
26 researched and test-drove the Jetta and found it to be the perfect combination of performance and
27 low emissions. The emission representations, in combination with the advertised fuel efficiency
28 and performance, as well as the vehicle’s reputation for maintaining a high resale value, induced

1 Plaintiff to purchase the Class Vehicle. Unbeknownst to Plaintiff, at the time of acquisition, the
2 Class Vehicle contained a defeat device designed to bypass emission standards and deceive
3 consumers and regulators. Consequently, the Class Vehicle could not deliver the advertised
4 combination of low emissions, high performance, and fuel economy—and was illegal. Plaintiff
5 has suffered concrete injury as a direct and proximate result of Defendants’ conduct, and would
6 not have purchased the Class Vehicle, had Defendants not concealed the illegal defeat device.

7 **6. Colorado Plaintiffs**

8 45. Plaintiff MARCUS DOEGE (for the purpose of this paragraph, “Plaintiff”) is a
9 citizen of Colorado domiciled in Castle Rock, Colorado. On or about March 10, 2012, Plaintiff
10 purchased a new 2012 Volkswagen Jetta TDI, VIN 3VWLL7AJXCM338427 and a new 2012
11 Touareg TDI, VIN WVGFK9BP6CD001701 (for the purpose of this paragraph, the “Class
12 Vehicles”), from McDonald Automotive Group in Littleton, Colorado. Plaintiff is a graduate of
13 the German Naval Academy and Air Force Academy and has been employed by Frontier Airlines
14 as a pilot for the last 13 years. Plaintiff traded in his gasoline-powered cars in order to purchase
15 the Class Vehicles. Before purchasing the Class Vehicles, Plaintiff researched “clean” diesel
16 vehicles on the internet and was convinced that “clean” diesel vehicles had better fuel efficiency
17 and cleaner emissions than gasoline-powered vehicles. He was told by the dealership that “clean”
18 diesel vehicles were environmentally-friendly, and “the exhaust coming out of the Touareg is
19 almost like pool water, drinkable, and safe to inhale.” The emission representations, in
20 combination with the advertised fuel efficiency and performance, as well as the vehicles’
21 reputation for maintaining a high resale value, induced Plaintiff to purchase the Class Vehicles.
22 Unbeknownst to Plaintiff, at the time of acquisition, the Class Vehicles contained defeat devices
23 designed to bypass emission standards and deceive consumers and regulators. Consequently, the
24 Class Vehicles could not deliver the advertised combination of low emissions, high performance,
25 and fuel economy—and were illegal. Plaintiff has suffered concrete injury as a direct and
26 proximate result of Defendants’ conduct, and would not have purchased the Class Vehicles had
27 Defendants not concealed the illegal defeat devices. When he learned the Class Vehicles
28 contained a defeat device designed to bypass emissions standards he wanted to see if Volkswagen

1 would take them back. Plaintiff sent an email to the general manager at McDonald Automotive
2 and stated he had been misled, but did not receive any response.

3 46. Plaintiff MARY HILDEGARD REISER (for the purpose of this paragraph,
4 “Plaintiff”) is a citizen of Colorado domiciled in Loveland, Colorado. On or about August 3,
5 2015, Plaintiff purchased a new 2015 Volkswagen Golf TDI, VIN 3VW2A7AU5FM066272 (for
6 the purpose of this paragraph, the “Class Vehicle”), from Ed Carroll Motor Company in Fort
7 Collins, Colorado. Plaintiff is a retired Science Advisor for the National Park Service. She has a
8 master’s degree in wildlife ecology and a PhD in Zoology from Northern Arizona University. As
9 an environmentalist, Plaintiff wanted a clean-burning vehicle with a high miles-per-gallon ratio,
10 power, and room for her dogs and camping gear. Before purchasing the Class Vehicle, Plaintiff
11 spent over 100 hours checking on specs and reviews and test-drove a subset of vehicles that
12 matched her criteria. The emission representations, in combination with the advertised fuel
13 efficiency and performance, as well as the vehicle’s reputation for maintaining a high resale
14 value, induced Plaintiff to purchase the Class Vehicle. Unbeknownst to Plaintiff, at the time of
15 acquisition, the Class Vehicle contained a defeat device designed to bypass emission standards
16 and deceive consumers and regulators. Consequently, the Class Vehicle could not deliver the
17 advertised combination of low emissions, high performance, and fuel economy—and was illegal.
18 Plaintiff has suffered concrete injury as a direct and proximate result of Defendants’ conduct, and
19 would not have purchased the Class Vehicle, had Defendants not concealed the illegal defeat
20 device. Plaintiff was disgusted when she learned the news of Volkswagen’s fraud only six weeks
21 after she purchased her brand new 2015 Golf TDI.

22 47. Plaintiff ROMAN ZVYAGELSKY (for the purpose of this paragraph, “Plaintiff”)
23 is a citizen of Colorado domiciled in Lakewood, Colorado. On or about August 24, 2015,
24 Plaintiff leased a new 2016 Audi Q5 TDI, VIN WA1DVAFP1GA034718 (for the purpose of this
25 paragraph, the “Class Vehicle”), from Prestige Imports in Lakewood, Colorado. Plaintiff has a
26 degree in marketing from Southern Illinois University and currently sells cloud-based business
27 communications solutions. When Plaintiff leased the Class Vehicle, the dealership told him the
28 Audi Q5 TDI had the best gas mileage and performance in its class. The emission

1 representations, in combination with the advertised fuel efficiency and performance, as well as
2 the vehicle's reputation for maintaining a high resale value, induced Plaintiff to lease the Class
3 Vehicle. Unbeknownst to Plaintiff, at the time of acquisition, the Class Vehicle contained a
4 defeat device designed to bypass emission standards and deceive consumers and regulators.
5 Consequently, the Class Vehicle could not deliver the advertised combination of low emissions,
6 high performance, and fuel economy—and was illegal. Plaintiff has suffered concrete injury as a
7 direct and proximate result of Defendants' conduct, and would not have leased the Class Vehicle,
8 had Defendants not concealed the illegal defeat device.

9 **7. Connecticut Plaintiffs**

10 48. Plaintiff LESLIE MACLISE-KANE (for the purpose of this paragraph, "Plaintiff")
11 is a citizen of Connecticut domiciled in Southbury, Connecticut. On or about December 28,
12 2012, Plaintiff purchased a new 2013 Volkswagen Jetta SportWagen TDI, VIN
13 3VWML7AJ3DM648859 (for the purpose of this paragraph, the "Class Vehicle"), from Danbury
14 Volkswagen in Danbury, Connecticut. Plaintiff attended Mount Holyoke College and the
15 University of Massachusetts. She has spent two decades working in the environmental field and
16 is currently the Center Director for the National Audubon Society and Audubon Center at Bent of
17 the River. It was paramount for Plaintiff that the vehicle she purchased was the most
18 environmentally-friendly option available in the market in 2012. Before purchasing her Class
19 Vehicle, Plaintiff conducted exhaustive research, including interviewing mechanics, reading
20 automotive publications, and reading Volkswagen's representations about the emissions and fuel
21 efficiency. The emission representations, in combination with the advertised fuel efficiency and
22 performance, as well as the vehicle's reputation for maintaining a high resale value, induced
23 Plaintiff to purchase the Class Vehicle, instead of the other, "hybrid" vehicles she was
24 considering at the time. Unbeknownst to Plaintiff, at the time of acquisition, the Class Vehicle
25 contained a defeat device designed to bypass emission standards and deceive consumers and
26 regulators. Consequently, the Class Vehicle could not deliver the advertised combination of low
27 emissions, high performance, and fuel economy—and was illegal. Plaintiff has suffered concrete
28 injury as a direct and proximate result of Defendants' conduct, and would not have purchased the

1 Class Vehicle, had Defendants not concealed the illegal defeat device. Plaintiff is appalled and
2 embarrassed that after extensive research and reliance on Volkswagen’s statements that “Clean
3 Diesel” was the wave of the future, her vehicle pollutes, continues to pollute, damaging the
4 environment she has worked to protect.

5 49. Plaintiff TIMOTHY J. WATSON (for the purpose of this paragraph, “Plaintiff”) is
6 a citizen of Connecticut domiciled in Waterford, Connecticut. On or about May 29, 2015,
7 Plaintiff purchased a new 2015 Audi A3 TDI, VIN WAUCJGFF7F1043863 (for the purpose of
8 this paragraph, the “Class Vehicle”), from Hoffman Audi in New London, Connecticut. Plaintiff
9 is an Ohio State University-educated PhD of Organic Chemistry and a research fellow at Pfizer.
10 Plaintiff and his family undertake an annual “green” project to help lower their environmental
11 impact, and his project for 2015 was to find a new vehicle with excellent fuel economy and low
12 environmental impact while still being sporty. Before purchasing the Class Vehicle, Plaintiff did
13 extensive internet research and test-drove a variety of diesel vehicles before ultimately choosing
14 the Class Vehicle for its apparently superior green qualities. The emission representations, in
15 combination with the advertised fuel efficiency and performance, as well as the vehicle’s
16 reputation for maintaining a high resale value, induced Plaintiff to purchase the Class Vehicle.
17 Unbeknownst to Plaintiff, at the time of acquisition, the Class Vehicle contained a defeat device
18 designed to bypass emission standards and deceive consumers and regulators. Consequently, the
19 Class Vehicle could not deliver the advertised combination of low emissions, high performance,
20 and fuel economy—and was illegal. Plaintiff has suffered concrete injury as a direct and
21 proximate result of Defendants’ conduct, and would not have purchased the Class Vehicle, had
22 Defendants not concealed the illegal defeat device.

23 50. Plaintiff BRIAN WILLINGHAM (for the purpose of this paragraph, “Plaintiff”) is
24 a citizen of New York domiciled in Katonah, New York. On or about September 10, 2014
25 Plaintiff leased a new 2015 Volkswagen Golf TDI, VIN 3VWRA7AU5FM013215 (for the
26 purpose of this paragraph, the “Class Vehicle”), from Weeks Automobile Corporation in
27 Danbury, Connecticut. Plaintiff is a private investigator and a Certified Fraud Examiner. He is
28 the president and founder of Diligentia Group, an investigation firm in Katonah, New York.

1 Before leasing the Class Vehicle, Plaintiff was inundated with advertisements and billboards for
2 Volkswagen’s “clean” diesel vehicles on his daily commute, which resonated with his desire for a
3 “clean” diesel vehicle with excellent fuel economy. The emission representations, in combination
4 with the advertised fuel efficiency and performance, as well as the vehicle’s reputation for
5 maintaining a high resale value, induced Plaintiff to lease the Class Vehicle. Unbeknownst to
6 Plaintiff, at the time of acquisition, the Class Vehicle contained a defeat device designed to
7 bypass emission standards and deceive consumers and regulators. Consequently, the Class
8 Vehicle could not deliver the advertised combination of low emissions, high performance, and
9 fuel economy—and was illegal. Plaintiff has suffered concrete injury as a direct and proximate
10 result of Defendants’ conduct, and would not have leased the Class Vehicle, had Defendants not
11 concealed the illegal defeat device.

12 **8. Delaware Plaintiffs**

13 51. Plaintiff DEWAYNE A. FOX (for the purpose of this paragraph, “Plaintiff”) is a
14 citizen of Delaware domiciled in Lewes, Delaware. On or about May 19, 2010, Plaintiff
15 purchased a new 2010 Volkswagen Jetta SportWagen TDI, VIN 3VWTL7AJ3AM676037 (for the
16 purpose of this paragraph, the “Class Vehicle”), from Dover Volkswagen in Dover, Delaware.
17 Plaintiff has a PhD in Zoology and is an Associate Professor of Fisheries at Delaware State
18 University. He has focused his education and professional career on ecology. It was important to
19 Plaintiff that his more than ninety-mile a day commute had a minimal environment impact, but he
20 still wanted a comfortable ride. Before purchasing the Class Vehicle, Plaintiff saw Volkswagen’s
21 advertisements concerning its alleged overall environmentally-friendly approach to “Clean
22 Diesels,” and the performance characteristics of its vehicles. Plaintiff also conducted research on
23 the United States Department of Energy website before deciding to purchase the Class Vehicle.
24 The emission representations, in combination with the advertised fuel efficiency and
25 performance, as well as the vehicle’s reputation for maintaining a high resale value, induced
26 Plaintiff to purchase the Class Vehicle. Unbeknownst to Plaintiff, at the time of acquisition, the
27 Class Vehicle contained a defeat device designed to bypass emission standards and deceive
28 consumers and regulators. Consequently, the Class Vehicle could not deliver the advertised

1 combination of low emissions, high performance, and fuel economy—and was illegal. Plaintiff
2 has suffered concrete injury as a direct and proximate result of Defendants’ conduct, and would
3 not have purchased the Class Vehicle, had Defendants not concealed the illegal defeat device.
4 Plaintiff is embarrassed and disappointed that his vehicle has polluted and continues to pollute at
5 up to 40 times the legal limit.

6 52. Plaintiff CELIA B. SHELTON (for the purpose of this paragraph, “Plaintiff”) is a
7 citizen of Delaware domiciled in Lewes, Delaware. On or about July 23, 2013, Plaintiff
8 purchased a new 2014 Audi A6 3.0L TDI, VIN WAUHMAFC7EN008537 (for the purpose of
9 this paragraph, the “Class Vehicle”), from Winner Audi in Wilmington, Delaware. Plaintiff
10 earned a PhD in Comparative Biomedical Sciences and a Bachelor of Science in Zoology, and
11 currently serves as Director of Regulatory Affairs for GlaxoSmithKline. Before purchasing the
12 Class Vehicle, Plaintiff researched vehicles with good fuel economy, environmental quality,
13 safety ratings and comfort for her long daily commute to and from work. The emission
14 representations, in combination with the advertised fuel efficiency and performance, as well as
15 the vehicle’s reputation for maintaining a high resale value, induced Plaintiff to purchase the
16 Class Vehicle. Unbeknownst to Plaintiff, at the time of acquisition, the Class Vehicle contained a
17 defeat device designed to bypass emission standards and deceive consumers and regulators.
18 Consequently, the Class Vehicle could not deliver the advertised combination of low emissions,
19 high performance, and fuel economy—and was illegal. Plaintiff has suffered concrete injury as a
20 direct and proximate result of Defendants’ conduct, and would not have purchased the Class
21 Vehicle, had Defendants not concealed the illegal defeat device.

22 **9. District of Columbia Plaintiffs**

23 53. Plaintiff CHINA BOAK TERRELL (for the purpose of this paragraph, “Plaintiff”)
24 is a citizen of the District of Columbia domiciled in Washington, D.C. In or about August 20,
25 2014, Plaintiff purchased a used (Certified Pre-owned) 2010 Volkswagen Jetta Sedan TDI, VIN
26 3VWRL7AJ0AM165119 (for the purpose of this paragraph, the “Class Vehicle”), from Sheehy
27 Volkswagen of Springfield in Springfield, Virginia. Plaintiff is Associate General Counsel and
28 Director of Programs for the Association of Corporate Counsel. Before purchasing the Class

1 Vehicle, Plaintiff conducted online research and reviewed Volkswagen’s website, articles from
2 “Consumer Reports,” and other reviews regarding its fuel economy and benefits for the
3 environment, particularly “Clean Diesel.” The benefits to the environment—especially “Clean
4 Diesel”—in combination with the advertised fuel efficiency, as well as the vehicle’s solid resale
5 value, induced Plaintiff to purchase the Class Vehicle. Unbeknownst to Plaintiff, at the time of
6 acquisition, the Class Vehicle contained a defeat device designed to bypass emission standards
7 and deceive consumers and regulators. Consequently, the Class Vehicle could not deliver the
8 advertised combination of low emissions, high performance, and fuel economy—and was illegal.
9 Plaintiff has suffered concrete injury as a direct and proximate result of Defendants’ conduct, and
10 would not have purchased the Class Vehicle, had Defendants not concealed the illegal defeat
11 device.

12 **10. Florida Plaintiffs**

13 54. Plaintiff FARRAH P. BELL (for the purpose of this paragraph, “Plaintiff”) is a
14 citizen of Florida domiciled in Beverly Hills, Florida. On or about April 11, 2015, Plaintiff
15 leased a new 2015 Audi A3 TDI, VIN WAUAJGFF1F1033935 (for the purpose of this
16 paragraph, the “Class Vehicle”), from Reeves Import Motorcars in Tampa, Florida. Before
17 leasing the Class Vehicle, Plaintiff conducted thorough research on “clean” diesel and the Class
18 Vehicle’s environmentally-friendly attributes. These and other emissions representations, in
19 combination with the advertised fuel efficiency and performance, as well as the vehicle’s
20 reputation for maintaining a high resale value, induced Plaintiff to lease the Class Vehicle.
21 Unbeknownst to Plaintiff, at the time of acquisition, the Class Vehicle contained a defeat device
22 designed to bypass emission standards and deceive consumers and regulators. Consequently, the
23 Class Vehicle could not deliver the advertised combination of low emissions, high performance,
24 and fuel economy—and was illegal. Plaintiff has suffered concrete injury as a direct and
25 proximate result of Defendants’ conduct, and would not have leased the Class Vehicle, had
26 Defendants not concealed the illegal defeat device.

27 55. Plaintiff JERRY LAWHON (for the purpose of this paragraph, “Plaintiff”) is a
28 citizen of Florida domiciled in Winter Haven, Florida. On or about May 26, 2014, Plaintiff

1 purchased a used 2013 Volkswagen Passat TDI, VIN 1VWCN7A35DC091977 (for the purpose
2 of this paragraph, the “Class Vehicle”), from Lakeland Volkswagen in Lakeland, Florida. Before
3 purchasing the Class Vehicle, Plaintiff thoroughly researched his available options. Plaintiff
4 sought to acquire a vehicle that performed well was environmentally-friendly and had efficient
5 fuel economy. At the time of purchase, a Volkswagen representative stressed to Plaintiff the
6 “clean” diesel feature of the Class Vehicle. This and other emissions representations, in
7 combination with the advertised fuel efficiency and performance, as well as the vehicle’s
8 reputation for maintaining a high resale value, induced Plaintiff to purchase the Class Vehicle.
9 Unbeknownst to Plaintiff, at the time of acquisition, the Class Vehicle contained a defeat device
10 designed to bypass emission standards and deceive consumers and regulators. Consequently, the
11 Class Vehicle could not deliver the advertised combination of low emissions, high performance,
12 and fuel economy—and was illegal. Plaintiff has suffered concrete injury as a direct and
13 proximate result of Defendants’ conduct, and would not have purchased the Class Vehicle, had
14 Defendants not concealed the illegal defeat device.

15 **11. Georgia Plaintiffs**

16 56. Plaintiff JASON DANIEL PEJSA (for the purpose of this paragraph, “Plaintiff”) is
17 a citizen of Georgia domiciled in Johns Creek, Georgia. In or about February 2015, Plaintiff
18 purchased a new 2015 Volkswagen Jetta TDI, VIN 3VWLA7AJ9FM294902 (for the purpose of
19 this paragraph, the “Class Vehicle”), from Autonation Volkswagen in Buford, Georgia. Plaintiff
20 is a pilot who is also concerned with environmental preservation and renewable energy sources.
21 Before purchasing the Class Vehicle, Plaintiff exhaustively researched Volkswagen’s “clean”
22 diesel vehicles, viewed Volkswagen’s representations about the emissions and fuel performance,
23 and ultimately purchased his “clean” diesel Jetta because of these misrepresentations. The
24 emission representations, in combination with the advertised fuel efficiency and performance, as
25 well as the vehicle’s reputation for maintaining a high resale value, induced Plaintiff to purchase
26 the Class Vehicle, instead of other, “hybrid” and “eco-friendly” vehicles he was considering.
27 Unbeknownst to Plaintiff, at the time of acquisition, the Class Vehicle contained a defeat device
28 designed to bypass emission standards and deceive consumers and regulators. Consequently, the

1 Class Vehicle could not deliver the advertised combination of low emissions, high performance,
2 and fuel economy—and was illegal. Plaintiff has suffered concrete injury as a direct and
3 proximate result of Defendants’ conduct, and would not have purchased the Class Vehicle, had
4 Defendants not concealed the illegal defeat device. Plaintiff attempted to return his vehicle to the
5 dealership without success and is upset that the vehicle’s resale value has been substantially
6 diminished. Plaintiff is appalled and embarrassed that the Class Vehicle has polluted, and
7 continues to pollute, at levels much greater than the legal limit.

8 57. Plaintiff LAURA LEE RAY (for the purpose of this paragraph, “Plaintiff”) is a
9 citizen of Tennessee domiciled in Sewanee, Tennessee. On or about September 30, 2014,
10 Plaintiff purchased a used 2010 Volkswagen Jetta SportWagen TDI, VIN
11 3VWTL7AJ7AM697831 (for the purpose of this paragraph, the “Class Vehicle”), from Cannon
12 Motors in Lilburn, Georgia. Plaintiff is a self-employed professional with an undergraduate
13 degree in interdisciplinary humanities who is conscious of environmental preservation and
14 renewable energy sources. It was critical to her that whatever vehicle she purchased be
15 environmentally-friendly. Before purchasing the Class Vehicle, Plaintiff exhaustively researched
16 Volkswagen’s “clean” diesel vehicles, viewed Volkswagen’s representations about the emissions
17 and fuel performance, and ultimately purchased her “clean” diesel Jetta as a result of these
18 misrepresentations. The emission representations, in combination with the advertised fuel
19 efficiency and performance, as well as the vehicle’s reputation for maintaining a high resale
20 value, induced Plaintiff to purchase the Class Vehicle, instead of the other “eco-friendly” vehicles
21 she was considering. Unbeknownst to Plaintiff, at the time of acquisition, the Class Vehicle
22 contained a defeat device designed to bypass emission standards and deceive consumers and
23 regulators. Consequently, the Class Vehicle could not deliver the advertised combination of low
24 emissions, high performance, and fuel economy—and was illegal. Plaintiff has suffered concrete
25 injury as a direct and proximate result of Defendants’ conduct, and would not have purchased the
26 Class Vehicle, had Defendants not concealed the illegal defeat device. Plaintiff is appalled and
27 embarrassed that the Class Vehicle has polluted, and continues to pollute, at levels many times
28 greater than the legal limit.

1 58. Plaintiff MICHAEL TERRY (for the purpose of this paragraph, “Plaintiff”) is a
2 citizen of Georgia domiciled in Columbus, Georgia. On or about January 20, 2014, Plaintiff
3 purchased a new 2013 Volkswagen Passat TDI, VIN 1VWBN7A33DC069956 (for the purpose of
4 this paragraph, the “Class Vehicle”), from Carl Gregory Volkswagen in Columbus, Georgia.
5 Before purchasing the Class Vehicle, Plaintiff exhaustively researched Volkswagen’s “clean”
6 diesel vehicles, viewed Volkswagen’s representations about the emissions and fuel performance,
7 and ultimately purchased his “clean” diesel Passat because of these misrepresentations. The
8 emissions representations, in combination with the advertised fuel efficiency and performance, as
9 well as the vehicle’s reputation for maintaining a high resale value, induced Plaintiff to purchase
10 the Class Vehicle. Unbeknownst to Plaintiff, at the time of acquisition, the Class Vehicle
11 contained a defeat device designed to bypass emission standards and deceive consumers and
12 regulators. Consequently, the Class Vehicle could not deliver the advertised combination of low
13 emissions, high performance, and fuel economy—and was illegal. Plaintiff has suffered concrete
14 injury as a direct and proximate result of Defendants’ conduct, and would not have purchased the
15 Class Vehicle, had Defendants not concealed the illegal defeat device.

16 **12. Hawaii Plaintiffs**

17 59. Plaintiff MICHAEL CRUISE (for the purpose of this paragraph, “Plaintiff”) is a
18 citizen of Hawaii domiciled in Honolulu, Hawaii. On or about October 26, 2011, Plaintiff
19 purchased a new 2012 Audi A3 TDI, VIN WAUKJBFM0CA049125 (for the purpose of this
20 paragraph, the “Class Vehicle”) from Audi Hawaii, a division of JN Automotive Group, in
21 Honolulu, Hawaii. Plaintiff is an attorney practicing in Hawaii, and is the former President of the
22 Hawaii Association for Justice. The emission representations, in combination with the advertised
23 fuel efficiency and performance, as well as the vehicle’s reputation for maintaining a high resale
24 value, induced Plaintiff to purchase the Class Vehicle, instead of the hybrid vehicle he was
25 considering. Unbeknownst to Plaintiff, at the time of acquisition, the Class Vehicle contained a
26 defeat device designed to bypass emission standards and deceive consumers and regulators.
27 Consequently, the Class Vehicle could not deliver the advertised combination of low emissions,
28 high performance, and fuel economy—and was illegal. Plaintiff has suffered concrete injury as a

1 direct and proximate result of Defendants’ conduct, and would not have purchased the Class
2 Vehicle, had Defendants not concealed the illegal defeat device. Plaintiff is upset that despite his
3 research and efforts to make an environmentally-friendly vehicle choice, he is left with a vehicle
4 that pollutes at unlawful levels. Making matters worse, as a resident of Hawaii, Plaintiff pays far
5 more for diesel fuel than for conventional gasoline, meaning that with each mile he drives, he is
6 pouring money down the drain, and unwittingly leaving a trail of pollutants behind him.

7 60. Plaintiff DUANE V. INOUE (for the purpose of this paragraph, “Plaintiff”) is a
8 citizen of Hawaii domiciled in Mililani, Hawaii. On or about March 20, 2010, Plaintiff purchased
9 a new 2010 Audi A3 TDI, VIN WAUKJAFM3AA115996 (for the purpose of this paragraph, the
10 “Class Vehicle”), from JN Automotive Group in Honolulu, Hawaii. Plaintiff is a retired
11 procurement analyst for the U.S. Army who is conscious of environmental preservation and
12 renewable energy sources. It was critical to him that whatever vehicle he purchased be
13 environmentally-friendly. Before purchasing the Class Vehicle, Plaintiff exhaustively researched
14 the “clean” diesel vehicles, viewed Audi’s representations about the emissions and fuel
15 performance, and ultimately chose his “clean” diesel Audi A3 based on these misrepresentations.
16 The emission representations, in combination with the advertised fuel efficiency and
17 performance, as well as the vehicle’s reputation for maintaining a high resale value, induced
18 Plaintiff to purchase the Class Vehicle, instead of the others he was considering, including
19 gas/electric hybrid models. Unbeknownst to Plaintiff, at the time of acquisition, the Class
20 Vehicle contained a defeat device designed to bypass emission standards and deceive consumers
21 and regulators. Consequently, the Class Vehicle could not deliver the advertised combination of
22 low emissions, high performance, and fuel economy—and was illegal. Plaintiff has suffered
23 concrete injury as a direct and proximate result of Defendants’ conduct, and would not have
24 purchased the Class Vehicle, had Defendants not concealed the illegal defeat device. Plaintiff is
25 appalled and embarrassed that the Class Vehicle has polluted, and continues to pollute, at levels
26 many times greater than the legal limit.

27 61. Plaintiff SEAN KETTLEY (for the purpose of this paragraph, “Plaintiff”) is a
28 citizen of Hawaii domiciled in Kailua, Hawaii. In or about January, 2012 Plaintiff purchased a

1 new 2012 Volkswagen Golf TDI, VIN WVWDM7AJXCW120900 (for the purpose of this
2 paragraph, the “Class Vehicle”), from Honolulu Volkswagen in Honolulu, Hawaii. Plaintiff had
3 owned a Volkswagen in the past, and he selected the Class Vehicle because he is
4 environmentally-conscious and wished to purchase an environmentally-friendly car. Before
5 purchasing the Class Vehicle, Plaintiff considered environmentally-conscious options such as
6 hybrids. The emission representations, in combination with the advertised fuel efficiency and
7 performance, as well as the vehicle’s reputation for maintaining a high resale value, induced
8 Plaintiff to purchase the Class Vehicle. Unbeknownst to Plaintiff, at the time of acquisition, the
9 Class Vehicle contained a defeat device designed to bypass emission standards and deceive
10 consumers and regulators. Consequently, the Class Vehicle could not deliver the advertised
11 combination of low emissions, high performance, and fuel economy—and was illegal. Plaintiff
12 has suffered concrete injury as a direct and proximate result of Defendants’ conduct, and would
13 not have purchased the Class Vehicle, had Defendants not concealed the illegal defeat
14 device. Plaintiff is frustrated that he paid a premium to purchase a car that he believed was better
15 for the environment, when it ended up being harmful to the environment.

16 **13. Idaho Plaintiffs**

17 62. Plaintiff JOHN C. DUFURRENA (for the purpose of this paragraph, “Plaintiff”) is
18 a citizen of Idaho domiciled in Star, Idaho. On or about December 6, 2012, Plaintiff purchased a
19 new 2013 Volkswagen Jetta TDI, VIN 3VW3L7AJ0DM234028 (for the purpose of this
20 paragraph, the “Class Vehicle”) from Boise Volkswagen in Boise, Idaho. Plaintiff is a retired
21 veteran of the United States Armed Forces. Before purchasing the Class Vehicle, Plaintiff
22 researched the “clean” diesel vehicles on internet websites. The emission representations, in
23 combination with the advertised fuel efficiency and performance, as well as the vehicle’s
24 reputation for maintaining a high resale value, induced Plaintiff to purchase the Class Vehicle,
25 instead of the other, “hybrid” vehicle he was considering. Unbeknownst to Plaintiff, at the time
26 of acquisition, the Class Vehicle contained a defeat device designed to bypass emission standards
27 and deceive consumers and regulators. Consequently, the Class Vehicle could not deliver the
28 advertised combination of low emissions, high performance, and fuel economy—and was illegal.

1 Plaintiff has suffered concrete injury as a direct and proximate result of Defendants' conduct, and
2 would not have purchased the Class Vehicle, had Defendants not concealed the illegal defeat
3 device.

4 **14. Illinois Plaintiffs**

5 63. Plaintiff SCOTT ANDERSON (for the purpose of this paragraph, "Plaintiff") is a
6 citizen of Illinois domiciled in Evanston, Illinois. On or about September 2, 2013, Plaintiff
7 purchased a used 2012 Volkswagen Passat TDI, VIN 1VWCN7A37CC055111 (for the purpose
8 of this paragraph, the "Class Vehicle"), from The Autobarn Limited in Evanston,
9 Illinois. Plaintiff has been employed as Publisher/Director for Law Bulletin Publishing Company
10 for the last 18 years. He travels a great deal for his job, so gas mileage and cost of ownership
11 were primary considerations in his purchase. As a father of five and sole earner in his family, the
12 cost of gasoline and transportation due to the travel demands of his job were his sole motivators.
13 Before purchasing the Class Vehicle, Plaintiff often saw advertisements in magazines and on
14 television touting the mileage drivers could expect from Volkswagen TDI vehicles. The emission
15 representations, in combination with the advertised fuel efficiency and performance, as well as
16 the vehicle's reputation for maintaining a high resale value, induced Plaintiff to purchase the
17 Class Vehicle. Unbeknownst to Plaintiff, at the time of acquisition, the Class Vehicle contained a
18 defeat device designed to bypass emission standards and deceive consumers and
19 regulators. Consequently, the Class Vehicle could not deliver the advertised combination of low
20 emissions, high performance, and fuel economy—and was illegal. Plaintiff has suffered concrete
21 injury as a direct and proximate result of Defendants' conduct, and would not have purchased the
22 Class Vehicle, had Defendants not concealed the illegal defeat device.

23 64. Plaintiff SCOTT BAHR (for the purpose of this paragraph, "Plaintiff") is a citizen
24 of Illinois domiciled in Urbana, Illinois. On or about October 8, 2014, Plaintiff purchased a new
25 2015 Volkswagen Golf TDI, VIN 3VW2A7AU8FM028986 (for the purpose of this paragraph,
26 the "Class Vehicle"), from D'Arcy Volkswagen (now Hawk Volkswagen) in Joliet,
27 Illinois. Plaintiff is a Direct Digital Control Programmer for the University of Illinois in
28 Champaign, Illinois. He and his wife built and live in a Passive House (Eco, Energy Efficient)

1 and wanted a car to match their desire to live in an environmentally conscious manner. Before
2 purchasing the Class Vehicle, Plaintiff read on Volkswagen's website that the Golf TDI was a
3 "clean" diesel and that it got good gas mileage. The Class Vehicle also had great performance
4 when he test-drove it. The emission representations, in combination with the advertised fuel
5 efficiency and performance, as well as the vehicle's reputation for maintaining a high resale
6 value, induced Plaintiff to purchase the Class Vehicle. Unbeknownst to Plaintiff, at the time of
7 acquisition, the Class Vehicle contained a defeat device designed to bypass emission standards
8 and deceive consumers and regulators. Consequently, the Class Vehicle could not deliver the
9 advertised combination of low emissions, high performance, and fuel economy—and was
10 illegal. Plaintiff has suffered concrete injury as a direct and proximate result of Defendants'
11 conduct, and would not have purchased the Class Vehicle, had Defendants not concealed the
12 illegal defeat device.

13 65. Plaintiff SAMUEL CLARK (for the purpose of this paragraph, "Plaintiff") is a
14 citizen of Illinois domiciled in Chicago, Illinois. On or about July 29, 2015, Plaintiff purchased a
15 used 2014 Volkswagen Touareg TDI, VIN WVGEP9BP6ED010043 (for the purpose of this
16 paragraph, the "Class Vehicle"), from Pugi Volkswagen in Downers Grove, Illinois. Plaintiff is a
17 retired Chicago Fire Department Paramedic Chief. Before purchasing the Class Vehicle, Plaintiff
18 conducted internet research and viewed printed and television advertisements for so-called
19 Volkswagen "clean" diesel Vehicles. The emission representations, in combination with the
20 advertised fuel efficiency and performance, as well as the vehicle's reputation for maintaining a
21 high resale value, induced Plaintiff to purchase the Class Vehicle. Unbeknownst to Plaintiff, at
22 the time of acquisition, the Class Vehicle contained a defeat device designed to bypass emission
23 standards and deceive consumers and regulators. Consequently, the Class Vehicle could not
24 deliver the advertised combination of low emissions, high performance, and fuel economy—and
25 was illegal. Plaintiff has suffered concrete injury as a direct and proximate result of Defendants'
26 conduct, and would not have purchased the Class Vehicle, had Defendants not concealed the
27 illegal defeat device.

28

1 66. Plaintiff KARL FRY (for the purpose of this paragraph, “Plaintiff”) is a citizen of
2 Illinois domiciled in Naperville, Illinois. On or about April 24, 2013, Plaintiff purchased a used
3 2012 Volkswagen Jetta TDI, VIN 3VWLL7AJ3CM059529 (for the purpose of this paragraph, the
4 “Class Vehicle”), from Fox Valley Volkswagen in West Chicago, Illinois. Plaintiff is a military
5 veteran with a bachelor’s degree in chemistry from Rhodes College, a degree in civil engineering
6 from University of Illinois Urbana, and a master’s degree in engineering management from
7 Northwestern University. Before purchasing the Class Vehicle, Plaintiff reviewed advertising
8 pertaining to fuel mileage and describing the Jetta TDI as a “clean burning” diesel with
9 unparalleled fuel mileage and durability. The Volkswagen dealer claimed that Volkswagen
10 diesels commonly last multiple hundreds of thousands of miles. The emission representations, in
11 combination with the advertised fuel efficiency and performance, as well as the vehicle’s
12 reputation for maintaining a high resale value, induced Plaintiff to purchase the Class
13 Vehicle. Unbeknownst to Plaintiff, at the time of acquisition, the Class Vehicle contained a
14 defeat device designed to bypass emission standards and deceive consumers and
15 regulators. Consequently, the Class Vehicle could not deliver the advertised combination of low
16 emissions, high performance, and fuel economy—and was illegal. Plaintiff has suffered concrete
17 injury as a direct and proximate result of Defendants’ conduct, and would not have purchased the
18 Class Vehicle, had Defendants not concealed the illegal defeat device. Plaintiff drives 30,000
19 miles per year and planned to drive the Class Vehicle until his anticipated retirement in 2028.

20 **15. Indiana Plaintiffs**

21 67. Plaintiff CESAR OLMOS (for the purpose of this paragraph, “Plaintiff”) is a
22 citizen of Indiana domiciled in Crown Point, Indiana. On or about September 15, 2013, Plaintiff
23 purchased a new 2014 Volkswagen Passat TDI, VIN 1VWBN7A36EC014449 (for the purpose of
24 this paragraph, the “Class Vehicle”), from Team Volkswagen in Merrillville, Indiana. Plaintiff is
25 an employee of the United States Environmental Protection Agency who sought to purchase a car
26 that promoted “Clean Diesel” technology and was environmentally-friendly. Before purchasing
27 the Class Vehicle, Plaintiff conducted thorough research on diesel vehicles, including
28 Volkswagen’s representations about emissions. The emission representations, in combination

1 with the advertised fuel efficiency and performance, as well as the vehicle’s reputation for
2 maintaining a high resale value, induced Plaintiff to purchase the Class Vehicle. Unbeknownst to
3 Plaintiff, at the time of acquisition, the Class Vehicle contained a defeat device designed to
4 bypass emission standards and deceive consumers and regulators. Consequently, the Class
5 Vehicle could not deliver the advertised combination of low emissions, high performance, and
6 fuel economy—and was illegal. Plaintiff has suffered concrete injury as a direct and proximate
7 result of Defendants’ conduct, and would not have purchased the Class Vehicle, had Defendants
8 not concealed the illegal defeat device.

9 68. Plaintiff JAMES PRIEST (for the purpose of this paragraph, “Plaintiff”) is a
10 citizen of Kentucky domiciled in Louisville, Kentucky. On or about March 14, 2014, Plaintiff
11 purchased a 2014 Volkswagen Jetta TDI, VIN 3VWLL7AJ4EM384953 (for the purpose of this
12 paragraph, the “Class Vehicle”), from Volkswagen of Clarksville in Clarksville, Indiana. Before
13 purchasing the Class Vehicle, Plaintiff repeatedly saw the “clean” diesel ads, which advised that
14 the Class Vehicle had lower emissions and was environmentally-friendly. In addition both a sale
15 representative and a store manager told Plaintiff that the Class Vehicle had lower emissions than
16 other comparable cars. These and other emissions representations, in combination with the
17 advertised fuel efficiency and performance, as well as the vehicle’s reputation for maintaining a
18 high resale value, induced Plaintiff to purchase the Class Vehicle. Unbeknownst to Plaintiff, at
19 the time of acquisition, the Class Vehicle contained a defeat device designed to bypass emission
20 standards and deceive consumers and regulators. Consequently, the Class Vehicle could not
21 deliver the advertised combination of low emissions, high performance, and fuel economy—and
22 was illegal. Plaintiff has suffered concrete injury as a direct and proximate result of Defendants’
23 conduct, and would not have purchased the Class Vehicle, had Defendants not concealed the
24 illegal defeat device.

25 **16. Iowa Plaintiffs**

26 69. Plaintiff BENJAMIN A. FOOTE (for the purpose of this paragraph, “Plaintiff”) is
27 a citizen of Iowa domiciled in Des Moines, Iowa. On July 19, 2014, Plaintiff leased a new 2014
28 Volkswagen Jetta SportWagen TDI, VIN 3VWPL7AJ9EM618179 (for the purpose of this

1 paragraph, the “Class Vehicle”) from Volkswagen of Cedar Rapids in Hiawatha, Iowa. Plaintiff
2 is an IT Quality Control Analyst who leased the Class Vehicle. It was important to him to lease a
3 car that was environmentally-friendly and had good fuel economy. Before leasing the Class
4 Vehicle, Plaintiff saw billboards and magazines advertising “clean” diesel TDI by Volkswagen.
5 Additionally, the dealer repeatedly told Plaintiff: “You can’t go wrong with ‘Clean Diesel’: Less
6 emission and more miles per gallon.” The emission representations, in combination with the
7 advertised fuel efficiency and performance, induced Plaintiff to lease the Class Vehicle, instead of
8 the other, “hybrid” vehicles he also considered. Unbeknownst to Plaintiff, at the time of
9 acquisition, the Class Vehicle contained a defeat device designed to bypass emission standards
10 and deceive consumers and regulators. Consequently, the Class Vehicle could not deliver the
11 advertised combination of low emissions and fuel economy. Plaintiff has suffered concrete injury
12 as a direct and proximate result of Defendants’ conduct, and would not have leased the Class
13 Vehicle had Defendants not concealed the illegal defeat device.

14 70. Plaintiff AARON PATRICK GARDNER (for the purpose of this paragraph,
15 “Plaintiff”) is a citizen of Iowa domiciled in Boone, Iowa. In or about February 2013, Plaintiff
16 purchased a new 2013 Volkswagen Passat TDI, VIN 1VWBN7A30DC090800 (for the purpose of
17 this paragraph, the “Class Vehicle”) from Performance Volkswagen in Omaha, Nebraska.
18 Plaintiff is a military veteran who works as an engineer for Union Pacific Railroad. He purchased
19 the Class Vehicle because he wanted an efficient car that could take him anywhere—to the
20 mountains and across the varying terrains of the American West—and that was healthy for the
21 environment. Before purchasing the Class Vehicle, Plaintiff exhaustively researched the miles-
22 per-gallon, emissions, and performance of the “clean” diesel vehicles. He viewed Volkswagen’s
23 representations about the emissions and fuel performance. The emission representations, in
24 combination with the advertised fuel efficiency and performance, as well as the vehicle’s
25 reputation for maintaining a high resale value, induced Plaintiff to purchase the Class Vehicle,
26 instead of the other gas-powered vehicles that he was considering. Unbeknownst to Plaintiff, at
27 the time of acquisition, the Class Vehicle contained a defeat device designed to bypass emission
28 standards and deceive consumers and regulators. Consequently, the Class Vehicle could not

1 deliver the advertised combination of low emissions, high performance, and fuel economy—and
2 was illegal. Plaintiff has suffered concrete injury as a direct and proximate result of Defendants’
3 conduct, and would not have purchased the Class Vehicle, had Defendants not concealed the
4 illegal defeat device. Plaintiff is appalled and embarrassed that the Class Vehicle has polluted,
5 and continues to pollute, up to forty times the legal limits.

6 71. Plaintiff BRITNEY LYNNE SCHNATHORST (for the purpose of this paragraph,
7 “Plaintiff”) is a citizen of Iowa domiciled in Newton, Iowa. On July 23, 2014, Plaintiff bought a
8 new 2014 Volkswagen Passat TDI, VIN 1VWBN7A31EC116211 (for the purpose of this
9 paragraph, the “Class Vehicle”) from Lithia Volkswagen of Des Moines in Johnston, Iowa.
10 Plaintiff also bought an extended warranty. Plaintiff is a graduate of Drake University Law
11 School and is a practicing attorney. It was important to her to buy a car that was
12 environmentally-friendly and had good fuel economy. Before buying the Class Vehicle, Plaintiff
13 and her husband researched the Volkswagen website and other car industry websites regarding
14 how Volkswagen could provide “Clean Diesel” and meet emissions standards. Additionally, the
15 dealer touted “clean” diesel and the environmentally-friendly aspects of the car. The dealer said
16 that there would be no smelling or black smoke, no need to use additives, and that the Class
17 Vehicle would exceed the stated miles per gallon. The emission representations, in combination
18 with the advertised fuel efficiency and performance, induced Plaintiff to purchase the Class
19 Vehicle, instead of the other, “hybrid” vehicles she also considered. Unbeknownst to Plaintiff, at
20 the time of acquisition, the Class Vehicle contained a defeat device designed to bypass emission
21 standards and deceive consumers and regulators. Consequently, the Class Vehicle could not
22 deliver the advertised combination of low emissions and fuel economy. Plaintiff has suffered
23 concrete injury as a direct and proximate result of Defendants’ conduct, and would not have
24 purchased the Class Vehicle and the extended warranty, had Defendants not concealed the illegal
25 defeat device.

26 72. Plaintiffs PAUL C. SOUCY and TRACY LUCHT (for the purpose of this
27 paragraph, “Plaintiffs”) are citizens of Iowa domiciled in Des Moines, Iowa. On September 26,
28 2014, Plaintiffs purchased a new 2014 Volkswagen Passat TDI SL, VIN 1VWCN7A31EC110106

1 (for the purpose of this paragraph, the “Class Vehicle”) from Lithia Volkswagen of Des Moines
2 in Johnston, Iowa. Plaintiffs also bought an extended warranty to cover 84 months or 100,000
3 miles. Plaintiff Soucy, an editor, and his wife, Plaintiff Lucht, an Assistant Professor at Iowa
4 State University, believe protecting the environment is very important. Plaintiffs wanted a car for
5 Plaintiff Lucht to drive to her work and looked for a car that was fuel efficient and
6 environmentally responsible for the commute. Before buying the Class Vehicle, Plaintiffs saw
7 Volkswagen television commercials advertising “Clean Diesel” vehicles and Plaintiff Lucht did
8 extensive research on the Internet. Among other things, Plaintiff Lucht relied on car reviews and
9 articles from sources such as Edmunds.com, Car and Driver, Green Car Reports, Kelley Blue
10 Book, USA Today, and Cars.com. The dealership represented that the Class Vehicle’s mileage
11 exceeded what had been certified by the Environmental Protection Agency. The high fuel
12 efficiency with low environmental impact, handling/performance on the road, and strong resale
13 value induced Plaintiffs to purchase the Class Vehicle, instead of the other “hybrid” and diesel
14 vehicles Plaintiffs considered. Unbeknownst to Plaintiffs, at the time of acquisition, the Class
15 Vehicle contained a defeat device designed to bypass emission standards and deceive consumers
16 and regulators. Consequently, the Class Vehicle could not deliver the advertised combination of
17 low emissions, high performance, and fuel economy—and was illegal. Plaintiffs have suffered
18 concrete injury as a direct and proximate result of Defendants’ conduct, and would not have
19 purchased the Class Vehicle, had Defendants not concealed the illegal defeat device. Plaintiffs
20 believe that Volkswagen’s actions may dissuade consumers from buying “Clean Diesel”
21 technology in the future, potentially stifling innovation that could help the environment.

22 73. Plaintiff HERBERT JOHN MANTERNACH (for the purpose of this paragraph,
23 “Plaintiff”) is a citizen of Iowa domiciled in Cascade, Iowa. On October 4, 2013, Plaintiff
24 purchased a certified pre-owned 2012 Volkswagen Passat TDI, VIN 1VWBN7A30CC102863
25 (for the purpose of this paragraph, the “Class Vehicle”) from Lujack’s Northpark Auto Plaza (a
26 certified Volkswagen dealer) in Davenport, Iowa. Plaintiff also bought an extended warranty to
27 cover 100,000 miles on the transmission/engine. Plaintiff is retired and needed a fuel efficient
28 vehicle that saved him money on fuel. Before purchasing the Class Vehicle, Plaintiff saw

1 Volkswagen television commercials and magazines advertising the fuel economy and low
2 emissions of its “clean” diesel vehicles. The television commercials convinced Plaintiff that the
3 Passat TCI would get him more miles per gallon of diesel fuel without harming the environment.
4 Additionally, the dealer touted the Class Vehicle’s fuel economy and represented that the
5 emissions were “clean.” The emission representations, in combination with the advertised fuel
6 efficiency and performance, induced Plaintiff to purchase the Class Vehicle. Unbeknownst to
7 Plaintiff, at the time of acquisition, the Class Vehicle contained a defeat device designed to
8 bypass emission standards and deceive consumers and regulators. Consequently, the Class
9 Vehicle could not deliver the advertised combination of low emissions, high performance, and
10 fuel economy—and was illegal. Plaintiff has suffered concrete injury as a direct and proximate
11 result of Defendants’ conduct, and would not have purchased the Class Vehicle, had Defendants
12 not concealed the illegal defeat device

13 **17. Kansas Plaintiffs**

14 74. Plaintiff AARON JOY (for the purpose of this paragraph, “Plaintiff”) is a citizen
15 of Kansas domiciled in Fredonia, Kansas. In November 2012, Plaintiff purchased a new 2013
16 Volkswagen Jetta TDI, VIN 3VWLL7AJ8DM210267 (for the purpose of this paragraph, the
17 “Class Vehicle”), from Crown Volkswagen in Lawrence, Kansas. Plaintiff is a Research
18 Engineer with the Naval Air Warfare Center and is concerned with protecting the environment.
19 Before purchasing the Class Vehicle, Plaintiff conducted online research, including reviewing
20 Volkswagen’s website and reviews on public forums from other Jetta TDI owners who praised
21 the car’s drivability and economy. Additionally, the dealership spoke at length with Plaintiff
22 about “Clean Diesel,” low emissions and approval by the Environmental Protection Agency with
23 regards to the Class Vehicle and touted the superiority of Volkswagen’s diesel technology. The
24 benefits to the environment—especially “Clean Diesel”—in combination with the advertised fuel
25 efficiency and performance, induced Plaintiff to purchase the Class Vehicle instead of other
26 “hybrid” vehicles. Plaintiff also bought a three-year, bumper-to-bumper extended warranty.
27 Unbeknownst to Plaintiff, at the time of acquisition, the Class Vehicle contained a defeat device
28 designed to bypass emission standards and deceive consumers and regulators. Consequently, the

1 Class Vehicle could not deliver the advertised combination of low emissions, high performance,
2 and fuel economy—and was illegal. Plaintiff has suffered concrete injury as a direct and
3 proximate result of Defendants’ conduct, and would not have purchased the Class Vehicle and the
4 extended warranty had Defendants not concealed the illegal defeat device. Plaintiff has tried to
5 limit his driving of the Class Vehicle.

6 75. Plaintiff CARLA BERG (for the purpose of this paragraph, “Plaintiff”) is a citizen
7 of Kansas domiciled in Lawrence, Kansas. On or about September 23, 2013, Plaintiff purchased
8 a new 2014 Volkswagen Passat TDI, VIN 1VWCN7A37EC020037 (for the purpose of this
9 paragraph, the “Class Vehicle”), from Crown Volkswagen in Lawrence, Kansas. Plaintiff is a
10 Behavior Coach with the Shawnee Mission School District and is concerned with protecting the
11 environment. Plaintiff needed a new car that would provide good gas mileage with minimal
12 environmental damage for a daily commute of 100 miles or more. Before purchasing the Class
13 Vehicle, Plaintiff conducted online research, including reviewing Volkswagen’s website and
14 brochures, Edmunds, Kelley Blue Book, and Consumer Reports. She also reviewed the Monroney
15 Sticker. Additionally, the dealership spoke at length with Plaintiff about “Clean Diesel,” the fuel
16 economy and environmental benefits with regards to the Class Vehicle during Plaintiff’s visits
17 and test-drives. The benefits to the environment—especially “Clean Diesel”—in combination
18 with the advertised fuel efficiency and performance, induced Plaintiff to purchase the Class
19 Vehicle, instead of other “hybrid” vehicles. Unbeknownst to Plaintiff, at the time of acquisition,
20 the Class Vehicle contained a defeat device designed to bypass emission standards and deceive
21 consumers and regulators. Consequently, the Class Vehicle could not deliver the advertised
22 combination of low emissions, high performance, and fuel economy—and was illegal. Plaintiff
23 has suffered concrete injury as a direct and proximate result of Defendants’ conduct, and would
24 not have purchased the Class Vehicle had Defendants not concealed the illegal defeat device.

25 76. Plaintiff ASHLEY RICE (for the purpose of this paragraph, “Plaintiff”) is a citizen
26 of Kansas domiciled in Winona, Kansas. In June 2013, Plaintiff leased a new 2013 Volkswagen
27 Jetta TDI, VIN 3VW3L7AJ4DM444681 (for the purpose of this paragraph, the “Class Vehicle”),
28 from Mike Steven Volkswagen in Wichita, Kansas. Plaintiff is concerned with protecting the

1 environment. Before leasing the Class Vehicle, Plaintiff conducted online research, including
2 reviewing car reviews at Cars.com. Additionally, the dealership spoke at length with Plaintiff
3 about “clean” diesel and the Class Vehicle’s fuel economy during Plaintiff’s visit and test-drive.
4 The benefits to the environment—especially “Clean Diesel”—in combination with the advertised
5 fuel efficiency and performance, induced Plaintiff to purchase the Class Vehicle, instead of other
6 “hybrid” vehicles. Unbeknownst to Plaintiff, at the time of leasing, the Class Vehicle contained a
7 defeat device designed to bypass emission standards and deceive consumers and regulators.
8 Consequently, the Class Vehicle could not deliver the advertised combination of low emissions,
9 high performance, and fuel economy—and was illegal. Plaintiff has suffered concrete injury as a
10 direct and proximate result of Defendants’ conduct, and would not have leased the Class Vehicle
11 had Defendants not concealed the illegal defeat device.

12 **18. Kentucky Plaintiffs**

13 77. Plaintiff ANDREW J. KANNAPPEL (for the purpose of this paragraph, “Plaintiff”)
14 is a citizen of Kentucky domiciled in Louisville, Kentucky. In or about July 2014, Plaintiff
15 purchased a new 2014 Volkswagen Jetta TDI, VIN 3VWLL7AJ7EM293224 (for the purpose of
16 this paragraph, the “Class Vehicle”), from Bachman Volkswagen in Louisville, Kentucky.
17 Plaintiff is a college-educated client manager at a payments systems business. Before purchasing
18 the Class Vehicle, Plaintiff watched television commercials about the car, visited the VW’s
19 website, and reviewed ads that subsequently targeting him on the internet. The emission
20 representations, in combination with the advertised fuel efficiency and performance, as well as
21 the vehicle’s reputation for maintaining a high resale value, induced Plaintiff to purchase the
22 Class Vehicle. Unbeknownst to Plaintiff, at the time of acquisition, the Class Vehicle contained a
23 defeat device designed to bypass emission standards and deceive consumers and regulators.
24 Consequently, the Class Vehicle could not deliver the advertised combination of low emissions,
25 high performance, and fuel economy—and was illegal. Plaintiff has suffered concrete injury as a
26 direct and proximate result of Defendants’ conduct, and would not have purchased the Class
27 Vehicle, had Defendants not concealed the illegal defeat device.
28

1 78. Plaintiff ROBERT WAGNER (for the purpose of this paragraph, “Plaintiff”) is a
2 citizen of Kentucky domiciled in Louisville, Kentucky. On or about May 2015, Plaintiff
3 purchased a new 2015 Volkswagen Golf SportWagen TDI, VIN 3VWCA7AU1FM511157 (for
4 the purpose of this paragraph, the “Class Vehicle”), from Bachman Volkswagen in Louisville,
5 Kentucky. Plaintiff is an attorney in Louisville. The emission representations, in combination
6 with the advertised fuel efficiency and performance, as well as the vehicle’s reputation for
7 maintaining a high resale value, induced Plaintiff to purchase the Class Vehicle. Unbeknownst to
8 Plaintiff, at the time of acquisition, the Class Vehicle contained a defeat device designed to
9 bypass emission standards and deceive consumers and regulators. Consequently, the Class
10 Vehicle could not deliver the advertised combination of low emissions, high performance, and
11 fuel economy—and was illegal. Plaintiff has suffered concrete injury as a direct and proximate
12 result of Defendants’ conduct, and would not have purchased the Class Vehicle, had Defendants
13 not concealed the illegal defeat device.

14 **19. Louisiana Plaintiffs**

15 79. Plaintiff THOMAS A. MALONE (for the purpose of this paragraph, “Plaintiff”) is
16 a citizen of Mississippi domiciled in Diamondhead, Mississippi. On March 12, 2011, Plaintiff
17 purchased a new 2011 Volkswagen Jetta SportWagen TDI, VIN 3VWPL7AJ3BM678535 (for the
18 purpose of this paragraph, the “Class Vehicle”), from Northshore Volkswagen in Mandeville,
19 Louisiana. Plaintiff is retired and an Air Force Veteran who rose to the rank of Lieutenant
20 Colonel before being honorably discharged in 1986. He is concerned with protecting the
21 environment. Before purchasing the Class Vehicle, Plaintiff saw Volkswagen television
22 commercials and other advertisements on the Internet, as well as in the newspaper, regarding
23 Volkswagen’s “Clean Diesel” vehicles. Additionally, the statements made at the dealership
24 caused Plaintiff to believe he was buying an environmentally-friendly car with the best gas
25 mileage available. Plaintiff was specifically told that the Volkswagen diesel technology was clean
26 and met environmental standards that other automakers could not. The benefits to the
27 environment—especially “Clean Diesel”—in combination with the advertised fuel efficiency and
28 performance, induced Plaintiff to purchase the Class Vehicle. Unbeknownst to Plaintiff, at the

1 time of purchase, the Class Vehicle contained a defeat device designed to bypass emission
2 standards and deceive consumers and regulators. Consequently, the Class Vehicle could not
3 deliver the advertised combination of low emissions, high performance, and fuel economy—and
4 was illegal. Plaintiff has suffered concrete injury as a direct and proximate result of Defendants’
5 conduct, and would not have purchased the Class Vehicle had Defendants not concealed the
6 illegal defeat device.

7 80. Plaintiff FLOYD BECK WARREN (for the purpose of this paragraph, “Plaintiff”)
8 is a citizen of Mississippi domiciled in Brookhaven, Mississippi. On August 21, 2015, Plaintiff
9 purchased a new 2015 Volkswagen Passat TDI, VIN 1VWBV7A34FC086140 (for the purpose of
10 this paragraph, the “Class Vehicle”), from Southpoint Volkswagen in Baton Rouge, Louisiana.
11 Plaintiff is a Senior Manager in Revenue Assurance and bought the Class Vehicle based on,
12 among other things, the fuel economy, dependability, and performance. Plaintiff also bought an
13 extended warranty. The benefits to the environment—especially the lower emissions—in
14 combination with the advertised fuel efficiency and performance, induced Plaintiff to purchase
15 the Class Vehicle. Unbeknownst to Plaintiff, at the time of acquisition, the Class Vehicle
16 contained a defeat device designed to bypass emission standards and deceive consumers and
17 regulators. Consequently, the Class Vehicle could not deliver the advertised combination of low
18 emissions, high performance, and fuel economy—and was illegal. Plaintiff has suffered concrete
19 injury as a direct and proximate result of Defendants’ conduct, and would not have purchased the
20 Class Vehicle had Defendants not concealed the illegal defeat device.

21 81. Plaintiff ERIC DAVIDSON WHITE (for the purpose of this paragraph,
22 “Plaintiff”) is a citizen of Louisiana domiciled in Baton Rouge, Louisiana. On or about
23 December 3, 2013, Plaintiff purchased a new 2014 Volkswagen Golf TDI, VIN
24 WVWNM7AJ5EW009193 (for the purpose of this paragraph, the “Class Vehicle”), from
25 Southpoint Volkswagen in Baton Rouge, Louisiana. Plaintiff is an Environmental Engineer for
26 The Water Institute of the Gulf and wanted a car that had minimal environmental footprints. He
27 was specifically in the market for a fuel efficient and fun to drive hatchback. Plaintiff was initially
28 concerned about the higher particulate emissions from diesels, but the self-cleaning/incinerating

1 particulate filter technology in the Golf TDI allayed Plaintiff’s concerns. Before purchasing the
2 Class Vehicle, Plaintiff conducted extensive online research, mainly with regards to the Golf
3 TDI’s fuel efficiency and environmental impact. Additionally, the dealership touted “Clean
4 Diesel,” excellent fuel economy and the fun driving aspects of the Golf TDI during Plaintiff’s
5 visit and test-drive. The benefits to the environment—especially “Clean Diesel”—in combination
6 with the advertised fuel efficiency and performance, induced Plaintiff to purchase the Class
7 Vehicle instead of other “hybrid” vehicles. Unbeknownst to Plaintiff, at the time of acquisition,
8 the Class Vehicle contained a defeat device designed to bypass emission standards and deceive
9 consumers and regulators. Consequently, the Class Vehicle could not deliver the advertised
10 combination of low emissions, high performance, and fuel economy—and was illegal. Plaintiff
11 has suffered concrete injury as a direct and proximate result of Defendants’ conduct, and would
12 not have purchased the Class Vehicle had Defendants not concealed the illegal defeat device.

13 **20. Maine Plaintiffs**

14 82. Plaintiff THOMAS J. BUCHBERGER (for the purpose of this paragraph,
15 “Plaintiff”) is a citizen of Maine domiciled in Jonesboro, Maine. On or about October 9, 2012,
16 Plaintiff purchased a new 2012 Volkswagen Jetta SportWagen TDI, VIN
17 3VWPL7AJ9CM711734 (for the purpose of this paragraph, the “Class Vehicle”), from Darlings
18 Volkswagen in Bangor, Maine. Plaintiff is retired and very environmentally conscious. He
19 recycles and composts as much as possible and bought the Class Vehicle because he wanted a car
20 with good mileage and that met the emissions standards set by the Environmental Protection
21 Agency. Before purchasing the Class Vehicle, Plaintiff reviewed Volkswagen’s print ads touting
22 its “Clean Diesel” vehicles, and reviewed the websites of Consumer Reports and Edmunds. The
23 benefits to the environment—especially “Clean Diesel”—in combination with the advertised fuel
24 efficiency and performance, induced Plaintiff to purchase the Class Vehicle instead of other
25 “hybrid” vehicles. Unbeknownst to Plaintiff, at the time of acquisition, the Class Vehicle
26 contained a defeat device designed to bypass emission standards and deceive consumers and
27 regulators. Consequently, the Class Vehicle could not deliver the advertised combination of low
28 emissions, high performance, and fuel economy—and was illegal. Plaintiff has suffered concrete

1 injury as a direct and proximate result of Defendants' conduct, and would not have purchased the
2 Class Vehicle had Defendants not concealed the illegal defeat device.

3 83. Plaintiffs RUSSELL E. AND ELIZABETH F. EVANS (for the purpose of this
4 paragraph, "Plaintiffs") are citizens of Maine domiciled in Mount Vernon, Maine. On or about
5 February 15, 2014, Plaintiffs purchased a new 2014 Volkswagen Jetta TDI, VIN
6 3VWLL7AJ1EM381136 (for the purpose of this paragraph, the "Class Vehicle") from O'Connor
7 Volkswagen in Augusta, Maine. Plaintiffs also bought an extended warranty. Before purchasing
8 the Class Vehicle, Plaintiffs read a review in Popular Mechanics and a brochure from the
9 dealership. The dealership touted the Class Vehicle's fuel economy during Plaintiffs' visit and
10 test-drive. The benefits to the environment—especially "Clean Diesel"—in combination with the
11 advertised fuel efficiency and performance, induced Plaintiffs to purchase the Class Vehicle.
12 Unbeknownst to Plaintiffs, at the time of acquisition, the Class Vehicle contained a defeat device
13 designed to bypass emission standards and deceive consumers and regulators. Consequently, the
14 Class Vehicle could not deliver the advertised combination of low emissions, high performance,
15 and fuel economy—and was illegal. Plaintiffs have suffered concrete injury as a direct and
16 proximate result of Defendants' conduct, and would not have purchased the Class Vehicle and
17 extended warranty if they had known about the illegal defeat device.

18 84. Plaintiff CARMEL A. RUBIN (for the purpose of this paragraph, "Plaintiff") is a
19 citizen of Maine domiciled in Bowdoinham, Maine. On or about November 21, 2011, Plaintiff
20 purchased a new 2012 Volkswagen Jetta SportWagen TDI 2.0, VIN 3VWML7AJ1CM633369
21 (for the purpose of this paragraph, the "Class Vehicle"), from O'Connor Volkswagen in Augusta,
22 Maine. Plaintiff is the Court Communications Manager for the State of Maine Judicial Branch
23 and is citizen concerned with protecting the environment. Before purchasing the Class Vehicle,
24 Plaintiff conducted online research and saw Volkswagen television commercials touting "Clean
25 Diesel," low emissions, sporty performance, and fuel savings. Additionally, the dealership touted
26 Volkswagen's "Clean Diesel" technology, which did not require consumers to add urea to the
27 fuel, and the performance of the car. The benefits to the environment—especially "Clean
28 Diesel"—in combination with the advertised fuel efficiency and performance, induced Plaintiff to

1 purchase the Class Vehicle instead of other “hybrid” vehicles. Unbeknownst to Plaintiff, at the
2 time of acquisition, the Class Vehicle contained a defeat device designed to bypass emission
3 standards and deceive consumers and regulators. Consequently, the Class Vehicle could not
4 deliver the advertised combination of low emissions, high performance, and fuel economy—and
5 was illegal. Plaintiff has suffered concrete injury as a direct and proximate result of Defendants’
6 conduct, and would not have purchased the Class Vehicle had Defendants not concealed the
7 illegal defeat device. Plaintiff believes Defendants should be held accountable for their actions.

8 85. Plaintiff DANIEL SULLIVAN (for the purpose of this paragraph, “Plaintiff”) is a
9 citizen of Maine domiciled in Cooper, Maine. In or about February 2014, Plaintiff purchased a
10 new 2014 Volkswagen Passat TDI, VIN 1VWBN7A33EC030771 (for the purpose of this
11 paragraph, the “Class Vehicle”), from Darling’s Volkswagen in Bangor, Maine. Plaintiff also
12 bought an extended warranty covering the vehicle for 100,000 miles. Plaintiff is an information
13 technology manager and is a citizen concerned with protecting the environment. Before
14 purchasing the Class Vehicle, Plaintiff conducted extensive online research, read customer
15 reviews and bought the car based on the stated miles per gallon (“MPG”), “Clean Diesel”
16 technology, and performance. Additionally, the dealership touted the Class Vehicle’s “Clean
17 Diesel” technology, performance, and MPG during Plaintiff’s visit and test-drive. The benefits to
18 the environment—especially “Clean Diesel”—in combination with the advertised fuel efficiency
19 and performance, induced Plaintiff to purchase the Class Vehicle. Unbeknownst to Plaintiff, at
20 the time of acquisition, the Class Vehicle contained a defeat device designed to bypass emission
21 standards and deceive consumers and regulators. Consequently, the Class Vehicle could not
22 deliver the advertised combination of low emissions, high performance, and fuel economy—and
23 was illegal. Plaintiff has suffered concrete injury as a direct and proximate result of Defendants’
24 conduct, and would not have purchased the Class Vehicle and extended warranty had Defendants
25 not concealed the illegal defeat device. Plaintiff has tried to trade-in the Class Vehicle but not a
26 single dealership has wanted it.

1 **21. Maryland Plaintiffs**

2 86. Plaintiff MATTHEW CURE (for the purpose of this paragraph, “Plaintiff”) is a
3 citizen of Maryland domiciled in Baltimore, Maryland. On or about November 23, 2014,
4 Plaintiff purchased a new 2015 Volkswagen Golf TDI, VIN 3VWRA7AUXFM021472 (for the
5 purpose of this paragraph, the “Class Vehicle”) from Laurel Volkswagen in Laurel, Maryland.
6 Before purchasing the Class Vehicle, Plaintiff saw Volkswagen television commercials that
7 focused on “Clean Diesel” and mileage. Additionally, the dealer compared the fuel economy and
8 pep of Volkswagen’s “Clean Diesel” vehicles with that of current hybrids. The emission
9 representations, in combination with the advertised fuel efficiency and performance, induced
10 Plaintiff to purchase the Class Vehicle, instead of the other, “hybrid” vehicles he was considering.
11 Unbeknownst to Plaintiff, at the time of acquisition, the Class Vehicle contained a defeat device
12 designed to bypass emission standards and deceive consumers and regulators. Consequently, the
13 Class Vehicle could not deliver the advertised combination of low emissions, high performance,
14 and fuel economy—and was illegal. Plaintiff has suffered concrete injury as a direct and
15 proximate result of Defendants’ conduct, and would not have purchased the Class Vehicle, had
16 Defendants not concealed the illegal defeat device.

17 87. Plaintiff DENISE DEFIESTA (for the purpose of this paragraph, “Plaintiff”) is a
18 citizen of Maryland domiciled in Chesapeake Beach, Maryland. On or about October 1, 2012,
19 Plaintiff bought a new 2013 Volkswagen Passat TDI SE, VIN 1VWBN7A37DC001286 (for the
20 purpose of this paragraph, the “Class Vehicle”) from Darcars Chrysler Jeep Dodge of Silver
21 Spring in Silver Spring, Maryland. Before buying the Class Vehicle, Plaintiff and her husband
22 researched the Internet regarding the Passat TDI and saw that it was advertised as “clean” diesel,
23 won Motor Trend Car of the Year, had great gas mileage, and reliability. The emission
24 representations, in combination with the advertised fuel efficiency and performance, induced
25 Plaintiff to purchase the Class Vehicle. Unbeknownst to Plaintiff, at the time of acquisition, the
26 Class Vehicle contained a defeat device designed to bypass emission standards and deceive
27 consumers and regulators. Consequently, the Class Vehicle could not deliver the advertised
28 combination of low emissions and fuel economy. Plaintiff has suffered concrete injury as a direct

1 and proximate result of Defendants' conduct, and would not have purchased the Class Vehicle
2 had Defendants not concealed the illegal defeat device.

3 88. Plaintiff MICHAEL C. HOFFMAN (for the purpose of this paragraph, "Plaintiff")
4 is a citizen of Maryland domiciled in Annapolis, Maryland. On or about September 6, 2011,
5 Plaintiff purchased a new 2012 Audi A3 TDI, VIN WAUKJAFM5CA031374 (for the purpose of
6 this paragraph, the "Class Vehicle") from Audi Silver Spring in Silver Spring, Maryland. Plaintiff
7 is a Development Officer in the United States Naval Academy Foundation and is concerned with
8 protecting the environment. Before leasing the Class Vehicle, Plaintiff saw Internet and print
9 advertisements that touted Audi's Green Car of the Year award and increased fuel economy. The
10 dealership also touted the Audi A3 TDI's fuel economy and performance of the "Clean Diesel"
11 technology during Plaintiff's visit and test-drive. The emission representations, in combination
12 with the advertised fuel efficiency and performance, induced Plaintiff to purchase the Class
13 Vehicle. Unbeknownst to Plaintiff, at the time of acquisition, the Class Vehicle contained a
14 defeat device designed to bypass emission standards and deceive consumers and regulators.
15 Consequently, the Class Vehicle could not deliver the advertised combination of low emissions,
16 high performance, and fuel economy—and was illegal. Plaintiff has suffered concrete injury as a
17 direct and proximate result of Defendants' conduct, and would not have purchased the Class
18 Vehicle, had Defendants not concealed the illegal defeat device.

19 89. Plaintiff MARK ROVNER (for the purpose of this paragraph, "Plaintiff") is a
20 citizen of Maryland domiciled in Takoma Park, Maryland. On November 25, 2014, Plaintiff
21 leased a new 2015 Volkswagen Golf TDI, VIN 3VWRA7AU6FM038950 (for the purpose of this
22 paragraph, the "Class Vehicle") from Ourisman Volkswagen of Bethesda in Bethesda, Maryland.
23 Plaintiff works in the environmental field and is the Founder and Principal of Sea Change
24 Strategies. Thus, it was important for Plaintiff to lease a car that was "green." Before leasing the
25 Class Vehicle, Plaintiff conducted Internet research. He Googled the words "green car" and "fun
26 to drive," which led him to Volkswagen's website. Additionally, he read online reviews on
27 www.cars.com. The emission representations, in combination with the advertised fuel efficiency
28 and performance, induced Plaintiff to lease the Class Vehicle. Unbeknownst to Plaintiff, at the

1 time of acquisition, the Class Vehicle contained a defeat device designed to bypass emission
2 standards and deceive consumers and regulators. Consequently, the Class Vehicle could not
3 deliver the advertised combination of low emissions, high performance, and fuel economy—and
4 was illegal. Plaintiff has suffered concrete injury as a direct and proximate result of Defendants’
5 conduct, and would not have leased the Class Vehicle, had Defendants not concealed the illegal
6 defeat device.

7 90. Plaintiff KOREEN WALSH (for the purpose of this paragraph, “Plaintiff”) is a
8 citizen of Maryland domiciled in Pasadena, Maryland. On September 19, 2014, Plaintiff
9 purchased a new 2015 Audi A3 TDI, VIN WAUCJGFF4F1043609 (for the purpose of this
10 paragraph, the “Class Vehicle”) from Len Stoller Porsche Audi in Owing Mills, Maryland.
11 Plaintiff is a Senior Graphic Designer and is concerned with protecting the environment. Before
12 buying the Class Vehicle, Plaintiff saw television commercials advertising the new 2015 Audi A3
13 and did extensive online research regarding the “green” aspects of the vehicle. The dealership
14 also touted the vehicle’s environmentally-friendly aspects, fuel economy, and the AdBlue system
15 that was supposed to make the vehicle run cleaner and smoother. The emission representations,
16 in combination with the advertised fuel efficiency and performance, induced Plaintiff to purchase
17 the Class Vehicle. Unbeknownst to Plaintiff, at the time of acquisition, the Class Vehicle
18 contained a defeat device designed to bypass emission standards and deceive consumers and
19 regulators. Consequently, the Class Vehicle could not deliver the advertised combination of low
20 emissions, high performance, and fuel economy—and was illegal. Plaintiff has suffered concrete
21 injury as a direct and proximate result of Defendants’ conduct, and would not have purchased the
22 Class Vehicle, had Defendants not concealed the illegal defeat device.

23 **22. Massachusetts Plaintiffs**

24 91. Plaintiff GREGORY GOTTA (for the purpose of this paragraph, “Plaintiff”) is a
25 citizen of Massachusetts domiciled in Northbridge, Massachusetts. On or about October 2013,
26 Plaintiff purchased a new 2014 Audi A6 TDI, VIN WAUFMAFC3EN026640 from Audi of
27 Shrewsbury in Shrewsbury, Massachusetts, and on or about August 27, 2014, Plaintiff purchased
28 a new 2014 Porsche Cayenne Diesel, VIN WP1AF2A2XELA49452 from Porsche of Nashua in

1 Nashua, NH (collectively, for the purpose of this paragraph, the “Class Vehicles”). Plaintiff
2 researched the Class Vehicles before purchasing them, and was led to believe that the “clean”
3 diesel vehicles were a more environmentally-friendly alternative to traditional vehicles. These
4 and other emission representations, in combination with the advertised fuel efficiency and
5 performance, as well as the vehicles’ reputation for maintaining a high resale value, induced
6 Plaintiff to purchase the Class Vehicles. Unbeknownst to Plaintiff, at the time of acquisition, the
7 Class Vehicles contained a defeat device designed to bypass emission standards and deceive
8 consumers and regulators. Consequently, the Class Vehicles could not deliver the advertised
9 combination of low emissions, high performance, and fuel economy. Plaintiff has suffered
10 concrete injury as a direct and proximate result of Defendants’ conduct, and would not have
11 purchased the Class Vehicles, had Defendants not concealed the illegal defeat device.

12 92. Plaintiff JEFFREY SCOLNICK (for the purpose of this paragraph, “Plaintiff”) is a
13 citizen of Ohio domiciled in Columbus, Ohio. On or about May 16, 2016, Plaintiff purchased a
14 new 2014 Volkswagen Passat TDI, VIN 1VWBN7A3XEC089526 (for the purpose of this
15 paragraph, the “Class Vehicle”), from Patrick Motors, Inc. in Auburn, Massachusetts. Plaintiff
16 earned a Master of Business Finance at the University of Chicago, and is a senior buyer for Big
17 Lots. It was important to Plaintiff that his new vehicle had excellent fuel economy and
18 performance, and sound environmental ratings. Before purchasing the Class Vehicle, Plaintiff
19 researched the “clean” diesel vehicles, viewed Volkswagen’s representations concerning their
20 performance and environmental impact, and recalls being told at the dealership that there was no
21 negative impact to the environment when driving a Volkswagen TDI. The emission
22 representations, in combination with the advertised fuel efficiency and performance, as well as
23 the vehicle’s reputation for maintaining a high resale value, induced Plaintiff to purchase the
24 Class Vehicle, instead of the other, “hybrid” vehicles he was considering. Unbeknownst to
25 Plaintiff, at the time of acquisition, the Class Vehicle contained a defeat device designed to
26 bypass emission standards and deceive consumers and regulators. Consequently, the Class
27 Vehicle could not deliver the advertised combination of low emissions, high performance, and
28 fuel economy—and was illegal. Plaintiff has suffered concrete injury as a direct and proximate

1 result of Defendants' conduct, and would not have purchased the Class Vehicle, had Defendants
2 not concealed the illegal defeat device. Plaintiff has tried to sell the Class Vehicle by posting "for
3 sale" notices online, but has been unable to sell it.

4 93. Plaintiff WILLARD D. CUNNINGHAM (for the purpose of this paragraph,
5 "Plaintiff") is a citizen of Massachusetts domiciled in Somerville, Massachusetts. On or about
6 March 30, 2015, Plaintiff purchased a new 2014 Volkswagen Passat TDI, VIN
7 1VWCN7A39EC097282 (for the purpose of this paragraph, the "Class Vehicle"), from Colonial
8 Volkswagen in Medford, Massachusetts. Plaintiff is the principal broker and owner of Willard
9 Realty Group, Inc. He has a background in international relations and secondary education.
10 Before purchasing the Class Vehicle, Plaintiff viewed Volkswagen's representations about the
11 alleged fuel economy of and emissions from its diesel vehicles. He also generally researched
12 mid-size diesel vehicles, and wanted one with superior fuel economy that was environmentally-
13 friendly. The emission representations, in combination with the advertised fuel efficiency and
14 performance, as well as the vehicle's reputation for maintaining a high resale value, induced
15 Plaintiff to purchase the Class Vehicle, instead of the other, "hybrid" and diesel vehicles he was
16 considering. Unbeknownst to Plaintiff, at the time of acquisition, the Class Vehicle contained a
17 defeat device designed to bypass emission standards and deceive consumers and regulators.
18 Consequently, the Class Vehicle could not deliver the advertised combination of low emissions,
19 high performance, and fuel economy—and was illegal. Plaintiff has suffered concrete injury as a
20 direct and proximate result of Defendants' conduct, and would not have purchased the Class
21 Vehicle, had Defendants not concealed the illegal defeat device.

22 94. Plaintiff ERICSSON BROADBENT (for the purpose of this paragraph,
23 "Plaintiff") is a citizen of Massachusetts domiciled in Harvard, Massachusetts. On or about
24 February 28, 2011, Plaintiff purchased a new 2011 Volkswagen Jetta TDI, VIN
25 3VWLL7AJ8BM054549 (for the purpose of this paragraph, the "Class Vehicle"), from Colonial
26 Volkswagen in Westboro, Massachusetts. Plaintiff is a Colby-educated senior software engineer.
27 He has advocated for environment sustainability, and once converted a vehicle to run on recycled
28 vegetable oil. Before purchasing the Class Vehicle, Plaintiff researched what environmentally-

1 friendly vehicle options were available on the market, and relied on Volkswagen’s representations
2 about the environmental cleanliness and fuel efficiency of its vehicles. The emission
3 representations, in combination with the advertised fuel efficiency and performance, as well as
4 the vehicle’s reputation for maintaining a high resale value, induced Plaintiff to purchase the
5 Class Vehicle, instead of an electric vehicle or plug-in hybrid vehicle. Unbeknownst to Plaintiff,
6 at the time of acquisition, the Class Vehicle contained a defeat device designed to bypass
7 emission standards and deceive consumers and regulators. Consequently, the Class Vehicle could
8 not deliver the advertised combination of low emissions, high performance, and fuel economy—
9 and was illegal. Plaintiff has suffered concrete injury as a direct and proximate result of
10 Defendants’ conduct, and would not have purchased the Class Vehicle, had Defendants not
11 concealed the illegal defeat device. Plaintiff’s use and enjoyment of his Class Vehicle has been
12 substantially diminished, because he now only drives it when necessary. He prefers either driving
13 his wife’s vehicle or car-pooling to work in order to minimize the impact his Class Vehicle has on
14 the environment.

15 95. Plaintiff GRANT R. GARCIA (for the purpose of this paragraph, “Plaintiff”) is a
16 citizen of Massachusetts domiciled in Leominster, Massachusetts. In or about August 2015,
17 Plaintiff purchased new a 2015 Volkswagen Golf SportWagen TDI, VIN
18 3VWFA7AU5FM511837 (for the purpose of this paragraph, the “Class Vehicle”), from Colonial
19 Volkswagen in Westborough, Massachusetts. Plaintiff is a managing director at Kitchen
20 Associates and is a staunch proponent of alternative energy. When deciding whether to purchase
21 his 2015 Golf TDI, Plaintiff wanted to know that the new vehicle he was considering was as fuel
22 efficient, environmentally-friendly and reliable as he thought his 2009 and 2010 Volkswagen
23 Jetta TDI vehicles were. Before purchasing each of the Class Vehicles, Plaintiff researched their
24 environmental cleanliness, performance and fuel-efficiency, and viewed Volkswagen
25 representations about its engineering, EPA compliance and performance. The emission
26 representations, in combination with the advertised fuel efficiency and performance, as well as
27 the vehicle’s reputation for maintaining a high resale value, induced Plaintiff to purchase the
28 Class Vehicle. Unbeknownst to Plaintiff, at the time of acquisition, the Class Vehicle contained a

1 defeat device designed to bypass emission standards and deceive consumers and regulators.
2 Consequently, the Class Vehicle could not deliver the advertised combination of low emissions,
3 high performance, and fuel economy—and was illegal. Plaintiff has suffered concrete injury as a
4 direct and proximate result of Defendants’ conduct, and would not have purchased the Class
5 Vehicle, had Defendants not concealed the illegal defeat device. Plaintiff is appalled that his
6 Class Vehicles are worse for the environment than he expected, and that he has no option left but
7 to continue driving a vehicle that has polluted, and continues to pollute, up to 40 times the legal
8 limit.

9 96. Plaintiff SARAH MATTHEWS (for the purpose of this paragraph, “Plaintiff”) is a
10 citizen of Massachusetts domiciled in Amherst, Massachusetts. On or about December 26, 2013,
11 Plaintiff leased a new 2014 Volkswagen Jetta SportWagen TDI, VIN 3VWLL7AJXEM248522
12 (for the purpose of this paragraph, the “Class Vehicle”), from Northampton Volkswagen in
13 Northampton, Massachusetts. Plaintiff is an attorney who graduated from the Georgetown
14 University Law Center. She has focused her career on representing clients in the renewable
15 energy field, including biofuels, solar and wind energy. As a proponent of alternative energy, it
16 was important to Plaintiff that she do her part to be environmentally conscious in her vehicle
17 selection. Before leasing the Class Vehicle, Plaintiff had a history of owning diesel vehicles,
18 including previously leasing a 2009 Volkswagen Jetta TDI. Plaintiff recalls during the lease of
19 her 2009 Volkswagen Jetta, the Volkswagen sales agent telling her the vehicle was so clean she
20 could stand behind the vehicle, while it was running, and smell no exhaust. The emission
21 representations, in combination with the advertised fuel efficiency and performance, as well as
22 the vehicle’s reputation for maintaining a high resale value, induced Plaintiff to lease the Class
23 Vehicle. Unbeknownst to Plaintiff, at the time of acquisition, the Class Vehicle contained a
24 defeat device designed to bypass emission standards and deceive consumers and regulators.
25 Consequently, the Class Vehicle could not deliver the advertised combination of low emissions,
26 high performance, and fuel economy—and was illegal. Plaintiff has suffered concrete injury as a
27 direct and proximate result of Defendants’ conduct, and would not have leased the Class Vehicle,
28 had Defendants not concealed the illegal defeat device. Plaintiff feels locked into a lease for a

1 vehicle she did not bargain for, and has contacted Volkswagen and her local Volkswagen
2 dealership in an attempt to trade in her lease for a comparable hybrid vehicle. Volkswagen
3 denied her request and the local dealership explained she would be financially upside down on a
4 trade-in.

5 97. Plaintiff WOLFGANG STEUDEL (for the purpose of this paragraph, “Plaintiff”)
6 is a citizen of Massachusetts domiciled in Newton, Massachusetts. On or about January 7, 2013,
7 Plaintiff purchased a new 2013 Volkswagen Golf TDI, VIN WVWNM7AJ0DW053293, from
8 Minuteman Volkswagen in Bedford, Massachusetts and, on or about August 11, 2015, Plaintiff
9 purchased another Volkswagen, a new 2015 Volkswagen Jetta TDI, VIN
10 3VW3A7AJ0FM321453, from the same dealer (for the purpose of this paragraph, the “Class
11 Vehicles”). Plaintiff is an anesthesiologist and licensed to practice medicine in three states. He
12 earned his medical degree from Freie University Berlin Faculty of Medicine, has authored or co-
13 authored several publications in his field, and speaks English, German and French. Plaintiff is a
14 long time purchaser of Volkswagen vehicles, having previously owned a 2006 Volkswagen Golf
15 TDI. Before purchasing the Class Vehicles, Plaintiff did detailed research regarding
16 environmentally-friendly vehicles, with great fuel economy and performance, viewed
17 Volkswagen’s representations about performance and environmental impact, as well evaluating
18 his prior experiences with his 2006 Volkswagen Golf TDI. The emission representations, in
19 combination with the advertised fuel efficiency and performance, as well as the vehicle’s
20 reputation for maintaining a high resale value, induced Plaintiff to purchase the Class Vehicles.
21 Unbeknownst to Plaintiff, at the time of acquisition, the Class Vehicles contained a defeat device
22 designed to bypass emission standards and deceive consumers and regulators. Consequently, the
23 Class Vehicles could not deliver the advertised combination of low emissions, high performance,
24 and fuel economy. Plaintiff has suffered concrete injury as a direct and proximate result of
25 Defendants’ conduct, and would not have purchased the Class Vehicles, had Defendants not
26 concealed the illegal defeat device. Plaintiff’s use of his Class Vehicles, and the upgrades he
27 purchased for them, has diminished greatly as Plaintiff now minimizes his use of the Class
28 Vehicles.

1 **23. Michigan Plaintiffs**

2 98. Plaintiff MICHAEL G. HEILMANN (for the purpose of this paragraph,
3 “Plaintiff”) is a citizen of Michigan domiciled in Birmingham, Michigan. On or about May 2015,
4 Plaintiff purchased a new 2015 Volkswagen Touareg TDI, VIN WVGEP9BP1FD004104 (for the
5 purpose of this paragraph, the “Class Vehicle”), from Suburban Imports in Farmington Hills,
6 Michigan. Plaintiff is an attorney and the president of Michael G. Heilmann P.C. and is
7 concerned about environmental preservation and renewable energy sources. Before purchasing
8 the Class Vehicle, Plaintiff exhaustively researched Volkswagen’s “clean” diesel vehicles,
9 viewed Volkswagen’s representations about the emissions and fuel performance, and ultimately
10 purchased his “clean” diesel Touareg based on these misrepresentations. The emission
11 representations, in combination with the advertised fuel efficiency and performance, as well as
12 the vehicle’s reputation for maintaining a high resale value, induced Plaintiff to purchase the
13 Class Vehicle, instead of other vehicles he was considering, including gas/electric hybrid models.
14 Unbeknownst to Plaintiff, at the time of acquisition, the Class Vehicle contained a defeat device
15 designed to bypass emission standards and deceive consumers and regulators. Consequently, the
16 Class Vehicle could not deliver the advertised combination of low emissions, high performance,
17 and fuel economy—and was illegal. Plaintiff has suffered concrete injury as a direct and
18 proximate result of Defendants’ conduct, and would not have purchased the Class Vehicle, had
19 Defendants not concealed the illegal defeat device. Plaintiff is appalled and embarrassed that the
20 Class Vehicle has polluted, and continues to pollute, at levels many times greater than the legal
21 limit.

22 99. Plaintiff BRYAN MICHAEL KINGMAN (for the purpose of this paragraph,
23 “Plaintiff”) is a citizen of Michigan domiciled in Armada, Michigan. On or about October 17,
24 2014, Plaintiff purchased a new 2015 Volkswagen Passat TDI, VIN 1VWCV7A30FC001749 (for
25 the purpose of this paragraph, the “Class Vehicle”), from Fox Automotive Group, Inc. in
26 Rochester, Michigan. Plaintiff is a new car salesperson and familiar with the latest developments
27 and trends in vehicles equipped with eco-friendly technology. He is also concerned with
28 environmental preservation and renewable energy sources. Before purchasing the Class Vehicle,

1 Plaintiff exhaustively researched Volkswagen’s “clean” diesel vehicles, viewed Volkswagen’s
2 representations about the emissions and fuel performance, and ultimately purchased his “clean”
3 diesel Passat based on those misrepresentations. The emission representations, in combination
4 with the advertised fuel efficiency and performance, as well as the vehicle’s reputation for
5 maintaining a high resale value, induced Plaintiff to purchase the Class Vehicle, instead of other
6 vehicles he was considering, including gas/electric hybrid models. Unbeknownst to Plaintiff, at
7 the time of acquisition, the Class Vehicle contained a defeat device designed to bypass emission
8 standards and deceive consumers and regulators. Consequently, the Class Vehicle could not
9 deliver the advertised combination of low emissions, high performance, and fuel economy—and
10 was illegal. Plaintiff has suffered concrete injury as a direct and proximate result of Defendants’
11 conduct, and would not have purchased the Class Vehicle, had Defendants not concealed the
12 illegal defeat device. Plaintiff is appalled and embarrassed that the Class Vehicle has polluted,
13 and continues to pollute, at levels many times greater than the legal limit.

14 100. Plaintiff SUSAN MATTHEWS (for the purpose of this paragraph, “Plaintiff”) is a
15 citizen of Michigan domiciled in Wolverine Lake, Michigan. On or about January 17, 2013,
16 Plaintiff purchased a used 2011 Volkswagen Jetta SportWagen TDI, VIN
17 3VWML8AJ9BM658833 (for the purpose of this paragraph, the “Class Vehicle”), from Thayer
18 Automotive in Livonia, Michigan. Plaintiff is self-employed as president of Loupe, LLC, and is
19 conscious of environmental preservation, her carbon footprint, and renewable energy sources. In
20 fact, she had only driven hybrids prior to considering “clean” diesel vehicles. It was critical to
21 her that whatever vehicle she purchased be environmentally-friendly. Before purchasing the
22 Class Vehicle, Plaintiff exhaustively researched Volkswagen’s “clean” diesel vehicles, viewed
23 Volkswagen’s representations about the emissions and fuel performance, and ultimately chose her
24 “clean” diesel Jetta because of these misrepresentations. The emission representations, in
25 combination with the advertised fuel efficiency and performance, as well as the vehicle’s
26 reputation for maintaining a high resale value, induced Plaintiff to purchase the Class Vehicle,
27 instead of the others she was considering, including gas/electric hybrid models. Unbeknownst to
28 Plaintiff, at the time of acquisition, the Class Vehicle contained a defeat device designed to

1 bypass emission standards and deceive consumers and regulators. Consequently, the Class
2 Vehicle could not deliver the advertised combination of low emissions, high performance, and
3 fuel economy—and was illegal. Plaintiff has suffered concrete injury as a direct and proximate
4 result of Defendants’ conduct, and would not have purchased the Class Vehicle, had Defendants
5 not concealed the illegal defeat device. Plaintiff is appalled and embarrassed that the Class
6 Vehicle has polluted, and continues to pollute, at levels many times greater than the legal limit.

7 **24. Minnesota Plaintiffs**

8 101. Plaintiffs ANNE MAHLE and DAVID MCCARTHY (for the purpose of this
9 paragraph, “Plaintiffs”) are citizens of Minnesota domiciled in Minneapolis, Minnesota.
10 Plaintiffs have purchased two Volkswagen TDI vehicles in the last seven years. On or about
11 December 19, 2009, Plaintiffs purchased their first Volkswagen TDI vehicle, a new 2010
12 Volkswagen Jetta SportWagen, VIN 3VWTL7AJ7AM630193, and on or about September 12,
13 2015, Plaintiffs purchased their second Volkswagen vehicle, a new 2015 Volkswagen Golf TDI,
14 VIN 3VWRA7AU6FM095300 (for the purpose of this paragraph, the “Class Vehicles”), both
15 from Westside Volkswagen in St. Louis Park, Minnesota. Plaintiff Anne Mahle graduated from
16 U.C. Berkeley Law School and has spent the last eleven years as the Senior Vice President at
17 Teach for America. Plaintiff David McCarthy is a consultant for McCarthy Media, LLC.
18 Plaintiffs wanted vehicles that were safe, reliable, fuel efficient and environmentally-friendly.
19 Before purchasing the Class Vehicles, Plaintiffs viewed Volkswagen’s representations about
20 emission cleanliness and fuel efficiency and consulted with Volkswagen sales agents about the
21 advantages of “clean” diesel engines. The emission representations, in combination with the
22 advertised fuel efficiency and performance, as well as the vehicles’ reputation for maintaining a
23 high resale value, induced Plaintiffs to purchase the Class Vehicles. Unbeknownst to Plaintiffs, at
24 the time of acquisition, the Class Vehicles contained a defeat device designed to bypass emission
25 standards and deceive consumers and regulators. Consequently, the Class Vehicles could not
26 deliver the advertised combination of low emissions, high performance, and fuel economy.
27 Plaintiffs have suffered concrete injury as a direct and proximate result of Defendants’ conduct,
28 and would not have purchased the Class Vehicles, had Defendants not concealed the illegal defeat

1 device. Plaintiffs feel betrayed that they relied on Volkswagen’s representations so much that
2 they purchased a second vehicle only six days before the public notifications regarding the defeat
3 devices in the Class Vehicles.

4 102. Plaintiff EDWARD CYRANKOWSKI (for the purpose of this paragraph,
5 “Plaintiff”) is a citizen of Minnesota domiciled in Woodbury, Minnesota. On or about July 2015,
6 Plaintiff purchased a new 2016 Audi Q5 TDI, VIN WA1CVAFP5GA012149 (for the purpose of
7 this paragraph, the “Class Vehicle”), from Maplewood Audi in Maplewood, Minnesota. Plaintiff
8 is an engineer and works with nanotechnology at Hysitron Inc. in Minneapolis. Before
9 purchasing the Class Vehicle, Plaintiff researched and discussed with an Audi salesperson his
10 concerns regarding reliability issues he experienced with his previous Audi Q5 TDI vehicle, and
11 viewed Volkswagen’s representations regarding its “clean” diesel vehicles. The emission
12 representations, in combination with the advertised fuel efficiency and performance, as well as
13 the vehicle’s reputation for maintaining a high resale value, induced Plaintiff to purchase the
14 Class Vehicle. Unbeknownst to Plaintiff, at the time of acquisition, the Class Vehicle contained a
15 defeat device designed to bypass emission standards and deceive consumers and regulators.
16 Consequently, the Class Vehicle could not deliver the advertised combination of low emissions,
17 high performance, and fuel economy—and was illegal. Plaintiff has suffered concrete injury as a
18 direct and proximate result of Defendants’ conduct, and would not have purchased the Class
19 Vehicle, had Defendants not concealed the illegal defeat device.

20 103. Plaintiff CHRISTOPHER JOHNSON (for the purpose of this paragraph,
21 “Plaintiff”) is a citizen of Minnesota domiciled in Minneapolis, Minnesota. On or about August
22 31, 2015, Plaintiff leased a new 2016 Audi A6 TDI, VIN WAUHMAFCXGN013685 (for the
23 purpose of this paragraph, the “Class Vehicle”), from Audi of Minneapolis in Minneapolis,
24 Minnesota. Plaintiff obtained his Medical Doctorate from the Medical College of Virginia over
25 ten years ago. Before leasing the Class Vehicle, Plaintiff researched comparable diesel vehicles,
26 viewed Volkswagen’s representations regarding the performance, fuel efficiency and emissions of
27 the Class Vehicle. The emission representations, in combination with the advertised fuel
28 efficiency and performance, as well as the vehicle’s reputation for maintaining a high resale

1 value, induced Plaintiff to lease the Class Vehicle, instead of comparable diesel vehicles he
2 considered. Unbeknownst to Plaintiff, at the time of acquisition, the Class Vehicle contained a
3 defeat device designed to bypass emission standards and deceive consumers and regulators.
4 Consequently, the Class Vehicle could not deliver the advertised combination of low emissions,
5 high performance, and fuel economy—and was illegal. Plaintiff has suffered concrete injury as a
6 direct and proximate result of Defendants’ conduct, and would not have leased the Class Vehicle,
7 had Defendants not concealed the illegal defeat device. As a physician, Plaintiff is especially
8 concerned about the negative public health implications of excessive emissions.

9 104. Plaintiff SCOTT P. MOEN (for the purpose of this paragraph, “Plaintiff”) is a
10 citizen of Minnesota domiciled in Saint Paul, Minnesota. Plaintiff owns two Volkswagen TDI
11 vehicles. On or about May 4, 2013, Plaintiff purchased a certified pre-owned 2013 Volkswagen
12 Golf TDI, VIN WVWDM7AJ7DW058955, and on or about May 28, 2013, Plaintiff purchased a
13 pre-owned 2010 Volkswagen Jetta TDI, VIN 3VWAL7AJ9AM030900 (for the purpose of this
14 paragraph, the “Class Vehicles”), from Schmelz Countryside Volkswagen, in Maplewood,
15 Minnesota. Plaintiff has practiced law since 1984 and is currently a solo practitioner specializing
16 in business transactions. Before purchasing the Class Vehicles, Plaintiff researched the fuel
17 efficiency, performance and emissions of the vehicles, and he trusted Volkswagen’s
18 representations about these matters based on their reputation. The emission representations, in
19 combination with the advertised fuel efficiency and performance, as well as the vehicles’
20 reputation for maintaining a high resale value, induced Plaintiff to purchase the Class Vehicle.
21 Unbeknownst to Plaintiff, at the time of acquisition, the Class Vehicle contained a defeat device
22 designed to bypass emission standards and deceive consumers and regulators. Consequently, the
23 Class Vehicle could not deliver the advertised combination of low emissions, high performance,
24 and fuel economy—and was illegal. Plaintiff has suffered concrete injury as a direct and
25 proximate result of Defendants’ conduct, and would not have purchased the Class Vehicles, had
26 Defendants not concealed the illegal defeat device. Plaintiff not only purchased his two Class
27 Vehicles based on Volkswagen’s representations, but he also purchased extended warranties
28 based on Volkswagen’s representations. Since October 2015, Plaintiff has made several attempts

1 to sell his Volkswagen Golf; however, his local dealership has repeatedly refused to purchase the
2 vehicle.

3 105. Plaintiff KHAMSHIN PAGE (for the purpose of this paragraph, “Plaintiff”) is a
4 citizen of Minnesota domiciled in Minneapolis, Minnesota. On or about March 2008, Plaintiff
5 purchased a new 2009 Volkswagen Jetta SportWagen TDI, VIN 3VWPL71K89M317773 (for the
6 purpose of this paragraph, the “Class Vehicle”), from Westside Volkswagen in Minneapolis,
7 Minnesota. Plaintiff graduated from New York University with a Master’s in Education and has
8 taught for ten years at the Blake Preparatory School in Minneapolis. Prior to purchasing the Class
9 Vehicle, Plaintiff had previously owned Volkswagen vehicles and firmly believed Volkswagen’s
10 advertising and representations that the “clean” diesel engines were environmentally-friendly
11 which was important to her. The emission representations, in combination with the advertised
12 fuel efficiency and performance, as well as the vehicle’s reputation for maintaining a high resale
13 value, induced Plaintiff to purchase the Class Vehicle. Unbeknownst to Plaintiff, at the time of
14 acquisition, the Class Vehicle contained a defeat device designed to bypass emission standards
15 and deceive consumers and regulators. Consequently, the Class Vehicle could not deliver the
16 advertised combination of low emissions, high performance, and fuel economy—and was illegal.
17 Plaintiff has suffered concrete injury as a direct and proximate result of Defendants’ conduct, and
18 would not have purchased the Class Vehicle, had Defendants not concealed the illegal defeat
19 device.

20 106. Plaintiff RYAN J. SCHUETTE (for the purpose of this paragraph, “Plaintiff”) is a
21 citizen of Minnesota domiciled in Saint Michael, Minnesota. On or about May 21, 2013, Plaintiff
22 purchased a new 2013 Volkswagen Passat TDI SE, VIN 1VWBN7A32DC056308 (for the
23 purpose of this paragraph, the “Class Vehicle”), from Luther Brookdale Volkswagen in Brooklyn
24 Park, Minnesota. Plaintiff is a mechanical engineer who has worked for the last four years as a
25 design engineer for Caterpillar, Inc. designing machinery that complies with EPA Tier 4F
26 requirements. It was important to Plaintiff that his vehicle complied with EPA regulations like
27 the machinery he designs. Before purchasing the Class Vehicle, Plaintiff researched the “clean”
28 diesel technology, which he found interesting because of his experience with Caterpillar. The

1 emission representations, in combination with the advertised fuel efficiency and performance, as
2 well as the vehicle’s reputation for maintaining a high resale value, induced Plaintiff to purchase
3 the Class Vehicle. Unbeknownst to Plaintiff, at the time of acquisition, the Class Vehicle
4 contained a defeat device designed to bypass emission standards and deceive consumers and
5 regulators. Consequently, the Class Vehicle could not deliver the advertised combination of low
6 emissions, high performance, and fuel economy—and was illegal. Plaintiff has suffered concrete
7 injury as a direct and proximate result of Defendants’ conduct, and would not have purchased the
8 Class Vehicle, had Defendants not concealed the illegal defeat device. Plaintiff has concerns
9 about selling his Class Vehicle, even if the option were available, which it is not, because he
10 would be passing along a vehicle that does not comply with EPA regulations and that continues to
11 pollute at unacceptable levels.

12 **25. Mississippi Plaintiffs**

13 107. Plaintiff RICHARDSON HAXTON (for the purpose of this paragraph, “Plaintiff”)
14 is a citizen of Mississippi domiciled in Jackson, Mississippi. In 2014, Plaintiff purchased a new
15 2014 Volkswagen Passat TDI, VIN 1VWBN7A3XEC078655 (for the purpose of this paragraph,
16 the “Class Vehicle”), from Ritchey Automotive Group in Jackson, Mississippi. Plaintiff is the
17 Executive Director of the Mississippi Association for Justice. Before purchasing the Class
18 Vehicle, Plaintiff viewed television advertisements and visited the Volkswagen website to learn
19 more about Volkswagen’s “clean” diesel vehicles. Plaintiff was split between purchasing a
20 Subaru or a Volkswagen vehicle. The “clean” aspect of the diesel was an absolute must for him.
21 At the dealership, the salesman repeatedly talked about the “clean” aspect of the diesel. The
22 emission representations, in combination with the advertised fuel efficiency and performance, as
23 well as the vehicle’s reputation for maintaining a high resale value, induced Plaintiff to purchase
24 the Class Vehicle. Unbeknownst to Plaintiff, at the time of acquisition, the Class Vehicle
25 contained a defeat device designed to bypass emission standards and deceive consumers and
26 regulators. Consequently, the Class Vehicle could not deliver the advertised combination of low
27 emissions, high performance, and fuel economy—and was illegal. Plaintiff has suffered concrete
28

1 injury as a direct and proximate result of Defendants' conduct, and would not have purchased the
2 Class Vehicle, had Defendants not concealed the illegal defeat device.

3 108. Plaintiff Dr. HOWARD KATZ (for the purpose of this paragraph, "Plaintiff") is a
4 citizen of Mississippi domiciled in Madison, Mississippi. On or about May 26, 2015, Plaintiff
5 purchased a new 2014 Volkswagen Golf TDI, VIN WVWDM7AJXEW008021 (for the purpose
6 of this paragraph, the "Class Vehicle"), from Ritchey Jackson LLC in Jackson, Mississippi.
7 Plaintiff is a self-employed doctor and purchased the Class Vehicle because he wanted the best
8 car for the environment. He also believed that the Class Vehicle had better gas mileage than the
9 Toyota Prius. Before purchasing the Class Vehicle, Plaintiff researched the vehicle on
10 Volkswagen's website and viewed and listened to radio print and television advertisements about
11 the vehicle. Plaintiff was told by the Volkswagen dealership that its "clean" diesel vehicles were
12 safer and better for the environment than the Toyota Prius. The emission representations, in
13 combination with the advertised fuel efficiency and performance, as well as the vehicle's
14 reputation for maintaining a high resale value, induced Plaintiff to purchase the Class Vehicle.
15 Unbeknownst to Plaintiff, at the time of acquisition, the Class Vehicle contained a defeat device
16 designed to bypass emission standards and deceive consumers and regulators. Consequently, the
17 Class Vehicle could not deliver the advertised combination of low emissions, high performance,
18 and fuel economy—and was illegal. Plaintiff has suffered concrete injury as a direct and
19 proximate result of Defendants' conduct, and would not have purchased the Class Vehicle, had
20 Defendants not concealed the illegal defeat device. Plaintiff has significantly decreased the
21 amount of driving he does since he learned of the defect.

22 **26. Missouri Plaintiffs**

23 109. Plaintiff JOSEPH MORREY (for the purpose of this paragraph, "Plaintiff") is a
24 citizen of Missouri domiciled in Columbia, Missouri. On or about September 9, 2014, Plaintiff
25 purchased a new 2015 Volkswagen Passat TDI, VIN 1VWBV7A35FC009129 (for the purpose of
26 this paragraph, the "Class Vehicle"), from Joe Machen's Volkswagen in Columbia, Missouri.
27 Plaintiff is a civil engineer who is also concerned with environmental preservation and renewable
28 energy sources. Before purchasing the Class Vehicle, Plaintiff exhaustively researched

1 Volkswagen’s “clean” diesel vehicles, viewed Volkswagen’s representations about the emissions
2 and fuel performance, and ultimately purchased his “clean” diesel Passat based on those
3 misrepresentations. The emission representations, in combination with the advertised fuel
4 efficiency and performance, as well as the vehicle’s reputation for maintaining a high resale
5 value, induced Plaintiff to purchase the Class Vehicle, instead of other vehicles he was
6 considering, including gas/electric hybrid models. Unbeknownst to Plaintiff, at the time of
7 acquisition, the Class Vehicle contained a defeat device designed to bypass emission standards
8 and deceive consumers and regulators. Consequently, the Class Vehicle could not deliver the
9 advertised combination of low emissions, high performance, and fuel economy—and was illegal.
10 Plaintiff has suffered concrete injury as a direct and proximate result of Defendants’ conduct, and
11 would not have purchased the Class Vehicle, had Defendants not concealed the illegal defeat
12 device. Plaintiff is appalled and embarrassed that the Class Vehicle has polluted, and continues to
13 pollute, at levels many times greater than the legal limit.

14 110. Plaintiff MEGAN WALAWENDER (for the purpose of this paragraph,
15 “Plaintiff”) is a citizen of Kansas domiciled in Lenexa, Kansas. On or about July 2014, Plaintiff
16 purchased a new 2014 Volkswagen Passat TDI, 1VWCN7A34EC072385 (for the purpose of this
17 paragraph, the “Class Vehicle”), from Molle Volkswagen in Kansas City, Missouri. Plaintiff is
18 an attorney who is conscious of environmental preservation, her carbon footprint, and renewable
19 energy sources. It was critical to her that whatever vehicle she purchased be environmentally-
20 friendly. Before purchasing the Class Vehicle, Plaintiff exhaustively researched the “clean”
21 diesel vehicles, viewed Volkswagen’s representations about the emissions and fuel performance,
22 and ultimately chose her “clean” diesel Passat because of these misrepresentations. The emission
23 representations, in combination with the advertised fuel efficiency and performance, as well as
24 the vehicle’s reputation for maintaining a high resale value, induced Plaintiff to purchase the
25 Class Vehicle, instead of the other vehicles she was considering, including gas/electric hybrid
26 models. Unbeknownst to Plaintiff, at the time of acquisition, the Class Vehicle contained a defeat
27 device designed to bypass emission standards and deceive consumers and regulators.
28 Consequently, the Class Vehicle could not deliver the advertised combination of low emissions,

1 high performance, and fuel economy—and was illegal. Plaintiff has suffered concrete injury as a
2 direct and proximate result of Defendants’ conduct, and would not have purchased the Class
3 Vehicle, had Defendants not concealed the illegal defeat device. Plaintiff is appalled and
4 embarrassed that the Class Vehicle has polluted, and continues to pollute, at levels many times
5 greater than the legal limit.

6 111. Plaintiff BRYCE ZUCKER (for the purpose of this paragraph, “Plaintiff”) is a
7 citizen of Missouri domiciled in St. Louis, Missouri. On or about September 22, 2014, Plaintiff
8 purchased a new 2014 Volkswagen Jetta TDI, VIN 3VW3L7AJXEM328287 (for the purpose of
9 this paragraph, the “Class Vehicle”), from Suntrup Volkswagen in St. Louis, Missouri. Plaintiff
10 is a senior business analyst with an undergraduate degree in engineering who is conscious of
11 environmental preservation and renewable energy sources. It was critical to him that whatever
12 vehicle he purchased be environmentally-friendly. Additionally, Plaintiff has driven Volkswagen
13 vehicles for over a decade. Before purchasing the Class Vehicle, Plaintiff exhaustively researched
14 the “clean” diesel vehicles, viewed Volkswagen’s representations about the emissions and fuel
15 performance, and ultimately chose his “clean” diesel Jetta because of these misrepresentations.
16 The emission representations, in combination with the advertised fuel efficiency and
17 performance, as well as the vehicle’s reputation for maintaining a high resale value, induced
18 Plaintiff to purchase the Class Vehicle. Unbeknownst to Plaintiff, at the time of acquisition, the
19 Class Vehicle contained a defeat device designed to bypass emission standards and deceive
20 consumers and regulators. Consequently, the Class Vehicle could not deliver the advertised
21 combination of low emissions, high performance, and fuel economy—and was illegal. Plaintiff
22 has suffered concrete injury as a direct and proximate result of Defendants’ conduct, and would
23 not have purchased the Class Vehicle, had Defendants not concealed the illegal defeat device.
24 Plaintiff is appalled and embarrassed that the Class Vehicle has polluted, and continues to pollute,
25 at levels many times greater than the legal limit.

26 **27. Montana Plaintiffs**

27 112. Plaintiff MICHAEL LORENZ (for the purpose of this paragraph, “Plaintiff”) is a
28 citizen of Montana domiciled in Three Forks, Montana. On or about March 30, 2012, Plaintiff

1 purchased a new 2012 Volkswagen Jetta TDI, VIN 3VWLL7AJ8CM029913 (for the purpose of
2 this paragraph, the “Class Vehicle”), from Montana Import Group, Inc. in Bozeman, Montana.
3 Plaintiff is a sales manager with an undergraduate degree in history who is conscious of
4 environmental preservation, his carbon footprint and renewable energy sources. Plaintiff takes
5 personal pride in Montana’s beauty and fully intended to drive a “green” vehicle. It was critical
6 to him that whatever vehicle he purchased would be environmentally-friendly. Before purchasing
7 the Class Vehicle, Plaintiff exhaustively researched Volkswagens’ “clean” diesel vehicles,
8 viewed Volkswagen’s representations about the emissions and fuel performance, and ultimately
9 chose his “clean” diesel Jetta because of these misrepresentations. The emission representations,
10 in combination with the advertised fuel efficiency and performance, as well as the vehicle’s
11 reputation for maintaining a high resale value, induced Plaintiff to purchase the Class Vehicle.
12 Unbeknownst to Plaintiff, at the time of acquisition, the Class Vehicle contained a defeat device
13 designed to bypass emission standards and deceive consumers and regulators. Consequently, the
14 Class Vehicle could not deliver the advertised combination of low emissions, high performance,
15 and fuel economy—and was illegal. Plaintiff has suffered concrete injury as a direct and
16 proximate result of Defendants’ conduct, and would not have purchased the Class Vehicle, had
17 Defendants not concealed the illegal defeat device. Plaintiff is appalled and embarrassed that the
18 Class Vehicle has polluted, and continues to pollute, at levels many times greater than the legal
19 limit.

20 113. Plaintiff SANDRA DI MAURO (for the purpose of this paragraph, “Plaintiff”) is a
21 citizen of Montana domiciled in Great Falls, Montana. On or about July 13, 2013, Plaintiff
22 purchased a new 2013 Volkswagen Jetta SportWagen TDI, VIN 3VWPL7AJ3DM663942 (for the
23 purpose of this paragraph, the “Class Vehicle”), from Bennett Motors in Great Falls, Montana.
24 Plaintiff is deeply concerned about maintaining and improving the quality of our environment,
25 and serves as the Treasurer and a member of the Steering Committee of Citizens for Clean
26 Energy, Inc., an all-volunteer group of Montana citizens dedicated to a healthy and sustainable
27 environment. Before purchasing the Class Vehicle, Plaintiff compared hybrid and “clean” diesel
28 vehicles, ultimately deciding that a VW TDI vehicle provided the best combination of

1 performance, fuel mileage, value (including resale value), and least impact on air quality. The
2 emission representations, in combination with the advertised fuel efficiency and performance, as
3 well as the vehicle's reputation for maintaining a high resale value, induced Plaintiff to purchase
4 the Class Vehicle. Unbeknownst to Plaintiff, at the time of acquisition, the Class Vehicle
5 contained a defeat device designed to bypass emission standards and deceive consumers and
6 regulators. Consequently, the Class Vehicle could not deliver the advertised combination of low
7 emissions, high performance, and fuel economy—and was illegal. Plaintiff has suffered concrete
8 injury as a direct and proximate result of Defendants' conduct, and would not have purchased the
9 Class Vehicle, had Defendants not concealed the illegal defeat device. Plaintiff believed that by
10 purchasing her vehicle she was doing her best for the quality of our environment, when in fact her
11 vehicle was responsible for toxic pollution, leaving her feeling duped and defrauded.

12 **28. Nebraska Plaintiffs**

13 114. Plaintiff SARA SCHRAM (for the purpose of this paragraph, "Plaintiff") is a
14 citizen of Nebraska domiciled in Geneva, Nebraska. On or about January 31, 2014, Plaintiff
15 purchased a used 2013 Volkswagen Passat TDI, 1VWCN7A37DC077935 (for the purpose of this
16 paragraph, the "Class Vehicle"), from BMW of Lincoln in Lincoln, Nebraska. Plaintiff is an
17 office manager who is conscious of environmental preservation, her carbon footprint and
18 renewable energy sources. It was critical to her that whatever vehicle she purchased be
19 environmentally-friendly. Before purchasing the Class Vehicle, Plaintiff exhaustively researched
20 Volkswagen's "clean" diesel vehicles, viewed Volkswagen's representations about the emissions
21 and fuel performance, and ultimately chose her "clean" diesel Passat because of these
22 misrepresentations. The emission representations, in combination with the advertised fuel
23 efficiency and performance, as well as the vehicle's reputation for maintaining a high resale
24 value, induced Plaintiff to purchase the Class Vehicle, instead of the others she was considering,
25 including gas/electric hybrid models. Unbeknownst to Plaintiff, at the time of acquisition, the
26 Class Vehicle contained a defeat device designed to bypass emission standards and deceive
27 consumers and regulators. Consequently, the Class Vehicle could not deliver the advertised
28 combination of low emissions, high performance, and fuel economy—and was illegal. Plaintiff

1 has suffered concrete injury as a direct and proximate result of Defendants’ conduct, and would
2 not have purchased the Class Vehicle, had Defendants not concealed the illegal defeat device.
3 Plaintiff is appalled and embarrassed that the Class Vehicle has polluted, and continues to pollute,
4 at levels many times greater than the legal limit.

5 115. Plaintiff NANCY L. STIREK (for the purpose of this paragraph, “Plaintiff”) is a
6 citizen of Nebraska domiciled in Elkhorn, Nebraska. On or about February 15, 2011, Plaintiff
7 purchased a new 2011 Volkswagen Jetta SportWagen TDI, VIN 3VWPL7AJ4BM640201 (for the
8 purpose of this paragraph, the “Class Vehicle”), from Performance Volkswagen in La Vista,
9 Nebraska. Plaintiff is an energy specialist who has dedicated her professional career to meeting
10 the world’s future energy needs, and is thus concerned about environmental preservation and
11 renewable energy sources. Plaintiff understands the environmental impacts of energy production,
12 fully intended to purchase a “green” vehicle, and often commutes via bicycle. It was critical to
13 her that whatever vehicle she purchased would be environmentally-friendly. Before purchasing
14 the Class Vehicle, Plaintiff exhaustively researched Volkswagen’s “clean” diesel vehicles,
15 viewed Volkswagen’s representations about the emissions and fuel performance, and ultimately
16 chose her “clean” diesel Jetta because of these misrepresentations. The emission representations,
17 in combination with the advertised fuel efficiency and performance, as well as the vehicle’s
18 reputation for maintaining a high resale value, induced Plaintiff to purchase the Class Vehicle.
19 Unbeknownst to Plaintiff, at the time of acquisition, the Class Vehicle contained a defeat device
20 designed to bypass emission standards and deceive consumers and regulators. Consequently, the
21 Class Vehicle could not deliver the advertised combination of low emissions, high performance,
22 and fuel economy—and was illegal. Plaintiff has suffered concrete injury as a direct and
23 proximate result of Defendants’ conduct, and would not have purchased the Class Vehicle, had
24 Defendants not concealed the illegal defeat device. Plaintiff is appalled and embarrassed that the
25 Class Vehicle has polluted, and continues to pollute, at levels many times greater than the legal
26 limit.

1 **29. Nevada Plaintiffs**

2 116. Plaintiff BRIAN K. BERMAN (for the purpose of this paragraph, “Plaintiff”) is a
3 citizen of Nevada domiciled in Las Vegas, Nevada. On or about July 11, 2009, Plaintiff
4 purchased a new 2009 Volkswagen Jetta TDI, VIN 3VWRL71K29M097605 (for the purpose of
5 this paragraph, the “Class Vehicle”), from Desert Volkswagen in Las Vegas, Nevada. Plaintiff is
6 Attorney and President of Brian K. Berman, Chtd. and is concerned with preventing pollution to
7 the environment. Before purchasing the Class Vehicle, Plaintiff saw Volkswagen’s television
8 commercials and print ad campaigns depicting a white handkerchief placed behind the tailpipe.
9 Additionally, the dealership stressed the environmental friendliness aspects of the Class Vehicle.
10 The benefits to the environment—especially “Clean Diesel”—in combination with the advertised
11 fuel efficiency and performance, induced Plaintiff to purchase the Class Vehicle. Unbeknownst
12 to Plaintiff, at the time of acquisition, the Class Vehicle contained a defeat device designed to
13 bypass emission standards and deceive consumers and regulators. Consequently, the Class
14 Vehicle could not deliver the advertised combination of low emissions, high performance, and
15 fuel economy—and was illegal. Plaintiff has suffered concrete injury as a direct and proximate
16 result of Defendants’ conduct, and would not have purchased the Class Vehicle, had Defendants
17 not concealed the illegal defeat device.

18 117. Plaintiff REBECCA PERLMUTTER (for the purpose of this paragraph,
19 “Plaintiff”) is a citizen of Nevada domiciled in Henderson, Nevada. On or about March 8, 2013,
20 Plaintiff bought a new 2012 Volkswagen Jetta TDI, VIN 3VWLL7AJ7CM425962. On March
21 27, 2015, Plaintiff bought a new 2015 Volkswagen Golf SportWagen TDI, VIN
22 3VWCA7AU3FM500290 (for purposes of this paragraph, the 2012 Volkswagen Jetta TDI and
23 2015 Golf TDI SportWagen that Plaintiff bought are referred to as “Class Vehicles”). Plaintiff
24 purchased the Class Vehicles from Findlay Volkswagen in Henderson, Nevada and also bought
25 an extended warranty for each of the vehicles. Plaintiff is retired and is concerned with protecting
26 the environment. She bought the Class Vehicles because she thought they had good fuel
27 efficiency, were environmentally-friendly and reliable. The benefits to the environment—
28 especially “Clean Diesel”—in combination with the advertised fuel efficiency and performance,

1 induced Plaintiff to purchase the Class Vehicles. Unbeknownst to Plaintiff, at the time of
2 purchase, the Class Vehicles contained defeat devices designed to bypass emission standards and
3 deceive consumers and regulators. Consequently, the Class Vehicles could not deliver the
4 advertised combination of low emissions, high performance, and fuel economy. Plaintiff has
5 suffered concrete injury as a direct and proximate result of Defendants' conduct, and would not
6 have purchased the Class Vehicles and the extended warranties, had Defendants not concealed the
7 illegal defeat device.

8 118. Plaintiff JONATHAN PETERSON (for the purpose of this paragraph, "Plaintiff")
9 is a citizen of Nevada domiciled in Las Vegas, Nevada. On or about December 15, 2014,
10 Plaintiff leased a new 2015 Volkswagen Golf TDI, VIN 3VWRA7AU0FM045943 (for the
11 purpose of this paragraph, the "Class Vehicle"), from AutoNation Volkswagen in Las Vegas,
12 Nevada. Plaintiff is a graduate of the University of Las Vegas and is concerned with protecting
13 the environment. Before leasing the Class Vehicle, Plaintiff saw Volkswagen television
14 commercials and conducted Internet research, and saw that the Golf TDI was awarded Car and
15 Driver Car of the Year, had low emissions, and great gas mileage. Additionally, the dealership
16 described the Volkswagen diesels as "the best bang for the bunk" when it came to gas mileage
17 and performance. The benefits to the environment—especially "Clean Diesel"—in combination
18 with the advertised fuel efficiency and performance, induced Plaintiff to lease the Class Vehicle.
19 Unbeknownst to Plaintiff, at the time of leasing, the Class Vehicle contained a defeat device
20 designed to bypass emission standards and deceive consumers and regulators. Consequently, the
21 Class Vehicle could not deliver the advertised combination of low emissions, high performance,
22 and fuel economy—and was illegal. Plaintiff has suffered concrete injury as a direct and
23 proximate result of Defendants' conduct, and would not have leased the Class Vehicle, had
24 Defendants not concealed the illegal defeat device. Plaintiff tried to cancel the lease with the
25 dealership, but would have lost thousands of dollars.

26 **30. New Hampshire Plaintiffs**

27 119. Plaintiff RICHARD GROGAN (for the purpose of this paragraph, "Plaintiff") is a
28 citizen of New Hampshire domiciled in West Chesterfield, New Hampshire. On or about May

1 23, 2015, Plaintiff purchased a new 2015 Volkswagen Golf TDI, VIN 3VW2A7AU6FM061436
2 (for the purpose of this paragraph, the “Class Vehicle”), from Noyes Volkswagen in Keene, New
3 Hampshire. Plaintiff is a Professor at the University of New Hampshire who sought to purchase a
4 vehicle that was fuel efficient, and environmentally-friendly. Before purchasing the Class
5 Vehicle, a salesperson specifically told Plaintiff that the Class Vehicle had lower carbon dioxide
6 emission levels than comparable gasoline engine vehicles. This and other emission
7 representations, in combination with the advertised fuel efficiency and performance, as well as
8 the vehicle’s reputation for maintaining a high resale value, induced Plaintiff to purchase the
9 Class Vehicle. Unbeknownst to Plaintiff, at the time of acquisition, the Class Vehicle contained a
10 defeat device designed to bypass emission standards and deceive consumers and regulators.
11 Consequently, the Class Vehicle could not deliver the advertised combination of low emissions,
12 high performance, and fuel economy—and was illegal. Plaintiff has suffered concrete injury as a
13 direct and proximate result of Defendants’ conduct, and would not have purchased the Class
14 Vehicle, had Defendants not concealed the illegal defeat device. In addition, Plaintiff is deeply
15 troubled by the fact that Volkswagen deliberately created a tool to bypass emissions standards
16 and deceive consumers like him.

17 120. Plaintiff ADDISON MINOTT (for the purpose of this paragraph, “Plaintiff”) is a
18 citizen of Massachusetts domiciled in Boston, Massachusetts. In or about June 2015, Plaintiff
19 purchase a used 2009 Volkswagen Jetta SportWagen TDI, VIN 3VWTL71KX9M265092 (for the
20 purpose of this paragraph, the “Class Vehicle”), from Nucci Auto Sales in Windham, New
21 Hampshire. Plaintiff is an engineer who considers herself extremely environmentally conscious.
22 It was critical to her that whatever vehicle she purchased produce low emissions. Before
23 purchasing the Class Vehicle, Plaintiff thoroughly researched, among others, the Class Vehicle’s
24 gas mileage, diesel particulate filters and its emission ratings, including Volkswagen’s
25 representations about emissions. The emission representations, in combination with the
26 advertised fuel efficiency and performance, as well as the vehicle’s reputation for maintaining a
27 high resale value, induced Plaintiff to purchase the Class Vehicle. Unbeknownst to Plaintiff, at
28 the time of acquisition, the Class Vehicle contained a defeat device designed to bypass emission

1 standards and deceive consumers and regulators. Consequently, the Class Vehicle could not
2 deliver the advertised combination of low emissions, high performance, and fuel economy—and
3 was illegal. Plaintiff has suffered concrete injury as a direct and proximate result of Defendants’
4 conduct, and would not have purchased the Class Vehicle, had Defendants not concealed the
5 illegal defeat device.

6 **31. New Jersey Plaintiffs**

7 121. Plaintiff ALAN BANDICS (for the purpose of this paragraph, “Plaintiff”) is a
8 citizen of New Jersey domiciled in Mountainside, New Jersey. On or about June 1, 2013,
9 Plaintiff purchased a new 2013 Volkswagen Passat TDI, VIN 1VWCN7A39DC128562 (for the
10 purpose of this paragraph, the “Class Vehicle”), from Linden Volkswagen in Linden, New Jersey.
11 Plaintiff is a detective sergeant and is conscious of environmental preservation and renewable
12 energy sources. It was critical to him that whatever vehicle he purchased be environmentally-
13 friendly. Before purchasing the Class Vehicle, Plaintiff exhaustively researched Volkswagen’s
14 “clean” diesel vehicles, viewed Volkswagen’s representations about the emissions and fuel
15 performance, and ultimately chose his “clean” diesel Jetta because of these misrepresentations.
16 The emission representations, in combination with the advertised fuel efficiency and
17 performance, as well as the vehicle’s reputation for maintaining a high resale value, induced
18 Plaintiff to purchase the Class Vehicle, instead of the others he was considering, including
19 gas/electric hybrid models. Unbeknownst to Plaintiff, at the time of acquisition, the Class
20 Vehicle contained a defeat device designed to bypass emission standards and deceive consumers
21 and regulators. Consequently, the Class Vehicle could not deliver the advertised combination of
22 low emissions, high performance, and fuel economy—and was illegal. Plaintiff has suffered
23 concrete injury as a direct and proximate result of Defendants’ conduct, and would not have
24 purchased the Class Vehicle, had Defendants not concealed the illegal defeat device. Plaintiff is
25 appalled and embarrassed that the Class Vehicle has polluted, and continues to pollute, at levels
26 many times greater than the legal limit.

27 122. Plaintiff CHARLES CHRISTIANA (for the purpose of this paragraph, “Plaintiff”)
28 is a citizen of New Jersey domiciled in Roseland, New Jersey. On or about October 7, 2011,

1 Plaintiff purchased a new 2012 Volkswagen Passat TDI, VIN 1VWCN7A37CC006541 (for the
2 purpose of this paragraph, the “Class Vehicle”), from Volkswagen of Freehold in Freehold, New
3 Jersey. Plaintiff purchased the Class Vehicle in anticipation of retirement with the intention of
4 using it for an extended period of time. A primary concern to Plaintiff in purchasing a car was
5 that it be environmentally-friendly. Before purchasing the Class Vehicle, Plaintiff visited
6 Volkswagen showrooms and test-drove the demonstration models available. The emission
7 representations, in combination with the advertised fuel efficiency and performance, as well as
8 the vehicle’s reputation for maintaining a high resale value, induced Plaintiff to purchase the
9 Class Vehicle. Unbeknownst to Plaintiff, at the time of acquisition, the Class Vehicle contained a
10 defeat device designed to bypass emission standards and deceive consumers and regulators.
11 Consequently, the Class Vehicle could not deliver the advertised combination of low emissions,
12 high performance, and fuel economy—and was illegal. Plaintiff has suffered concrete injury as a
13 direct and proximate result of Defendants’ conduct, and would not have purchased the Class
14 Vehicle, had Defendants not concealed the illegal defeat device. Plaintiff feels frustrated that his
15 best efforts to be environmentally-friendly in his vehicle purchase were thwarted, and he believes
16 he was misled by Volkswagen.

17 123. Plaintiff NATHAN FORBES (for the purpose of this paragraph, “Plaintiff”) is a
18 citizen of New York domiciled in Clifton Park, New York. On or about May 23, 2014, Plaintiff
19 purchased a used 2012 Volkswagen Touareg TDI Lux, VIN WVGEK9BP0CD005805 (for the
20 purpose of this paragraph, the “Class Vehicle”), from Burlington Volkswagen in Burlington, New
21 Jersey. Plaintiff is a business development manager and is concerned about environmental
22 preservation and renewable energy sources. Before purchasing the Class Vehicle, Plaintiff
23 exhaustively researched Volkswagen’s “clean” diesel vehicles, viewed Volkswagen’s
24 representations about the emissions and fuel performance, and ultimately purchased his “clean”
25 diesel Touareg based on these misrepresentations. The emission representations, in combination
26 with the advertised fuel efficiency and performance, as well as the vehicle’s reputation for
27 maintaining a high resale value, induced Plaintiff to purchase the Class Vehicle, instead of other
28 vehicles he was considering, including gas/electric hybrid models. Unbeknownst to Plaintiff, at

1 the time of acquisition, the Class Vehicle contained a defeat device designed to bypass emission
2 standards and deceive consumers and regulators. Consequently, the Class Vehicle could not
3 deliver the advertised combination of low emissions, high performance, and fuel economy—and
4 was illegal. Plaintiff has suffered concrete injury as a direct and proximate result of Defendants’
5 conduct, and would not have purchased the Class Vehicle, had Defendants not concealed the
6 illegal defeat device. Plaintiff is appalled and embarrassed that the Class Vehicle has polluted,
7 and continues to pollute, at levels many times greater than the legal limit.

8 124. Plaintiff DAVID GRECZYLO (for the purpose of this paragraph, “Plaintiff”) is a
9 citizen of New Jersey domiciled in Tinton Falls, New Jersey. On or about February 25, 2013,
10 Plaintiff purchased a new 2012 Volkswagen Golf TDI, VIN WVWDM7AJ4CW349038 (for the
11 purpose of this paragraph, the “Class Vehicle”), from Freehold Volkswagen in Freehold, New
12 Jersey. Plaintiff is a police lieutenant who is conscious of environmental preservation, his carbon
13 footprint and environmental responsibility, and renewable energy sources. It was critical to him
14 that whatever vehicle he purchased be environmentally-friendly. Before purchasing the Class
15 Vehicle, Plaintiff exhaustively researched Volkswagen’s “clean” diesel vehicles, viewed
16 Volkswagen’s representations about the emissions and fuel performance, and ultimately chose his
17 “clean” diesel Golf because of these misrepresentations. The emission representations, in
18 combination with the advertised fuel efficiency and performance, as well as the vehicle’s
19 reputation for maintaining a high resale value, induced Plaintiff to purchase the Class Vehicle,
20 instead of the others he was considering, including gas/electric hybrid models. Unbeknownst to
21 Plaintiff, at the time of acquisition, the Class Vehicle contained a defeat device designed to
22 bypass emission standards and deceive consumers and regulators. Consequently, the Class
23 Vehicle could not deliver the advertised combination of low emissions, high performance, and
24 fuel economy—and was illegal. Plaintiff has suffered concrete injury as a direct and proximate
25 result of Defendants’ conduct, and would not have purchased the Class Vehicle, had Defendants
26 not concealed the illegal defeat device. Plaintiff is appalled and embarrassed that the Class
27 Vehicle has polluted, and continues to pollute, at levels many times greater than the legal limit.
28

1 125. Plaintiff CARRIE LASPINA (for the purpose of this paragraph, “Plaintiff”) is a
2 citizen of New Jersey domiciled in Oakland, New Jersey. On or about September 10, 2010,
3 Plaintiff purchased a new 2010 Volkswagen Jetta TDI, VIN 3VWRL7AJ1AM094948 (for the
4 purpose of this paragraph, the “Class Vehicle”), from Cresmont VW, Lakeland Auto Inc. in
5 Pompton Plains, New Jersey. Plaintiff selected the Class Vehicle because she wanted a “clean”
6 diesel that got favorable gas mileage and was positive for the environment. Before purchasing
7 the Class Vehicle, Plaintiff heard promotions on television and radio about Volkswagen “clean”
8 diesel vehicles. The emission representations, in combination with the advertised fuel efficiency
9 and performance, as well as the vehicle’s reputation for maintaining a high resale value, induced
10 Plaintiff to purchase the Class Vehicle. Unbeknownst to Plaintiff, at the time of acquisition, the
11 Class Vehicle contained a defeat device designed to bypass emission standards and deceive
12 consumers and regulators. Consequently, the Class Vehicle could not deliver the advertised
13 combination of low emissions, high performance, and fuel economy—and was illegal. Plaintiff
14 has suffered concrete injury as a direct and proximate result of Defendants’ conduct, and would
15 not have purchased the Class Vehicle, had Defendants not concealed the illegal defeat device.
16 Plaintiff would never have purchased her vehicle if she had known at the time of purchase what
17 she knows now about the true qualities of her Class Vehicle. Plaintiff feels extremely
18 inconvenienced by her vehicle, and she has been unsuccessful in her effort to have Volkswagen
19 buy back her Class Vehicle.

20 **32. New Mexico Plaintiffs**

21 126. Plaintiff ALVIN CONVERSE (for the purpose of this paragraph, “Plaintiff”) is a
22 citizen of New Mexico domiciled in Santa Fe, New Mexico. On or about July 25, 2013, Plaintiff
23 purchased a new 2013 Volkswagen Jetta TDI, VIN 3VWLL7AJ2DM370130 (for the purpose of
24 this paragraph, the “Class Vehicle”), from Premier Motor Cars of Santa Fe, New Mexico.
25 Plaintiff has a Ph.D. in chemical engineering. Before purchasing the Class Vehicle, Plaintiff
26 believed that VW had mastered the diesel engine, and had previously owned two hybrid cars, a
27 Toyota Prius and a hybrid. The emission representations, in combination with the advertised fuel
28 efficiency and performance, as well as the vehicle’s reputation for maintaining a high resale

1 value, induced Plaintiff to purchase the Class Vehicle. Unbeknownst to Plaintiff, at the time of
2 acquisition, the Class Vehicle contained a defeat device designed to bypass emission standards
3 and deceive consumers and regulators. Consequently, the Class Vehicle could not deliver the
4 advertised combination of low emissions, high performance, and fuel economy—and was illegal.
5 Plaintiff has suffered concrete injury as a direct and proximate result of Defendants’ conduct, and
6 would not have purchased the Class Vehicle, had Defendants not concealed the illegal defeat
7 device.

8 127. Plaintiff MELANI BUCHANAN FARMER (for the purpose of this paragraph,
9 “Plaintiff”) is a citizen of New Mexico domiciled in Albuquerque, New Mexico. On or about
10 September 26, 2011, Plaintiff purchased a new 2012 Volkswagen Jetta TDI, VIN
11 3VWLL7AJ0CM314377 (for the purpose of this paragraph, the “Class Vehicle”), from
12 University Volkswagen-Mazda in Albuquerque, New Mexico. Plaintiff has a Ph.D. from the
13 California Institute of Integral Studies, and is a resource teacher with Albuquerque Public
14 Schools. Before purchasing the Class Vehicle, Plaintiff researched the Class Vehicle, which
15 included reviewing Volkswagen’s advertisements. The emission representations, in combination
16 with the advertised fuel efficiency and performance, as well as the vehicle’s reputation for
17 maintaining a high resale value, induced Plaintiff to purchase the Class Vehicle. Unbeknownst to
18 Plaintiff, at the time of acquisition, the Class Vehicle contained a defeat device designed to
19 bypass emission standards and deceive consumers and regulators. Consequently, the Class
20 Vehicle could not deliver the advertised combination of low emissions, high performance, and
21 fuel economy—and was illegal. Plaintiff has suffered concrete injury as a direct and proximate
22 result of Defendants’ conduct, and would not have purchased the Class Vehicle, had Defendants
23 not concealed the illegal defeat device.

24 128. Plaintiff CARMELINA HART HOXENG (for the purpose of this paragraph,
25 “Plaintiff”) is a citizen of New Mexico domiciled in Albuquerque, New Mexico. On or about
26 December 6, 2008, Plaintiff purchased a new 2009 Volkswagen Jetta TDI, VIN
27 3VWRL71K09M075652 (for the purpose of this paragraph, the “Class Vehicle”), from
28 University Volkswagen-Mazda in Albuquerque, New Mexico. Plaintiff has a master’s degree

1 from the College of Santa Fe and is self-employed. The emission representations, in combination
2 with the advertised fuel efficiency and performance, as well as the vehicle's reputation for
3 maintaining a high resale value, induced Plaintiff to purchase the Class Vehicle. Unbeknownst to
4 Plaintiff, at the time of acquisition, the Class Vehicle contained a defeat device designed to
5 bypass emission standards and deceive consumers and regulators. Consequently, the Class
6 Vehicle could not deliver the advertised combination of low emissions, high performance, and
7 fuel economy—and was illegal. Plaintiff has suffered concrete injury as a direct and proximate
8 result of Defendants' conduct, and would not have purchased the Class Vehicle, had Defendants
9 not concealed the illegal defeat device.

10 129. Plaintiffs WANPEN ROOT and DANIEL ROOT (for the purpose of this
11 paragraph, "Plaintiffs") are citizens of New Mexico domiciled in Williamsburg, New Mexico.
12 On or about June 17, 2015, Plaintiffs leased a new 2014 Volkswagen Touareg TDI, VIN
13 WVGEP9BP5ED010048 (for the purpose of this paragraph, the "Class Vehicle"), from Sisbarro
14 Volkswagen in Las Cruces, New Mexico. Prior to purchasing the Class Vehicle, Plaintiffs
15 researched the Class Vehicle, which included reviewing Volkswagen's advertisements and
16 literature on the "clean" diesel models. The emission representations, in combination with the
17 advertised fuel efficiency and performance, as well as the vehicle's reputation for maintaining a
18 high resale value, induced Plaintiffs to purchase the Class Vehicle. Unbeknownst to Plaintiffs, at
19 the time of acquisition, the Class Vehicle contained a defeat device designed to bypass emission
20 standards and deceive consumers and regulators. Consequently, the Class Vehicle could not
21 deliver the advertised combination of low emissions, high performance, and fuel economy—and
22 was illegal. Plaintiffs have suffered concrete injury as a direct and proximate result of
23 Defendants' conduct, and would not have purchased the Class Vehicle, if they had known about
24 the illegal defeat device.

25 **33. New York Plaintiffs**

26 130. Plaintiffs KEVIN BEDARD and ELIZABETH BEDARD (for the purpose of this
27 paragraph, "Plaintiffs") are citizens of New York domiciled in Rockville Centre, New York. On
28 or about December 13, 2014, Plaintiffs leased a new 2015 Audi A3 TDI, VIN

1 WAUAJGFF4F1036196 (for the purpose of this paragraph, the “Class Vehicle”), from Audi of
2 Lynnbrook in Lynnbrook, New York. Plaintiffs researched the Class Vehicle before acquiring it,
3 and reviewed advertisements and mailings from Audi and Volkswagen about the “clean” diesel
4 technology. This led Plaintiffs to believe that the Class Vehicle provided high performance and
5 fuel efficiency, with low emissions. The emission representations, in combination with the
6 advertised fuel efficiency and performance, as well as the vehicle’s reputation for maintaining a
7 high resale value, induced Plaintiff to lease the Class Vehicle. Unbeknownst to Plaintiff, at the
8 time of acquisition, the Class Vehicle contained a defeat device designed to bypass emission
9 standards and deceive consumers and regulators. Consequently, the Class Vehicle could not
10 deliver the advertised combination of low emissions, high performance, and fuel economy—and
11 was illegal. Plaintiffs have suffered concrete injury as a direct and proximate result of
12 Defendants’ conduct, and would not have leased the Class Vehicle, had Defendants not concealed
13 the illegal defeat device.

14 131. Plaintiff ROBERT ESLICK (for the purpose of this paragraph, “Plaintiff”) is a
15 citizen of New York domiciled in Old Bethpage, New York. On or about February 20, 2013,
16 Plaintiff purchased a new 2013 Volkswagen Passat TDI, VIN 1VWCN7A33DC064776 (for the
17 purpose of this paragraph, the “Class Vehicle”), from Platinum Volkswagen in Hicksville, New
18 York. Before purchasing the Class Vehicle, Plaintiff visited several dealerships, read articles, and
19 reviewed advertisements that touted the performance, economical, and environmental benefits of
20 Volkswagen’s “clean” diesel models. The emission representations, in combination with the
21 advertised fuel efficiency and performance, as well as the vehicle’s reputation for maintaining a
22 high resale value, induced Plaintiff to purchase the Class Vehicle. Unbeknownst to Plaintiff, at
23 the time of acquisition, the Class Vehicle contained a defeat device designed to bypass emission
24 standards and deceive consumers and regulators. Consequently, the Class Vehicle could not
25 deliver the advertised combination of low emissions, high performance, and fuel economy—and
26 was illegal. Plaintiff has suffered concrete injury as a direct and proximate result of Defendants’
27 conduct, and would not have purchased the Class Vehicle, had Defendants not concealed the
28 illegal defeat device.

1 132. Plaintiff CYNTHIA KIRTLAND (for the purpose of this paragraph, “Plaintiff”) is
2 a citizen of New York domiciled in Red Hook, New York. On or about September 28, 2013,
3 Plaintiff purchased a new 2014 Volkswagen Jetta SportWagen TDI, VIN
4 3VWML7AJ7EM604185 (for the purpose of this paragraph, the “Class Vehicle”), from
5 Volkswagen of Kingston in Kingston, New York. Before purchasing the Class Vehicle, Plaintiff
6 considered purchasing a Toyota Prius, saw television and magazine ads for Volkswagen “Clean
7 Diesel” technology, and visited the dealership and took home brochures, which heightened her
8 interest. The emission representations, in combination with the advertised fuel efficiency and
9 performance, as well as the vehicle’s reputation for maintaining a high resale value, induced
10 Plaintiff to purchase the Class Vehicle. Unbeknownst to Plaintiff, at the time of acquisition, the
11 Class Vehicle contained a defeat device designed to bypass emission standards and deceive
12 consumers and regulators. Consequently, the Class Vehicle could not deliver the advertised
13 combination of low emissions, high performance, and fuel economy—and was illegal. Plaintiff
14 has suffered concrete injury as a direct and proximate result of Defendants’ conduct, and would
15 not have purchased the Class Vehicle, had Defendants not concealed the illegal defeat device.

16 133. Plaintiff STEVEN KOLPAN (for the purpose of this paragraph, “Plaintiff”) is a
17 citizen of New York domiciled in West Hurley, New York. On or about March 22, 2015,
18 Plaintiff purchased a new 2015 Volkswagen Passat TDI, VIN 1VWCV7A32FC009657 (for the
19 purpose of this paragraph, the “Class Vehicle”), from Volkswagen of Kingston in Kingston, New
20 York. Plaintiff is a professor at the Culinary Institute of America, where he has taught for 29
21 years. Before purchasing the Class Vehicle, Plaintiff researched the Class Vehicle and reviewed
22 Volkswagen’s advertising on the “clean” diesel technology, which led him to believe that the
23 Class Vehicle would be less detrimental to the environment than a “hybrid” vehicle. The
24 emission representations, in combination with the advertised fuel efficiency and performance, as
25 well as the vehicle’s reputation for maintaining a high resale value, induced Plaintiff to purchase
26 the Class Vehicle. Unbeknownst to Plaintiff, at the time of acquisition, the Class Vehicle
27 contained a defeat device designed to bypass emission standards and deceive consumers and
28 regulators. Consequently, the Class Vehicle could not deliver the advertised combination of low

1 emissions, high performance, and fuel economy—and was illegal. Plaintiff has suffered concrete
2 injury as a direct and proximate result of Defendants’ conduct, and would not have purchased the
3 Class Vehicle, had Defendants not concealed the illegal defeat device.

4 134. Plaintiff YVETTE PAGANO (for the purpose of this paragraph, “Plaintiff”) is a
5 citizen of New York domiciled in Penfield, New York. On or about March 22, 2014, Plaintiff
6 purchased a new 2014 Volkswagen Jetta SportWagen 2.0 L TDI, VIN 3VWML7AJ0EM613035
7 (for the purpose of this paragraph, the “Class Vehicle”), from Ide Volkswagen in East Rochester,
8 New York. Plaintiff has an MBA from Pepperdine University and is CEO of an engineering and
9 manufacturing company. Prior to purchasing the Class Vehicle, Plaintiff researched the Class
10 Vehicle, and was led to believe that it was a superior choice to the competing electric cars and
11 BMW diesel models she was considering. The emission representations, in combination with the
12 advertised fuel efficiency and performance, as well as the vehicle’s reputation for maintaining a
13 high resale value, induced Plaintiff to purchase the Class Vehicle. Unbeknownst to Plaintiff, at
14 the time of acquisition, the Class Vehicle contained a defeat device designed to bypass emission
15 standards and deceive consumers and regulators. Consequently, the Class Vehicle could not
16 deliver the advertised combination of low emissions, high performance, and fuel economy—and
17 was illegal. Plaintiff has suffered concrete injury as a direct and proximate result of Defendants’
18 conduct, and would not have purchased the Class Vehicle, had Defendants not concealed the
19 illegal defeat device.

20 135. Plaintiff MARJORIE HODGES SHAW (for the purpose of this paragraph,
21 “Plaintiff”) is a citizen of New York domiciled in Rochester, New York. On or about December
22 31, 2012, Plaintiff purchased a new 2012 Volkswagen Jetta SportWagen TDI, VIN
23 3VWML7AJ7CM646658 (for the purpose of this paragraph, the “Class Vehicle”), from Dorschel
24 Volkswagen in Rochester, New York. Plaintiff has a law degree from Cornell Law School, and a
25 Ph.D. in Education from the University of Rochester, where she is an Assistant Professor in the
26 School of Medicine and Dentistry. Before purchasing the Class Vehicle, Plaintiff reviewed
27 Volkswagen’s advertisements, read reviews on Car and Driver and Edmunds, and examined
28 information about the Class Vehicle on the Volkswagen website. The emission representations,

1 in combination with the advertised fuel efficiency and performance, as well as the vehicle's
2 reputation for maintaining a high resale value, induced Plaintiff to purchase the Class Vehicle.
3 Unbeknownst to Plaintiff, at the time of acquisition, the Class Vehicle contained a defeat device
4 designed to bypass emission standards and deceive consumers and regulators. Consequently, the
5 Class Vehicle could not deliver the advertised combination of low emissions, high performance,
6 and fuel economy—and was illegal. Plaintiff has suffered concrete injury as a direct and
7 proximate result of Defendants' conduct, and would not have purchased the Class Vehicle, had
8 Defendants not concealed the illegal defeat device.

9 **34. North Carolina Plaintiffs**

10 136. Plaintiff CHRISTIAN ALEXANDER (for the purpose of this paragraph,
11 "Plaintiff") is a citizen of Texas domiciled in Houston, Texas. On or about August 2012, Plaintiff
12 purchased a used 2012 Volkswagen Jetta TDI, VIN 3VWLL7AJ0CM367676 (for the purpose of
13 this paragraph, the "Class Vehicle"), from Crossroads Ford in Cary, North Carolina. Plaintiff is a
14 businessman who spent eight years in the renewable fuels business, producing and manufacturing
15 renewable fuels. In light of his extensive experience in the renewable fuels industry, Plaintiff
16 decided to purchase a vehicle with "Clean Diesel" technology. Before purchasing the Class
17 Vehicle, Plaintiff conducted thorough research, including Volkswagen's representations about
18 emissions. The emission representations, in combination with the advertised fuel efficiency and
19 performance, as well as the vehicle's reputation for maintaining a high resale value, induced
20 Plaintiff to purchase the Class Vehicle. Unbeknownst to Plaintiff, at the time of acquisition, the
21 Class Vehicle contained a defeat device designed to bypass emission standards and deceive
22 consumers and regulators. Consequently, the Class Vehicle could not deliver the advertised
23 combination of low emissions, high performance, and fuel economy—and was illegal. Plaintiff
24 has suffered concrete injury as a direct and proximate result of Defendants' conduct, and would
25 not have purchased the Class Vehicle, had Defendants not concealed the illegal defeat device.

26 137. Plaintiff MATTHEW DOWD (for the purpose of this paragraph, "Plaintiff") is a
27 citizen of North Carolina domiciled in Huntersville, North Carolina. On or about July 22, 2015,
28 Plaintiff purchased a new 2015 Audi Q7 TDI, VIN WA1LMAFE9FD023511 (for the purpose of

1 this paragraph, the “Class Vehicle”), from Audi Northlake in Charlotte, North Carolina. Before
2 purchasing the Class Vehicle, Plaintiff exhaustively researched the vehicle online and compared
3 the model to other similar vehicles. Plaintiff settled on the Class Vehicle for its fuel efficiency
4 and its highly recommended diesel engine. Plaintiff was specifically told by a sales
5 representative that the Class Vehicle’s diesel engine was second to none. This and other
6 emissions representations, in combination with the advertised fuel efficiency and performance, as
7 well as the vehicle’s reputation for maintaining a high resale value, induced Plaintiff to purchase
8 the Class Vehicle. Unbeknownst to Plaintiff, at the time of acquisition, the Class Vehicle
9 contained a defeat device designed to bypass emission standards and deceive consumers and
10 regulators. Consequently, the Class Vehicle could not deliver the advertised combination of low
11 emissions, high performance, and fuel economy—and was illegal. Plaintiff has suffered concrete
12 injury as a direct and proximate result of Defendants’ conduct, and would not have purchased the
13 Class Vehicle, had Defendants not concealed the illegal defeat device.

14 138. Plaintiff WILL HARLAN (for the purpose of this paragraph, “Plaintiff”) is a
15 citizen of North Carolina domiciled in Barnardsville, North Carolina. Plaintiff currently owns
16 two Volkswagen Jetta TDIs. The first was purchased on or about, August 2011, and is a 2011
17 Volkswagen Jetta TDI, VIN 3VWLL7AJ7BM094010. The second vehicle, purchased on or
18 about February 2014, is a 2014 Volkswagen Jetta TDI, VIN 3VWLL7AJ7EM419369 (for
19 purposes of this paragraph both of the aforementioned vehicles are referred to as the “Class
20 Vehicles”). Both vehicles were purchased at Harmony Motors in Asheville, North Carolina.
21 Plaintiff is the Editor-in-Chief of the magazine Blue Ridge Outdoors. In light of his profession,
22 Plaintiff wanted to acquire the most eco-friendly and environmentally responsible vehicle on the
23 market. Before purchasing the Class Vehicles, Plaintiff conducted through researched and
24 encountered Volkswagen claims that the Class Vehicles’ diesel technology surpassed others in
25 the market. These and other emissions representations, in combination with the advertised fuel
26 efficiency and performance, as well as the vehicle’s reputation for maintaining a high resale
27 value, induced Plaintiff to purchase the Class Vehicles. Unbeknownst to Plaintiff, at the time of
28 acquisition, the Class Vehicles contained defeat devices designed to bypass emission standards

1 and deceive consumers and regulators. Consequently, the Class Vehicles could not deliver the
2 advertised combination of low emissions, high performance, and fuel economy. Plaintiff has
3 suffered concrete injury as a direct and proximate result of Defendants' conduct, and would not
4 have purchased the Class Vehicles, had Defendants not concealed the illegal defeat device.

5 139. Plaintiff MICHAEL CHARLES KRIMMELBEIN (for the purpose of this
6 paragraph, "Plaintiff") is a citizen of North Carolina domiciled in Biltmore Lake, North Carolina.
7 On or about June 2015, Plaintiff purchased a new 2015 Volkswagen Passat TDI, VIN
8 1VWBV7A39FC073206 (for the purpose of this paragraph, the "Class Vehicle"), from Harmony
9 Motors in Asheville, North Carolina. Before purchasing the Class Vehicle, Plaintiff thoroughly
10 researched the Class Vehicle, including seeing advertisements on television regarding the Class
11 Vehicle's "Clean Diesel." In addition, a sales representative repeatedly told Plaintiff about the
12 benefits of the Class Vehicle's "Clean Diesel" technology. These and other emissions
13 representations, in combination with the advertised fuel efficiency and performance, as well as
14 the vehicle's reputation for maintaining a high resale value, induced Plaintiff to purchase the
15 Class Vehicle. Unbeknownst to Plaintiff, at the time of acquisition, the Class Vehicle contained a
16 defeat device designed to bypass emission standards and deceive consumers and regulators.
17 Consequently, the Class Vehicle could not deliver the advertised combination of low emissions,
18 high performance, and fuel economy—and was illegal. Plaintiff has suffered concrete injury as a
19 direct and proximate result of Defendants' conduct, and would not have purchased the Class
20 Vehicle, had Defendants not concealed the illegal defeat device.

21 **35. North Dakota Plaintiffs**

22 140. Plaintiff MICHELLE GRAMLING (for the purpose of this paragraph, "Plaintiff")
23 is a citizen of North Dakota domiciled in Bismarck, North Dakota. On or about August 31, 2015,
24 Plaintiff purchased a new 2015 Volkswagen Jetta TDI, VIN 3VWLA7AJ5FM323862 (for the
25 purpose of this paragraph, the "Class Vehicle"), from Bismarck Motor Company in Bismarck,
26 North Dakota. Before purchasing the Class Vehicle, Plaintiff conducted thorough research,
27 comparing the Class Vehicle to other similar vehicles. In doing so, Plaintiff was impressed by
28 Volkswagen's statements about its "clean" diesel technology and the Class Vehicle's fuel

1 efficiency. These and other emissions representations, in combination with the advertised fuel
2 efficiency and performance, as well as the vehicle's reputation for maintaining a high resale
3 value, induced Plaintiff to purchase the Class Vehicle. Unbeknownst to Plaintiff, at the time of
4 acquisition, the Class Vehicle contained a defeat device designed to bypass emission standards
5 and deceive consumers and regulators. Consequently, the Class Vehicle could not deliver the
6 advertised combination of low emissions, high performance, and fuel economy—and was illegal.
7 Plaintiff has suffered concrete injury as a direct and proximate result of Defendants' conduct, and
8 would not have purchased the Class Vehicle, had Defendants not concealed the illegal defeat
9 device.

10 **36. Ohio Plaintiffs**

11 141. Plaintiff MICHAEL J. GREITZER (for the purpose of this paragraph, "Plaintiff")
12 is a citizen of Ohio domiciled in Springfield, Ohio. On or about October 29, 2014, Plaintiff
13 purchased a used 2013 Volkswagen Passat TDI, VIN 1VWBN7A34DC051661 (for the purpose
14 of this paragraph, the "Class Vehicle"), from Fairfield Volkswagen in Cincinnati, Ohio. Before
15 purchasing the Class Vehicle, Plaintiff reviewed numerous publications, consumer reports, and
16 television and magazine advertisements, promoting the environmental benefits of the Affect
17 Vehicle and its allegedly superior fuel economy. In addition, Plaintiff's sale representative spoke
18 extensively about the Class Vehicle's "clean" diesel technology. These and other emissions
19 representations, in combination with the advertised fuel efficiency and performance, as well as
20 the vehicle's reputation for maintaining a high resale value, induced Plaintiff to purchase the
21 Class Vehicle. Unbeknownst to Plaintiff, at the time of acquisition, the Class Vehicle contained a
22 defeat device designed to bypass emission standards and deceive consumers and regulators.
23 Consequently, the Class Vehicle could not deliver the advertised combination of low emissions,
24 high performance, and fuel economy—and was illegal. Plaintiff has suffered concrete injury as a
25 direct and proximate result of Defendants' conduct, and would not have purchased the Class
26 Vehicle, had Defendants not concealed the illegal defeat device.

27 142. Plaintiff MARC STEWART (for the purpose of this paragraph, "Plaintiff") is a
28 citizen of Ohio domiciled in Mason, Ohio. On or about February 2, 2010, Plaintiff purchased a

1 new 2010 Volkswagen Jetta TDI, VIN 3VWRL7AJ2AM080167 (for the purpose of this
2 paragraph, the “Class Vehicle”), from Kings Volkswagen in Loveland, Ohio. Plaintiff is a Senior
3 Engineer at Procter and Gamble who sought to buy an environmentally-friendly car. Before
4 purchasing the Class Vehicle, Plaintiff thoroughly researched the car to determine its sustainable
5 and eco-friendly features. It was important to Plaintiff that his car be environmentally-friendly
6 and the Class Vehicle was represented to him as such. This and other emissions representations,
7 in combination with the advertised fuel efficiency and performance, as well as the vehicle’s
8 reputation for maintaining a high resale value, induced Plaintiff to purchase the Class Vehicle.
9 Unbeknownst to Plaintiff, at the time of acquisition, the Class Vehicle contained a defeat device
10 designed to bypass emission standards and deceive consumers and regulators. Consequently, the
11 Class Vehicle could not deliver the advertised combination of low emissions, high performance,
12 and fuel economy—and was illegal. Plaintiff has suffered concrete injury as a direct and
13 proximate result of Defendants’ conduct, and would not have purchased the Class Vehicle, had
14 Defendants not concealed the illegal defeat device.

15 143. Plaintiff GARY VIGRAN (for the purpose of this paragraph, “Plaintiff”) is a
16 citizen of Indiana domiciled in Zionsville, Indiana. On or about November 22, 2013, Plaintiff
17 leased a new 2014 Porsche Cayenne Diesel, VIN WPIAF2A2XELA37477 (for the purpose of this
18 paragraph, the “Class Vehicle”), from Beechmont Motors in Cincinnati, Ohio. Before leasing the
19 Class Vehicle, Plaintiff discussed the Class Vehicle at length with representatives in two separate
20 dealerships. Both representatives touted the environmental benefits of the Class Vehicle’s “Clean
21 Diesel” technology, stating that it was one of the most fuel efficient SUVs on the market.
22 Plaintiff also conducted other market research, which led him to believe the Class Vehicle had
23 efficient gas mileage and was environmentally-friendly. These and other emissions
24 representations, in combination with the advertised fuel efficiency and performance, as well as
25 the vehicle’s reputation for maintaining a high resale value, induced Plaintiff to lease the Class
26 Vehicle. Unbeknownst to Plaintiff, at the time of acquisition, the Class Vehicle contained a
27 defeat device designed to bypass emission standards and deceive consumers and regulators.
28 Consequently, the Class Vehicle could not deliver the advertised combination of low emissions,

1 high performance, and fuel economy—and was illegal. Plaintiff has suffered concrete injury as a
2 direct and proximate result of Defendants’ conduct, and would not have leased the Class Vehicle,
3 had Defendants not concealed the illegal defeat device.

4 **37. Oklahoma Plaintiffs**

5 144. Plaintiff HEATHER GREENFIELD (for the purpose of this paragraph, “Plaintiff”)
6 is a citizen of Oklahoma domiciled in Norman, Oklahoma. On or about August 25, 2010,
7 Plaintiff purchased a new 2010 Volkswagen Jetta TDI, VIN 3VWAL7AJ3AM166746 (for the
8 purpose of this paragraph, the “Class Vehicle”), from Volkswagen of Tulsa in Tulsa, Oklahoma.
9 Plaintiff is an Aerospace Engineer who works for the Department of Defense. Plaintiff wanted a
10 vehicle that had low carbon emissions and was environmentally-friendly. Before purchasing the
11 Class Vehicle, Plaintiff conducted thorough research of the Class Vehicle, including speaking
12 with a salesman who represented that the Class Vehicle had “clean” diesel technology, low
13 emissions and high fuel economy. These and other emissions representations, in combination
14 with the advertised fuel efficiency and performance, as well as the vehicle’s reputation for
15 maintaining a high resale value, induced Plaintiff to purchase the Class Vehicle. Unbeknownst to
16 Plaintiff, at the time of acquisition, the Class Vehicle contained a defeat device designed to
17 bypass emission standards and deceive consumers and regulators. Consequently, the Class
18 Vehicle could not deliver the advertised combination of low emissions, high performance, and
19 fuel economy—and was illegal. Plaintiff has suffered concrete injury as a direct and proximate
20 result of Defendants’ conduct, and would not have purchased the Class Vehicle, had Defendants
21 not concealed the illegal defeat device.

22 **38. Oregon Plaintiffs**

23 145. Plaintiff THOMAS AYALA (for the purpose of this paragraph, “Plaintiff”) is a
24 citizen of Oregon domiciled in Lebanon, Oregon. In October 2014, Plaintiff purchased a new
25 2014 Volkswagen Passat TDI, VIN 1VWBN7A3XEC096587 (for the purpose of this paragraph,
26 the “Class Vehicle”), from Volkswagen of Salem in Salem, Oregon. Plaintiff is a Doctor in
27 organizational psychology from the Chicago School of Professional Psychology and presently
28 works as managing partner of People Solutions, LLC. Before purchasing the Class Vehicle,

1 Plaintiff thoroughly researched Defendants’ and other manufacturers’ vehicles. He was
2 particularly attracted to Volkswagen’s “clean” diesel vehicles because they embodied his
3 environmentally-minded values. The emission representations, in combination with the
4 advertised fuel efficiency and performance, as well as the vehicle’s reputation for maintaining a
5 high resale value, induced Plaintiff to purchase the Class Vehicle. Unbeknownst to Plaintiff, at
6 the time of acquisition, the Class Vehicle contained a defeat device designed to bypass emission
7 standards and deceive consumers and regulators. Consequently, the Class Vehicle could not
8 deliver the advertised combination of low emissions, high performance, and fuel economy—and
9 was illegal. Plaintiff has suffered concrete injury as a direct and proximate result of Defendants’
10 conduct, and would not have purchased the Class Vehicle, had Defendants not concealed the
11 illegal defeat device.

12 146. Plaintiff NICHOLAS BOND (for the purpose of this paragraph, “Plaintiff”) is a
13 citizen of Washington domiciled in Tacoma, Washington. On or about September 1, 2013,
14 Plaintiff purchased a new 2013 Jetta SportWagen TDI, VIN 3VWML7AJ6DM693455 (for the
15 purpose of this paragraph, the “Class Vehicle”), from Sheppard Volkswagen in Eugene, Oregon.
16 Before purchasing the Class Vehicle, Plaintiff saw many television ads praising the Class Vehicle
17 as fuel efficient, “eco-friendly,” and powerful. In particular, Plaintiff recalls seeing a television
18 ad that asked viewers, “what sound does your hybrid make?” Plaintiff was ultimately swayed by
19 the promise of great performance and a “green” image, choosing his Class Vehicle over other
20 environmentally-friendly options like the Chevy Volt and the Prius V. The emission
21 representations, in combination with the advertised fuel efficiency and performance, as well as
22 the vehicle’s reputation for maintaining a high resale value, induced Plaintiff to purchase the
23 Class Vehicle. Unbeknownst to Plaintiff, at the time of acquisition, the Class Vehicle contained a
24 defeat device designed to bypass emission standards and deceive consumers and regulators.
25 Consequently, the Class Vehicle could not deliver the advertised combination of low emissions,
26 high performance, and fuel economy—and was illegal. Plaintiff has suffered concrete injury as a
27 direct and proximate result of Defendants’ conduct, and would not have purchased the Class
28 Vehicle, had Defendants not concealed the illegal defeat device.

1 147. Plaintiffs COBY COHEN and MIRIAM JAFFEE (for the purpose of this
2 paragraph, “Plaintiffs”) are citizens of Oregon domiciled in Portland, Oregon. On or about
3 August 15, 2015 Plaintiffs pre-paid a three-year lease on a new 2016 Audi Q5 TDI, VIN
4 WA1DVAFP3GA018374 (for the purpose of this paragraph, the “Class Vehicle”), from Sunset
5 Audi in Beaverton, Oregon. Plaintiff Cohen, who obtained a Juris Doctor degree from New York
6 Law School and now serves as General Counsel for KinderCare Education, LLC, was attracted to
7 Defendants’ “clean” diesel vehicles because he believed leasing this kind of vehicle was
8 beneficial to the environment. Before leasing the Class Vehicle, Plaintiff Cohen conducted online
9 research, including information provided by Defendant Audi on its website as well as third-party
10 reviews. Additionally, Plaintiff Cohen spoke with an Audi sales representative, who informed
11 him that “clean” diesel vehicles met emissions standards in all fifty States. The emission
12 representations, in combination with the advertised fuel efficiency and performance, as well as
13 the vehicle’s reputation for maintaining a high resale value, induced Plaintiffs to lease the Class
14 Vehicle. Unbeknownst to Plaintiffs, at the time of acquisition, the Class Vehicle contained a
15 defeat device designed to bypass emission standards and deceive consumers and regulators.
16 Consequently, the Class Vehicle could not deliver the advertised combination of low emissions,
17 high performance, and fuel economy—and was illegal. Plaintiffs have suffered concrete injury as
18 a direct and proximate result of Audi’s conduct, and would not have leased the Class Vehicle if
19 they had known about the illegal defeat device.

20 148. Plaintiff HERBERT YUSSIM (for the purpose of this paragraph, “Plaintiff”) is a
21 citizen of Oregon domiciled in Bandon, Oregon. On or about September 6, 2015, Plaintiff
22 purchased a new 2015 Volkswagen Passat TDI, VIN 1VWCV7A31FC083331 (for the purpose of
23 this paragraph, the “Class Vehicle”), from Sheppard Motors, Ltd. in Eugene, Oregon. Before
24 purchasing the Class Vehicle, Plaintiff conducted extensive online research to compare and
25 contrast the various vehicle options available to him for purchase. After an exhaustive search,
26 Plaintiff settled on purchasing either a Nissan Altima or the Class Vehicle. Although the Class
27 Vehicle was more expensive than the Nissan Altima, Plaintiff thought it attractive because it was
28 purportedly more fuel efficient and “green” than the Nissan Altima. It was a difficult decision,

1 but Plaintiff opted for the Class Vehicle in the end because it was supposed to have very low
2 emissions. He believed that in making the purchase, he was benefitting future generations, and
3 that his children and grandchildren would be proud of his choice. The emission representations,
4 in combination with the advertised fuel efficiency and performance, as well as the vehicle's
5 reputation for maintaining a high resale value, induced Plaintiff to purchase the Class Vehicle.
6 Unbeknownst to Plaintiff, at the time of acquisition, the Class Vehicle contained a defeat device
7 designed to bypass emission standards and deceive consumers and regulators. Consequently, the
8 Class Vehicle could not deliver the advertised combination of low emissions, high performance,
9 and fuel economy—and was illegal. Plaintiff has suffered concrete injury as a direct and
10 proximate result of Defendants' conduct, and would not have purchased the Class Vehicle, had
11 Defendants not concealed the illegal defeat device. On or about September 25, 2015 Plaintiff
12 asked Sheppard Motors to buy back his vehicle, but the dealer refused to do so.

13 **39. Pennsylvania Plaintiffs**

14 149. Plaintiff BRIAN BIALECKI (for the purpose of this paragraph, "Plaintiff") is a
15 citizen of Pennsylvania domiciled in Downingtown, Pennsylvania. On or about April 13, 2012,
16 Plaintiff purchased a new 2012 Volkswagen Jetta TDI, VIN 3VWLL7AJ8CM369157.
17 Subsequently, on or about June 14, 2014, Plaintiff purchased a new 2014 Volkswagen Passat,
18 VIN 1VWBN7A3XEC090756 (for the purpose of this paragraph, collectively, the "Class
19 Vehicles"). Plaintiff purchased both Class Vehicles at Jeff D'Ambrosio Auto Group in
20 Downingtown, Pennsylvania. Before purchasing the Class Vehicles, Plaintiff consulted vehicle-
21 review websites, such as Edmunds.com, to compare across models and brands and to determine a
22 fair price for the Class Vehicles. Although the Class Vehicles were priced higher than
23 comparable cars, Plaintiff's research suggested the higher price tag was justified because the
24 Class Vehicles were "environmentally-friendly" without sacrificing performance. The emission
25 representations, in combination with the advertised fuel efficiency and performance, as well as
26 the vehicle's reputation for maintaining a high resale value, induced Plaintiff to purchase the
27 Class Vehicle. Unbeknownst to Plaintiff, at the time of acquisition, the Class Vehicles contained
28 a defeat device designed to bypass emission standards and deceive consumers and regulators.

1 Consequently, the Class Vehicles could not deliver the advertised combination of low emissions,
2 high performance, and fuel economy. Plaintiff has suffered concrete injury as a direct and
3 proximate result of Defendants' conduct, and would not have purchased the Class Vehicles, had
4 Defendants not concealed the illegal defeat device.

5 150. Plaintiff J. WESLEY PRATT (for the purpose of this paragraph, "Plaintiff") is a
6 citizen of Pennsylvania domiciled in West Chester, Pennsylvania. On or about November 6,
7 2012, Plaintiff purchased a new 2013 Volkswagen Jetta TDI, VIN 3VWLL7AJ7DM222135.
8 Subsequently, on or about September 24, 2014, Plaintiff purchased a new 2014 Volkswagen
9 Touareg TDI, VIN VWGEP9BP6ED013122 (for the purpose of this paragraph, collectively, the
10 "Class Vehicles"). Plaintiff purchased both Class Vehicles from Jeff D'Ambrosio Auto Group in
11 Downingtown, Pennsylvania. Before purchasing the Class Vehicle, Plaintiff saw and relied on
12 Volkswagen advertisements promoting the Class Vehicles as "clean." The emission
13 representations, in combination with the advertised fuel efficiency and performance, as well as
14 the vehicles' reputation for maintaining a high resale value, induced Plaintiff to purchase the
15 Class Vehicles. Unbeknownst to Plaintiff, at the time of acquisition, the Class Vehicles contained
16 a defeat device designed to bypass emission standards and deceive consumers and regulators.
17 Consequently, the Class Vehicles could not deliver the advertised combination of low emissions,
18 high performance, and fuel economy. Plaintiff has suffered concrete injury as a direct and
19 proximate result of Defendants' conduct, and would not have purchased the Class Vehicles, had
20 Defendants not concealed the illegal defeat device.

21 151. Plaintiff KAREN LABBATE (for the purpose of this paragraph, "Plaintiff") is a
22 citizen of Pennsylvania domiciled in Forty-Fort, Pennsylvania. On or about August 14, 2015,
23 Plaintiff purchased a new 2015 Volkswagen Passat TDI, VIN 1VWBG7A36FC060039 (for the
24 purpose of this paragraph, the "Class Vehicle"), from Ciocca Volkswagen in Allentown,
25 Pennsylvania. Plaintiff is currently employed as Vice President of Sales at Commonwealth
26 Energy Group, LLC. In this capacity, Plaintiff develops, sells and implements energy efficiency
27 strategies that help businesses save money through environmentally-friendly practices. Given her
28 profession, Plaintiff prides herself in reducing her carbon footprint wherever possible. Before

1 purchasing the Class Vehicle, Plaintiff viewed and heard various television, radio, newspaper and
2 billboard ads describing “clean” diesel Volkswagens as being “green” and fuel efficient without
3 sacrificing performance. Moreover, the dealership where she purchased the Class Vehicle
4 provided her with marketing materials again praising the Class Vehicle for its purported
5 attributes. The emission representations, in combination with the advertised fuel efficiency and
6 performance, as well as the vehicle’s reputation for maintaining a high resale value, induced
7 Plaintiff to purchase the Class Vehicle. Unbeknownst to Plaintiff, at the time of acquisition, the
8 Class Vehicle contained a defeat device designed to bypass emission standards and deceive
9 consumers and regulators. Consequently, the Class Vehicle could not deliver the advertised
10 combination of low emissions, high performance, and fuel economy—and was illegal. Plaintiff
11 has suffered concrete injury as a direct and proximate result of Defendants’ conduct, and would
12 not have purchased the Class Vehicle, had Defendants not concealed the illegal defeat device.

13 **40. Rhode Island Plaintiffs**

14 152. Plaintiff KATHERINE MEHLS (for the purpose of this paragraph, “Plaintiff”) is a
15 citizen of Rhode Island domiciled in Narragansett, Rhode Island. On or about September 7, 2015,
16 Plaintiff purchased a new 2015 Golf SportWagen TDI, VIN 3VWFA7AU0FM520865 (for the
17 purpose of this paragraph, the “Class Vehicle”), from Speedcraft Volkswagen in Wakefield,
18 Rhode Island. Before purchasing the Class Vehicle, Plaintiff received promotional materials,
19 including print advertisements and emails, representing that Volkswagen “clean” diesel vehicles
20 were fuel efficient and environmentally-friendly. The emission representations, in combination
21 with the advertised fuel efficiency and performance, as well as the vehicle’s reputation for
22 maintaining a high resale value, induced Plaintiff to purchase the Class Vehicle. Unbeknownst to
23 Plaintiff, at the time of acquisition, the Class Vehicle contained a defeat device designed to
24 bypass emission standards and deceive consumers and regulators. Consequently, the Class
25 Vehicle could not deliver the advertised combination of low emissions, high performance, and
26 fuel economy—and was illegal. Plaintiff has suffered concrete injury as a direct and proximate
27 result of Defendants’ conduct, and would not have purchased the Class Vehicle, had Defendants
28 not concealed the illegal defeat device.

1 153. Plaintiff JAMES URBANIAK (for the purpose of this paragraph, “Plaintiff”) is a
2 citizen of Florida domiciled in Sarasota, Florida. On or about May 6, 2014, Plaintiff leased a new
3 2014 Volkswagen Jetta SportWagen TDI, VIN 3VWPL7AJ2EM609078 (for the purpose of this
4 paragraph, the “Class Vehicle”), from a Volkswagen dealer in East Greenwich, Rhode Island.
5 Before purchasing the Class Vehicle, Plaintiff relied on Internet, television, radio and print
6 advertisements billing Volkswagen “clean” diesel vehicles as “green,” fuel efficient and
7 performance-oriented. The emission representations, in combination with the advertised fuel
8 efficiency and performance, as well as the vehicle’s reputation for maintaining a high resale
9 value, induced Plaintiff to purchase the Class Vehicle. Unbeknownst to Plaintiff, at the time of
10 acquisition, the Class Vehicle contained a defeat device designed to bypass emission standards
11 and deceive consumers and regulators. Consequently, the Class Vehicle could not deliver the
12 advertised combination of low emissions, high performance, and fuel economy—and was illegal.
13 Plaintiff has suffered concrete injury as a direct and proximate result of Defendants’ conduct, and
14 would not have purchased the Class Vehicle, had Defendants not concealed the illegal defeat
15 device.

16 **41. South Carolina Plaintiffs**

17 154. Plaintiff PERRY OXENDINE (for the purpose of this paragraph, “Plaintiff”) is a
18 citizen of South Carolina domiciled in Isle of Palms, South Carolina. On or about July 8, 2014,
19 Plaintiff purchased a new 2014 Porsche Cayenne Diesel, VIN WP1AF2A21ELA47072 (for the
20 purpose of this paragraph, the “Class Vehicle”), from Baker Motor Company in Charleston,
21 South Carolina. Before purchasing the Class Vehicle, Plaintiff conducted extensive online
22 research, and obtained information he relied on from the Porsche website among others. In
23 addition to the Porsche Cayenne, Plaintiff also considered purchasing a diesel-powered
24 Mercedes-Benz. However, based on representations that both vehicles had the same level of
25 emissions, Plaintiff opted to purchase the Class Vehicle because it had greater power. The
26 emission representations, in combination with the advertised fuel efficiency and performance, as
27 well as the vehicle’s reputation for maintaining a high resale value, induced Plaintiff to purchase
28 the Class Vehicle. Unbeknownst to Plaintiff, at the time of acquisition, the Class Vehicle

1 contained a defeat device designed to bypass emission standards and deceive consumers and
2 regulators. Consequently, the Class Vehicle could not deliver the advertised combination of low
3 emissions, high performance, and fuel economy—and was illegal. Plaintiff has suffered concrete
4 injury as a direct and proximate result of Porsche’s conduct, and would not have purchased the
5 Class Vehicle, had Defendants not concealed the illegal defeat device. Plaintiff attempted to
6 trade in his Class Vehicle at Baker Motors, where he had originally purchased it. However, he
7 was unable to do so because Baker Motors would only take it back for a small fraction of its
8 original cost.

9 155. Plaintiff WHITNEY POWERS (for the purpose of this paragraph, “Plaintiff”) is a
10 citizen of South Carolina domiciled in Charleston, South Carolina. On or about October 13,
11 2010, Plaintiff purchased a new 2011 Volkswagen Jetta SportWagen TDI, VIN
12 3VWPL7AJ1BM623162 (for the purpose of this paragraph, the “Class Vehicle”), from Low
13 Country Volkswagen in Mount Pleasant, South Carolina. Plaintiff owned two vehicles each over
14 eighteen years old that she sold after her husband was killed in an accident. To replace the two
15 vehicles, Plaintiff expressly sought a “green” that aligned with her lifestyle, values and with her
16 architectural firm’s focus on sustainability. Before purchasing the Class Vehicle, Plaintiff relied
17 general knowledge of “clean” diesel vehicles that she gained through exposure to television, radio
18 and print ads, including those published by Defendants. The emission representations, in
19 combination with the advertised fuel efficiency and performance, as well as the vehicle’s
20 reputation for maintaining a high resale value, induced Plaintiff to purchase the Class Vehicle.
21 Unbeknownst to Plaintiff, at the time of acquisition, the Class Vehicle contained a defeat device
22 designed to bypass emission standards and deceive consumers and regulators. Consequently, the
23 Class Vehicle could not deliver the advertised combination of low emissions, high performance,
24 and fuel economy—and was illegal. Plaintiff has suffered concrete injury as a direct and
25 proximate result of Defendants’ conduct, and would not have purchased the Class Vehicle, had
26 Defendants not concealed the illegal defeat device.

1 **42. South Dakota Plaintiffs**

2 156. Plaintiff RODNEY GOEMAN (for the purpose of this paragraph, “Plaintiff”) is a
3 citizen of South Dakota domiciled in Sioux Falls, South Dakota. In or around May 2014,
4 Plaintiff purchased a new 2014 Volkswagen Passat TDI, VIN 1VWCN7A39EC110631 (for the
5 purpose of this paragraph, the “Class Vehicle”), from Graham Automotive Volkswagen in Sioux
6 Falls, South Dakota. Before purchasing the Class Vehicle, Plaintiff researched the Class Vehicle,
7 and viewed Volkswagen’s advertisements and brochures, which led him to believe that the Class
8 Vehicle would minimize his environmental impact, and maximize his fuel economy. The
9 emission representations, in combination with the advertised fuel efficiency and performance, as
10 well as the vehicle’s reputation for maintaining a high resale value, induced Plaintiff to purchase
11 the Class Vehicle. Unbeknownst to Plaintiff, at the time of acquisition, the Class Vehicle
12 contained a defeat device designed to bypass emission standards and deceive consumers and
13 regulators. Consequently, the Class Vehicle could not deliver the advertised combination of low
14 emissions, high performance, and fuel economy—and was illegal. Plaintiff has suffered concrete
15 injury as a direct and proximate result of Defendants’ conduct, and would not have purchased the
16 Class Vehicle, had Defendants not concealed the illegal defeat device. Plaintiff tried to sell his
17 vehicle after learning of Volkswagen’s emissions scandal, but he has been unable to sell the
18 vehicle or trade it in to a dealer.

19 **43. Tennessee Plaintiffs**

20 157. Plaintiff CAROL ANDREWS (for the purpose of this paragraph, “Plaintiff”) is a
21 citizen of Tennessee domiciled in Nashville, Tennessee. In or around February 2014, Plaintiff
22 purchased a used 2012 Volkswagen Jetta TDI, VIN 3VWLL7AJ0CM004472 (for the purpose of
23 this paragraph, the “Class Vehicle”), from Southeast Signature Volkswagen and Hyundai in
24 Murfreesboro, Tennessee. Plaintiff is a Vice President and Senior Editor of a research company.
25 Before purchasing the Class Vehicle, Plaintiff researched various cars for six weeks and visited
26 numerous dealerships, before settling on the Jetta because of its good resale value and relatively
27 low environmental impact. The emission representations, in combination with the advertised fuel
28 efficiency and performance, as well as the vehicle’s reputation for maintaining a high resale

1 value, induced Plaintiff to purchase the Class Vehicle. Unbeknownst to Plaintiff, at the time of
2 acquisition, the Class Vehicle contained a defeat device designed to bypass emission standards
3 and deceive consumers and regulators. Consequently, the Class Vehicle could not deliver the
4 advertised combination of low emissions, high performance, and fuel economy—and was illegal.
5 Plaintiff has suffered concrete injury as a direct and proximate result of Defendants’ conduct, and
6 would not have purchased the Class Vehicle, had Defendants not concealed the illegal defeat
7 device. Plaintiff was offered \$2000 to trade in her 2012 Volkswagen Jetta that had recently
8 passed a safety inspection.

9 158. Plaintiff JASON HESS (for the purpose of this paragraph, “Plaintiff”) is a citizen
10 of Tennessee domiciled in Nashville, Tennessee. On or about April 13, 2015, Plaintiff purchased
11 a new 2015 Volkswagen Passat TDI, VIN 1VWBV7A34FC011325 (for the purpose of this
12 paragraph, the “Class Vehicle”), from Hallmark Volkswagen of Cool Springs in Franklin,
13 Tennessee. Plaintiff purchased the vehicle because of its good gas mileage, fuel efficiency,
14 smooth handling, and benefits of clean emissions. Plaintiff had owned another TDI vehicle prior
15 to purchasing the Class Vehicle and believed TDI vehicles were reliable and trustworthy. Before
16 purchasing the Class Vehicle, Plaintiff saw television advertisements and brochures at the
17 dealership regarding “clean” diesel vehicles and German engineering. The dealer had indicated
18 that “diesel engines last longer than others” and made sure he was aware of the fuel efficiency
19 and “clean” diesel bonuses that these “well built” vehicles included. Plaintiff relied on these
20 advertisements as well as representations made by the dealer to arrive at his decision to purchase
21 the vehicle. The emission representations, in combination with the advertised fuel efficiency and
22 performance, as well as the vehicle’s reputation for maintaining a high resale value, induced
23 Plaintiff to purchase the Class Vehicle. Unbeknownst to Plaintiff, at the time of acquisition, the
24 Class Vehicle contained a defeat device designed to bypass emission standards and deceive
25 consumers and regulators. Consequently, the Class Vehicle could not deliver the advertised
26 combination of low emissions, high performance, and fuel economy—and was illegal. Plaintiff
27 has suffered concrete injury as a direct and proximate result of Defendants’ conduct, and would
28 not have purchased the Class Vehicle, had Defendants not concealed the illegal defeat device.

1 159. Plaintiff ROBIN JOHNSON (for the purpose of this paragraph, “Plaintiff”) is a
2 citizen of Mississippi domiciled in Southaven, Mississippi. On November 12, 2012, Plaintiff
3 purchased a new 2013 Volkswagen Beetle TDI, VIN 3VWJL7AT9DM611402 (for the purpose of
4 this paragraph, the “Class Vehicle”), from Gossett Volkswagen in Germantown, Tennessee.
5 Plaintiff served 21 years in the United States Navy, during which time she served in
6 administrative and management capacities. She was awarded Sailor of the Year and received an
7 Honorable Discharge in 1996. Before purchasing the Class Vehicle, Plaintiff knew that she
8 wanted a “clean” diesel vehicle. She is a self-proclaimed “Recycle Queen” and made the
9 decision to purchase the Class Vehicle because of it was eco-friendly and fuel efficient. The
10 emission representations, in combination with the advertised fuel efficiency and performance, as
11 well as the vehicle’s reputation for maintaining a high resale value, induced Plaintiff to purchase
12 the Class Vehicle. Unbeknownst to Plaintiff, at the time of acquisition, the Class Vehicle
13 contained a defeat device designed to bypass emission standards and deceive consumers and
14 regulators. Consequently, the Class Vehicle could not deliver the advertised combination of low
15 emissions, high performance, and fuel economy—and was illegal. Plaintiff has suffered concrete
16 injury as a direct and proximate result of Defendants’ conduct, and would not have purchased the
17 Class Vehicle, had Defendants not concealed the illegal defeat device. Plaintiff placed a “for
18 sale” sign on her Class Vehicle in an attempt to sell it, however, she was unable to sell it for the
19 price she was asking.

20 **44. Texas Plaintiffs**

21 160. Plaintiff LORI ESQUIVEL (for the purpose of this paragraph, “Plaintiff”) is a
22 citizen of Texas domiciled in San Antonio, Texas. In or around October 2014, Plaintiff
23 purchased a new 2014 Volkswagen Jetta TDI, 3VWLL7AJ2EM438671 (for the purpose of this
24 paragraph, the “Class Vehicle”), from Volkswagen of Alamo Heights in San Antonio, Texas.
25 Prior to purchasing the Class Vehicle, Plaintiff worked for Volkswagen of Alamo Heights and
26 was very familiar with all of the representations the dealership made regarding its “clean” diesel
27 vehicle. In particular, Plaintiff was drawn to the Class Vehicle because it had won a “Green
28 Vehicle of the Year” award. The emission representations, in combination with the advertised

1 fuel efficiency and performance, as well as the vehicle’s reputation for maintaining a high resale
2 value, induced Plaintiff to purchase the Class Vehicle. Unbeknownst to Plaintiff, at the time of
3 acquisition, the Class Vehicle contained a defeat device designed to bypass emission standards
4 and deceive consumers and regulators. Consequently, the Class Vehicle could not deliver the
5 advertised combination of low emissions, high performance, and fuel economy—and was illegal.
6 Plaintiff has suffered concrete injury as a direct and proximate result of Defendants’ conduct, and
7 would not have purchased the Class Vehicle, had Defendants not concealed the illegal defeat
8 device.

9 161. Plaintiff TIMOTHY FITZPATRICK (for the purpose of this paragraph,
10 “Plaintiff”) is a citizen of Texas domiciled in Austin, Texas. On or about July 20, 2015, Plaintiff
11 purchased a new 2015 Volkswagen Golf SportWagen TDI, VIN 3VWFA7AU7FM5088695 (for
12 the purpose of this paragraph, the “Class Vehicle”), from Charles Maund Volkswagen in Austin,
13 Texas. Before purchasing the Class Vehicle, Plaintiff was looking for a car that was
14 environmentally-friendly, fuel efficient, practical and fun to drive. Although he was considering
15 other vehicles, he settled on the Class Vehicle because he saw various internet and television ads
16 representing Volkswagen “clean” diesel cars as “green,” fuel efficient, but focused on
17 performance as well. The emission representations, in combination with the advertised fuel
18 efficiency and performance, as well as the vehicle’s reputation for maintaining a high resale
19 value, induced Plaintiff to purchase the Class Vehicle. Unbeknownst to Plaintiff, at the time of
20 acquisition, the Class Vehicle contained a defeat device designed to bypass emission standards
21 and deceive consumers and regulators. Consequently, the Class Vehicle could not deliver the
22 advertised combination of low emissions, high performance, and fuel economy—and was illegal.
23 Plaintiff has suffered concrete injury as a direct and proximate result of Defendants’ conduct, and
24 would not have purchased the Class Vehicle, had Defendants not concealed the illegal defeat
25 device. After Defendants’ deception came to light, Plaintiff attempted to trade in his Class
26 Vehicle for a new BMW, but the BMW dealership refused to accept his Class Vehicle as a trade-
27 in.
28

1 162. Plaintiff ROY MCNEAL (for the purpose of this paragraph, “Plaintiff”) is a citizen
2 of Texas domiciled in San Antonio, Texas. In or around October 2014, Plaintiff purchased a new
3 2014 Volkswagen Passat TDI, VIN 1VWCN7A3XEC112310 (for the purpose of this paragraph,
4 the “Class Vehicle”), from Ancira Volkswagen in San Antonio, Texas. Before purchasing the
5 Class Vehicle, Plaintiff saw television, print and radio advertisements representing that
6 Volkswagen “clean” diesel vehicles are fuel efficient and clean without affecting performance.
7 The emission representations, in combination with the advertised fuel efficiency and
8 performance, as well as the vehicle’s reputation for maintaining a high resale value, induced
9 Plaintiff to purchase the Class Vehicle. Unbeknownst to Plaintiff, at the time of acquisition, the
10 Class Vehicle contained a defeat device designed to bypass emission standards and deceive
11 consumers and regulators. Consequently, the Class Vehicle could not deliver the advertised
12 combination of low emissions, high performance, and fuel economy—and was illegal. Plaintiff
13 has suffered concrete injury as a direct and proximate result of Defendants’ conduct, and would
14 not have purchased the Class Vehicle, had Defendants not concealed the illegal defeat device.

15 163. Plaintiff AMIN NOSRAT (for the purpose of this paragraph, “Plaintiff”) is a
16 citizen of Texas domiciled in Houston, Texas. On or about March 14, 2014, Plaintiff purchased a
17 new 2014 Audi A6 TDI, VIN WAUHMAFCXEN113136 (for the purpose of this paragraph, the
18 “Class Vehicle”), from Audi Central Houston in Houston, Texas. Prior to purchasing his Class
19 Vehicle, Plaintiff was a loyal Toyota customer and drove a hybrid Camry. He switched brands
20 specifically because television ads and the dealer billed the Audi A6 TDI as fuel efficient and
21 “green.” The emission representations, in combination with the advertised fuel efficiency and
22 performance, as well as the vehicle’s reputation for maintaining a high resale value, induced
23 Plaintiff to purchase the Class Vehicle. Unbeknownst to Plaintiff, at the time of acquisition, the
24 Class Vehicle contained a defeat device designed to bypass emission standards and deceive
25 consumers and regulators. Consequently, the Class Vehicle could not deliver the advertised
26 combination of low emissions, high performance, and fuel economy—and was illegal. Plaintiff
27 has suffered concrete injury as a direct and proximate result of Audi’s conduct, and would not
28 have purchased the Class Vehicle, had Defendants not concealed the illegal defeat device.

1 Plaintiff sent Scott Keogh, Chief Executive Officer for Audi in the United States a letter asking
2 that Defendant take his vehicle back. Plaintiff never obtained a response.

3 **45. Utah Plaintiffs**

4 164. Plaintiff BRETT ALTERS (for the purpose of this paragraph, “Plaintiff”) is a
5 citizen of Nevada domiciled in Las Vegas, Nevada. On or about August 12, 2015, Plaintiff
6 purchased used a 2012 Volkswagen Golf TDI, VIN WVWDM7AJ2CW350043 (for the purpose
7 of this paragraph, the “Class Vehicle”), from Findlay Volkswagen in St. George, Utah. Plaintiff
8 received an education from New York University and is a performer who currently appears in Las
9 Vegas with Cirque du Soleil. Before purchasing the Class Vehicle, Plaintiff was interested in fuel
10 economy, performance, durability and impact on the environment, and viewed Volkswagen
11 representations about the “clean” diesel vehicles, and discussed his options with Volkswagen
12 salespersons. The emission representations, in combination with the advertised fuel efficiency
13 and performance, as well as the vehicle’s reputation for maintaining a high resale value, induced
14 Plaintiff to purchase the Class Vehicle, instead of other, hybrid and electric vehicles he was
15 considering. Unbeknownst to Plaintiff, at the time of acquisition, the Class Vehicle contained a
16 defeat device designed to bypass emission standards and deceive consumers and regulators.
17 Consequently, the Class Vehicle could not deliver the advertised combination of low emissions,
18 high performance, and fuel economy—and was illegal. Plaintiff has suffered concrete injury as a
19 direct and proximate result of Defendants’ conduct, and would not have purchased the Class
20 Vehicle, had Defendants not concealed the illegal defeat device.

21 165. Plaintiff RACHEL OTTO (for the purpose of this paragraph, “Plaintiff”) is a
22 citizen of Utah domiciled in Salt Lake City, Utah. On or about July 2015, Plaintiff purchased a
23 new 2015 Volkswagen Golf SportWagen TDI, VIN 3VWCA7AU6FM501823 (for the purpose of
24 this paragraph, the “Class Vehicle”), from Southtowne Volkswagen in South Jordan, Utah.
25 Plaintiff is the Assistant City Attorney for South Jordan City, Utah, with a background in natural
26 resources law. Plaintiff has a deep concern about the environment and historically commuted to
27 work by bike or on foot. Before purchasing the Class Vehicle, Plaintiff’s top concern was to find
28 a vehicle with a low environmental impact, so she did extensive research on environmentally

1 sound vehicles and viewed Volkswagen representations regarding the “clean” diesel engine. The
2 emission representations, in combination with the advertised fuel efficiency and performance, as
3 well as the vehicle’s reputation for maintaining a high resale value, induced Plaintiff to purchase
4 the Class Vehicle. Unbeknownst to Plaintiff, at the time of acquisition, the Class Vehicle
5 contained a defeat device designed to bypass emission standards and deceive consumers and
6 regulators. Consequently, the Class Vehicle could not deliver the advertised combination of low
7 emissions, high performance, and fuel economy—and was illegal. Plaintiff has suffered concrete
8 injury as a direct and proximate result of Defendants’ conduct, and would not have purchased the
9 Class Vehicle, had Defendants not concealed the illegal defeat device. Plaintiff has attempted
10 numerous times to sell her “clean” diesel vehicle back to her local Volkswagen dealership, but the
11 dealership has refused and has downplayed her concerns about environmental impact. Because of
12 her continued concerns relating to the Class Vehicle’s pollution levels, Plaintiff limits the use of
13 the Class Vehicle to her work commute, opting to use alternate modes of transportation on the
14 weekends.

15 166. Plaintiff KELLY R. KING (for the purpose of this paragraph, “Plaintiff”) is a
16 citizen of Utah domiciled in Centerville, Utah. On or about August 27, 2010, Plaintiff purchased
17 a new 2010 Volkswagen Jetta TDI, VIN 3VWRL7AJ6AM104227 (for the purpose of this
18 paragraph, the “Class Vehicle”), from Strong Volkswagen in Salt Lake City, Utah. Plaintiff is a
19 Brigham Young University educated project manager for L3 Communications Systems-West,
20 specializing in the development, design, manufacturing and integration of secure networked
21 communications. Before purchasing the Class Vehicle, Plaintiff spent months extensively
22 researching the “clean” diesel vehicles, and viewed Volkswagen’s representations regarding fuel
23 efficiency, emissions and performance. The emission representations, in combination with the
24 advertised fuel efficiency and performance, and the vehicle’s reputation for maintaining a high
25 resale value, induced Plaintiff to purchase the Class Vehicle. Unbeknownst to Plaintiff, at the
26 time of acquisition, the Class Vehicle contained a defeat device designed to bypass emission
27 standards and deceive consumers and regulators. Consequently, the Class Vehicle could not
28 deliver the advertised combination of low emissions, high performance, and fuel economy—and

1 was illegal. Plaintiff has suffered concrete injury as a direct and proximate result of Defendants’
2 conduct, and would not have purchased the Class Vehicle, had Defendants not concealed the
3 illegal defeat device. Plaintiff is embarrassed and dismayed not only that the Class Vehicle
4 pollutes, and continues to pollute, but that he recommended and convinced others to buy similar
5 “clean” diesel vehicles based on Volkswagen’s representations regarding emissions and fuel
6 economy.

7 167. Plaintiff WILLIAM A. WILSON (for the purpose of this paragraph, “Plaintiff”) is
8 a citizen of Utah domiciled in Provo, Utah. On or about October 1, 2013, Plaintiff purchased a
9 new 2013 Volkswagen Passat TDI SE, VIN 1VWBN7A38DC088762 (for the purpose of this
10 paragraph, the “Class Vehicle”), from Garff Volkswagen in Orem, Utah. Plaintiff has a B.S. in
11 Sociology and Economics from Brigham Young University and served in the United States
12 military. Before purchasing the Class Vehicle, Plaintiff did extensive research on the “clean”
13 diesel vehicles, focusing on fuel efficiency, reliability, durability and environmental impact,
14 viewed many Volkswagen representations about “clean” diesel vehicles, and discussed the
15 longevity of “clean” diesel engines with the service manager at Garff Volkswagen. The emission
16 representations, in combination with the advertised fuel efficiency and performance, as well as
17 the vehicle’s reputation for maintaining a high resale value, induced Plaintiff to purchase the
18 Class Vehicle. Unbeknownst to Plaintiff, at the time of acquisition, the Class Vehicle contained a
19 defeat device designed to bypass emission standards and deceive consumers and regulators.
20 Consequently, the Class Vehicle could not deliver the advertised combination of low emissions,
21 high performance, and fuel economy—and was illegal. Plaintiff has suffered concrete injury as a
22 direct and proximate result of Defendants’ conduct, and would not have purchased the Class
23 Vehicle, had Defendants not concealed the illegal defeat device.

24 **46. Vermont Plaintiffs**

25 168. Plaintiff DAVID EBENSTEIN (for the purpose of this paragraph, “Plaintiff”) is a
26 citizen of Vermont domiciled in Richmond, Vermont. On or about July 15, 2015, Plaintiff
27 purchased a new 2015 Volkswagen Golf TDI, VIN 3VWRA7AU4FM076208 (for the purpose of
28 this paragraph, the “Class Vehicle”), from Shearer Volkswagen in South Burlington, Vermont.

1 Plaintiff presently works as a Research Technician at the University of Vermont, having earned a
2 Master's Degree in Biology from the University of Southern California in 1986. Before
3 purchasing the Class Vehicle, Plaintiff read a review in the New York Times that described
4 Volkswagen's "clean" diesel vehicles as emitting reduced levels of combustion pollutants. The
5 emission representations, in combination with the advertised fuel efficiency and performance, as
6 well as the vehicle's reputation for maintaining a high resale value, induced Plaintiff to purchase
7 the Class Vehicle. Unbeknownst to Plaintiff, at the time of acquisition, the Class Vehicle
8 contained a defeat device designed to bypass emission standards and deceive consumers and
9 regulators. Consequently, the Class Vehicle could not deliver the advertised combination of low
10 emissions, high performance, and fuel economy—and was illegal. Plaintiff has suffered concrete
11 injury as a direct and proximate result of Defendants' conduct, and would not have purchased the
12 Class Vehicle, had Defendants not concealed the illegal defeat device.

13 169. Plaintiff JAMES MALLOY (for the purpose of this paragraph, "Plaintiff") is a
14 citizen of Vermont domiciled in Plainfield, Vermont. In or about May 2011, Plaintiff purchased a
15 new 2011 Volkswagen Golf TDI, VIN WVWMM7AJ8BW330247. Subsequently, in April 2015,
16 Plaintiff purchased a new 2014 Volkswagen Passat TDI, VIN IVWCN7A38EC098973 (for the
17 purpose of this paragraph, collectively, the "Class Vehicles"). Plaintiff purchased both Class
18 Vehicles from Walker Mazda Volkswagen in Barre, Vermont. Plaintiff is presently Managing
19 Partner of Black Bear Bio Diesel & TH Malloy, a company that sells biodiesel fuel. Before
20 purchasing the Class Vehicle, Plaintiff saw myriad advertisements on billboards, bus stops,
21 newspapers, and television. The ads caught Plaintiff's attention because they all represented,
22 falsely, that Volkswagen's "clean" diesel vehicles retained their full performance all the while
23 producing very few noxious pollutants and being fuel-efficient. The ads struck a chord with
24 Plaintiff, whose entire business is devoted to making the use of fuel sustainable and "green." The
25 emission representations, in combination with the advertised fuel efficiency and performance, as
26 well as the vehicle's reputation for maintaining a high resale value, induced Plaintiff to purchase
27 the Class Vehicle. Unbeknownst to Plaintiff, at the time of acquisition, the Class Vehicle
28 contained a defeat device designed to bypass emission standards and deceive consumers and

1 regulators. Consequently, the Class Vehicle could not deliver the advertised combination of low
2 emissions, high performance, and fuel economy—and was illegal. Plaintiff has suffered concrete
3 injury as a direct and proximate result of Defendants’ conduct, and would not have purchased the
4 Class Vehicle, had Defendants not concealed the illegal defeat device.

5 **47. Virginia Plaintiffs**

6 170. Plaintiff STEVEN BRIER (for the purpose of this paragraph, “Plaintiff”) is a
7 citizen of New Jersey domiciled in Maplewood, New Jersey. On or about June 2010, Plaintiff
8 purchased a new 2010 Volkswagen Jetta TDI, VIN 3VWRL7AJ2AM121056; on or about June
9 2015, Plaintiff purchased a 2014 Jetta SportWagen TDI, VIN 3VWPL7AJ9EM626928 (for the
10 purpose of this paragraph, these vehicles are considered “Class Vehicles”), from Wes Greenway’s
11 Alexandria Volkswagen, in Alexandria, Virginia. Plaintiff is a self-employed consultant. Before
12 purchasing the Class Vehicles, Plaintiff researched “Clean Diesel” technology on Volkswagen’s
13 website, read newspaper and magazine reviews, and visited the dealership that had “Clean
14 Diesel” logos displayed throughout. The emission representations, in combination with the
15 advertised fuel efficiency and performance, as well as the vehicle’s reputation for maintaining a
16 high resale value, induced Plaintiff to purchase the Class Vehicles. Unbeknownst to Plaintiff, at
17 the time of acquisition, the Class Vehicles contained a defeat device designed to bypass emission
18 standards and deceive consumers and regulators. Consequently, the Class Vehicles could not
19 deliver the advertised combination of low emissions, high performance, and fuel economy.
20 Plaintiff has suffered concrete injury as a direct and proximate result of Defendants’ conduct, and
21 would not have purchased the Class Vehicles, had Defendants not concealed the illegal defeat
22 device.

23 171. Plaintiff MARK SCHUMACHER (for the purpose of this paragraph, “Plaintiff”)
24 is a citizen of Virginia domiciled in Gainesville, Virginia. On or about April 2012, Plaintiff
25 purchased a new 2012 Volkswagen Passat TDI, VIN 1VWBN7A30CC071839 (for the purpose of
26 this paragraph, the “Class Vehicle”), from Lindsay Volkswagen in Sterling, Virginia. Plaintiff is
27 a graduate of Minnesota State University and has worked as an air traffic controller for thirty
28 years. Before purchasing the Class Vehicle, Plaintiff researched the Volkswagen and bought the

1 car to drive long trips to visit his kids who were playing college sports in neighboring states;
2 Plaintiff believed the cleanliness and long-range of the diesel fuel would make up for the higher
3 price of the fuel. The emission representations, in combination with the advertised fuel efficiency
4 and performance, as well as the vehicle's reputation for maintaining a high resale value, induced
5 Plaintiff to purchase the Class Vehicle. Unbeknownst to Plaintiff, at the time of acquisition, the
6 Class Vehicle contained a defeat device designed to bypass emission standards and deceive
7 consumers and regulators. Consequently, the Class Vehicle could not deliver the advertised
8 combination of low emissions, high performance, and fuel economy—and was illegal. Plaintiff
9 has suffered concrete injury as a direct and proximate result of Defendants' conduct, and would
10 not have purchased the Class Vehicle, had Defendants not concealed the illegal defeat device.
11 Plaintiff placed an ad on Craigslist to sell his car, but has been unsuccessful in selling his car thus
12 far.

13 172. Plaintiff JOHN STABY (for the purpose of this paragraph, "Plaintiff") is a citizen
14 of Virginia domiciled in Vienna, Virginia. In or about March 31, 2015, Plaintiff purchased a new
15 2014 Audi A6 TDI, VIN WAUFMAFC0EN071468 (for the purpose of this paragraph, the "Class
16 Vehicle"), from Tysons Corner Audi (Penske Automotive Group in Vienna, Virginia. Plaintiff
17 has a bachelor of science degree in civil engineering and a master's degree in project
18 management. He currently works as a project manager for the Federal Aviation Administration in
19 Washington D.C. Before purchasing the Class Vehicle, Plaintiff researched the Class Vehicle on
20 the internet. Several automotive blogs touted not only the environmentally sound aspects of the
21 A6, but also the fuel economy and performance. The "clean" diesel advertising and the
22 salesperson at the dealership convinced him he was making an environmentally responsible
23 purchase decision by selecting the A6 TDI. The emission representations, in combination with
24 the advertised fuel efficiency and performance, as well as the vehicle's reputation for maintaining
25 a high resale value, induced Plaintiff to purchase the Class Vehicle. Unbeknownst to Plaintiff, at
26 the time of acquisition, the Class Vehicle contained a defeat device designed to bypass emission
27 standards and deceive consumers and regulators. Consequently, the Class Vehicle could not
28 deliver the advertised combination of low emissions, high performance, and fuel economy—and

1 was illegal. Plaintiff has suffered concrete injury as a direct and proximate result of Defendants’
2 conduct, and would not have purchased the Class Vehicle, had Defendants not concealed the
3 illegal defeat device.

4 173. Plaintiff SCOTT TAYLOR (for the purpose of this paragraph, “Plaintiff”) is a
5 citizen of Virginia domiciled in Clifton, Virginia. On or about October 19, 2012, Plaintiff
6 purchased a new 2013 Volkswagen Passat TDI, VIN 1VWCN7A37DC030467 (for the purpose of
7 this paragraph, the “Class Vehicle”), from Wes Greenway’s Alexandria Volkswagen in
8 Alexandria, Virginia. Plaintiff is an advisor for the U.S. Department of Health and human
9 Services in Washington D.C. He purchased the Class Vehicle out of his desire to “go green” and
10 liked the idea of low emissions and excellent fuel economy. Before purchasing the Class Vehicle,
11 Plaintiff conducted internet research that produced multiple articles regarding the vehicle’s
12 exemplary fuel economy for its class. He visited multiple dealerships that similarly touted the
13 vehicle’s “clean” diesel technology and exceptional fuel economy. The emission representations,
14 in combination with the advertised fuel efficiency and performance, as well as the vehicle’s
15 reputation for maintaining a high resale value, induced Plaintiff to purchase the Class Vehicle.
16 Unbeknownst to Plaintiff, at the time of acquisition, the Class Vehicle contained a defeat device
17 designed to bypass emission standards and deceive consumers and regulators. Consequently, the
18 Class Vehicle could not deliver the advertised combination of low emissions, high performance,
19 and fuel economy—and was illegal. Plaintiff has suffered concrete injury as a direct and
20 proximate result of Defendants’ conduct, and would not have purchased the Class Vehicle, had
21 Defendants not concealed the illegal defeat device. Plaintiff attempted to sell the Class Vehicle
22 after he learned of the defect and was offered only \$13,000 by an interested party who pointed out
23 the emissions issue to him as justification for the low offer. Volkswagen of Alexandria offered
24 him \$12,000 on a trade-in.

25 174. Plaintiff WALTER FORD (for the purpose of this paragraph, “Plaintiff”) is a
26 citizen of Virginia domiciled in Charlottesville, Virginia. On or about July 31, 2103, Plaintiff
27 purchased a new 2013 Volkswagen Passat TDI, VIN 1VWCN7A39DC083543 (for the purpose of
28 this paragraph, the “Class Vehicle”), from Flow Volkswagen in Charlottesville, Virginia.

1 Plaintiff has worked for Northrop Grumman for the last eight years in the International Business
2 Development department. Before purchasing the Class Vehicle, Plaintiff reviewed articles on
3 Consumer Reports that picked the 2012 Passat TDI as best overall mid-sized car. After he
4 considered all possible options, he was drawn to the Passat TDI because of its rating in Consumer
5 Reports and the MPG rating of the engine. The sales people at the dealership emphasized the
6 “clean” diesel aspect of the vehicle and the MPG. The emission representations, in combination
7 with the advertised fuel efficiency and performance, as well as the vehicle’s reputation for
8 maintaining a high resale value, induced Plaintiff to purchase the Class Vehicle. Unbeknownst to
9 Plaintiff, at the time of acquisition, the Class Vehicle contained a defeat device designed to
10 bypass emission standards and deceive consumers and regulators. Consequently, the Class
11 Vehicle could not deliver the advertised combination of low emissions, high performance, and
12 fuel economy—and was illegal. Plaintiff has suffered concrete injury as a direct and proximate
13 result of Defendants’ conduct, and would not have purchased the Class Vehicle, had Defendants
14 not concealed the illegal defeat device.

15 175. Plaintiff MICHAEL MEINTZSCHEL (for the purpose of this paragraph,
16 “Plaintiff”) is a citizen of Virginia domiciled in Charlottesville, Virginia. On or about June 16,
17 2015, Plaintiff purchased a new 2015 Volkswagen Golf SportWagen TDI, VIN
18 3VWCA7AU8FM502097 (for the purpose of this paragraph, the “Class Vehicle”), from Valley
19 Volkswagen in Staunton, Virginia. Plaintiff has a degree in Business Administration and
20 currently works for the Great Outdoor Provision Company in Charlottesville, Virginia. Before
21 purchasing the Class Vehicle, Plaintiff was looking for a car with great gas mileage and
22 performance. His previous car was 15 years old and he and his wife were looking for a new one.
23 They were looking at Volkswagen for over a year and received regular mailings from the
24 dealership. The Volkswagen Golf TDI was advertised as a high per gallon mileage car with great
25 acceleration for a diesel. They test-drove the vehicle a week before they purchased it and found
26 that it performed as described. The salesperson at the dealership told them Volkswagen TDI
27 vehicles contained new technology that allowed the new diesel engines to burn cleaner and that
28 because of this “we would be seeing a lot more models in diesel.” The emission representations,

1 in combination with the advertised fuel efficiency and performance, as well as the vehicle's
2 reputation for maintaining a high resale value, induced Plaintiff to purchase the Class Vehicle.
3 Unbeknownst to Plaintiff, at the time of acquisition, the Class Vehicle contained a defeat device
4 designed to bypass emission standards and deceive consumers and regulators. Consequently, the
5 Class Vehicle could not deliver the advertised combination of low emissions, high performance,
6 and fuel economy—and was illegal. Plaintiff has suffered concrete injury as a direct and
7 proximate result of Defendants' conduct, and would not have purchased the Class Vehicle, had
8 Defendants not concealed the illegal defeat device.

9 **48. Washington Plaintiffs**

10 176. Plaintiff KURT MALLERY (for the purpose of this paragraph, "Plaintiff") is a
11 citizen of Washington domiciled in Gig Harbor, Washington. On or about April 22, 2010,
12 Plaintiff purchased a new 2010 Volkswagen Golf TDI, VIN WVWNM7AJXAW327854 (for the
13 purpose of this paragraph, the "Class Vehicle"), from Chaplin's Volkswagen in Bellevue,
14 Washington. Plaintiff has a degree in engineering from the United States Air Force Academy and
15 has been employed by Alaska Airlines as a pilot for the last 20 years. Before purchasing the
16 Class Vehicle, Plaintiff thoroughly researched "clean" diesel vehicles on the internet and was
17 convinced that "clean" diesel vehicles had better fuel efficiency and cleaner emissions than
18 hybrid and gasoline-powered vehicles. He decided to purchase the Jetta Golf TDI after test-
19 driving various vehicles. The dealership explained to him the advantages of "clean" diesel
20 vehicles, the durability of the engine, and how the fuel economy would improve over time. The
21 emission representations, in combination with the advertised fuel efficiency and performance, as
22 well as the vehicle's reputation for maintaining a high resale value, induced Plaintiff to purchase
23 the Class Vehicle. Unbeknownst to Plaintiff, at the time of acquisition, the Class Vehicle
24 contained a defeat device designed to bypass emission standards and deceive consumers and
25 regulators. Consequently, the Class Vehicle could not deliver the advertised combination of low
26 emissions, high performance, and fuel economy—and was illegal. Plaintiff has suffered concrete
27 injury as a direct and proximate result of Defendants' conduct, and would not have purchased the
28 Class Vehicle, had Defendants not concealed the illegal defeat device. When he learned the Class

1 Vehicle contained a defeat device designed to bypass emissions standards put his vehicle into
2 storage and started driving another car.

3 177. Plaintiff CHAD DIAL (for the purpose of this paragraph, “Plaintiff”) is a citizen of
4 Washington domiciled in Woodinville, Washington. In or about September 2013, Plaintiff
5 purchased a new 2014 Volkswagen Passat TDI, VIN 1VWCN7A36EC021289 (for the purpose of
6 this paragraph, the “Class Vehicle”), from Chaplain’s Volkswagen in Bellevue,
7 Washington. Plaintiff has a master’s degree in business administration and is currently the
8 Executive Director of HTC America in Seattle, Washington. Before purchasing the Class
9 Vehicle, Plaintiff visited a Volkswagen dealer and test-drove the “clean” diesel vehicle. The
10 dealer also explained the performance, fuel economy, and “clean” diesel technology. The
11 emission representations, in combination with the advertised fuel efficiency and performance, as
12 well as the vehicle’s reputation for maintaining a high resale value, induced Plaintiff to purchase
13 the Class Vehicle. Unbeknownst to Plaintiff, at the time of acquisition, the Class Vehicle
14 contained a defeat device designed to bypass emission standards and deceive consumers and
15 regulators. Consequently, the Class Vehicle could not deliver the advertised combination of low
16 emissions, high performance, and fuel economy—and was illegal. Plaintiff has suffered concrete
17 injury as a direct and proximate result of Defendants’ conduct, and would not have purchased the
18 Class Vehicle, had Defendants not concealed the illegal defeat device.

19 178. Plaintiff JOSEPH HERR (for the purpose of this paragraph, “Plaintiff”) is a citizen
20 of Washington domiciled in Seattle, Washington. On or about May 30, 2015, Plaintiff purchased
21 a new 2015 Volkswagen Passat TDI, VIN 1VWCV7A39FC061531 (for the purpose of this
22 paragraph, the “Class Vehicle”), from Pignataro Volkswagen in Everett, Washington. Plaintiff
23 has been the Director of Design for Burnstead Construction for the last 17 years. When Plaintiff
24 purchased the Class Vehicle, the dealership told him the Volkswagen Passat TDI had great
25 mileage and performance. He was also told that his “clean” diesel vehicle met all emissions
26 standards and it was better than comparable gasoline vehicles. The emission representations, in
27 combination with the advertised fuel efficiency and performance, as well as the vehicle’s
28 reputation for maintaining a high resale value, induced Plaintiff to purchase the Class

1 Vehicle. Unbeknownst to Plaintiff, at the time of acquisition, the Class Vehicle contained a
2 defeat device designed to bypass emission standards and deceive consumers and
3 regulators. Consequently, the Class Vehicle could not deliver the advertised combination of low
4 emissions, high performance, and fuel economy—and was illegal. Plaintiff has suffered concrete
5 injury as a direct and proximate result of Defendants’ conduct, and would not have purchased the
6 Class Vehicle, had Defendants not concealed the illegal defeat device.

7 179. Plaintiff DAN CLEMENTS (for the purpose of this paragraph, “Plaintiff”) is a
8 citizen of Washington domiciled in Everett, Washington. In or about October 2011, Plaintiff
9 purchased a new 2012 Touareg TDI, VIN WVGEK9BP5CD008991 (for the purpose of this
10 paragraph, the “Class Vehicle”), from Pignataro Volkswagen in Everett, Washington. Plaintiff
11 has an MBA in International Finance. He is an underwater photographer and public speaker. He
12 purchased the Touareg TDI because he wanted an environmentally clean vehicle with a long
13 driving range that could hold his dive and photography gear. Before purchasing the Class
14 Vehicle, Plaintiff compared the Touareg TDI with Mercedes. They were within a few hundred
15 dollars of each other. Before he purchased the Touareg TDI, Plaintiff was told by the dealership
16 that the “clean” diesel was “much cleaner than gas engines. You can almost breathe the
17 exhaust.” The emission representations, in combination with the advertised fuel efficiency and
18 performance, as well as the vehicle’s reputation for maintaining a high resale value, induced
19 Plaintiff to purchase the Class Vehicle. Unbeknownst to Plaintiff, at the time of acquisition, the
20 Class Vehicle contained a defeat device designed to bypass emission standards and deceive
21 consumers and regulators. Consequently, the Class Vehicle could not deliver the advertised
22 combination of low emissions, high performance, and fuel economy—and was illegal. Plaintiff
23 has suffered concrete injury as a direct and proximate result of Defendants’ conduct, and would
24 not have purchased the Class Vehicle, had Defendants not concealed the illegal defeat
25 device. Plaintiff contacted Volkswagen after he learned about the defects in his vehicle but has
26 not received a response.

1 **49. West Virginia Plaintiffs**

2 180. Plaintiff RICHARD LANHAM (for the purpose of this paragraph, “Plaintiff”) is a
3 citizen of West Virginia domiciled in Hurricane, West Virginia. On or about June 4, 2015,
4 Plaintiff purchased a new 2014 Volkswagen Jetta TDI, VIN 3VWLL7AJ7EM416455 (for the
5 purpose of this paragraph, the “Class Vehicle”), from Moses Honda Volkswagen in Huntington,
6 West Virginia. Plaintiff has been a stay at home father since suffering an industrial accident at
7 work that resulted in the loss of his hand. Before purchasing the Class Vehicle, Plaintiff
8 researched reliable and fuel efficient vehicles for his wife’s new hour-long commute to work,
9 viewed Volkswagen representations related to the “clean” diesel vehicles, and discussed with his
10 local dealership the advantages of paying a premium price for a “clean” diesel vehicle. The
11 emission representations, in combination with the advertised fuel efficiency and performance, as
12 well as the vehicle’s reputation for maintaining a high resale value, induced Plaintiff to purchase
13 the Class Vehicle. Unbeknownst to Plaintiff, at the time of acquisition, the Class Vehicle
14 contained a defeat device designed to bypass emission standards and deceive consumers and
15 regulators. Consequently, the Class Vehicle could not deliver the advertised combination of low
16 emissions, high performance, and fuel economy—and was illegal. Plaintiff has suffered concrete
17 injury as a direct and proximate result of Defendants’ conduct, and would not have purchased the
18 Class Vehicle, had Defendants not concealed the illegal defeat device.

19 181. Plaintiff MARION B. MOORE (for the purpose of this paragraph, “Plaintiff”) is a
20 citizen of West Virginia domiciled in Charleston, West Virginia. On or about April 25, 2014,
21 Plaintiff purchased a new 2014 Volkswagen Jetta TDI, VIN 3VWPL7AJ5EM614520 (for the
22 purpose of this paragraph, the “Class Vehicle”), from Joe Holland Volkswagen in Charleston,
23 West Virginia. Plaintiff has a B.A. from William Smith College with an emphasis in English.
24 She is currently a stay at home mother. Before purchasing the Class Vehicle, Plaintiff researched
25 the “clean” diesel vehicles for fuel economy and emissions, viewed Volkswagen representations
26 relating to the “clean” diesels, and compared vehicle options through Consumer Reports. The
27 emission representations, in combination with the advertised fuel efficiency and performance, as
28 well as the vehicle’s reputation for maintaining a high resale value, induced Plaintiff to purchase

1 the Class Vehicle. Unbeknownst to Plaintiff, at the time of acquisition, the Class Vehicle
2 contained a defeat device designed to bypass emission standards and deceive consumers and
3 regulators. Consequently, the Class Vehicle could not deliver the advertised combination of low
4 emissions, high performance, and fuel economy—and was illegal. Plaintiff has suffered concrete
5 injury as a direct and proximate result of Defendants’ conduct, and would not have purchased the
6 Class Vehicle, had Defendants not concealed the illegal defeat device. Plaintiff now limits the
7 use of her Class Vehicle. In October 2015, she purchased a new vehicle, one she considered and
8 rejected after viewing Volkswagen’s representations of its “clean” diesel vehicles, and which she
9 now drives daily.

10 **50. Wisconsin Plaintiffs**

11 182. Plaintiff CHAD M. NIEGELSEN (for the purpose of this paragraph, “Plaintiff”) is
12 a citizen of Wisconsin domiciled in La Crosse, Wisconsin. On or about December 30, 2008,
13 Plaintiff purchased a new 2009 Volkswagen Jetta SportWagen TDI, 3VWTL81K59M300689 (for
14 the purpose of this paragraph, the “Class Vehicle”), from Burg Auto in La Crosse, Wisconsin.
15 Plaintiff is a Realtor and is concerned with protecting the environment. Before purchasing the
16 Class Vehicle, Plaintiff reviewed Volkswagen’s brochure, which stated in part, “Jetta TDI “clean”
17 diesels offer fuel efficiency, power, performance . . . Or in other words, lean, mean, cleaner
18 burning machines.” Additionally, the brochure stated, “The Volkswagen TDI engine is cleaner
19 than conventional diesels, emitting 95% less soot as well as a reduction in oxides of nitrogen and
20 sulfur. It’s powerful, with the kind of low-end torque that racers and tuners demand. It’s efficient,
21 using a turbocharger and smart exhaust design to burn fuel more efficiently. So much so, in fact,
22 that Volkswagen expects to be the first automaker to make ‘Clean Diesel’ cars that are certified in
23 all 50 states. And best of all, it will help save you money with an out-of-this-world AMCI
24 estimated mileage of 38 city/44 highway (automatic) and over 600 miles on a single tank of fuel.”
25 Additionally, the dealership touted the 2009 Jetta SportWagen as having a new diesel motor
26 without the “stink.” The benefits to the environment—especially “Clean Diesel”—in combination
27 with the advertised fuel efficiency and performance, induced Plaintiff to purchase the Class
28 Vehicle, instead of other “hybrid” vehicles. Unbeknownst to Plaintiff, at the time of acquisition,

1 the Class Vehicle contained a defeat device designed to bypass emission standards and deceive
2 consumers and regulators. Consequently, the Class Vehicle could not deliver the advertised
3 combination of low emissions, high performance, and fuel economy—and was illegal. Plaintiff
4 has suffered concrete injury as a direct and proximate result of Defendants’ conduct, and would
5 not have purchased the Class Vehicle, had Defendants not concealed the illegal defeat device.

6 183. Plaintiff LAURA SWENSON (for the purpose of this paragraph, “Plaintiff”) is a
7 citizen of Wisconsin domiciled in Brookfield, Wisconsin. In or about June 2015, Plaintiff bought
8 a used 2014 Volkswagen Jetta SportWagen TDI, VIN 3VWML7AJ9EM628472 (for the purpose
9 of this paragraph, the “Class Vehicle”), from Sleepy Hollow in Viroqua, Wisconsin. Plaintiff is
10 concerned with protecting the environment. Before buying the Class Vehicle, Plaintiff saw
11 Volkswagen television commercials about “Clean Diesel” vehicles. Additionally, the dealership
12 touted excellent gas mileage with diesel. The benefits to the environment—especially “Clean
13 Diesel”—in combination with the advertised fuel efficiency and performance, induced Plaintiff to
14 purchase the Class Vehicle. Unbeknownst to Plaintiff, at the time of purchase, the Class Vehicle
15 contained a defeat device designed to bypass emission standards and deceive consumers and
16 regulators. Consequently, the Class Vehicle could not deliver the advertised combination of low
17 emissions, high performance, and fuel economy—and was illegal. Plaintiff has suffered concrete
18 injury as a direct and proximate result of Defendants’ conduct, and would not have purchased the
19 Class Vehicle, had Defendants not concealed the illegal defeat device

20 **51. Wyoming Plaintiffs**

21 184. Plaintiff BRIAN MILLS (for the purpose of this paragraph, “Plaintiff”) is a citizen
22 of Wyoming domiciled in Cheyenne, Wyoming. On or about September 2, 2015, Plaintiff
23 purchased a new 2015 Volkswagen Passat TDI, VIN 1VWBV7A38FC086335 (for the purpose of
24 this paragraph, the “Class Vehicle”), from Greeley Volkswagen in Greeley, Colorado. Plaintiff is
25 a paramedic for American Medical Response. He purchased the Class Vehicle because of the
26 excellent fuel mileage that was reported, the low emissions, and the minimal footprint the vehicle
27 supposedly left. He also relied on the good reputation on Volkswagen at the time. Before
28 purchasing the Class Vehicle, Plaintiff conducted extensive internet research on Volkswagen

1 websites and consumer review sites like Consumer Reports. Based upon his research, he believed
2 he was getting a reliable vehicle, from a reliable and trusted company that blew the reported fuel
3 mileage out of the water while being eco-friendly. The emission representations, in combination
4 with the advertised fuel efficiency and performance, as well as the vehicle's reputation for
5 maintaining a high resale value, induced Plaintiff to purchase the Class Vehicle. Unbeknownst to
6 Plaintiff, at the time of acquisition, the Class Vehicle contained a defeat device designed to
7 bypass emission standards and deceive consumers and regulators. Consequently, the Class
8 Vehicle could not deliver the advertised combination of low emissions, high performance, and
9 fuel economy—and was illegal. Plaintiff has suffered concrete injury as a direct and proximate
10 result of Defendants' conduct, and would not have purchased the Class Vehicle, had Defendants
11 not concealed the illegal defeat device. In November 2015, Plaintiff went to Halladay Motors in
12 Cheyenne, Wyoming to see what the trade in value of his vehicle was and was offered only
13 \$19,000 for the vehicle he purchased in September 2015 for \$25, 479.

14 185. Plaintiff RONE TEMPEST (for the purpose of this paragraph, "Plaintiff") is a
15 citizen of Wyoming domiciled in Lander, Wyoming. On or about July 2009, Plaintiff purchased
16 a new 2009 Volkswagen Jetta TDI, VIN 3VWRL71K09M074789 (for the purpose of this
17 paragraph, the "Class Vehicle"), from Montana Import Group in Bozeman, Montana. Plaintiff is
18 a graduate of UC-Berkeley and worked as a journalist for the Los Angeles Times before
19 retirement. Before purchasing the Class Vehicle, Plaintiff attended a conference on "clean" diesel
20 sponsored by the American Council on Germany, where Volkswagen and Audi executives gave
21 presentations touting the low-emission, high mileage virtues of their forthcoming "clean" diesel
22 vehicles. The emission representations, in combination with the advertised fuel efficiency and
23 performance, as well as the vehicle's reputation for maintaining a high resale value, induced
24 Plaintiff to purchase the Class Vehicle. Unbeknownst to Plaintiff, at the time of acquisition, the
25 Class Vehicle contained a defeat device designed to bypass emission standards and deceive
26 consumers and regulators. Consequently, the Class Vehicle could not deliver the advertised
27 combination of low emissions, high performance, and fuel economy—and was illegal. Plaintiff
28

1 has suffered concrete injury as a direct and proximate result of Defendants' conduct, and would
2 not have purchased the Class Vehicle, had Defendants not concealed the illegal defeat device.

3 **B. Defendants**

4 **1. Volkswagen Defendants**

5 **a. Volkswagen AG**

6 186. Volkswagen AG ("VW AG") is a German corporation with its principal place of
7 business in Wolfsburg, Germany. VW AG is one of the largest automobile manufacturers in the
8 world, and is in the business of designing, developing, manufacturing, and selling automobiles.
9 VW AG is the parent corporation of VW America, Audi AG, and Porsche AG. According to VW
10 AG, it sold 10.14 million cars worldwide in 2014 – including 6.12 million VW-branded cars, 1.74
11 million Audi-Branded cars, and 189,849 Porsche-branded cars. Combined with other brands,
12 VW AG boasts a 12.9% share of the worldwide passenger car market. VW AG's sales revenue in
13 2014 totaled €202 billion (approximately \$221 billion) and sales revenue in 2013 totaled €197
14 billion (approximately \$215 billion). At €2.7 billion (approximately \$13.9 billion), VW AG
15 generated its highest ever operating profit in fiscal year 2014, beating the previous record set in
16 2013 by €1.0 billion (approximately \$1.1 billion).

17 187. VW AG engineered, designed, developed, manufactured, and installed the defeat
18 device software on the Class Vehicles equipped with the 2.0-liter and 3.0-liter TDI engines and
19 exported these vehicles with the knowledge and understanding that they would be sold throughout
20 the United States. Audi developed the 3.0-liter TDI diesel engine utilized in the VW Touareg and
21 Porsche Cayenne Class Vehicles. VW AG also developed, reviewed, and approved the marketing
22 and advertising campaigns designed to sell the Class Vehicles.

23 **b. Volkswagen Group of America, Inc.**

24 188. Volkswagen Group of America, Inc. ("VW America") is a New Jersey corporation
25 with its principal place of business located at 2200 Ferdinand Porsche Drive, Herndon, Virginia
26 20171. VW America is a wholly-owned subsidiary of Volkswagen AG, and it engages in
27 business, including the advertising, marketing and sale of Volkswagen automobiles, in all 50
28

1 states. In 2014 alone, VW America sold 552,729 vehicles from its 1,018 dealer locations in all 50
2 states, including 95,240 TDI “clean” diesel vehicles.

3 **c. Audi AG**

4 189. Audi AG (“Audi AG”) is a German corporation with its principal place of business
5 in Ingolstadt, Germany. Audi AG is the parent of Audi of America, LLC and a subsidiary of the
6 Audi Group, which is a wholly-owned subsidiary of VW AG. Audi AG designs, develops,
7 manufacturers, and sells luxury automobiles. According to Audi AG, the Audi Group sold 1.74
8 million cars worldwide in 2014, with sales revenues in 2014 totaling €3.8 billion (approximately
9 \$58.5 billion). Audi AG’s operating profit in fiscal year 2014 was €1.15 billion (approximately
10 \$5.63 billion).

11 190. Audi AG engineered, designed, developed, manufactured and installed the defeat
12 device software on the Class Vehicles equipped with the 3.0-liter TDI diesel engine, and exported
13 these vehicles with the knowledge and understanding that they would be sold throughout the
14 United States. Audi AG also developed, reviewed, and approved the marketing and advertising
15 campaigns designed to sell its Audi Class Vehicles. According to the U.S. government,
16 approximately 80,000 3.0-liter TDI® diesel engine vehicles containing the defeat device were
17 sold by VW, Audi and Porsche in the United States.

18 **d. Audi of America, LLC**

19 191. Audi of America, LLC (“Audi America”) is a Delaware limited liability company
20 with its principal place of business located at 2200 Ferdinand Porsche Drive, Herndon, Virginia
21 20171. Audi America is a wholly-owned U.S. subsidiary of Audi AG, and it engages in business,
22 including the advertising, marketing and sale of Audi automobiles, in all 50 states.

23 **e. Dr. Ing. h.c. F. Porsche AG**

24 192. Dr. Ing. h.c. F. Porsche AG (“Porsche AG”) is a German corporation with its
25 principal place of business located in Stuttgart, Germany. Porsche AG designs, develops,
26 manufacturers, and sells luxury automobiles. Porsche AG is a wholly-owned subsidiary of VW
27 AG. According to Porsche AG, it sold 187,208 cars worldwide in 2014, with sales revenues in
28

1 2014 totaling €7.2 billion (approximately \$18.8 billion). Porsche AG's operating profit in fiscal
2 year 2014 was €2.79 billion (\$2.97 billion).

3 193. Porsche AG installed the defeat device software on the Class Vehicles equipped
4 with the 3.0-liter TDI diesel engine, designed by Audi and calibrated for use in the Porsche
5 Cayenne, and exported these vehicles with the knowledge and understanding that they would be
6 sold throughout the United States. Porsche executives and engineers had previously worked at
7 Audi, including overseeing development of the 3.0-liter TDI diesel engine, and Porsche personnel
8 had knowledge of the defeat device. Porsche AG also developed, reviewed, and approved the
9 marketing and advertising campaigns designed to sell its Class Vehicles.

10 **f. Porsche Cars North America, Inc.**

11 194. Porsche Cars North America, Inc. ("Porsche America") is a Delaware corporation
12 with its principal place of business located at 1 Porsche Drive, Atlanta, Georgia 30354. Porsche
13 America is a wholly-owned U.S. subsidiary of Porsche AG, and it engages in business, including
14 the advertising, marketing and sale of Porsche automobiles, in all 50 states. According to Porsche
15 AG, 2014 represented its best annual results in Porsche history in the U.S., with 47, 007
16 automobiles delivered. Porsche America now maintains a network of 189 dealers nationwide.

17 **g. Martin Winterkorn**

18 195. Martin Winterkorn is a resident of Germany. Winterkorn was CEO of VW AG
19 until he resigned on September 23, 2015, in the wake of the diesel emissions scandal. Notably,
20 Winterkorn was widely regarded as a detail-oriented, micromanaging CEO, who retained control
21 over engineering details that many other CEOs would relinquish fully to deputies. Winterkorn is
22 being investigated by the German government for allegations of fraud. Winterkorn reportedly
23 hand-picked the engineers who designed the defeat devices. According to news reports,
24 Winterkorn was also the head of Audi when the idea of defeat device software was first
25 considered years earlier. Winterkorn received compensation from the illegal scheme and course
26 of conduct based on the revenues and profits from the Class Vehicles, and Volkswagen's
27 increased market share. Winterkorn approved, authorized, directed, ratified, and/or participated
28 in the acts complained of herein. Winterkorn is subject to the personal jurisdiction of this Court

1 as he has availed himself of the laws of the United States through his management and control
2 over VW America as well as the manufacture, distribution, testing, and sale of hundreds of
3 thousands of Class Vehicles imported and sold across the United States. Furthermore,
4 Winterkorn has consistently travelled to the U.S. to attend and make presentations at various car
5 shows across the country in order to promote the sale of the Class Vehicles.

6 **h. Matthias Müller**

7 196. Matthias Müller is a resident of Germany. Müller is a 40-year veteran of
8 Volkswagen, where he began as an apprentice toolmaker at Audi AG in 1977. Müller was
9 appointed coordinator of the Audi model lines in 2002, after Winterkorn took over the
10 management of Audi AG. In 2007, when Winterkorn became CEO of VW AG, Winterkorn
11 appointed Müller as Head of Product Management across all Volkswagen brands. In 2010,
12 Müller was appointed CEO of Porsche AG. In 2014, Müller became the Chief Information
13 Officer of Porsche Automobil Holding SE. Müller became the CEO of VW AG on September
14 25, 2015, upon Winterkorn's resignation amidst the emissions scandal. Müller profited millions
15 of dollars from the illegal scheme and course of conduct based on the revenues and profits from
16 the Class Vehicles and Volkswagen's increased market share. Müller approved, authorized,
17 directed, ratified, and/or participated in the acts complained of herein. Müller is subject to the
18 personal jurisdiction of this Court because he has availed himself of the laws of the United States
19 through his management and control of the American Volkswagen Defendants, as well as the
20 design, manufacture, distribution, testing, and/or sale of hundreds of thousands of Class Vehicles
21 imported and sold across the United States. Furthermore, Müller has consistently travelled to the
22 U.S. to attend and make presentations at various car shows across the country in order to promote
23 the sale of the Class Vehicles.

24 **i. Michael Horn**

25 197. Michael Horn is a resident of Virginia. Horn was President and CEO of VW
26 America until he resigned on March 9, 2016. Horn received compensation from the illegal
27 scheme and course of conduct based on the revenues and profits from the Class Vehicles, and
28 Volkswagen's increased market share. Horn approved, authorized, directed, ratified, and/or

1 participated in the acts complained of herein. Horn has admitted that he was aware of the
2 vehicles' emissions non-compliance since at least 2014.

3 **j. Rupert Stadler**

4 198. Rupert Stadler is a resident of Germany. Stadler became the CEO of Audi AG on
5 January 1, 2010. Stadler joined Audi AG in 1990 and has held various roles at Audi and VW,
6 including the Head of the Board of Management's Office for Volkswagen and the Head of Group
7 Product Planning. In 2003, Stadler became an Audi AG Board Member and was later responsible
8 for the Finance and Organisation Division. Stadler joined the Board of Management of
9 Volkswagen when he was appointed to his current role as CEO of Audi AG. Stadler received
10 millions of dollars from the illegal scheme and course of conduct based on the revenues and
11 profits from the Class Vehicles and Volkswagen's increased market share. Stadler approved,
12 authorized, directed, ratified, and/or participated in the acts complained of herein. Stadler is
13 subject to the personal jurisdiction of this Court because he has availed himself of the laws of the
14 United States through his management and control over Audi America as well as the design,
15 manufacture, distribution, testing, and/or sale of hundreds of thousands of Class Vehicles
16 imported and sold across the United States. Furthermore, Stadler has consistently travelled to the
17 U.S. to attend and make presentations at various car shows across the country in order to promote
18 the sale of the Class Vehicles.

19 **2. Bosch Defendants**

20 199. From at least 2005 to 2015, Bosch GmbH, Bosch LLC and CEO Volkmar Denner
21 (together, "Bosch") were knowing and active participants in the creation, development,
22 marketing, and sale of illegal defeat devices specifically designed to evade U.S. emissions
23 requirements in vehicles sold solely in the United States. Even though Bosch has produced little
24 discovery, the evidence obtained by Plaintiffs to date shows that Bosch participated not just in the
25 development of the defeat device, but in the scheme to prevent U.S. regulators from uncovering
26 the device's true functionality. Moreover, Bosch's participation was not limited to engineering
27 the defeat device (in a collaboration described as unusually close). Rather, Bosch marketed
28 "Clean Diesel" in the United States and lobbied U.S. regulators to approve Class Vehicles,

1 another highly unusual activity for a mere supplier. These lobbying efforts, taken together with
2 evidence of Bosch's actual knowledge that the "akustikfunktion" operated as a defeat device, and
3 participation in concealing the true functionality of the device from U.S. regulators, can be
4 interpreted only one way under U.S. law: Bosch was a knowing and active participant in a
5 massive, decade-long conspiracy with VW to defraud U.S. consumers.

6 **b. Robert Bosch GmbH**

7 200. Robert Bosch GmbH ("Bosch GmbH") is a German multinational engineering and
8 electronics company headquartered in Gerlingen, Germany. Bosch GmbH is the parent company
9 of Robert Bosch LLC. Bosch GmbH, directly and/or through its North-American subsidiary
10 Robert Bosch LLC, at all material times, designed, manufactured, developed, tailored, reviewed,
11 approved, and supplied elements of the defeat device to Volkswagen for use in the Class
12 Vehicles. Bosch GmbH is subject to the personal jurisdiction of this Court because it has availed
13 itself of the laws of the United States through its management and control over Bosch, LLC, and
14 over the design, development, manufacture, distribution, testing, and sale of hundreds of
15 thousands of the defeat devices installed in the Class Vehicles sold or leased in the U.S.

16 **c. Robert Bosch, LLC**

17 201. Robert Bosch LLC ("Bosch LLC") is a Delaware limited liability company with
18 its principal place of business located at 38000 Hills Tech Drive, Farmington Hills, Michigan
19 48331. Bosch LLC is a wholly-owned subsidiary of Bosch GmbH, which wholly owns and
20 controls Bosch LLC. At all material times, Bosch LLC, directly and/or in conjunction with its
21 parent Bosch GmbH, designed, manufactured, developed, tailored, reviewed, approved, and
22 supplied elements of the defeat device to Volkswagen for use in the Class Vehicles.

23 202. Both Bosch GmbH and Bosch LLC (together with Volkmar Denner, "Bosch")
24 operate under the umbrella of the Bosch Group, which encompasses some 340 subsidiaries and
25 companies. The Bosch Group is divided into four business sectors: Mobility Solutions (formerly
26 Automotive Technology), Industrial Technology, Consumer Goods, and Energy and Building
27 Technology. The Mobility Solutions sector, which supplies parts to the automotive industry, and
28 its Diesel Systems division, which develops, manufactures and applies diesel systems, are

1 particularly at issue here and include the relevant individuals at both Bosch GmbH and Bosch
2 LLC. Bosch's sectors and divisions are grouped not by location, but by subject matter. Mobility
3 Solutions includes the relevant individuals at both Bosch GmbH and Bosch LLC. Regardless of
4 whether an individual works for Bosch in Germany or the U.S., the individual holds him or
5 herself out as working for Bosch. This collective identity is captured by Bosch's mission
6 statement: "We are Bosch," a unifying principle that links each entity and person within the
7 Bosch Group.⁶

8 **d. Volkmar Denner**

9 203. Volkmar Denner ("Denner") is a resident of Germany. Denner has been the
10 Chairman and CEO of Bosch GmbH since July 1, 2012, and contemporaneously holds the
11 position of Chief Technology Officer. Denner joined Bosch in 1986, and has held numerous
12 positions within the company, including, Director of ECU Development; Vice-President of Sales
13 and Development, Semiconductors and Electronic Control Units division; and President of
14 Automotive Electronics division. In 2006, Denner became a member of Bosch GmbH's Board of
15 Management and was later responsible for research and advance engineering, product planning,
16 and technology coordination across the company's three business sectors from July 2010 until his
17 appointment as CEO. Denner received millions of dollars from the illegal scheme and course of
18 conduct based on the revenues and profits from the sale of defeat devices to Volkswagen. Denner
19 approved, authorized, directed, ratified, and participated in the acts complained of herein. He is
20 subject to the personal jurisdiction of this Court because he has availed himself of the laws of the
21 United States through his management and control over Bosch LLC, as well as the design,
22 development manufacture, distribution, testing, and sale of hundreds of thousands of the defeat
23 devices installed in the Class Vehicles sold or leased in the U.S.

24
25
26
27 ⁶ Bosch 2014 Annual Report: "Experiencing quality of life," available at
28 http://www.bosch.com/en/com/bosch_group/bosch_figures/publications/archive/archive-cg12.php.

COMMON FACTUAL ALLEGATIONS

A. Volkswagen's Plot to Dominate the Automotive Market

204. Volkswagen's decade-long illegal scheme was born out of greed and ambition to dominate the global automotive market at any cost. By Volkswagen's own admissions, the seeds for the scandal were planted in 2005, as Volkswagen was repositioning its fleet in light of tightening emission regulations in our country with "a strategic decision to launch a large-scale promotion of diesel vehicles in the United States in 2005."⁷ While other automakers focused on hybrid or hydrogen-fueled vehicles, Volkswagen pivoted toward "clean" diesel technology as its primary strategy to reach the growing market of environmentally-conscious consumers.

205. In 2004, the second generation Toyota Prius became an explosive success, tripling global sales from years prior and changing environmentally-friendly vehicles from a niche market to a standard consumer option. Although it was the first mainstream hybrid vehicle, the Prius was widely viewed as a "boring" vehicle, as the improvements in fuel efficiency and emissions were offset by relatively bland styling and lackluster driving performance.

206. Volkswagen took note of the success and sought to achieve the same (or better) efficiency benchmarks as the Prius, but in a "fun-to-drive," high-performance vehicle. This was to be achieved with a supposedly remarkable breakthrough in diesel technology: the EA 189 TDI engine. Volkswagen's TDI (short for "turbocharged direct injection,") diesel engines were the culmination of millions of dollars in research and development, and were heralded as the critical factor that would be responsible for Volkswagen's growth and success in the U.S.

207. In 2007, defendant Winterkorn left his position at Audi to become VW AG's CEO. Winterkorn set goals for Volkswagen to become a world leader in automobile manufacturing. This included a target of tripling U.S. sales to at least 800,000 vehicles by 2018.⁸ At the time, diesel-engine vehicles made up just 5% of the U.S. car market, and Winterkorn recognized this as

⁷ *Volkswagen making good progress with its investigation, technical solutions, and Group realignment*, Volkswagen AG (Dec. 10, 2015), http://www.volkswagenag.com/content/vwcorp/info_center/en/news/2015/12/VW_PK.html.

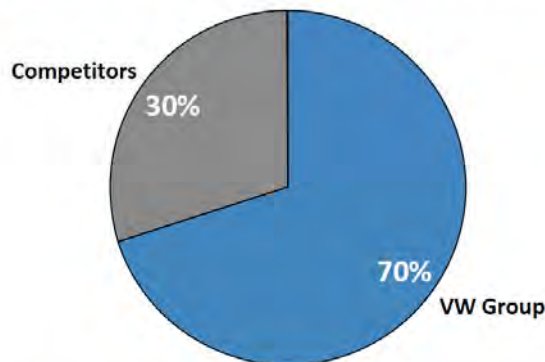
⁸ William Boston, *Volkswagen Emissions Investigation Zeroes In on Two Engineers*, Wall Street Journal (Oct. 5, 2015), <http://www.wsj.com/articles/vw-emissions-probe-zeroes-in-on-two-engineers-1444011602>.

1 the perfect opportunity to expand Volkswagen's market share. As shown below in a VW
 2 America presentation touting the success of "Clean Diesel," this strategy was employed with
 3 great success:⁹

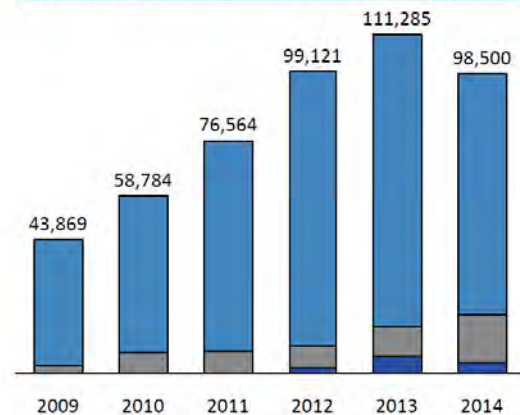
Diesel is an important differentiator for the VW Group

TDI – Turbocharged Direct Injection Diesel

Clean Diesel volume Cars and SUVs 2014



Volkswagen Group Clean Diesel Sales Volume



➔ VW Group US Diesel market share PC ~ 70 %

March 2015

VWoA- Product Strategy

➔ Strong growth since introduction

Source for competitor sales: Polk

4



15 208. To expand its diesel market penetration in the U.S., Volkswagen needed to
 16 overcome the stigmas associated with diesel vehicles. Foremost among these was the consumer
 17 perception that diesel engines emit thick, toxic smoke full of dangerous and destructive
 18 pollutants, relegated to the smog-filled cities of the past. Volkswagen claimed to have solved all
 19 of these environmental problems with the new EA 189 engine, which it aggressively marketed as
 20 the clean, green alternative to hybrid engines, such as those in the Prius.

21 209. Behind the scenes, however, Volkswagen realized internally that it was not
 22 possible to roll out these so-called "clean" diesel vehicles within its self-imposed budgets and
 23 engineering constraints. To get the job done, Winterkorn appointed two engineers with whom he
 24 had worked closely at Audi (Ulrich Hackenberg and Wolfgang Hatz¹⁰) to head up R&D and
 25 engine development for this project. These two engineers were the chief developers of the TDI

26 ⁹ Volkswagen AG, *TDI: U.S. Market Success, Clean Diesel Delivers* (March, 2015),
 27 http://cleandieseldelivers.com/media/Douglas-Skorupski-VWoA_DTF_March2015.pdf.

28 ¹⁰ Hatz, head of engine development at Volkswagen, and formerly at Audi, subsequently became head of development for Porsche.

1 engine.¹¹ Their primary mandate from management was to develop a diesel engine that
2 maintained the performance of traditional gasoline engines with reduced CO₂ emissions and fuel
3 consumption, all while meeting the strict NO_x emission standards in the U.S. Winterkorn also
4 relied upon and worked closely with Frank Tuch, VW's head of quality assurance, who was
5 intimately familiar with the engines and transmissions across all Volkswagen brands.

6 210. NO_x is a generic term for the mono-nitrogen oxides NO and NO₂ (nitric oxide and
7 nitrogen dioxide), which are predominantly produced from the reaction of nitrogen and oxygen
8 gases in the air during combustion. NO_x is produced by the burning of all fossil fuels, but is
9 particularly difficult to control from the burning of diesel fuel. NO_x is a toxic pollutant, which
10 produces smog and a litany of environmental and health problems, as detailed further below.

11 211. Diesel fuel is traditionally denser than gasoline, and the syrupy fuel contains
12 longer hydrocarbon chains, which tends to produce a more efficient vehicle. In fact, diesel
13 engines can convert over 45% of diesel's chemical energy into useful mechanical energy,
14 whereas gasoline engines convert only 30% of gasoline's chemical energy into mechanical
15 energy.¹² To make use of this dense diesel fuel, diesel engines combine high pressure to ignite a
16 combination of diesel fuel and air through "compression ignition," as opposed gasoline engines
17 that typically use electric discharge from a spark plug to ignite a combination of gasoline and air
18 through "spark ignition." Though more efficient, diesel engines come with their own set of
19 challenges, as emissions from diesel engines can include higher levels of NO_x and particulate
20 matter ("PM"), or soot than emissions from gasoline engines due to the different ways the
21 different fuels combust and the different ways the resulting emissions are treated following
22 combustion. One way NO_x emissions can be reduced by adjusting the compression and
23 temperature, but that in turn produces PM, a similarly-undesirable hydrocarbon-based emission.
24 Another way NO_x emissions can be reduced is through expensive exhaust gas aftertreatment

25 ¹¹ Jack Ewing, *Volkswagen Engine-Rigging Scheme Said to Have Begun in 2008*, N.Y. Times
26 (Oct. 5, 2015), [http://www.nytimes.com/2015/10/05/business/engine-shortfall-pushed-
volkswagen-to-evade-emissions-testing.html](http://www.nytimes.com/2015/10/05/business/engine-shortfall-pushed-volkswagen-to-evade-emissions-testing.html).

27 ¹² *Just the Basics, Diesel Engine*, U.S. Dept. of Energy, Office of Energy Efficiency and
28 Renewable Energy (last visited Feb. 8, 2016), available at
http://www1.eere.energy.gov/vehiclesandfuels/pdfs/basics/jtb_diesel_engine.pdf.

1 devices, primarily, catalytic converters, that use a series of chemical reactions to transform the
2 chemical composition of a vehicle's NO_x emissions into less harmful, relatively inert, and triple
3 bonded nitrogen gas (N₂; just over 78% of the Earth's atmosphere by volume consists of N₂) and
4 carbon dioxide (CO₂).

5 212. Diesel engines thus operate according to this trade-off between price, NO_x and
6 PM, and for the EPA to designate a diesel car as a "clean" vehicle, it must produce *both* low PM
7 and low NO_x. In 2000, the EPA announced stricter emission standards requiring all diesel
8 models starting in 2007 to produce drastically less NO_x than years prior.

9 213. These strict emission standards posed a serious challenge to Volkswagen's
10 engineers. In fact, during a 2007 demonstration in San Francisco, engine R&D chief Hatz
11 lamented presciently that "[Volkswagen] can do quite a bit and we will do a bit, but 'impossible'
12 we cannot do. . . . From my point of view, the CARB is not realistic . . . I see it as nearly
13 impossible for [Volkswagen]."¹³

14 214. But it was of utmost importance for Volkswagen to achieve (or at least appear to
15 achieve) this "impossible" goal, for it could not legally sell a single vehicle that failed comply
16 with the governmental emission regulations. Before introducing a Class Vehicle into the U.S.
17 stream of commerce (or causing the same), Volkswagen was required to first apply for, and
18 obtain, an EPA-administered COC, certifying that the vehicle comported with the emission
19 standards for pollutants enumerated in 40 C.F.R. §§ 86.1811-04, 86.1811-09, and 86.1811-10.

20 215. The CAA expressly prohibits automakers, like Volkswagen, from introducing a
21 new vehicle into the stream of commerce without a valid EPA COC. *See* 42 U.S.C. § 7522(a)(1).
22 Moreover, vehicles must be accurately described in the COC application "in all material respects"
23 to be deemed covered by a valid COC. *See* 40 C.F.R. §§ 86.1848-10(c)(6). California's emission
24 standards were even more stringent than those of the EPA. California's regulator, CARB,

25 ¹³ Danny Hakim, *et al.*, *VW Executive Had a Pivotal Role as Car Maker Struggled With*
26 *Emissions*, N.Y. Times (Dec. 21, 2015),
27 [http://www.nytimes.com/2015/12/22/business/international/vw-executive-had-a-pivotal-role-as-](http://www.nytimes.com/2015/12/22/business/international/vw-executive-had-a-pivotal-role-as-car-maker-struggled-with-emissions.html?mtrref=undefined&gwh=7E46E42F7CCC3D687AEC40DFB2CFA8BA&gwt=pa)
28 [car-maker-struggled-with-](http://www.nytimes.com/2015/12/22/business/international/vw-executive-had-a-pivotal-role-as-car-maker-struggled-with-emissions.html?mtrref=undefined&gwh=7E46E42F7CCC3D687AEC40DFB2CFA8BA&gwt=pa)
[emissions.html?mtrref=undefined&gwh=7E46E42F7CCC3D687AEC40DFB2CFA8BA&gwt=pa](http://www.nytimes.com/2015/12/22/business/international/vw-executive-had-a-pivotal-role-as-car-maker-struggled-with-emissions.html?mtrref=undefined&gwh=7E46E42F7CCC3D687AEC40DFB2CFA8BA&gwt=pa)
[y.](http://www.nytimes.com/2015/12/22/business/international/vw-executive-had-a-pivotal-role-as-car-maker-struggled-with-emissions.html?mtrref=undefined&gwh=7E46E42F7CCC3D687AEC40DFB2CFA8BA&gwt=pa)

1 requires a similar application from automakers to obtain an EO, confirming compliance with
2 California's emission regulations, before allowing the vehicle onto California's roads.

3 216. Thus, in order to successfully grow the U.S. diesel market and meet its ambitious
4 objectives, it was critical that Volkswagen develop the technology to maintain the efficient,
5 powerful performance of a diesel, while drastically reducing NOx emissions to comply with the
6 CAA and state emission standards.

7 217. This high-stakes engineering dilemma led to a deep divide within the company, as
8 two divergent exhaust gas aftertreatment technical approaches emerged. One approach involved
9 a selective catalytic reduction ("SCR") system that proved to be effective but expensive. The
10 other, which utilized a lean NOx trap, was significantly cheaper but was less effective and
11 resulted in lower fuel efficiency.

12 218. In 2006, Wolfgang Bernhard, then a top executive at VW AG (and former Daimler
13 executive), advocated for the SCR system and championed a technology-sharing agreement with
14 Mercedes-Benz and BMW to jointly develop a SCR emission control system utilizing urea— a
15 post-combustion emission reductant generically referred to as "Diesel Exhaust Fluid" or "DEF"
16 and marketed as "Bluetec" by Mercedes and "AdBlue" by Volkswagen and other German vehicle
17 manufacturers. When injected into the exhaust stream in a catalyst chamber, converts NOx into
18 nitrogen gas, water, and carbon dioxide. This SCR system was expensive, costing \$350 per
19 vehicle and came with other compromises, including, primarily, the need for installation of a DEF
20 tank that would require regular refills.

21 219. Hatz initially supported this solution as well, stating publicly at the Detroit Auto
22 Show in early 2007 that "Bluetec technology allows us to demonstrate Audi's commitment to
23 always being at the very forefront of diesel technology."¹⁴ Although the SCR system was
24 ultimately utilized for the larger, 3.0-liter TDI engine, Hatz withdrew his support for using the
25 system in the 2.0-liter engine as Volkswagen's leadership balked at the \$350 per-vehicle cost of
26 the SCR system. Bernhard ultimately lost the internal battle at Volkswagen and resigned.

27
28 ¹⁴ *Id.*

1 220. Hatz remained and was tasked with implementing the alternative, lower-cost
2 strategy for the 2.0-liter TDI engine: NO_x traps. This technology involved the storage of NO_x
3 emissions in a catalyst substrate during vehicle operation. Once that substrate filled up, the
4 system burned off the stored NO_x by pumping an extra burst of fuel into the cylinders, most of
5 which passed through to the converter, where it then converts the NO_x into less harmful
6 emissions. This method was cheaper and easier to implement than the SCR system. The NO_x
7 trap system was less effective at reducing emissions, however, and, like the more effective SCR
8 system used in the 3.0-liter engine, still resulted in lower miles-per-gallon fuel efficiency, directly
9 contradicting one of the key elements (high miles-per-gallon fuel efficiency) necessary to execute
10 Volkswagen's ambitious diesel sales goals. Accordingly, this option, too, was unacceptable.

11 221. But at Volkswagen, failure was not an option. According to many sources
12 (including journalists, industry insiders, and Volkswagen whistleblowers), Volkswagen's top
13 brass directed its engineers to find a way to meet emission standards despite tight budgetary and
14 technical constraints, or suffer the consequences. VW AG's former CEO, Ferdinand Piëch,
15 created "a culture where performance was driven by fear and intimidation," and his leadership
16 was characterized as "a reign of terror."¹⁵ Employees were told, "[y]ou will sell diesels in the
17 U.S., and you will not fail. Do it, or I'll find somebody who will."¹⁶ Piëch was infamous for
18 firing subordinates who failed to meet his exacting standards: "Stories are legion in the industry
19 about Volkswagen engineers and executives shaking in their boots prior to presentations before
20 Piech, knowing that if he was displeased, they might be fired instantly."¹⁷ And so it seems, out of
21 self-preservation, the defeat device scandal was born.

22 **B. Defendants' Illegal "Defeat Device" Scheme**

23 222. Volkswagen engineers had to find a solution to the "impossible" problem of
24 passing stricter emission standards while maintaining performance and fuel efficiency, all while

25 ¹⁵ Bob Lutz, *One Man Established the Culture That Led to VW's Emissions Scandal*, Road &
26 Track (Nov. 4, 2015), <http://www.roadandtrack.com/car-culture/a27197/bob-lutz-vw-diesel-fiasco/>.

27 ¹⁶ *Id.*

28 ¹⁷ Doron Levin, *The man who created VW's toxic culture still looms large*, Fortune (Oct. 16,
2015), <http://fortune.com/2015/10/16/vw-ferdinand-piech-culture/>.

1 hamstrung by cost-cutting measures. And it had to be done fast, because the new diesel vehicles
2 were scheduled for imminent release in the U.S.

3 223. Ultimately, time ran out, and Volkswagen executives and engineers were either
4 unable or unwilling to devise a solution within the constraints of the law and their self-imposed
5 cost-cutting measures. So instead of being honest (and risk being summarily fired), they and
6 others conspired to cheat by installing a “defeat device” in the new diesel vehicles so that those
7 vehicles could “pass” the EPA and CARB emission testing, and Volkswagen could obtain COCs
8 and EOs to sell the vehicles to make its sales targets throughout the U.S and in California.

9 224. Volkswagen had a ready-made solution at hand. As reported by the New York
10 Attorney General, starting as far back as 1999, Audi engineers had come up with a similar
11 solution to a problem they were facing related to the development of the 3.0-liter diesel engine for
12 Audi models sold in Europe. The engineers had eliminated a noise problem associated with
13 diesel engines by injecting additional fuel into the engine on ignition. But as a result, the engine
14 could not meet European emissions standards during testing. To solve this problem, they
15 developed defeat device software that could recognize when the car was being tested and
16 deactivate the fuel injection function during testing, then reactivate it during normal driving
17 conditions. From 2004-2008, Audi incorporated the defeat device software in its 3.0-liter diesel
18 engines sold in Europe. Since the defeat device software was related to the goal of reducing
19 engine noise, it became known as the “Acoustic Function” or, in German, the “Akustikfunktion.”

20 225. When it became clear that the 2.0-liter TDI engine being developed for the U.S.
21 market could not meet U.S. emission regulations, and initial emission testing failed, the launch of
22 the Jetta TDI “clean” diesel, initially scheduled for 2007, had to be delayed.¹⁸ The prospect of
23 failure was unacceptable, so Volkswagen decided to cheat instead. Starting in the mid-2000s,
24 Volkswagen engineers, working with Bosch—as detailed further below—and with the knowledge
25 of management, adapted Audi’s “akustikfunktion” concept to the 2.0-liter and 3.0-liter diesel
26 engines for Volkswagen, Audi, and Porsche models to be sold in the U.S. It has been reported

27 ¹⁸ *VW delays Jetta TDI diesel into the US*, Clean MPG (last visited Feb. 8, 2016),
28 <http://www.cleanmpg.com/community/index.php?threads/7254/>.

1 that the decision to cheat the EPA, CARB, and countless other regulators worldwide was an
2 “open secret” in Volkswagen’s engine development department,¹⁹ as it was necessary for the “EA
3 189 engine to pass U.S. diesel emissions limits within the budget and time frame allotted.”²⁰ The
4 resulting defeat device was incorporated into the software required to operate the 2.0-liter and
5 3.0-liter TDI engines in the Class Vehicles.

6 226. As explained further below, the defeat device that Defendants installed in the Class
7 Vehicles to evade emission testing is software code residing the vehicles’ control unit. All
8 modern engines are integrated with sophisticated computer components to manage the vehicle’s
9 operation, such as, in the case of diesel vehicles, an electronic diesel control (“EDC”). The EDC
10 equipped in the Class Vehicles is formally referred to as the Electronic Diesel Control Unit 17
11 (also known as “EDC Unit 17,” “EDC 17,” and “EDC17”). Defendant Bosch tested,
12 manufactured, and sold customized EDC Unit 17’s to Volkswagen for use in the Class Vehicles.

13 227. The EDC Unit 17 was widely used throughout the automotive industry, including
14 by BMW and Mercedes, to operate modern “Clean Diesel” engines. Bosch worked with each
15 vehicle manufacturer that utilized a EDC Unit 17 to create a unique set of specifications and
16 software code to manage the vehicle’s engine operation.

17 228. With respect to the Class Vehicles, however, EDC Unit 17 was also used to
18 surreptitiously evade emissions regulations. Bosch and Volkswagen worked together to develop
19 and implement a specific set of software algorithms for implementation in the Class Vehicles,
20 including algorithms to adjust fuel levels, exhaust gas recirculation, air pressure levels, and urea
21 injection rates.²¹

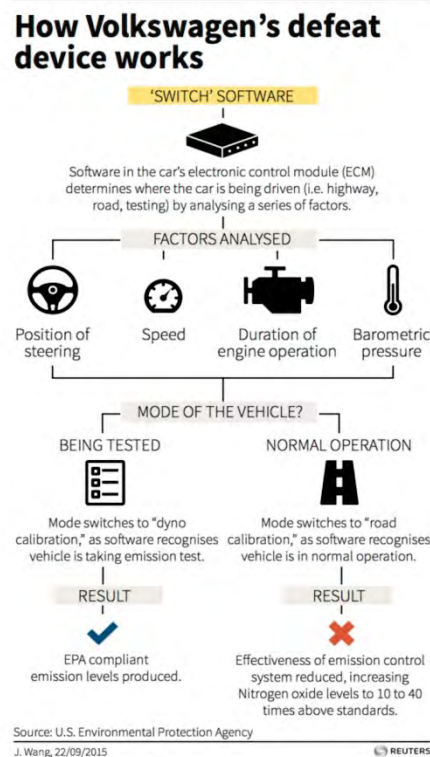
23 ¹⁹ Georgina Prodhon, *Volkswagen probe finds manipulation was open secret in department*,
24 Reuters (Jan. 23, 2016), [http://www.reuters.com/article/us-volkswagen-emissions-investigation-
idUSKCN0V02E7](http://www.reuters.com/article/us-volkswagen-emissions-investigation-idUSKCN0V02E7).

25 ²⁰ Jay Ramey, *VW chairman Poetsch: Company ‘tolerated breaches of rules’*, Autoweek
26 (Dec. 10, 2015), [http://autoweek.com/article/vw-diesel-scandal/vw-chairman-poetsch-company-
tolerated-breaches-rules](http://autoweek.com/article/vw-diesel-scandal/vw-chairman-poetsch-company-tolerated-breaches-rules).

27 ²¹ See, e.g., *Engine management*, Bosch Auto Parts (last visited February 8, 2016),
28 [http://de.bosch-
automotive.com/en/parts_and_accessories/motor_and_systems/diesel/engine_management_2/engi
ne_control_unit_1](http://de.bosch-automotive.com/en/parts_and_accessories/motor_and_systems/diesel/engine_management_2/engine_control_unit_1).

229. Bosch's EDC Unit 17 was necessary for the Class Vehicles to "pass" emission tests in the U.S. When carmakers test their vehicles against EPA emission standards, they place their cars on dynamometers (large rollers) and then perform a series of specific maneuvers prescribed by federal regulations. Bosch's EDC Unit 17 allowed the Class Vehicles to detect test scenarios by monitoring vehicle speed, acceleration, engine operation, air pressure and even the position of the steering wheel. When the EDC Unit 17's detection algorithm detected that the vehicle was on a dynamometer (and undergoing an emission test), additional software code within the EDC Unit 17 downgraded the engine's power and performance and upgraded the emissions control systems' performance by switching to a "dyno calibration," temporarily reducing emissions to legal levels. Once the EDC Unit 17 detected that the emission test was complete, the EDC Unit would then enable a different "road calibration" that caused the engine to return to full power while reducing the emissions control systems' performance, and consequently, caused the car to spew the full amount of illegal NO_x emissions out on the road.²²

This process is illustrated in the following diagram:

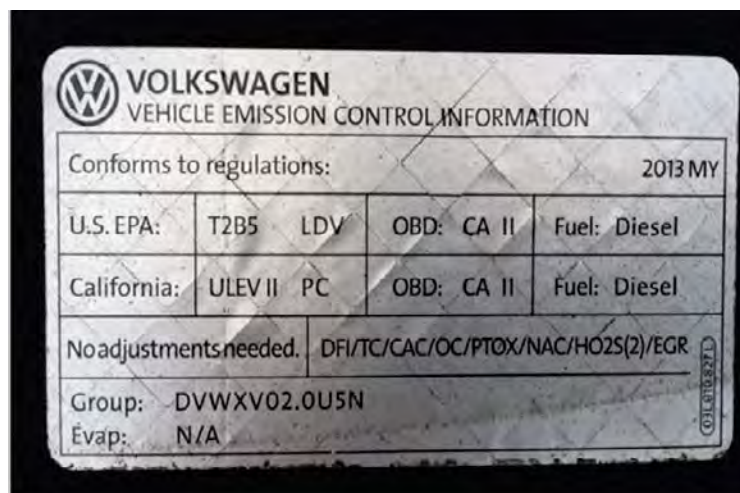


²² Russell Hotten, *Volkswagen: The scandal explained*, BBC (Dec. 10, 2015), <http://www.bbc.com/news/business-34324772>.

1 230. Make no mistake: this workaround was highly illegal. And, according to the New
2 York Attorney General, Volkswagen management was well aware of this fact, as they studied the
3 issue extensively during 2006-2007 when preparing to launch their vehicles in the U.S. market.

4 231. The CAA expressly prohibits “defeat devices,” defined as any auxiliary emission
5 control device “that reduces the effectiveness of the emission control system under conditions
6 which may reasonably be expected to be encountered in normal vehicle operation and use.”
7 40 C.F.R. § 86.1803-01; *see also id.*, § 86.1809-10 (“No new light-duty vehicle, light-duty truck,
8 medium-duty passenger vehicle, or complete heavy-duty vehicle shall be equipped with a defeat
9 device.”). Moreover, the CAA prohibits the sale of components used as defect devices, “where
10 the person knows or should know that such part or component is being offered for sale or
11 installed for such use or put to such use.” 42 U.S.C. § 7522(a)(3). Finally, in order to obtain a
12 COC, automakers must submit an application, which lists all auxiliary emission control devices
13 installed in the vehicle, a justification for each, and an explanation of why the control device is
14 not a defeat device.

15 232. Thus, in order to obtain the COCs necessary to sell their vehicles, Volkswagen did
16 not disclose, and affirmatively concealed, the presence of the test-detecting and performance
17 altering software code within the EDC Unit 17 from government regulators, thus making that
18 software an illegal “defeat device.” In other words, Volkswagen lied to the government, its
19 customers, and the public at large. An example of one of Volkswagen’s vehicle stickers
20 reflecting its fraudulently-obtained COCs is pictured below:



1 233. Because the COCs were fraudulently-obtained, and because the 2.0-liter and 3.0-
2 liter Class Vehicles did not conform “in all material respects” to the specifications provided in the
3 COC applications, the Class Vehicles were never covered by a valid COC, and thus, were never
4 legal for sale, nor were they EPA and/or CARB compliant, as represented. Volkswagen hid these
5 facts from the EPA, other regulators, and consumers, and it continued to sell and lease the 2.0-
6 liter and 3.0-liter Class Vehicles to the driving public, despite their illegality.

7 234. Volkswagen knew better—VW America itself is a recidivist violator of the CAA.
8 In July of 1973, the EPA sought legal action against VW America from the DOJ based on a claim
9 that defeat devices were installed in 1973 Volkswagen vehicles. The matter was swiftly settled
10 for \$120,000 the following year.²³ And, in June of 2005, VW America entered into a consent
11 decree with the DOJ, wherein it paid a \$1.1 million penalty for failing to notify the EPA of
12 emissions problems in certain vehicles manufactured by VW in Mexico.²⁴

13 235. Volkswagen cheating continued. With respect to the Class Vehicles, Volkswagen
14 hid the fact of the defeat devices from the EPA, such that the COCs were fraudulently obtained.
15 Specifically, VW America submitted COC applications on behalf of VW AG, Audi AG, and
16 itself, for the 2.0-liter and VW-and Audi-branded 3.0-liter Class Vehicles, describing compliant
17 specifications and concealing the dual-calibration strategy of the defeat device. Similarly,
18 Porsche America submitted COC applications on behalf of Porsche AG and itself for the Porsche-
19 branded 3.0-liter Class Vehicles, describing compliant specifications and concealing the dual-
20 calibration strategy of the defeat device. VW America coordinated the submission of these and
21 other regulatory submissions with Audi and Porsche to ensure that discrepancies among the
22 companies’ submissions did not alert regulators to emission problems with the Class Vehicles.²⁵
23 Executives from the companies even devised a policy of cross brand communication and
24 coordination to minimize the risk that U.S. regulators would learn of fraudulent representations

25
26 ²³ Rich Gardellsa, *et al.*, *VW had previous run-in over ‘defeat devices’*, NBC News (Sept. 23, 2015), <http://www.cnbc.com/2015/09/23/vw-had-previous-run-in-over-defeat-devices.html>.

27 ²⁴ Consent Decree, *United States v. Volkswagen of Am., Inc.*, Case No. 1:05-cv-01193-GK
(D.D.C. June 15, 2005 and Nov. 4, 2005), ECF Nos. 1-2.

28 ²⁵ VW-MDL2672-00570461.

1 contained in regulatory filings.²⁶ But, the Class Vehicles differed in “material respects” from the
2 specifications described in the COC applications because they were equipped with undisclosed
3 auxiliary emissions control devices, specifically, the software code described above, that
4 functioned as an illegal “defeat device.”

5 236. Because the COCs were fraudulently obtained, the Class Vehicles were never
6 covered by valid COCs, and thus, were never offered legally for sale. Volkswagen hid these facts
7 from the EPA, CARB and other regulators, and consumers, and it continued to sell and lease the
8 illegal Class Vehicles to the public with the help of Bosch.

9 **C. Bosch Played a Critical Role in the Defeat Device Scheme**

10 237. Discovery of Bosch has just begun, but the evidence already proves that Bosch
11 played a critical role in scheme to evade U.S. emission requirements in the Class Vehicles.²⁷ *In*
12 *2008, Bosch wrote Volkswagen and expressly demanded that Volkswagen indemnify Bosch for*
13 *anticipated liability arising from the use of the Bosch-created “defeat device” (Bosch’s words),*
14 *which Bosch knew was “prohibited pursuant to . . . US Law.”*²⁸ Volkswagen apparently
15 refused to indemnify Bosch, but Bosch nevertheless continued to develop the so-called
16 “akustikfunktion” (the code name used for the defeat device) for Volkswagen for another seven
17 years. During that period, Bosch concealed the defeat device in communications with U.S.
18 regulators once questions were raised about the emission control system in the Class Vehicles,
19 and went so far as to actively lobby lawmakers to promote Volkswagen’s “Clean Diesel” system
20 in the U.S. Bosch’s efforts, taken together with evidence of Bosch’s actual knowledge that the
21 “akustikfunktion” operated as an illegal defeat device, demonstrate that Bosch was a knowing and
22 active participant in the decade-long illegal enterprise to defraud U.S. consumers.

23
24
25

²⁶ VW-MDL2672-00412718.

26 ²⁷ Plaintiffs’ detailed and specific allegations against Bosch are based almost entirely on
27 information produced by Volkswagen, publicly-available documents, and Plaintiffs’ own
28 research. Bosch has produced a small number of documents, none of which merit consideration
for Plaintiffs’ allegations against Bosch.

²⁸ VW-MDL2672-02570091 (English translation) (emphasis added).

1 **1. Volkswagen and Bosch Conspire to Develop the Illegal Defeat Device**

2 238. Bosch tightly controlled development of the control units in the Class Vehicles,
3 and actively participated in the development of the defeat device.

4 239. As discussed above, Bosch introduced a new generation of diesel ECUs for
5 Volkswagen. The development of the EDC17 was a massive undertaking, which began years
6 before Volkswagen began its push into the U.S. market. At least twenty Bosch engineers were
7 working full-time on writing the code for the EDC17 in the 2001 time frame. By 2004, long
8 before the November 20, 2006 meeting at which Volkswagen apparently decided to use the defeat
9 device to “pass” emission certification standards in the U.S., Bosch and Volkswagen had already
10 entered into preliminary agreements for further development of the EDC17.²⁹

11 240. A February 28, 2006, Bosch press release introduced the “New Bosch EDC17
12 engine management system” as the “brain of diesel injection” which “controls every parameter
13 that is important for effective, low-emission combustion.” The EDC17 offered “[e]ffective
14 control of combustion” and a “[c]oncept tailored for all vehicle classes and markets.” In the press
15 release, Bosch touted the EDC17 as follows:

16 **EDC17: Ready for future demands**

17 Because the computing power and functional scope of the new
18 EDC17 can be adapted to match particular requirements, it can be
19 used very flexibly in any vehicle segment on all the world’s
20 markets. In addition to controlling the precise timing and quantity
21 of injection, exhaust gas recirculation, and manifold pressure
22 regulation, it also offers a large number of options such as the
23 control of particulate filters or systems for reducing nitrogen
24 oxides. The Bosch EDC17 determines the injection parameters for
25 each cylinder, making specific adaptations if necessary. This
26 improves the precision of injection throughout the vehicle’s entire
27 service life. The system therefore makes an important contribution
28 to observing future exhaust gas emission limits.³⁰

25 ²⁹ See PowerPoint presentation at VW-MDL2672-02559528. This internal Volkswagen
26 PowerPoint describes the “akustikfunktion” as activated in “recognition of emission related
27 environment conditions” and proposed it as a solution to the “registration/certification [problem]
28 in the US.”

27 ³⁰ See Feb. 28, 2006 Bosch press release, “The brain of diesel injection: New Bosch EDC17
28 engine management system,” [http://www.bosch-
presse.de/presseforum/details.htm?txtID=2603&locale=en](http://www.bosch-presse.de/presseforum/details.htm?txtID=2603&locale=en).

1 241. Bosch's EDC17 was the technology behind Volkswagen's ambition. The EDC17
2 and the development of its underlying software were integral to Volkswagen's entire diesel
3 strategy, which by late 2006 included creating software to sense when the vehicles were in test
4 mode and then manipulate the emission control system at that time. This could not have been
5 accomplished without years of collaborative work with Bosch.

6 242. As early as February 2005, an internal feasibility study drafted by Ulrich
7 Hackenberg (Audi Development Chief) mentioned Bosch's EDC17 as part of a strategy to reduce
8 diesel vehicle emissions of nitrogen oxides ("NOx") by creating a change in engine electronics.³¹
9 The study discussed diesel strategies in the U.S. market in light of tightening U.S. emission
10 standards. As discussed above, shortly after the cheating scandal became public, Volkswagen
11 suspended Hackenberg, and he later resigned.³²

12 243. Bosch made clear that the EDC17 was not one-size-fits-all. Instead, it was a
13 "[c]oncept tailored for all vehicle classes and markets" that could "be adapted to match particular
14 requirements [and] ... be used very flexibly in any vehicle segment on all the world's markets."
15 The EDC17 was tailored and adapted by modifying the sophisticated software embedded within
16 the electronic control unit ("ECU"). Bosch manufactured, developed, and provided the ECU and
17 its base of software to Volkswagen for the Class Vehicles.

18 244. Bosch and Volkswagen worked together closely to modify the software, and to
19 create specifications for each vehicle model. Indeed, customizing a road-ready ECU is an
20 intensive three- to five-year endeavor involving a full-time Bosch presence at an automaker's
21 facility. Bosch and its customers work so closely that Bosch purposefully locates its component
22 part manufacturing facilities close to its carmaker customers' manufacturing plants.

23 245. All Bosch ECUs, including the EDC17, run on complex, highly proprietary engine
24 management software over which Bosch exerts near-total control. In fact, the software is
25 typically locked to prevent customers, like Volkswagen, from making significant changes on their

26 _____
³¹ VW-MDL2672-00744825.

27 ³² Jack Ewing, *Audi Executive Resigns After Suspension over VW Emissions Scandal*, NY. Times
28 (Dec. 4, 2015), <http://www.nytimes.com/2015/12/05/business/international/ulrich-hackenberg-suspended-over-volkswagen-emissions-scandal-resigns.html>.

1 own. The defeat device was just such a software change—one that would allow modifications to
 2 the vehicle’s emission control to turn on only under certain circumstances—that Volkswagen
 3 could not have made without Bosch’s participation.

4 246. Bosch’s security measures further confirm that its customers cannot make
 5 significant changes to Bosch software without Bosch involvement. Bosch boasts that its security
 6 modules protect vehicle systems against unauthorized access in every operating phase, meaning
 7 that no alteration could have been made without either a breach of that security—and no such
 8 claims have been advanced—or Bosch’s knowing participation.³³

9 247. Unsurprisingly, then, at least one car-company engineer has confirmed that Bosch
 10 maintains absolute control over its software as part of its regular business practices:

11 I’ve had many arguments with Bosch, and they certainly own the
 12 dataset software and let their customers tune the curves. Before
 each dataset is released it goes back to Bosch for its own validation.

13 Bosch is involved in all the development we ever do. They insist on
 14 being present at all our physical tests and they log all their own
 data, so someone somewhere at Bosch will have known what was
 15 going on.

16 All software routines have to go through the software verification
 of Bosch, and they have hundreds of milestones of verification,
 17 that’s the structure

18 The car company is *never* entitled by Bosch to do something on
 their own.³⁴

19 248. Thus, Bosch cannot convincingly argue that the development of the “akustik”
 20 device was the work of a small group of rogue engineers.

21 249. In fact, Volkswagen’s and Bosch’s work on the EDC17 reflected a highly unusual
 22 degree of coordination. It was a massive project that required the work of numerous Bosch
 23 coders for a period of more than ten years, or perhaps more.³⁵ Although Bosch publicly

24 ³³ *Reliable Protection for ECUs* (May 12, 2016), [https://www.escript.com/company/single-](https://www.escript.com/company/single-news/detail/reliable-protection-for-ecus/)
 25 [news/detail/reliable-protection-for-ecus/](https://www.escript.com/company/single-news/detail/reliable-protection-for-ecus/).

26 ³⁴ Michael Taylor, *EPA Investigating Bosch over VW Diesel Cheater Software*, Car and Driver
 (Nov. 23, 2015), [http://blog.caranddriver.com/epa-investigating-bosch-over-vw-diesel-cheater-](http://blog.caranddriver.com/epa-investigating-bosch-over-vw-diesel-cheater-software/)
 27 [software/](http://blog.caranddriver.com/epa-investigating-bosch-over-vw-diesel-cheater-software/).

28 ³⁵ Approximately 50,000 of Bosch’s 375,000 employees worked in the diesel-technology
 operations branch of Bosch, and Volkswagen was the biggest diesel manufacturer in the world.
See Bosch Probes Whether Its Staff Helped VW’s Emissions Rigging, Automotive News (Jan. 27,
Footnote continued on next page)

1 introduced the EDC17 in 2006, it had started to develop the engine management system years
2 before.³⁶

3 250. The size and complexity of the undertaking is captured by a spreadsheet that lists
4 entries for work done by Volkswagen and Bosch employees on the EDC17 from late 2003 to
5 2009. Each entry is given one of six descriptors: enhancement, new feature, service, support,
6 integration, or bug/defect. In total, the spreadsheet contains 8,565 entries and lists hundreds of
7 Bosch individuals.³⁷

8 251. The joint enterprise is also memorialized in a series of agreements between Bosch
9 and Volkswagen dating back to as early as mid-2005, reflecting negotiations that date prior to
10 January, 2005. On April 7, 2005, for example, Bosch GmbH's [REDACTED] and [REDACTED]
11 executed the "Framework Development Agreement for Software Sharing in EDC/MED17
12 Control Unit Projects from the Robert Bosch (RB) Diesel Systems (DS) And Gasoline Systems
13 (GS) Motor Vehicle Units." VW AG countersigned the agreement on September 26, 2005.
14 Importantly, the agreement defined software sharing as "the handing over of BOSCH software in
15 the form of object code by BOSCH to VW, so that VW can use this BOSCH software as a basis
16 for developing VW modules for specific EDC/ME(D)17 projects using software development
17 environments from BOSCH." The agreement states that "[p]roviding the VW modules and
18 integrating them to form a complete software product requires close cooperation between the
19 Parties."

20 252. The contract also outlined responsibilities for software sharing and co-
21 development. Throughout development, the contract dictated, Bosch was to retain control over
22 the software. While Bosch provided (and owned) the object code, and Volkswagen developed
23 (and owned) the modules, the parties agreed that "BOSCH carries out any modifications to the
24

25 *Footnote continued from previous page*

26 2016), <http://www.autonews.com/article/20160127/COPY01/301279955/bosch-probes-whether-its-staff-helped-vws-emissions-rigging>.

27 ³⁶ Feb. 28, 2006 Bosch press release, "The brain of diesel injection: New Bosch EDC17 engine
28 management system," [http://www.bosch-
presse.de/presseforum/details.htm?txtID=2603&locale=en](http://www.bosch-presse.de/presseforum/details.htm?txtID=2603&locale=en).

³⁷ VW-MDL2672-02559780.

1 BOSCH software that are necessary in order to integrate the intended VW modules at the expense
2 of VW.” The agreement further specifies that Bosch would monitor the software, test the
3 implementation of Volkswagen modules, and grant written approval to Volkswagen modules.
4 Only if everything met Bosch’s standards would it then “deliver[] the final complete software
5 product for VW to use in combination with a BOSCH control unit.”³⁸ Thus, Bosch needed to
6 conduct extensive testing before delivering the product to V.

7 253. Yet another document demonstrates the tight grip that Bosch maintained over
8 EDC17 software and any modifications made to it. On February 20, 2006, VW AG and Bosch
9 (signed by Bosch GmbH’s [REDACTED], [REDACTED] of the Diesel Systems
10 division), entered into a supplemental agreement concerning the use of “expanded software”
11 documentation for the EDC17 and EDC16 (its predecessor).³⁹ Pursuant to this agreement, Bosch
12 identified 35 named individuals, affiliated with either VW AG or IAV (Ingenieurgesellschaft
13 Auto und Verkehr), who were granted access to expanded documentation for the EDC17 for
14 specific functions relating to emissions. Any changes to the list of persons to be given access
15 required the explicit consent of Bosch GmbH, and the access was temporary and non-transferable.
16 Critically, the agreement stated that “[t]his right of use shall not include the right to the change,
17 modify or use the DOCUMENTATION with third-party control units.”⁴⁰ Bosch thereby tightly
18 controlled both who could access the expanded documentation and the scope of their use of such
19 materials.

20 254. A later agreement between Bosch GmbH and Volkswagen, this one from a June
21 12, 2006, governed the implementation, integration, project management, and delivery of certain
22 EDC 17 software functions for diesel vehicles that VW AG had requested from Bosch. This
23 agreement, too, made clear that any changes not explicitly detailed in the agreement would
24 require further approval from Bosch.

26 _____
27 ³⁸ Volkswagen produced an English translation of the agreement at VW-MDL2672-03752699.

28 ³⁹ Volkswagen produced an English translation of the agreement at VW-MDL2672-03752757.

⁴⁰ VW-MDL2672-03752757.

1 255. Along the same lines, several years later, in a February 5, 2011 agreement, Bosch
2 granted VW AG a license to further develop Bosch Denoxtronic functions for the treatment of
3 exhaust from diesel engines. Again, the contract is clear that Bosch maintains rights over the
4 Denoxtronic functions.

5 256. To recap, as the EA 189 project moved to series production in 2009, Bosch's
6 documented role was to provide to Volkswagen executable software for installation in the EDC17
7 controller at the VW production line.⁴¹ Bosch insisted that Bosch control the definition of the
8 EDC17 software, that Bosch test the software using bench top and vehicle testing, that Bosch
9 produce the final software release for series production, and that Bosch deliver the software to
10 Volkswagen for installation in the EA 189 engines used in the Class Vehicles. Bosch's firm
11 control over the development of and modifications to EDC17 is undeniable. It is inconceivable,
12 then, that Bosch did not know that the software it was responsible for defining, developing,
13 testing, maintaining and delivering contained an illegal defeat device.

14 257. In fact, Bosch was in on the secret and knew that Volkswagen was using Bosch's
15 software algorithm as an "on/off" switch for emission controls when the Class Vehicle was
16 undergoing testing. As noted above, it has been said the decision to cheat was an "open secret" at
17 Volkswagen.⁴² It was an "open secret" at Bosch as well.

18 258. Volkswagen and Bosch personnel employed code language for the defeat device,
19 referring to it as the "acoustic function" (in German, "akustikfunktion"). As described above, the
20 roots of the "akustikfunktion"—and likely the cheating—can be traced back to the late 1990's
21 when Audi devised software called the "akustikfunktion" that could switch off certain functions
22 when the vehicle was in a test mode.⁴³ The "akustik" term is derived from the function's ability

23 _____
24 ⁴¹ VW-MDL2672-03752699.

25 ⁴² Georgina Prodham, *Volkswagen probe finds manipulation was open secret in department*,
26 Reuters (Jan. 23, 2016), [http://www.reuters.com/article/us-volkswagen-emissions-investigation-
27 idUSKCN0V02E7](http://www.reuters.com/article/us-volkswagen-emissions-investigation-idUSKCN0V02E7). See also Jay Ramey, *VW chairman Poetsch: Company 'tolerated breaches of
28 rules'*, Autoweek (Dec. 10, 2015), [http://autoweek.com/article/vw-diesel-scandal/vw-chairman-
poetsch-company-tolerated-breaches-rules](http://autoweek.com/article/vw-diesel-scandal/vw-chairman-poetsch-company-tolerated-breaches-rules) (it was necessary for the "EA 189 engine to pass U.S.
diesel emissions limits within the budget and time frame allotted.").

⁴³ [https://global.handelsblatt.com/edition/413/ressort/companies-markets/article/dieselgates-roots-
stretch-back-to-audi?ref=MTI5ODU1](https://global.handelsblatt.com/edition/413/ressort/companies-markets/article/dieselgates-roots-stretch-back-to-audi?ref=MTI5ODU1).

1 to modify the noise and vibration produced by the engine. News articles report that, in 2006, VW
2 AG further developed this “akustikfunktion” for the Class Vehicles.⁴⁴

3 259. Written communications between and within Bosch and Volkswagen describe the
4 “akustikfunktion” in surprising detail. In emails sent as early as July 2005 from VW AG’s
5 Andreas Specht to Bosch’s [REDACTED], [REDACTED], [REDACTED], and [REDACTED],
6 Specht discussed emissions measurements from vehicles using the “akustikfunktion” in
7 connection with U.S. emission compliance.⁴⁵ A February 2014 PowerPoint prepared by VW AG
8 explained that the akustikfunktion measured speed, acceleration, and engine operation to
9 determine whether a vehicle is undergoing testing.⁴⁶

10 260. On November 13, 2006, VW AG’s Dieter Mannigel (Software Design, U.S. Diesel
11 Engines, Drivetrain Electronics) circulated via email a PowerPoint presentation prepared for VW
12 AG’s Rudolf Krebs (who joined Volkswagen from Audi in 2005) about how the
13 “akustikfunktion” is activated and deactivated in recognition of emissions-related environmental
14 conditions, such as temperature and pressure. The presentation explained that the existing
15 vehicles functioning with different drive cycles could not pass U.S. emission tests, and thus
16 proposed the release of the “akustikfunktion” to be driving dependent.⁴⁷

17 261. On November 20, 2006, Mannigel emailed his colleagues to summarize a meeting
18 with Krebs, at which the PowerPoint described above was likely presented. Krebs had
19 emphasized the importance of not getting caught by U.S. regulators using the “akustikfunktion,”

20 _____
21 ⁴⁴ Volkswagen Probe Finds Manipulation Was Open Secret in Department: Newspaper”, *Reuters*
22 (Jan. 23, 2016), [http://www.reuters.com/article/us-volkswagen-emissions-investigation-
23 idUSKCN0V02E7](http://www.reuters.com/article/us-volkswagen-emissions-investigation-idUSKCN0V02E7). VW Group Chairman, Hans Dieter Poetsch, explained that a small group of
24 engineers and managers was involved in the creation of the manipulating software. *See* VW
25 Chairman Poetsch: Company “Tolerated Breaches of Rules”, *Auto Week* (Dec. 10, 2015),
[http://autoweek.com/article/vw-diesel-scandal/vw-chairman-poetsch-company-tolerated-
26 breaches-rules](http://autoweek.com/article/vw-diesel-scandal/vw-chairman-poetsch-company-tolerated-breaches-rules). *See also* “Scandal Explained”, *BBC*, Dec. 10, 2015,
<http://www.bbc.com/news/business-34324772>; Sept. 18, 2015, [http://www.autocar.co.uk/car-
28 news/industry/vw-emissions-scandal-how-volkswagens-defeat-device-works](http://www.autocar.co.uk/car-
27 news/industry/vw-emissions-scandal-how-volkswagens-defeat-device-works).

⁴⁵ VW-MDL2672-02559611.

⁴⁶ VW-MDL2672-02572122.

⁴⁷ VW-MDL2672-02559527. The email attached an internal Volkswagen PowerPoint that
describes the “akustikfunktion” as activated in recognition of emission related environment
conditions and proposed it as a solution to the registration emissions certification problems in the
U.S. (VW-MDL2672-02559528).

1 and warned that the function must be explainable to regulators. Krebs was skeptical about using
2 the akustikfunktion in the U.S. market due to potential regulatory and legal exposure, and
3 Mannigel was nervous that regulators would be able to detect the “akustikfunktion.”
4 Nevertheless, Mannigel reported, Volkswagen was going ahead with the expanded
5 “akustikfunktion” with Bosch.⁴⁸ It is likely this was the meeting at which VW decided to use the
6 “akustikfunktion” as a defeat device to evade compliance with U.S. emission requirements.

7 262. Well after the defeat device was developed and integrated into hundreds of
8 thousands of Class Vehicles, Volkswagen and Bosch continued to work together to refine and
9 maintain it. For example, both Bosch and Volkswagen were involved in the calibration of the
10 defeat devices for the Class Vehicles. A November 2014 email from VW AG’s Juergen Hintz,
11 entitled “Akustikfunktion,” relayed a telephone call with Bosch’s ██████ about the
12 “akustikfunktion” and Volkswagen’s role. VW AG’s C. Arenz responded that while he had been
13 responsible for the operation of the “akustikfunktion,” Bosch was responsible for its calibration.
14 In fact, Arenz disclosed that he planned to meet with Bosch (along with Michael Brand) about
15 calibrating the “akustikfunktion” the following week.⁴⁹ In another email, Hintz wrote that
16 Bosch’s ██████ told him that Bosch would be making certain changes to the “akustikfunktion”
17 based on Volkswagen’s specifications.⁵⁰

18 263. In sum, Bosch worked hand-in-glove with Volkswagen to develop and maintain
19 the akustikfunktion/defeat device.⁵¹

23 ⁴⁸ VW-MDL2672-02559526.

24 ⁴⁹ VW-MDL2672-02569895.

25 ⁵⁰ Translation at 00387135.

26 ⁵¹ From the information available to date, it appears that at least nine individuals from Bosch were
27 involved in the scheme to develop the illegal defeat device: ██████, ██████, ██████, and ██████
28 (based on a July 2005 email from VW AG’s Specht); ██████ (based on a March 2007 email with
VW AG’s Klaproth and Mannigel); ██████, ██████, and ██████ (based on a June 2, 2008 letter
attempting to limit Bosch’s liability); and ██████ (recipient of the letter attached to VW AG’s June
6, 2008 response). VW-MDL2672-02570091; VW-MDL2672-02559611; VW-MDL2672-
02559515.

1 2. **Volkswagen and Bosch Conspire to Conceal the Illegal**
2 **“Akustikfunktion”**

3 264. By 2007, and likely earlier, Bosch was critical not only in developing the
4 “akustikfunktion,” but also in concealing it. On March 9, 2007, Bosch’s ██████████
5 emailed VW AG’s Mathias Klapproth (a technical developer) and Mannigel with the subject of
6 “Erweiterungen Akustikfunktion” (in English, “Further Development of the Acoustic
7 Function”).⁵² ██████████ *confirmed that Bosch would remove the description of the enhanced*
8 *“akustikfunktion” from Volkswagen’s fuel pump specification sheets D2250 and D2278.*
9 Klapproth and Mannigel agreed not to list the function in documentation in the U.S., but disagreed
10 whether to disclose it in Europe. Klapproth then took ██████████ off the email chain and insisted the
11 “akustikfunktion” would be applied to the European projects, to which Mannigel responded that
12 he would contact Klapproth off-line.

13 265. Bosch was concerned about getting caught participating in the defeat device fraud.
14 As reported in the German newspaper, *Bild am Sonntag*, and a French publication, a Volkswagen
15 internal inquiry found that in 2007 Bosch warned Volkswagen by letter that using the emissions-
16 altering software in production vehicles would constitute an “offense.”^{53,54}

17 266. Bosch expressed similar concerns that use of the defeat device it had created
18 would violate U.S. law. These concerns culminated in a June 2, 2008, letter from Bosch’s ██████████
19 ██████████ to Volkswagen’s Thorsten Schmidt in which Bosch demanded that Volkswagen
20 indemnify Bosch for any liability arising from the creation of a “defeat device,” as Bosch itself
21 called it in English. Through the letter, Bosch sought to clarify the roles and responsibilities of
22 Volkswagen and Bosch regarding the development of the EDC 17, and demanded that
23 Volkswagen indemnify Bosch for any legal exposure arising from work on the defeat device:

24 _____
25 ⁵² VW-MDL2672-02559515.

26 ⁵³ Automotive News (Sept. 27, 2015)

27 (<http://www.autonews.com/article/20150927/COPY01/309279989/bosch-warned-vw-about-illegal-software-use-in-diesel-cars-report-says>); VW Scandal: Company Warned over Test Cheating Years Ago”, *BBC*, Sept. 27, 2015, <http://www.bbc.com/news/business-34373637>.

28 ⁵⁴ <http://www.autonews.com/article/20150927/COPY01/309279989/bosch-warned-vw-about-illegal-software-use-in-diesel-cars-report-says>

1 The further development [of the EDC17] requested by your
2 company will result, in addition to the already existing possibility
3 of activating enriched data manually, *in an additional path for the
potential to reset data to act as a “defeat device.”* We ask you to
4 have the attached disclaimers executed by your company.⁵⁵

5 The letter uses the words “defeat device” in English, and further explained that “[t]he usage of a
6 **defeat device is prohibited pursuant to . . . US Law (CARB/EPA)** (see definition footnote
7 2).”⁵⁶

8 267. Bosch’s June 2, 2008 letter also warned Volkswagen that the software
9 modifications Volkswagen requested could allow “the certified dataset [to be] replaced with
10 another, possibly non-certified data set[,]” which could, in turn, cause “the vehicle’s general
11 operating license (registration) [to] become void.”⁵⁷ Creating two data sets on emission
12 compliance was illegal under U.S. law. Bosch knew this, and that is why it requested
13 indemnification from Volkswagen.

14 268. [REDACTED] and [REDACTED] at Bosch signed the proposed indemnification;
15 the signature lines for Volkswagen were left blank. When Volkswagen’s Hermann Middendorf
16 responded to [REDACTED] at Bosch. He did not deny the existence of a defeat device, but instead
17 attacked Bosch for involving “the lawyers.”

18 269. Discovery is ongoing, and Plaintiffs do not have a full record of what unfolded in
19 response to Bosch’s June 2, 2008 letter. However, it is indisputable that Bosch continued to
20 develop and sell to Volkswagen hundreds of thousands of the defeat devices for U.S. vehicles
21 following Bosch’s express, written recognition that its software was being used in the Class
22 Vehicles as a “defeat device” that was “prohibited pursuant to . . . US Law.”

23 270. VW AG and Bosch continued over the next few years to refine the defeat device.
24 This was a lengthy and complicated process that required concealing its existence from the
25 onboard diagnostic system, which was intended to report emission controls to comply with U.S.,
26 and particularly California’s, requirements. In a July 18, 2011 email, Audi’s Olaf Busse proposed

27 ⁵⁵ VW-MDL2672-02570091 (English translation) (emphasis added).

28 ⁵⁶ *Id.* at -92 (emphasis added).

⁵⁷ *Id.* at -93.

1 tying the activation of the “akustikfunktion” more directly to steering angle, instead of vehicle
 2 temperature, which was proving to be problematic. This request coincided with inquiries from
 3 CARB about on-board diagnostics issues. VW AG’s Hanno Jelden (Head of Powertrain
 4 Electronics), worried that the change would be too obvious and could not be explained to
 5 regulators.⁵⁸

6 271. Defendant Denner and the other Individual Defendants were also in on the secret.
 7 Notes from a May 28, 2014 meeting between Bosch and Volkswagen executives at VW
 8 headquarters reflect that the topic of “akustikfunktion” was discussed in the context of
 9 Volkswagen’s and Bosch’s partnership in the U.S. market. VW AG’s Friedrich Eichler
 10 (Powertrain Development Chief) mentioned the importance of the “akustikfunktion” in Bosch
 11 diesel engines. Bosch participants at the meeting included Defendant Denner, as well as [REDACTED]
 12 [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED],
 13 [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. For VW AG, Defendant Winterkorn was also present.⁵⁹

14 **3. Volkswagen and Bosch Conspire in the U.S. and Germany to Elude**
 15 **U.S. Regulators**

16 272. The purpose of the defeat device was to evade stringent U.S. emissions standards.
 17 Once Bosch and VW perfected the defeat device, therefore, their attention turned to deceiving
 18 U.S. regulators.

19 273. Evidence already shows that Bosch GmbH employees expressly conspired with
 20 VW to hide the function of the defeat device. Shortly after the March 2007 email exchange
 21 detailed above, in which VW AG’s Klaproth and Mannigel confirmed to Bosch GmbH’s [REDACTED]
 22 that the “akustikfunktion” would not be listed in the U.S. documentation for the Class Vehicles,
 23 an internal email from VW AG’s Frank Alich (Development, OBD Diesel) to various individuals
 24 at VW AG about scheduling a May 9, 2007 meeting, lamented the trouble distinguishing between
 25

26
 27 ⁵⁸ VW-MDL2672-0259489. Jelden was subsequently suspended in connection with the
 emissions scandal.

28 ⁵⁹ VW-MDL2672-02569909.

1 acoustic and non-acoustic modes relating to soot simulation. Alich complained that he did not
2 know how he would explain the problem to CARB.⁶⁰

3 274. Bosch's North American subsidiary, Defendant Bosch LLC, was also part of and
4 essential to the fraud. Bosch LLC worked closely with Bosch GmbH and Volkswagen, in the
5 United States and in Germany, to ensure that the non-compliant Class Vehicles passed U.S.
6 emission tests. As set forth below, Bosch LLC employees frequently communicated with U.S.
7 regulators, and actively worked to ensure the Class Vehicles were approved by regulators.

8 275. Employees of Bosch LLC and Bosch GmbH provided specific information to U.S.
9 regulators about how Volkswagen's vehicles functioned and unambiguously stated that the
10 vehicles met emissions standards. Bosch LLC regularly communicated to its colleagues and
11 clients in Germany about ways to deflect and diffuse questions from US regulators about the
12 Class Vehicles - particularly CARB. For example, in a May 15, 2008 email from Audi AG's
13 Martin Hierse to Bosch GmbH's [REDACTED] (Diesel Systems, Engineering Powertrain
14 Diagnosis), copying Audi's Stefan Forthmann, Hierse noted that auxiliary emission control
15 devices ("AECs") were a very important subject for certification of U.S. diesels, and admitted
16 discrepancies with the U.S. authorities in AECD documentation.⁶¹ The regulators' questions
17 were chipping away at the discrepancies between on board diagnostic systems, and the emission
18 controls.

19 276. Accordingly, Hierse worried that there was a possibility that one of the
20 Volkswagen Group's representatives in the U.S. was providing the regulators too much
21 information and data concerning AECD disclosure. He then asked to discuss the matter with
22 Bosch's [REDACTED] either by telephone or in private at one of their offices due to the
23 confidentiality of the issue.

24 277. Bosch and VW worked together to craft responses to CARB's questions. For
25 example, an April 2009 email, Suanne Thomas (VW America Regulatory Strategist) and Bosch
26

27 ⁶⁰ VW-MDL2672-02555825.

28 ⁶¹ VW-MDL2672-11873274.

1 LLC's ██████ discussed results from tests sent from an individual at IAV showing defects in
2 the Class Vehicles' in-use ratios and missing readiness information.

3 278. On July 1, 2009, VW America's Thomas emailed colleagues, again raising
4 concerns about documenting AECDs in Model Year 2010-11 Class Vehicles to U.S. authorities.
5 At issue was the "low level of detail in the AECD documents [so that] ARB is not able to confirm
6 which strategies are for component protection." Thomas then relayed that CARB asked whether
7 there was a problem getting Bosch to disclose its strategy.⁶² In a related email, Thomas
8 commented: "I was not involved in the discussions . . . with ARB on diesel, however I get the
9 impression that there is a misunderstanding at VW regarding AECDs. That this
10 misunderstanding is the root of the issue – why ARB is not satisfied with the AECD disclosure
11 for diesels."⁶³ CARB was asking the right questions, and not getting honest answers.

12 279. Nor can Bosch persuasively distance Bosch GmbH from the communications with
13 regulators, as Bosch GmbH employees directly participated in meetings with CARB. For
14 example, in January, 2015, Bosch GmbH (specifically, Bosch LLC's ██████, ██████
15 ██████, ██████, Quality Control, and ██████, Sales Quality and
16 Warranty) conferred about setting up a conference call with Audi and CARB to explain problems
17 with the diagnostics relating to faulty fuel pumps, issues that likely arose because the defeat
18 device was causing problems with the on board diagnostic system in certain Class Vehicles.
19 Suanne Thomas of VW coordinated the call between Bosch and CARB.

20 280. Volkswagen and Bosch held CARB and the EPA at bay with finesse (and fraud) to
21 obtain the necessary COCs and EOs to keep Class Vehicles on the road. In an August 2009 email
22 from VW America shared a comment from CARB regarding 2009 Volkswagen Jetta TDIs test
23 results that "VW 'blatantly did the wrong thing'" and asking Volkswagen if this "is a base
24 strategy from Bosch." Volkswagen responded, "yes."⁶⁴

25
26
27 ⁶² VW-MDL2672-02469411.

28 ⁶³ VW-MDL2672-02120937.

⁶⁴ VW-MDL2672-00912096.

1 281. This is not the only document crediting Bosch strategies to obtain regulatory
 2 approval. A May 17, 2011 email from CARB to Thomas regarding Volkswagen 2014 TDIs
 3 referenced a 2010 conference call where they discussed “the bosch ZFC [Zero Fuel Calibration]
 4 strategy and a possible fuel rail pressure disablement.” VW AG’s Alich then relayed that “ARB
 5 accepted our proposal to implement the ZFC ‘time to closed loop’ monitor with MY [model year]
 6 2013.”⁶⁵ And in a May 31, 2013 email regarding 2.0-liter Class Vehicles, Thomas referenced a
 7 “[p]roposed strategy” to “get the executive order [from CARB] based on the ‘Bosch’ strategy.”⁶⁶
 8 These communications demonstrate Bosch’s deep understanding of what regulators allowed and
 9 would not allow, and what Bosch did to help VW obtain approval.

10 282. In short, there can be no argument that Bosch left communications with the
 11 regulators to VW, or that Bosch did not understand the regulatory implications of the defeat
 12 device software VW paid Bosch to develop. Employees of Bosch GmbH and Bosch LLC worked
 13 together with VW to convince U.S. regulators to approve the Class Vehicles for sale and use in
 14 this country. The examples below identify at least six additional instances in which Bosch
 15 communicated directly with U.S. regulators to discuss concerns with emissions detection and
 16 compliance in the Class Vehicles. During each communication, Bosch LLC provided specific
 17 information about how Volkswagen’s vehicles functioned and unambiguously stated that the
 18 vehicles met emissions standards:

- 19 a. In December 2009, Bosch presented CARB with a strategy
 20 to allow usage of Injection Quantity Adjustment codes in
 21 2013 Volkswagen diesel models.⁶⁷
- 22 b. In or around December 2012, Volkswagen and Bosch
 23 submitted separate written responses, including requested
 24 documents, to the U.S. National Highway Traffic Safety
 25 Administration in response to its investigation into high-
 26 pressure fuel pump failures in certain Class Vehicles.⁶⁸
- 27 c. A January 15, 2014 email from CARB to Thomas with the
 28 subject, “RE: VW response Re: V6TDI clarifications,”

26 ⁶⁵ VW-MDL-2672-02464246.

27 ⁶⁶ VW-MDL2672-00530556.

28 ⁶⁷ VW-MDL2672-07235955.

⁶⁸ VW-MDL2672-00762181.

1 CARB's Peter Ho referenced "previous discussions with
2 Bosch," and inquired about false detections in the field.⁶⁹

- 3 d. July 23, 2014 notes from Volkswagen referenced a phone
4 call between Volkswagen, Bosch, CARB, and other
5 automakers during which Bosch raised the issue of pin-
6 pointing of wire faults of NOx and particulate matter
7 sensors with a separate control unit.⁷⁰
- 8 e. A February 9, 2015 email from VW AG's Steffen Vieser
9 relayed an update from Bosch GmbH about a discussion
10 between CARB and Bosch LLC's ██████████ re: a "non-
11 erasable permanent fault code issue of the fuel pump
12 electronic driver stage diagnostic," which Volkswagen
13 suggested could be fixed by a "software update" requiring
14 Bosch's assistance, which CARB approved.⁷¹
- 15 f. Notes from a June 10-11, 2015 meeting between CARB and
16 Volkswagen reference a "Bosch discussion with ARB
17 regarding PM [particulate matter] sensor introduction with
18 Fe-doping." The meeting notes also record that CARB told
19 Volkswagen that CARB did not want the emission monitors
20 in a "contrived condition."⁷²

21 283. Bosch did not disclose its knowledge of the illegal defeat device in any of these
22 meetings or communications with U.S. regulators.

23 **4. Bosch Keeps Volkswagen's Secret Safe and Pushes "Clean" Diesel in**
24 **the U.S.**

25 284. Bosch not only kept Volkswagen's dirty secret safe, it went a step further and
26 actively lobbied lawmakers to push "Clean Diesel" in the U.S., including making Class Vehicles
27 available for regulators to drive.

28 285. As early as 2004, Bosch announced a push to convince U.S. automakers that its
diesel technology could meet tougher 2007 U.S. emission standards.⁷³ Its efforts ended up being
a multiple-year, multi-million dollar effort, involving key players from both Bosch Germany and
Bosch America. Following the launch of its new EDC systems in 2006, Bosch hired mcapitol
Managers, a lobbying firm to promote its "Clean Diesel" products on Capitol Hill and with the

⁶⁹ VW-MDL2672-00465156 (emphasis added). These discussions began in 2011.

⁷⁰ VW-MDL2672-00887996.

⁷¹ VW-MDL2672-00902633; VW-MDL2672-02449923.

⁷² VW-MDL2672-02296983.

⁷³ Mar. 8, 2004, Edmund Chew, Autonews.

1 EPA. In Washington, DC, mcapital Managers lobbied on Bosch's behalf to defeat a proposal that
2 would have favored hybrid vehicle technology over "Clean Diesel" vehicles.

3 286. Bosch also coordinated studies to advance diesel technology in the U.S. In
4 September 2006, Bosch's ██████████ reached out to Volkswagen and Audi to request their
5 participation in the "Martec Light Duty Diesel Market Opportunity Assessment." The study's
6 goal was to develop coordinated strategies to accelerate advancements of light duty diesel
7 technology in the U.S.⁷⁴

8 287. Bosch's promotion of diesel technology specifically targeted the U.S. For
9 example, Bosch put on "Diesel Days in California," "Deer Conference: EGT Focus," and "SAE
10 World Congress in Detroit." In 2008, Bosch LLC and VW America co-sponsored the "Future
11 Motion Made in Germany-Second Symposium on Modern Drive Technologies" at the German
12 Embassy in Washington, D.C., with the aim of providing a venue for "stakeholders to gain insight
13 into the latest technology trends and engage in a vital dialogue with industry leaders and
14 policymakers."⁷⁵

15 288. Bosch LLC hosted multi-day conferences open to many regulators and legislators
16 and held private meetings with regulators, in which it proclaimed extensive knowledge of the
17 specifics of Volkswagen technology, including calibrations necessary for the Class Vehicles to
18 comply with emissions regulations.

19 289. For example, in April 2009, Bosch organized and hosted a two-day "California
20 Diesel Days" event in Sacramento, California. Bosch invited a roster of lawmakers, journalists,
21 executives, regulators, and NGOs with the aim of changing perceptions of diesel from "dirty" to
22 "clean." The event featured Class Vehicles as ambassadors of "Clean Diesel" technology,
23 including a 2009 VW Jetta "green car." The stated goals were to "generat[e] a positive
24 perception of Clean Diesel in passenger vehicles" and to "educate California stakeholders about
25 the immediate benefits [of] Clean Diesel passenger vehicles" in reducing emissions. A key
26

27 ⁷⁴ VW-MDL2672-06136031.

28 ⁷⁵ VW-MDL2672-00234383.

1 feature of the event included “Bosch Vehicles Being Deployed.”⁷⁶ Attendees included [REDACTED]
 2 [REDACTED] ([REDACTED]), Diesel Systems, Bosch LLC); [REDACTED] ([REDACTED])
 3 [REDACTED], Diesel Engineering, Bosch Support Staff, Bosch GmbH); [REDACTED] ([REDACTED]),
 4 Marketing, Diesel Systems, Robert Bosch LLC); and [REDACTED] ([REDACTED]), External
 5 Affairs, Robert Bosch LLC).

6 290. In 2009, Bosch also became a founding member of the U.S. Coalition for
 7 Advanced Diesel Cars. One of this advocacy group’s purposes included “generating awareness to
 8 legislators and regulators on the benefits of “Clean Diesel” technology for passenger cars,
 9 through engagement in policy, regulatory and advocacy activities.”

10 291. Another example of Bosch’s U.S. lobbying is the 2009 “California Green
 11 Summit.” As part of its “Clean Diesel” partnership with Volkswagen, Bosch deployed two 2009
 12 Jetta TDI Volkswagens to attendees with the express purpose of “Influencing California,” and
 13 inviting CARB, the Western Automotive Journalist Organization, and many others.

14 292. In September 2009, Bosch held a Diesel Technology Forum in California. [REDACTED]
 15 [REDACTED] (Diesel Systems/Engineering; Vehicle and Engine Laboratory of Bosch) attended, as did
 16 VW’s Stuart Johnson, R. Dorenkamp and G. Pamio, along with Juergen Peter. Following this
 17 forum, in October 2009, Mightycomm (Bosch’s California lobbyist) outlined a proposal for
 18 “OEM Vehicle Placement Program targeting influential California NGOs and Regulators.”⁷⁷
 19 This memo was addressed to Bosch’s [REDACTED], [REDACTED], and Bosch Diesel Systems.
 20 **Mightycomm specifically stated “[v]ehicles placed with CARB would have to be . . . newer**
 21 **models that can withstand possible dynamometer testing. While we do not anticipate a vehicle**
 22 **placed with CARB would be inspected, examined, or tested on a dynamometer, there is no**
 23 **assurance some CARB staff won’t want to do this.”**⁷⁸ On the other hand, Mightycomm advised
 24 not to worry about a vehicle being tested by the California Energy Commission (“CEC”) “as the
 25 CEC is not equipped to conduct such inspections.”⁷⁹

26 ⁷⁶ *Id.* 115-45; VW-MDL2672-03331605.

27 ⁷⁷ VW-MDL2672-15182932

28 ⁷⁸ *Id.* (emphasis added).

⁷⁹ *Id.*

1 293. In 2010, Bosch sponsored the Virginia International Raceway with the support of
2 the 2010 Volkswagen Jetta Cup Series. This included the 2009 “Sidewinder” which Bosch
3 featured for its “performance exhaust system.”

4 294. In its lobbying on behalf of “Clean Diesel,” Bosch had to continually cover up the
5 dirty secret of the defeat device in the Class Vehicles. In a January 13, 2010 memo addressed to
6 Bosch’s [REDACTED] and [REDACTED], Mightycomm noted that “Clean Diesel has been ranked
7 the green car of the year” two years in a row—2009 and 2010. And yet Bosch knew the Class
8 Vehicles could not obtain the results being advertised without activating the defeat device.

9 295. Bosch’s [REDACTED] ([REDACTED])
10 presented on “Clean Diesel” technology before the CEC on June 19, 2013, specifically
11 pinpointing “key influencers,” such as specific NGOs that have not traditionally engaged CARB,
12 “who we need to reach, rally and motivate.”⁸⁰

13 296. In its efforts to promote “Clean Diesel,” including the Class Vehicles, Bosch acted
14 on behalf of its global group. As an example, Bosch put on a two-day presentation on June 27-
15 28, 2007, about meeting the demands of U.S. emission legislation, where it focused on lowering
16 emissions in diesel vehicles. Each of the presentation’s 30 pages bears both the “Bosch” name
17 and “Bosch Engineering GmbH” but makes no mention of Bosch LLC.⁸¹ The aforementioned
18 memo from Mightycomm was addressed to “Bosch Diesel Systems.” And each page of the
19 presentation for California Diesel Days bears the label “BOSCH” in emboldened red type.⁸² This
20 is consistent with the ongoing representations that the Bosch entities, overseas and in the U.S.
21 were “one-for-all-and-all-for-one” in promoting “Clean Diesel” technology to U.S. stakeholders.

22 **5. Defendant Denner Also Played a Critical Role in the Scheme**

23 297. Prior to becoming CEO in 2012, Denner climbed the corporate ladder in Bosch’s
24 Engine ECU Development division, managing the development and sale of automotive engine
25 computers, such as the EDC units that Volkswagen used as defeat devices. In 2006, Denner

26 _____
27 ⁸⁰ VW-MDL2672-00885348.

28 ⁸¹ VW-MDL2672-05676990.

⁸² VW-MDL2672-03331605.

1 joined Bosch Germany's Board of Management and was later responsible for research and
2 advance engineering, product planning, and technology coordination across the company's three
3 business sectors from July 2010 until his appointment as CEO. Denner has agitated for the
4 company to become more like a "start-up,"⁸³ and to develop a "culture of failure,"⁸⁴ where risk
5 taking is rewarded, in an attempt to replicate the "California venture capitalist model."⁸⁵ Denner
6 set the tone at the top of Bosch as a member of Bosch's Board of Management and later CEO.
7 He embraced the Silicon Valley culture of moving fast, taking risks, and asking for forgiveness
8 rather than permission.

9 298. As he rose in the ranks, Denner worked to foster Bosch's relationship with key
10 corporate partners, like Volkswagen, which brought in billions of dollars in annual revenues.
11 Denner immersed himself in the day-to-day business of Bosch's important customers. Illustrating
12 how important Volkswagen was to Bosch, Denner communicated directly with Volkswagen's
13 Winterkorn about the companies' relationship and Bosch products sold to Volkswagen. For
14 example, when Bosch ran out of oxygen sensor parts that Volkswagen ordered for its vehicles,
15 Denner reached out directly to Winterkorn. Denner and Winterkorn directly communicated over
16 parts delays and shortages, implying that each was not a manager who governed from afar, but
17 rather was intricately involved in the details of operations.

18 299. In May 28, 2014, Denner participated in a meeting with Defendant Winterkorn and
19 other Bosch and Volkswagen executives at Volkswagen headquarters concerning their
20 partnership in the U.S. market. Among other topics, participants discussed the "akustikfunktion"
21

22 ⁸³ See Interview with Bosch Director Volkmar Denner, Jan. 21, 2015, available at
23 [http://www.uni-stuttgart.de/forschung-leben/forschung-](http://www.uni-stuttgart.de/forschung-leben/forschung-persoendlich/persoendlich_artikel0005.en.html)
[persoendlich/persoendlich_artikel0005.en.html](http://www.uni-stuttgart.de/forschung-leben/forschung-persoendlich/persoendlich_artikel0005.en.html).

24 ⁸⁴ See Martin-Werner Bucdhenau, The Multinational Start-up: The engineering and electronics
25 giant Bosch is putting aside its conservative tendencies and investing in a new innovation unit
26 that it hopes will rival successful start-up incubators, Handelsblatt, Nov. 28, 2014, available at
[https://global.handelsblatt.com/edition/64/ressort/companies-markets/article/the-multinational-](https://global.handelsblatt.com/edition/64/ressort/companies-markets/article/the-multinational-start-up)
[start-up](https://global.handelsblatt.com/edition/64/ressort/companies-markets/article/the-multinational-start-up).

27 ⁸⁵ See Nick Gibbs, German auto firms try to nurture Silicon Valley boldness, Automotive News,
28 Nov. 22, 2015, available at
[http://www.autonews.com/article/20151122/OEM06/311239956/german-auto-firms-try-to-](http://www.autonews.com/article/20151122/OEM06/311239956/german-auto-firms-try-to-nurture-silicon-valley-boldness)
[nurture-silicon-valley-boldness](http://www.autonews.com/article/20151122/OEM06/311239956/german-auto-firms-try-to-nurture-silicon-valley-boldness)

1 in Volkswagen diesel vehicles.⁸⁶ Thus, Denner and Winterkorn were aware of the illegal use of
2 the defeat devices at least by May 2014.

3 300. In sum, Bosch played a crucial role in the fraudulent enterprise and profited
4 handsomely from it. It is no exaggeration to say that Bosch provided Volkswagen with the most
5 critical elements necessary to create an engine capable of being (fraudulently) represented as
6 achieving the most stringent U.S. emission standards. All of the Bosch content provided to the
7 Volkswagen production line combined—including the ECU, software, fuel system, sensors, and
8 harness—accounted for a sizeable portion of the total material cost of the engines. This is very
9 big business for Bosch.

10 **D. Porsche Knowingly Adopts the Defeat Device in Its 3.0-liter Class Vehicles**

11 301. Porsche also knew that its class vehicles—the Porsche Cayenne Diesel—contained
12 defeat devices that resulted in NO_x and other emissions exceeded the allowable EPA emission
13 standards under normal driving conditions. Indeed, Porsche’s head of development, Hatz, was
14 formerly head of engine development at VW and Audi and, as alleged above, *was one of the*
15 *architects of the defeat device scheme*. Although Porsche would later disclaim any responsibility
16 for the 3.0-liter TDI engine, Porsche was fully aware of the defeat device that the engine utilized,
17 and fully embraced the “Clean Diesel” engine for purposes of marketing its cars to the public.

18 302. At the very least, Porsche learned of the defeat device during the design and
19 manufacture of the Porsche Cayenne Diesel and the installation of its 3.0-liter TDI engine and
20 ECU, which were developed and integrated into the Cayenne with the assistance of Audi and
21 Bosch. When Porsche decided to enter the U.S. market, Porsche representatives worked closely
22 with Audi and Bosch engineers on the development, installation, and integration of the Audi-
23 developed 3.0-liter TDI engine used in the Porsche Cayenne Class Vehicles. During this process,
24 Audi personnel educated Porsche personnel about the defeat device used in the 3.0-liter engine.
25 This included communications between Audi engineers, Porsche’s electronics development chief,
26 and the head of engine development at Volkswagen, Ulrich Hackenberg, that described the EPA
27 requirements and the strategy devised to circumvent those requirements.

28 ⁸⁶ VW-MDL2672-02569909.

1 303. Furthermore, although the Porsche Cayenne uses a 3.0-liter TDI engine developed
2 by Audi, it is distinct and required its own unique calibrations. Any changes specific to the
3 Cayenne required Porsche to collaborate with Audi and Bosch engineers to ensure that the
4 modifications were advisable given the configuration of the engine software and would not
5 negatively impact overall vehicle performance.

6 304. Additionally, Porsche was ultimately responsible for obtaining the necessary
7 emissions certification required to market the Porsche Cayenne Diesels in the United States.
8 Porsche was therefore aware of the input values and other engine calibrations required for the
9 Cayenne to undergo the emissions testing necessary to obtain a COC, and it well understood that
10 the Cayenne could maintain comparable levels of power and fuel efficiency during testing and
11 real-world driving conditions while simultaneously generating drastically different emissions
12 results during these two scenarios, only because of the presence of the defeat device in the
13 Cayenne's ECU.

14 **E. Volkswagen's "Clean" Diesel Advertising Campaign**

15 305. While secretly using defeat devices to bypass emission testing, Volkswagen
16 publicly declared a landmark victory—touting that it had successfully optimized its engines to
17 maintain legal emissions, while simultaneously enjoying the cost savings and convenience factors
18 of a lean NO_x trap system. Volkswagen claimed it accomplished this by monitoring and
19 adjusting combustion conditions and using a two-stage exhaust gas recirculation system to reduce
20 initial emissions, while neutralizing the remaining ones with a lean NO_x trap to comply with U.S.
21 law.⁸⁷ Volkswagen branded and advertised this purportedly revolutionary technology to
22 American consumers as "Clean Diesel" TDI technology.

23 306. As we now know, Volkswagen's "clean" diesel campaign was built upon a lie.
24 Indeed, the Class Vehicles were so "dirty" that they could not pass the minimum emission
25 standards in the U.S., and Volkswagen had to lie to the EPA in order to sell them in the U.S. But,
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27 ⁸⁷ See Hadler, *et al.*, *Volkswagen's New 2.0l TDI Engine Fulfils the Most Stringent Emission*
28 *Standards*, Internationales Wiener Motorensymposium 2008; see also *Self Study Program*
826803: 2.0 Liter TDI Common Rail BinS ULEV Engine, Volkswagen of America, Inc. (2008).

1 of course, Volkswagen marketed and sold these Class Vehicles without ever disclosing to
2 consumers that they were unlawful to sell or drive due to their high levels of NO_x emissions.

3 **1. VW's False and Misleading Advertisements**

4 307. VW's "clean" diesel campaign was its key selling point for consumers
5 increasingly concerned about the environment. Its marketing mission was to "get clean-diesel
6 power the recognition it deserves as a true 'green' technology," thereby growing Volkswagen's
7 market share to match Winterkorn's lofty goals.⁸⁸ The objective was to change the way
8 consumers thought of diesel technology, by replacing the mental image of sulfur emissions amid
9 clouds of thick soot with that of heightened efficiency and reduced CO₂ emissions. In fact, the
10 VW website stated: "This ain't your daddy's diesel. Stinky, smoky, and sluggish. Those old
11 diesel realities no longer apply. Enter TDI 'clean' diesel. Ultra-low-sulfur fuel, direct injection
12 technology, and extreme efficiency. We've ushered in a new era of diesel."⁸⁹

13 308. Dubbing these diesel engines as "Clean Diesel" was a symptom of the brazen
14 arrogance underlying the fraud. VW's entire marketing campaign, from the branding of the
15 products to the advertisements, focused on convincing consumers that the Class Vehicles were
16 not merely compliant with emission regulations, but that they exceeded them. This deception
17 culminated in a Guinness World Record attempt in a 2013 Volkswagen Passat TDI, which
18 ironically won an award for "lowest fuel consumption—48 U.S. states for a non-hybrid car."⁹⁰

19 309. VW professed that its diesel-based technology was equal or superior to hybrid and
20 electric options offered by its competitors. As described by Mark Barnes (COO of VW America)
21 when asked, "What is the advantage of a diesel over a hybrid?"

22 It's a fantastic power train. It gives very good fuel economy. It's
23 also good for the environment because it puts out 25% less
24 greenhouse gas emissions than what a gasoline engine would. And
25 thanks to the uniqueness of the TDI motor, it cuts out the particulate
emissions by 90% and the emissions of nitrous oxide are cut by
95%. So, a very very clean running engine. Clean enough to be

26 ⁸⁸ See, e.g., *TDI Clean Diesel*, <http://www.venturavw.com/TDI-clean-diesel.html>.

27 ⁸⁹ *Supra* note 3.

28 ⁹⁰ Nick Palermo, *Volkswagen Passat TDI Sets World Record for Fuel Economy*, Autotrader (July 2013), <http://www.autotrader.com/car-news/volkswagen-passat-tdi-sets-world-record-for-fuel-economy-210689>.

1 certified in all 50 states. It's just like driving a high-powered
2 gasoline engine so you are not giving up one bit of the driving
experience that you'd expect from a regular gasoline engine.⁹¹

3 310. Facing skepticism, Barnes had a ready, if imaginative, response to the question,
4 "How do you re-brand something that's dirty like diesel as something that's green?"

5 The way we've gone about it is through a number of
6 communication pieces. One of them we've used is TDI Truth &
Dare. It is a very good website that compares some older diesels
7 versus the current TDI clean diesel. And one of the things we do is
we put coffee filters over the exhaust pipes of both cars. We let
8 them run for five minutes and after they are done, we take them off
and the older diesel product (not a VW diesel) has a round sooty
9 spot on that coffee filter. Ours is very clean. In fact they actually
make coffee out of the filter that was attached to the Volkswagen
10 clean diesel tail pipe and they drink it.⁹²

11 311. VW also advertised that its vehicles performed better on the road than in test
12 conditions, touting in a 2008 press release: "While the Environmental Protection Agency
13 estimates the Jetta TDI at an economical 29 mpg city and 40 mpg highway, Volkswagen went a
14 step further to show real world fuel economy of the Jetta TDI. Leading third-party certifier,
15 AMCI, tested the Jetta TDI and found it performed 24 percent better in real world conditions,
16 achieving 38 mpg in the city and 44 mpg on the highway."⁹³ This discrepancy between the EPA
17 certified mpg figures (which are reverse calculated based on vehicle performance on a
18 dynamometer) and the real world mpg figures came about because, in real world driving,
19 Volkswagen's defeat device *disabled* the full functioning of the NO_x trap system exhaust gas
20 after treatment control (which needed to burn more fuel to work properly), thereby decreasing
21 vehicle operating costs at the expense of massively increased NO_x emissions.

22 312. Volkswagen distinguished the TDI "clean" diesel engines from other, "stinky,
23 smoky, sluggish" diesels, proclaiming its "eco-conscious" status and of course failing to disclose

24 _____
25 ⁹¹ Gayathri Vaidyanathan, *Volkswagen: Our Diesel Cars Whup The Prius And Other Hybrids*,
Business Insider (Oct. 9, 2009), <http://www.businessinsider.com/volkswagen-preps-for-a-diesel-revolution-2009-10>.

26 ⁹² *Id.*

27 ⁹³ Jake Fisher, *Did Volkswagen Use 'Cheat Mode' as a Selling Point?*, Consumer Reports
28 (Oct. 19, 2015), <http://www.consumerreports.org/volkswagen/did-volkswagen-use-cheat-mode-as-a-selling-point?loginMethod=auto>.

1 that the Class Vehicles were “dirty” themselves. These messages were prevalent in
2 Volkswagen’s extensive marketing campaign.

3 313. Some advertisements, for example, specifically emphasized the low emissions and
4 eco-friendliness of the vehicles:



17 314. Others touted the combination of fuel efficiency and power:



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Combining legendary performance and fuel economy, the TDI Clean Diesel is our least thirsty engine yet, delivering up to 1,235 kilometres (highway) per tank on models like the Touareg and Passat.*

Come test drive one today.



315. Yet others addressed the full package, implying that in contrast to the “stinky, smoky, and sluggish” diesel vehicles of old, Volkswagen’s new diesel vehicles were clean, efficient, and powerful all at once:

This ain't your daddy's diesel.

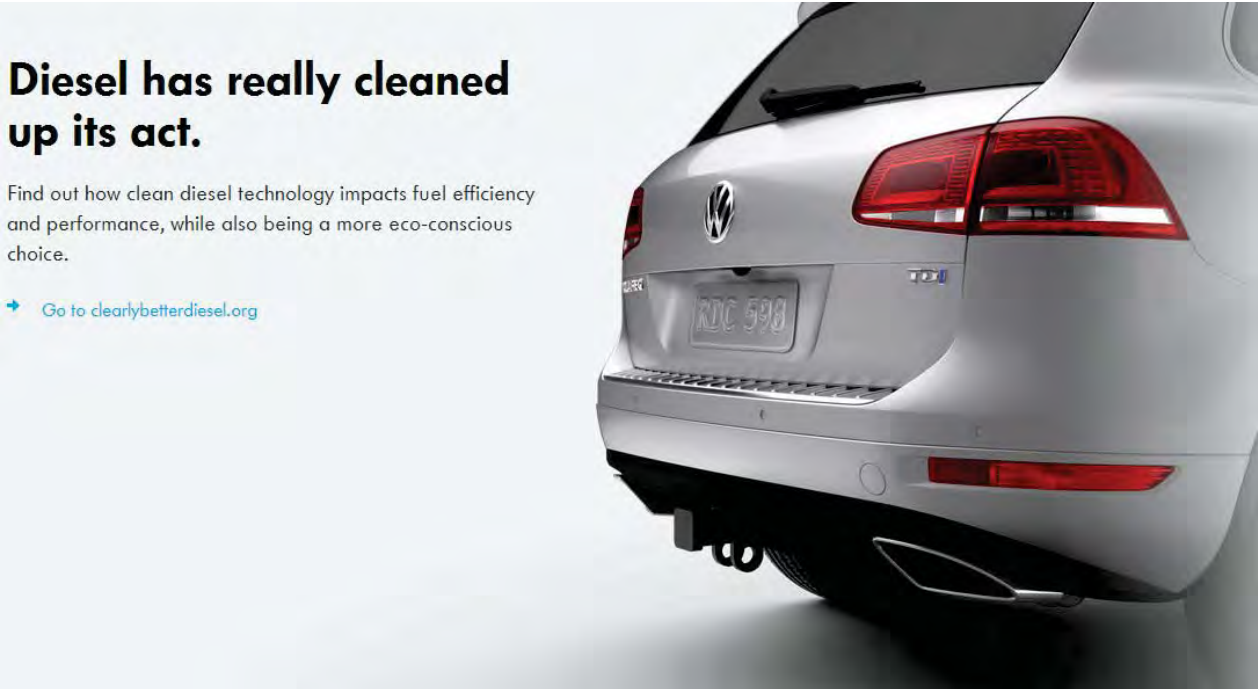
Stinky, smoky, and sluggish. Those old diesel realities no longer apply. Enter TDI Clean Diesel. Ultra-low-sulfur fuel, direct injection technology, and extreme efficiency. We've ushered in a new era of diesel.

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

[View key fuel efficiency info](#) ?



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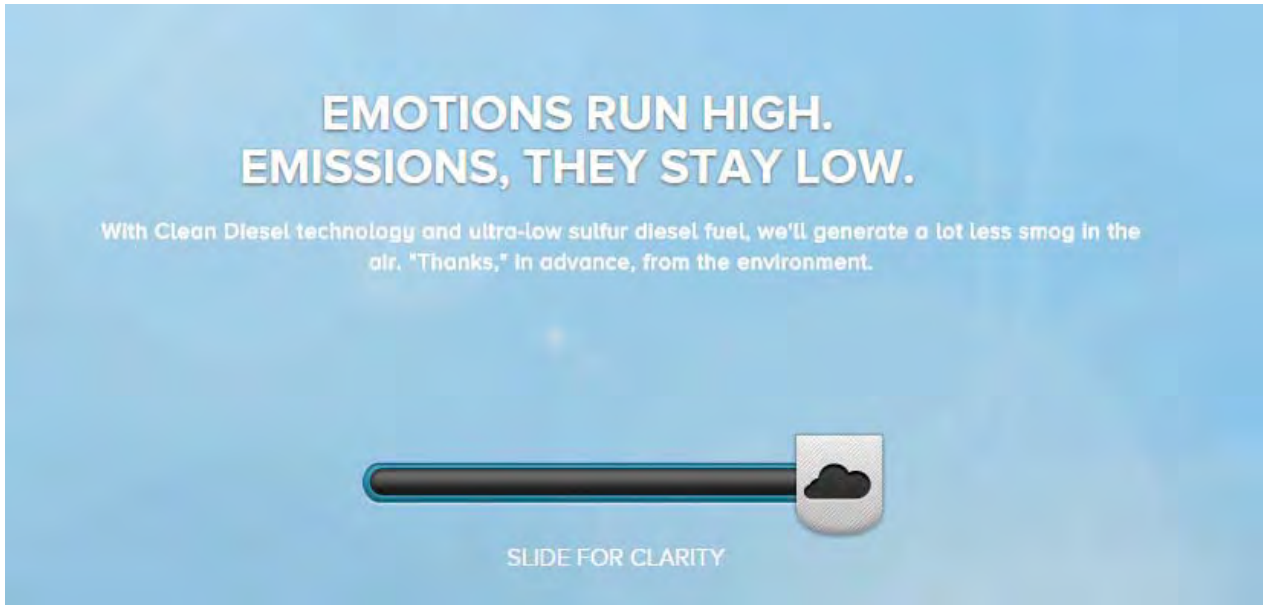


316. In addition, VW directed consumers to the www.clearlybetterdiesel.org website, which partnered with affiliates Audi and Porsche, as well as Bosch, Mercedes, and BMW. This website touted the benefits of newly developed diesel technology as “clean” and environmentally friendly. Although it has been scrubbed of all content, the website previously contained false and misleading statements, such as:



317. The website also offered a graphic slider, specifically representing that “clean” diesel produced less emissions and dramatically reduced smog, as shown by the following:

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318. This website may have accurately portrayed the environmental advantages of BMW diesel vehicles, which have not been implicated in the defeat device scandals, to date. However, Volkswagen’s partnership with “www.clearlybetterdiesel.org” falsely or misleadingly portrayed the Class Vehicles as an environmentally friendly, low emissions choice for discerning and socially responsible consumers.

319. VW also produced a series of TV advertisements for the U.S. market, intended to debunk myths about diesel engines. One ad, titled “Three Old Wives Talk Dirty,” featured three elderly women debating whether diesels, though “beautiful,” are dirty vehicles:



1 320. To ostensibly debunk the “Old Wives’ Tale” that diesel produced dirty exhaust
2 and hazardous emissions, one of the women held her white scarf to the exhaust to convince the
3 passengers that the exhaust was environmentally friendly, and not, in fact, dirty:



14 321. She removed the scarf, gestured at it, and asked her friends “see how clean it is?”



1 322. Like others in VW’s “clean” diesel campaign, this ad falsely or misleadingly
2 portrayed the exhaust emissions from the Class Vehicles as clean and safe. In reality, the Class
3 Vehicles actually emitted invisible and extremely hazardous levels of NO_x.

4 323. These themes extended to print brochures at dealerships and to VW’s website.
5 The brochures emphasized that VW’s “clean” diesel was “clean,” “green,” and low emission. For
6 example, a “2012 Volkswagen Family” brochure for all VW models, states:

7 Let TDI “clean” diesel set you free from the filling station. Our TDI
8 engines achieve astonishing mileage and range—up to 43 highway
9 mpg and 795 miles on a single tank without sacrificing one bit of
10 turbocharged performance. *That’s all thanks to the TDI*
11 *technology that uses a direct injection system and runs on ultra-*
12 *low-sulfur diesel, helping reduce sooty emissions by up to 90%*
13 *compared to previous diesel engines.* On most models, you can
14 even choose the available DSG automatic transmission with
15 Tiptronic to take that turbo engine to a whole new level.⁹⁴
16 (Emphasis added.)

17 324. Similarly, a “2013 Volkswagen Family” brochure, applicable to all models, states:

18 When you’ve had your fill of filling stations, hit the road in your
19 TDI “clean” diesel Volkswagen. These engines achieve astonishing
20 mileage and range—up to 43 highway mpg and 795 miles on a single
21 tank without sacrificing one bit of turbocharged performance.
22 *That’s all thanks to the TDI technology that uses a direct*
23 *injection system, and runs on ultra-low-sulfur diesel, helping*
24 *reduce emissions by up to 90% compared to previous diesels.* Far
25 and away, it’s our best diesel yet.⁹⁵ (Emphasis added.)

26 325. And a 2012 “Volkswagen TDI “clean” diesel” brochure for the six models of
27 Volkswagen TDIs then on the market (Jetta, Jetta SportWagen, Golf, Passat, Beetle, and Touareg)
28 states:

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

...

⁹⁴ Brochure: 2012 Volkswagen Family,
<http://cdn.dealereprocess.com/cdn/brochures/volkswagen/2012-family.pdf>.

⁹⁵ Brochure: 2013 Volkswagen Family,
<http://cdn.dealereprocess.com/cdn/brochures/volkswagen/2013-volkswagenfamily.pdf>.

1 **Think beyond green.** TDI represents one part of the Volkswagen
 2 Think Blue initiative, our goal of creating and encouraging eco-
 3 conscious products and behaviors. Join us in being more
 4 responsible on the road and on the planet.⁹⁶

5 326. Further, a Volkswagen 2010 TDI Jetta and Jetta SportWagen brochure states:

6 The 2.0L TDI® “clean” diesel engine gives you 140hp and 236 lbs-
 7 ft of torque. This engine is the toast of Europe for its quickness, low
 8 emissions, and fuel efficiency—a staggering 38 city/44 highway
 9 mpg (automatic) based on real-world AMCI-certified testing (30
 10 city/42 highway mpg. EPA estimates).

11 ...

12 Jetta TDI “clean” diesel offers fuel efficiency, power, performance,
 13 and a \$1,300 tax credit from Uncle Sam because it qualifies as an
 14 Advanced Lean Burn Credit. *Or, in other words, lean, mean,
 15 cleaner burning machines. Volkswagen believes in delivering a
 16 no-compromise German-tuned auto that performs, and still leaves
 17 a small carbon footprint. The Volkswagen TDI engine is cleaner
 18 than conventional diesels, emitting as much as 95% less soot than
 19 previous diesel engines, as well as a reduction in oxides of
 20 nitrogen and sulfur.* It’s powerful, with the kind of low-end torque
 21 that racers and tuners demand. It’s efficient, using a turbocharger
 22 and smart exhaust design to burn fuel more effectively. So much so,
 23 in fact, that Volkswagen was the first automaker to make clean
 24 diesel cars certified in all 50 states. And best of all, it will help save
 25 you money with an out-of-this-world AMCI-estimated mileage of
 26 38 city/44 highway mpg (automatic) and over 594 miles on a single
 27 tank of fuel.

28 There’s even a Jetta SportWagen TDI “clean” diesel, with the same
 astonishing clean diesel technology, plus a whopping 66.9 cubic
 feet of cargo room.⁹⁷ (Emphasis added.)

327. And a Volkswagen 2011 Golf TDI brochure states:

Regardless of which Golf model you get, you’ll be seeing a lot
 fewer gas stations and a lot more road. The 2.5L Golf comes
 standard with a 170-hp, in-line five-cylinder engine with 177 lbs/ft
 torque and impressive fuel efficiency rated at 23 city/30 highway
 mpg. Opt for the Golf TDI model and you’ll enjoy a turbocharged
 clean diesel engine with 140 hp and 236 lbs/ft of torque that will
 run you even farther at a whopping 30 city/42 highway mpg. That’s
 up to 609 miles per tank. *And you’ll do it all with 95 percent fewer
 sooty emissions than diesel engines of old, making it cleaner for*

⁹⁶ Brochure: 2012 Volkswagen TDI® Clean Diesel,
<http://cdn.dealereprocess.com/cdn/brochures/volkswagen/2012-family.pdf>.

⁹⁷ Brochure: 2010 Volkswagen Jetta and Jetta SportWagen,
<http://www.slideshare.net/SteveWhiteVW/2010-volkswagen-jetta-brochure-greenville>.

1 **both you and the planet.** So whether you're in the market for
 2 IntelliChoice's 2010 "Best Overall Value Compact Car over
 3 \$17,000," or you want to go for a variation on that theme and get
 4 the ever-popular TDI model, you can't go wrong. In fact, you can
 5 go very right for a long, long time."⁹⁸

6 328. A Volkswagen 2012 Passat TDI brochure states:

7 Let the Passat TDI "clean" diesel set you free from the filling
 8 station. It achieves an astonishing 43 highway mpg and travels 795
 9 miles on a single tank without sacrificing one bit of turbocharged
 10 performance. ***That's all thanks to its TDI technology that uses a
 11 direct injection system and runs on ultra-low-sulfur diesel,
 12 helping reduce sooty emissions by up to 90% compared to
 13 previous diesel engines.*** You can even choose the available DSG
 14 automatic transmission with Tiptronic to take that turbo engine to a
 15 whole new level.

16 ...

17 The TDI "clean" diesel engine was designed and engineered around
 18 one simple belief: driving is more fun than refueling. ***So besides the
 19 reduced emissions and torque-filled benefits you experience
 20 behind the wheel of the Passat TDI, it also saves you money at the
 21 pump.***⁹⁹ (Emphasis added.)

22 329. A Volkswagen 2013 Beetle TDI brochure states:

23 Start the TDI® "clean" diesel model and hear the surprisingly quiet
 24 purr of ***the first clean diesel Beetle***, designed for both power and
 25 efficiency.¹⁰⁰ (Emphasis added.)

26 330. A Volkswagen 2014 Beetle TDI brochure states:

27 2.0L TDI "clean" diesel engine. Engineered with the idea that less
 28 is more. The Beetle TDI has lower CO₂ emissions compared to
 84% of other vehicles. ***So every getaway you make will be a
 cleaner one.***¹⁰¹ (Emphasis added.)

29 331. A Volkswagen 2014 TDI Touareg brochure states:

30 3.0L TDI "clean" diesel engine. Engineered with the idea that less
 31 is more. The Touareg TDI has lower CO₂ emissions compared to
 32 88% of other vehicles. ***So every getaway you make will be a clean
 33 one.***¹⁰² (Emphasis added.)

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 35 ⁹⁸ Brochure: 2011 Volkswagen Golf, <http://cdn.dealereprocess.com/cdn/brochures/volkswagen/2011-golf.pdf>.

36 ⁹⁹ Brochure: 2012 Volkswagen Passat, <https://static.beepi.com/Brochures/17001.pdf>.

37 ¹⁰⁰ Brochure: 2013 Volkswagen Beetle, <https://static.beepi.com/Brochures/22980.pdf>.

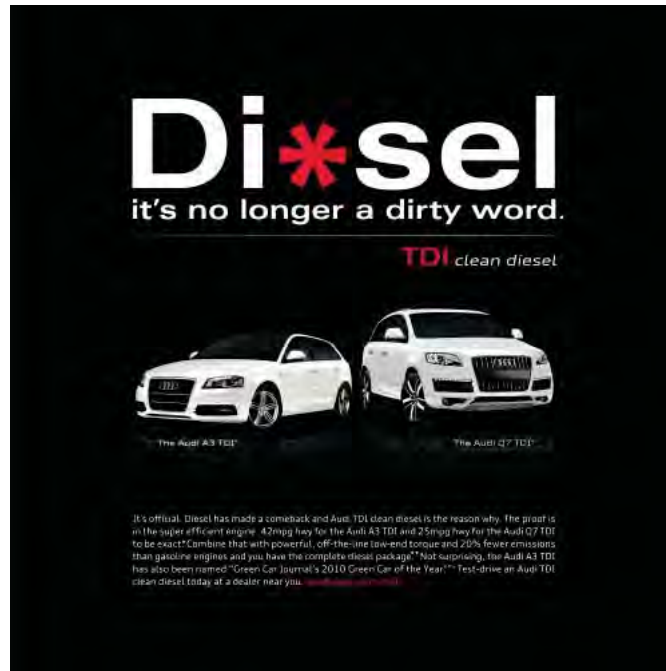
38 ¹⁰¹ Brochure: 2014 Volkswagen Beetle, <https://static.beepi.com/Brochures/23900.pdf>.

¹⁰² Brochure: 2014 Volkswagen Touareg, <https://static.beepi.com/Brochures/18663.pdf>.

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2. **Audi's False and Misleading Advertisements**

332. Audi, like VW, pitched its 2.0-liter and 3.0-liter diesel engines as environmentally friendly, powerful, and efficient. Drawing heavily from the themes in VW's advertisements, Audi deceptively portrayed its Class Vehicles as clean and safe for the environment, unlike the diesels of yesteryear. Examples of such advertisements include:



1 333. Audi proclaimed that “[d]iesel [was] no longer a dirty word,” but failed to disclose
2 that its vehicles were so dirty that they could not pass emission standards in the U.S. and that the
3 only reason why they were introduced into the stream of commerce here is because Audi
4 fraudulently obtained COCs from the EPA for these vehicles. With equal audacity, Audi
5 advertised that, by driving an Audi TDI, you could “[p]rotect the environment and look good
6 doing it,” while failing to disclose the pernicious NO_x spewed into the environment.

7 334. Audi also ran numerous TV commercials for its “clean” diesel vehicles, many of
8 which touted the “eco-friendly” characteristics of its diesel technology. One ad, “The Green
9 Police” (which aired during the 2010 Super Bowl) portrayed a world in which the environmental
10 police (“Green Police”) arrested people for using Styrofoam cups, failing to compost, asking for
11 plastic bags at the grocery store, throwing out batteries, and drinking water from plastic bottles.
12 And at a highway checkpoint, the “ECO ROADBLOCK,” the Green Police flagged cars that were
13 harmful to the environment:



25 335. When the Green Police at the ECO ROADBLOCK see an Audi A3 TDI
26 SportWagen, they give the car a “thumbs up” and allow the driver to bypass the roadblock.

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12 336. After the white A3 TDI cruises past the other vehicles, the screen fades to black
13 and falsely touts the supposed “green credentials” of the A3 TDI.

14 337. Like VW, Audi also made false representations in print brochures available at
15 dealerships and on Audi’s website. For example, an Audi 2011 A3 TDI brochure states:

16 With the potent combination of direct diesel injection and
17 turbocharging, the 2.0-liter TDI® clean diesel engine delivers an
18 impressive 236 lb-ft. of torque and produces 140hp. The power and
19 performance is complemented with impressive EPA-estimated 30
20 MPG city and 42 MPG highway ratings. ***Producing 30 percent
fewer CO₂ emissions than a comparable gasoline engine, the 2.0
TDI clean diesel also meets or exceeds the 50 state emissions
requirements.***

21 ...

22 ***Long gone are the days of dirty, smoking diesel engines. Audi
TDI clean diesel technology is responsible for the cleanest diesel
engines in the world, with 30 percent fewer CO₂ emissions than
comparable gasoline engines, making it an environmentally friendly
alternative to gasoline power. In fact, TDI clean diesel is
compliant with California’s ULEV II requirement—the world’s
most stringent emission standard. The result is a significant
reduction in emissions that contribute to global warming.***¹⁰³
26 (Emphasis added.)

27
28 ¹⁰³ Brochure: 2011 Audi A3, <http://www.slideshare.net/MichiganCarSales/2011-audi-a3-detroit-mi-fred-lavery-company>.

1 338. Audi's 2016 A6 and A7 brochures similarly (and falsely) stated that the 3.0-liter
2 TDI versions of these cars meet emission rating "ULEV II," and the 2016 A6, A7, and Q5
3 brochures all similarly stated:

4 Taking advantage of the greater power density of diesel fuel over
5 traditional gasoline, the available 240-hp 3.0-liter TDI® clean
6 diesel V6 delivers incredible torque (428 lb-ft) and passing power,
7 while boasting impressive fuel efficiency numbers. ***It also produces
8 fewer emissions with a combination of Piezo direct injection, a
9 high compression ratio, and innovative after-exhaust treatment
10 that helps eliminate up to 95% of diesel NOx emissions.***¹⁰⁴
(Emphasis added.)

11 339. An Audi 2016 A8 brochure also listed the TDI models as meeting emission rating
12 "ULEV II," and further stated:

13 With 240 hp and 428 lb-ft of torque on tap, the available 3.0-liter
14 TDI® clean diesel engine's elasticity in the passing lane is almost
15 as impressive as its ability to take on even the longest road trips.
16 ***And with features like AdBlue® exhaust after-treatment helping
17 to make every journey a little cleaner, this is a performance win
18 for all sides.***¹⁰⁵ (Emphasis added.)

19 340. Contrary to these advertisements, Audi employees knew the Class Vehicles' real
20 world NO_x and other emissions exceeded the allowable EPA emission standards.

21 **3. Porsche's False and Misleading Advertisements**

22 341. Porsche similarly exploited the "clean" diesel branding for the 3.0-liter TDI engine
23 used in its Cayenne SUV to falsely convey that the vehicle was environmentally friendly and
24 legal to drive. The "clean" diesel marketing and advertising for the Cayenne SUV also omitted
25 the material fact that the COC issued by the EPA for the vehicle in response to Porsche's
26 submission was based on a fundamental lie. Those ads were unfair, deceptive, false, and
27 misleading for the same reasons, as stated above.
28

¹⁰⁴ Brochures 2016 Audi A6, <https://www.audiusa.com/content/dam/audiusa/Documents/2016-Audi-A6-brochure.pdf>, and 2016 Audi A7, <https://www.audiusa.com/content/dam/audiusa/Documents/2016-Audi-A7-brochure.pdf>.

¹⁰⁵ Brochure: 2016 Audi A8, <http://pa.motorwebs.com/audi/brochure/a8.pdf>.

1 342. For example, Porsche expressly marketed the fuel-efficiency of the Cayenne
2 Diesel, even though such efficiency could not be achieved while complying with applicable
3 emission regulations.



15 343. Moreover, the brochure for Porsche’s diesel-powered 2013 Cayenne SUV,
16 available online and at dealerships, touted the vehicle’s “Intelligent Performance and efficiency—
17 the core characteristics of Porsche engineering.”¹⁰⁶ It boasted that “[t]his is no ordinary diesel.
18 This is a Porsche 3.0-liter V6 turbo diesel engine. It’s a technological marvel, able to take its
19 unique fuel source and transform it into clean, efficient, and incredibly torque-rich power.”
20 Further, the brochure exclaimed Porsche “refined” diesel engine technology, which made its
21 diesel engine “far advanced from what many people perceive—especially in terms of its
22 acceleration, clean emissions, and quiet running operation.”¹⁰⁷ The brochure even touted its “low
23 emissions” on a page entitled: “A cleaner diesel. Exhaust technologies.”¹⁰⁸ Porsche described the
24 exhaust system and stated that its exhaust technologies “help to ensure the reduction of harmful
25 pollutants into the environment and make the Cayenne diesel compliant with U.S. emission

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27 ¹⁰⁶ Brochure: 2012 Cayenne Diesel, <https://static.beepi.com/Brochures/17053.pdf>.

28 ¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

standards.”¹⁰⁹ Unfortunately, for thousands of American consumers, these statements were all false.

4. **Volkswagen’s Nationwide Advertising Campaign Was Highly Effective, and Volkswagen Profited Handsomely from Selling the Class Vehicles**

344. Volkswagen’s massive advertising campaign for the Class Vehicles proved highly successful, as Volkswagen took a commanding lead in U.S. diesel vehicle sales. Volkswagen’s diesel vehicles were profiled on environmental websites and blogs as the responsible choice, relying on Volkswagen’s representations of high mileage and low emissions.¹¹⁰

345. And the success of Volkswagen’s advertising campaign resulted in skyrocketing sales. In 2007, VW America sold 230,572 cars in the United States—a far cry from Winterkorn’s goal of 800,000 sales in 2018—and a negligible number of those were diesel vehicles. In fact, in 2007 only approximately 16,700 light-duty diesel vehicles were sold in the United States.¹¹¹ As Volkswagen released its “clean” diesel lineup and fraudulent advertising campaign, sales of the Class Vehicles grew dramatically, from 43,869 in 2009 to a peak of 111,285 in 2013.¹¹² This largely accounted for VW America’s sales growth to over 400,000 sales in 2013, nearly double the sales in 2007.¹¹³ Likewise, the Class Vehicles contributed significantly to Audi’s growth from 93,506 sales in 2007 to 182,011 in 2014.¹¹⁴ According to the U.S. government, approximately 80,000 of the illegal vehicles sold by VW, Audi and Porsche in the United States had 3.0-liter TDI diesel engines.

¹⁰⁹ *Id.*

¹¹⁰ See, e.g., Jim Motavalli, *Clean diesel: What you need to know*, Mother Nature Network (Apr. 5, 2013), <http://www.mnn.com/green-tech/transportation/blogs/clean-diesel-what-you-need-to-know>; Anthony Ingram, *2015 VW Golf, Beetle, Passat, Jetta All Get New Clean Diesel Engine*, Green Car Reports (Mar. 19, 2014), http://www.greencarreports.com/news/1090957_2015-vw-golf-beetle-passat-jetta-all-get-new-clean-diesel-engine (last visited on Sept. 28, 2015).

¹¹¹ Paul Eisenstein, *Volkswagen Scandal Delivers ‘Black Eye’ to Diesel Tech as a Whole*, NBC News (Sept. 24, 2015), <http://www.nbcnews.com/business/autos/volkswagen-scandal-delivers-black-eye-diesel-tech-whole-n433016>.

¹¹² *Supra* note 7.

¹¹³ *Volkswagen Reports December 2013 and Year-End Results*, Volkswagen (Jan. 3, 2014), <http://media.vw.com/release/592/>.

¹¹⁴ *Audi achieves fifth straight year of U.S. record sales with 182,011 vehicles in 2014*, Audi USA (Jan. 5, 2015), <https://www.audiusa.com/newsroom/news/press-releases/2015/01/audi-achieves-fifth-straight-year-of-us-record-sales-with-182011-vehicles-in-2014>.

1 346. Volkswagen reaped considerable benefit from their fraud, charging premiums of
2 thousands of dollars for the “clean” diesel models of the Class Vehicles.

3 347. Volkswagen also engaged in an aggressive lobbying campaign for federal tax
4 credits for the Class Vehicles, akin to the credits offered for electric cars.¹¹⁵ These efforts were
5 met with some success, as many of the Class Vehicles were deemed eligible for federal income
6 tax credits in order to spur “clean” diesel technology. In fact, at least \$78 million was earmarked
7 for TDI Jetta buyers in 2009 and 2010.¹¹⁶

8 **F. Defendants’ Dirty Diesel Scheme Starts to Unravel**

9 348. Defendants’ illegal scheme started to unravel approximately five years after
10 Volkswagen introduced its first diesel model containing the defeat device into the U.S. stream of
11 commerce. In May 2014, West Virginia University’s Center for Alternative Fuels, Engines &
12 Emissions published results of a study commissioned by the International Council on Clean
13 Transportation (“ICCT”), which found that certain of the Class Vehicles’ real world NO_x and
14 other emissions exceeded the allowable EPA emission standards.¹¹⁷

15 349. The ICCT researchers had been comparing the real-world performance of “clean”
16 diesel vehicles in Europe with reported results and noted numerous discrepancies. Since the U.S.
17 emission regulations were significantly more stringent than its European counterparts, the ICCT
18 sought to test the equivalent U.S. “clean” diesel cars, presuming that they would run cleaner.
19 West Virginia University’s team of emissions researchers was a qualified and enthusiastic
20 partner, as they had already been engaged in the study of heavy truck emissions.

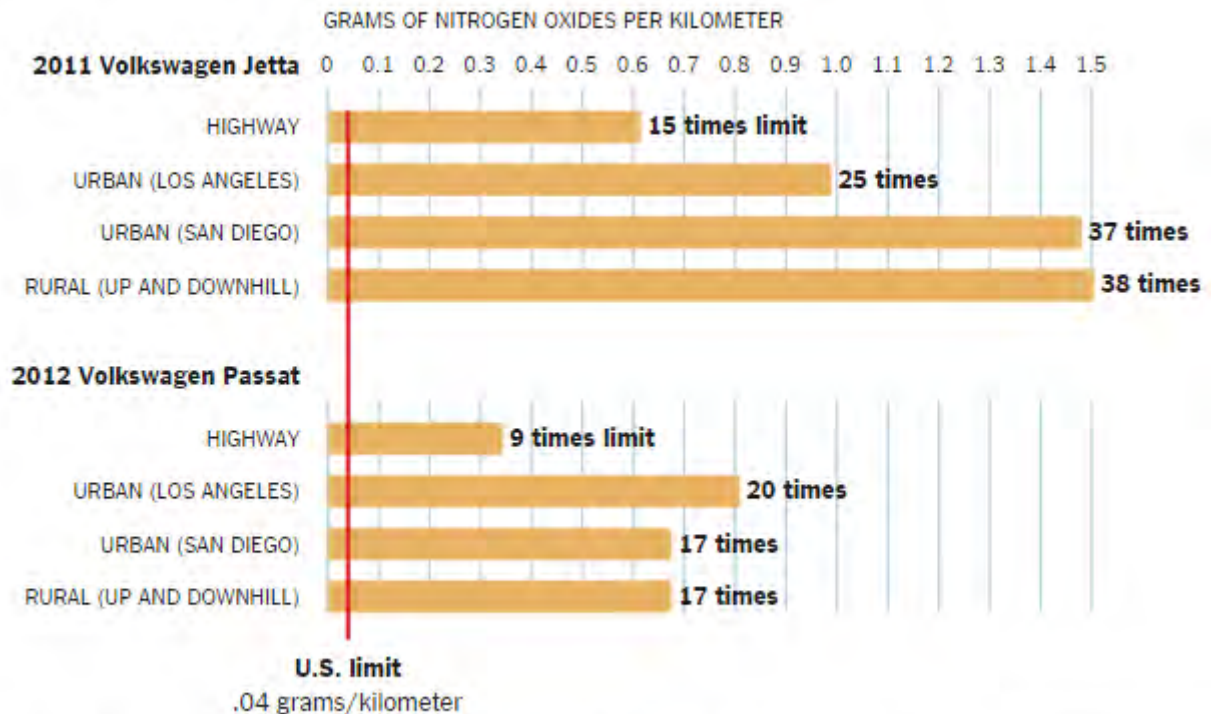
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24 ¹¹⁵ Steve Birr, *Volkswagen Lobbied Obama Administration For Green Tax Credits*, The Daily
25 Caller (Oct. 13, 2015), [http://dailycaller.com/2015/10/13/volkswagen-lobbied-obama-
administration-for-green-tax-credits/](http://dailycaller.com/2015/10/13/volkswagen-lobbied-obama-administration-for-green-tax-credits/).

26 ¹¹⁶ *Volkswagen shares plunge on emissions scandal; U.S. widens probe*, Reuters (Sept. 21, 2015),
<https://finance.yahoo.com/news/volkswagen-shares-plunge-most-six-071319964.html>.

27 ¹¹⁷ *See Final Report: In Use Emissions Testing of Light-Duty Diesel Vehicles in the United States*,
28 International Council on Clean Transportation (May 15, 2015),
[http://www.theicct.org/sites/default/files/publications/WVU_LDDVin-
use_ICCT_Report_Final_may_2014.pdf](http://www.theicct.org/sites/default/files/publications/WVU_LDDVin-use_ICCT_Report_Final_may_2014.pdf).

1 350. Shockingly, the study showed that, contrary to testing lab results, real world
 2 driving of Volkswagen “clean” diesel vehicles produced levels of NO_x up to 40 times higher than
 3 legal limits promulgated by the EPA and CARB:

4 **Average emissions of nitrogen oxides in on-road testing**



6 Source: Arvind Thiruvengadam, Center for Alternative Fuels, Engines and Emissions at West Virginia University

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 18 351. The results of this study prompted an immediate investigation by the EPA and
 19 CARB, both of whom demanded an explanation from Volkswagen. Despite knowing that the
 20 Class Vehicles contained illegal emission systems—and defeat devices intentionally designed to
 21 comply with emission standards on a test bench but not under normal driving operation and use—
 22 Volkswagen failed to come clean. Instead, Volkswagen denied the allegations and blamed faulty
 23 testing procedures.

24 352. Audi conducted internal testing on the 3.0-Liter TDI engine starting in Fall 2014,
 25 and found driving emissions of NO_x that greatly exceeded U.S. standards. Volkswagen officials
 26 conveyed this information to CARB, but without disclosing the true source and nature of the
 27 problem.
 28

1 353. In December 2014, Volkswagen issued a recall purportedly to update emission
2 control software in the Class Vehicles, and CARB (along with the EPA) conducted follow-up
3 testing of the Class Vehicles in the laboratory and during normal road operation. CARB
4 attempted to identify the source and nature of the Class Vehicles' poor performance and
5 determine why their on-board diagnostic systems did not detect the increased emissions. None of
6 the technical issues suggested by Volkswagen adequately explained the NO_x test results as
7 confirmed by CARB.

8 354. Dissatisfied with Volkswagen's explanations, EPA and CARB officials finally
9 threatened to withhold the COCs for Volkswagen's 2016 diesel vehicles until it adequately
10 explained the anomaly of the higher emissions. Then, and only then, did Volkswagen finally
11 relent and start to lift the curtain on its illegal scheme.

12 **G. Once Caught, Volkswagen Admits its Fraud—in Part**

13 355. On September 3, 2015, Volkswagen officials finally disclosed in writing and at a
14 meeting with the EPA and CARB that it had installed a sophisticated software algorithm on the
15 2.0-liter Class Vehicles, which could detect when the car was undergoing emission testing on a
16 test bench and switch the car into a cleaner running mode. During that meeting, Volkswagen
17 admitted that the software was a "defeat device" forbidden by the CAA and state regulations.

18 356. On September 18, 2015, the EPA issued a Notice of Violation of the CAA (the
19 "First NOV") to VW AG, Audi AG, and VW America for installing illegal defeat devices in
20 2009-2015 Volkswagen and Audi diesel cars equipped with 2.0-liter diesel engines. That same
21 day, CARB sent a letter to VW AG, Audi AG, and VW America, advising that it had initiated an
22 enforcement investigation of Volkswagen pertaining to the vehicles at issue in the First NOV.

23 357. Two days later, Volkswagen made its first public admission of wrongdoing in a
24 written statement and video by VW AG's then-CEO Winterkorn (who would soon resign as a
25 result of this scandal), posted on VW AG's website. Winterkorn's statement read, in pertinent
26 part:

27 I personally am deeply sorry that we have broken the trust of our
28 customers and the public. We will cooperate fully with the
 responsible agencies, with transparency and urgency, to clearly,

1 openly, and completely establish all of the facts of this case.
 2 Volkswagen has ordered an external investigation of this matter. . . .
 3 We do not and will not tolerate violation of any kind of our internal
 4 rules or of the law.¹¹⁸

5 In his video, Winterkorn further apologized by stating:

6 The irregularities in our group's diesel engines go against
 7 everything Volkswagen stands for. To be frank with you,
 8 manipulation at Volkswagen must never happen again. . . . I
 9 personally am deeply sorry that we have broken the trust of our
 10 customers. I would like to make a formal apology to our customers
 11 to the authorities and to the general public for this misconduct.¹¹⁹

12 358. That same day, Volkswagen confirmed that it had ordered dealers to stop selling
 13 both new and used vehicles with 2.0-liter diesel engines.¹²⁰ Volkswagen continued to sell its 3.0-
 14 liter diesel models, despite containing similar, but not-yet-disclosed defeat devices.

15 359. On September 21, 2015, Volkswagen spokesman John Schilling stated in an email
 16 that Volkswagen was “committed to fixing this issue as soon as possible” and to “developing a
 17 remedy that meets emissions standards and satisfies our loyal and valued customers.”¹²¹

18 360. Defendant Horn, President and CEO of VW America, echoed this sentiment when
 19 he took the stage later that evening at a launch event for the 2016 Volkswagen Passat in
 20 Brooklyn, New York, telling reporters:

21 Our company was dishonest, with the EPA and the California Air
 22 Resources Board, and with all of you and in my German words, ***we***
 23 ***have totally screwed up***. We have to make things right, with the
 24 government, the public, our customers, our employees and also
 25 very important, our dealers.¹²² (Emphasis added.)

26 ¹¹⁸ See Statement of Prof. Dr. Martin Winterkorn, CEO of Volkswagen AG, Volkswagen AG
 27 (Sept. 20, 2012),
 28 http://www.volkswagenag.com/content/vwcorp/info_center/en/news/2015/09/statement_ceo_of_volkswagen_ag.html.

29 ¹¹⁹ See Joe Lorio, VW Chairman Martin Winterkorn Releases Video Addressing Scandal, Is Not
 30 Stepping Down, Car and Driver (Sept. 22, 2015), <http://blog.caranddriver.com/vw-chairman-martin-winterkorn-releases-video-addressing-scandal-is-not-stepping-down/>.

31 ¹²⁰ Jack Ewing, Volkswagen to Stop Sales of Diesel Cars Involved in Recall, N.Y. Times
 32 (Sept. 20, 2015), <http://www.nytimes.com/2015/09/21/business/international/volkswagen-chief-apologizes-for-breach-of-trust-after-recall.html>.

33 ¹²¹ Jad Mouadwad, et al., The Wrath of Volkswagen's Drivers, N.Y. Times (Sept. 21, 2015),
 34 <http://www.nytimes.com/2015/09/22/business/the-wrath-of-volkswagens-drivers.html>.

35 ¹²² Christine Seib, Volkswagen's US Boss: We Totally Screwed Up, CNBC (Sept. 22, 2015),
 36 <http://www.cnbc.com/2015/09/21/volkswagen-us-ceo-screwed-up-on-eca-emissions-diesel-test->

Footnote continued on next page

1 Defendant Horn's presentation on the new Passat, notably, did not promote the environmental
2 efficiency of the car's "clean" diesel model.

3 361. On September 22, 2015, Volkswagen announced that 11 million diesel cars
4 worldwide were installed with the same defeat device software that had evaded emission testing
5 by U.S. regulators. Contemporaneously, Volkswagen announced that it had set aside reserves of
6 6.5 billion euros (\$7.3 billion) in the third quarter to address the matter.¹²³

7 362. On September 23, 2015, Winterkorn resigned from his position as CEO of VW
8 AG. In his resignation statement, Winterkorn insisted that he was not personally involved in the
9 emissions scandal: "Above all, I am stunned that misconduct on such a scale was possible in the
10 Volkswagen Group. I am doing this in the interests of the company even though I am not aware
11 of any wrongdoing on my part."¹²⁴

12 363. Following Winterkorn's resignation, Volkswagen released a statement that it had
13 set up a special committee to lead its own inquiry into the scandal and expected "further
14 personnel consequences in the next days." It added: "The internal group investigations are
15 continuing at a high tempo. All participants in these proceedings that have resulted in
16 immeasurable harm for Volkswagen will be subject to the full consequences." However, the
17 committee insisted that Winterkorn "had no knowledge of the manipulation of emissions data."¹²⁵

18 364. On September 25, 2015, Matthias Müller, the Chairman of Porsche AG, was
19 named as Winterkorn's successor. Immediately upon assuming his new role, Müller issued a
20 press release stating:

21 My most urgent task is to win back trust for the Volkswagen
22 Group—by leaving no stone unturned and with maximum
23 transparency, as well as drawing the right conclusions from the
current situation. Under my leadership, Volkswagen will do

24 *Footnote continued from previous page*
[rigging.html](#).

25 ¹²³ Nathan Bomey, *Volkswagen Emission Scandal Widens: 11 Million Cars Affected*, USA Today
(Sept. 22, 2015), <http://www.usatoday.com/story/money/cars/2015/09/22/volkswagen-emissions-scandal/72605874/>.

26 ¹²⁴ Graham Ruddick, *Volkswagen chief quits over emissions scandal as car industry faces crisis*,
27 The Guardian (Sept. 23, 2015), <http://www.theguardian.com/business/2015/sep/23/volkswagen-chief-martin-winterkorn-quits-emissions-scandal>.

28 ¹²⁵ *Id.*

1 everything it can to develop and implement the most stringent
2 compliance and governance standards in our industry.¹²⁶

3 365. On October 8, 2015, Defendant Horn made frank admissions of culpability in his
4 testimony before the House Committee on Energy and Commerce’s Subcommittee on Oversight
5 and Investigations. Under oath, Defendant Horn testified: “On behalf of our Company, and my
6 colleagues in Germany, I would like to offer a sincere apology for Volkswagen’s use of a
7 software program that served to defeat the regular emissions testing regime.”¹²⁷ In response to a
8 question from the Subcommittee Chairman, Representative Tim Murphy, whether the software
9 was installed “for the express purpose of beating tests,” Horn testified, “it was installed for this
10 purpose, yes.”¹²⁸

11 366. On November 2, 2015, the EPA issued a second Notice of Violation of the CAA
12 (the “Second NOV”) to VW AG, Audi AG, and VW America, this time directed at the larger 3.0-
13 liter, 6-cylinder diesel models—the same vehicles that Volkswagen continued to sell through its
14 dealers after the First NOV.¹²⁹ The Second NOV, which was also issued to Porsche AG and
15 Porsche America, disclosed that the EPA had sent a letter to manufacturers on September 25,
16 2015, stating it was assessing all diesel engine cars for defeat devices. The Second NOV stated
17 that Volkswagen had installed illegal defeat devices in certain vehicles equipped with 3.0-liter
18 diesel engines for model years 2014–16. Although not identical, the cheating alleged of
19 Volkswagen in the Second NOV concerned essentially the same mechanism Volkswagen used—
20 and admitted to using—in the First NOV.

21 367. However, shortly after it received the Second NOV, Volkswagen fired back at the
22 EPA’s new claims of fraud, denying that it installed defeat device software in the identified 3.0-
23 liter diesel vehicles. In response to the Second NOV, Volkswagen issued the following bold

24 _____
25 ¹²⁶ *Matthias Müller appointed CEO of the Volkswagen Group*, Volkswagen AG (Sept. 25, 2015),
http://www.volkswagenag.com/content/vwcorp/info_center/en/news/2015/09/CEO.html.

26 ¹²⁷ *Supra* note 1.

27 ¹²⁸ *Id.*

28 ¹²⁹ Letter from Susan Shinkman, Director, EPA Office of Civil Enforcement to Volkswagen dated
Nov. 2, 2015, <http://www.epa.gov/sites/production/files/2015-11/documents/vw-nov-2015-11-02.pdf>.

1 statement: “Volkswagen AG wishes to emphasize that no software has been installed in the 3.0-
2 liter V6 diesel power units to alter emissions characteristics in a forbidden manner.”¹³⁰

3 368. Yet, the following day, despite Volkswagen’s insistence that the 3.0-liter diesel
4 emission system was legal, Volkswagen ordered dealers to stop selling all six models at issue in
5 the Second NOV, in addition to the Audi Q7, which was also equipped with a 3.0-liter diesel
6 engine.¹³¹ Porsche likewise discontinued sales of the 3.0-Liter Cayenne, despite claiming the
7 EPA notice was “unexpected.”

8 369. On November 4, 2015, following its directive to halt sales of the 3.0-liter diesel
9 models, Volkswagen announced that an internal investigation revealed “unexplained
10 inconsistencies” with the carbon-dioxide output of 800,000 of its gasoline-powered vehicles.¹³²

11 370. At a meeting on November 19, 2015, after almost three weeks of denying the
12 EPA’s allegations contained in the Second NOV, Audi finally admitted that defeat device
13 software was installed not only in the vehicles identified in the Second NOV, but in all 3.0-liter
14 Class Vehicles sold by Volkswagen, Audi, and Porsche. Porsche met separately with the EPA on
15 the same day. Specifically, Audi stated that it had failed to disclose three auxiliary emissions
16 control devices in its 3.0-liter diesel engines to U.S. regulators, and further admitted: “One of
17 them is regarded as a defeat device according to applicable U.S. law. Specifically, this is the
18 software for the temperature conditioning of the exhaust-gas cleaning system.”¹³³ On November
19 20, 2015, the EPA and CARB issued notices giving a complete list of 3.0-liter Class Vehicles that
20 were affected. On November 25, 2015, CARB sent a letter to Audi, Volkswagen and Porsche
21 stating that the same 3.0-liter engine, with the same defeat device, was used in all of the 3.0-liter

22 ¹³⁰ Emily Field, *Volkswagen Slams Newest EPA Emissions Fraud Claims*, Law360 (Nov. 3,
23 2015), <http://www.law360.com/articles/722478/volkswagen-slams-newest-epa-emissions-fraud-claims>.

24 ¹³¹ Paul Lienert, *Volkswagen tells dealers to stop selling some 3.0 V6 diesel models*, Reuters
25 (Nov. 4, 2015), <http://www.reuters.com/article/us-volkswagen-emissions-stopsale-idUSKCN0ST2E420151104>.

26 ¹³² Benedikt Kammel, *VW Emissions Issues Spread to Gasoline Cars*, Bloomberg (Nov. 3, 2015),
27 <http://www.bloomberg.com/news/articles/2015-11-03/volkswagen-emissions-woes-deepen-as-800-000-more-cars-affected>.

28 ¹³³ *Statement on Audi’s discussions with the US environmental authorities EPA and CARB*,
Volkswagen AG (Nov. 23, 2015), http://www.volkswagenag.com/content/vwcorp/info_center/en/news/2015/11/epa.html.

1 Class Vehicles sold by Volkswagen, Audi and Porsche. Volkswagen had publicly acknowledged
2 in a press release dated November 23, 2015, that the 3.0-liter engine “was developed by Audi”
3 and had been used in the Porsche Cayenne since 2013.

4 371. This admission came almost three months after Volkswagen’s initial, more limited
5 *mea culpa*. It came years after Audi employees first learned that their 3.0-liter diesel vehicles,
6 even when equipped with the more expensive SCR system, still could not pass NO_x emission
7 tests. Moreover, Audi had known for years that, with the installation of the defeat device, its 3.0-
8 liter diesel engines exceeded the legal limits of NO_x levels when operated in real world
9 conditions.

10 372. It also came and years after Porsche employees first attended meetings with Bosch
11 to discuss the diesel engine, began coordinating regulatory submissions regarding NO_x levels
12 with Audi and Volkswagen America, and learned, following the installation of the defeat device,
13 that their vehicles exceeded the legal limits of NO_x levels when operated in real world conditions.

14 373. Still, despite the admissions and apologies that followed each time a Volkswagen
15 lie was exposed, it became apparent that Volkswagen was not ready to fully accept responsibility
16 for its actions. Indeed, merely one month after Volkswagen admitted to the findings in the
17 Second NOV, Hans-Gerd Bode, Volkswagen’s Group Communications Chief, told a group of
18 reporters: “I can assure you that we certainly did not, at any point, knowingly lie to you. . . . We
19 have always tried to give you the information which corresponded to the latest level of our own
20 knowledge at the time.”¹³⁴

21 374. On January 4, 2016, the DOJ, on behalf of the EPA, filed a civil complaint against
22 VW AG, VW America, Volkswagen Group of America Chattanooga Operations LLC, Audi AG,
23 Audi, Porsche AG, and Porsche America for injunctive relief and the assessment of civil penalties
24 for their violations of the CAA. In addition to alleging the various violations of the CAA, the
25 complaint states that the Defendants impeded the government’s efforts to learn the truth about the
26

27 ¹³⁴ Andreas Cremer, *Das Auto’ no more: Volkswagen plans image offensive*, Reuters (Dec. 22,
28 2014), <http://www.reuters.com/article/us-volkswagen-emissions-communications-i-idUSKBN0U514L20151222>.

1 emission irregularities related to the Class Vehicles with material omissions and misleading
2 information.

3 375. On January 10, 2016, in an interview with NPR at the North American
4 International Auto Show, Müller claimed that Volkswagen *did not lie* to U.S. regulators about
5 emissions problems with its diesel engines, and suggested that the whole thing had been a
6 misunderstanding of U.S. law. Müller stated:

7 Frankly spoken, it was a technical problem. We made a default, we
8 had a . . . not the right interpretation of the American law. And we
9 had some targets for our technical engineers, and they solved this
10 problem and reached targets with some software solutions which
11 haven't been compatible to the American law. That is the thing.
12 And the other question you mentioned—it was an ethical problem?
13 I cannot understand why you say that. . . . We didn't lie. We didn't
14 understand the question first. And then we worked since 2014 to
15 solve the problem.¹³⁵

16 376. Moreover, since the fraud was first exposed, Volkswagen has consistently denied
17 that its top executives were involved with, or had knowledge of, the fraudulent scheme, instead
18 pinning the blame on the work of a few rogue engineers.

19 377. As an alternative tactic, during defendant Horn's Congressional hearing on
20 October 8, 2015, Horn testified that the installation of the defeat device in certain Volkswagen
21 diesel vehicles was the work of "a couple of software engineers who put this in for whatever
22 reason."¹³⁶ Horn's explanation is not only contrary to prior admissions, but entirely implausible.

23 378. To date, at least eleven of Volkswagen's top executives have either resigned under
24 pressure or been fired. Among the top executives dismissed are defendant Winterkorn, CEO and
25 Chairman of Volkswagen, who resigned almost immediately once the scandal became public;
26 Dr. Ulrich Hackenberg, a top engineering boss in the Audi Group, who was suspended and later
27 resigned; Heinz-Jakob Neusser, described as a Volkswagen "development" boss, who was
28 suspended and later resigned; and Wolfgang Hatz, Porsche's "development" boss and previously

¹³⁵ Sonari Ginton, 'We Didn't Lie,' *Volkswagen CEO Says Of Emissions Scandal*, NPR (Jan. 11, 2016), <http://www.npr.org/sections/thetwo-way/2016/01/11/462682378/we-didnt-lie-volkswagen-ceo-says-of-emissions-scandal>.

¹³⁶ Paul A. Eisenstein, *Could Rogue Software Engineers Be Behind VW Emissions Cheating?*, NBC News (Oct. 9, 2015), <http://www.nbcnews.com/business/autos/could-rogue-software-engineers-be-behind-vw-emissions-cheating-n441451>.

1 Volkswagen's head of engine development, who was suspended and then resigned. Furthermore,
2 one of Volkswagen's top advertising executives purportedly "resigned" (although the company
3 has said that the resignation was unrelated to the present scandal), and VW America has replaced
4 their general counsel and head of public affairs, David Geanacopoulos. Frank Tuch, VW AG's
5 head of quality assurance, resigned on February 8, 2016—his departure likely tied to leadership
6 overhauls as Volkswagen's internal investigations continue. Michael Horn, head of VW
7 America, resigned on March 9, 2016.

8 379. That a few rogue engineers could orchestrate this massive, worldwide scheme is
9 implausible not only because of the firings of the above-listed executives, but also because
10 Volkswagen has been implicated using not just one, but *two* sophisticated defeat device software
11 programs, in *two* separate engines designed and manufactured by different engineers in different
12 corporate facilities. In addition, more than a dozen different Class Vehicles, involving three
13 separate brands—Volkswagen, Audi and Porsche—have been implicated in a fraud that began
14 more than a decade ago.

15 380. On October 17, 2015, Reuters reported that anonymous insiders, including a
16 Volkswagen manager and a U.S. official close to the government's investigation of the company,
17 claimed that Volkswagen made several modifications to its emission defeat device software over
18 the seven years the company has admitted to cheating.¹³⁷ Such incremental updates to the
19 software, which were made to accommodate new generations of engines during that timeframe,
20 evidences a larger group of employees making an ongoing effort to continue their deception.

21 381. As discussed above, on January 22, 2016, Germany's *Sueddeutsche Zeitung*
22 newspaper reported that Volkswagen's development of defeat device software to cheat diesel
23 emissions tests was an "open secret" in its engineering development department. Staff members
24 in engine development have stated that they felt pressure from the top of Volkswagen's corporate
25 hierarchy to find a cost-effective solution to develop "Clean Diesel" engines to increase U.S.
26 market share. Rather than concede that such engines could not be built (*i.e.*, were "impossible" as

27 ¹³⁷ Andreas Cremer, *et al.*, *VW made several defeat devices to cheat emissions tests: sources*,
28 Reuters (Oct. 17, 2015), <http://www.reuters.com/article/us-volkswagen-emissions-software-idUSKCN0SB0PU20151017>.

1 R&D chief Hatz once proclaimed), the development team decided to push ahead with
2 manipulation.¹³⁸

3 382. Quoting documents from Volkswagen’s internal investigation, which included
4 testimony from a staff member who took part in the fraud, the German newspaper said: “Within
5 the company there was a culture of ‘we can do everything’, so to say something cannot be done,
6 was not acceptable. . . . Instead of coming clean to the management board that it cannot be done,
7 it was decided to commit fraud.”¹³⁹ The newspaper further reported that staff in Volkswagen’s
8 engine development department took comfort from the fact that regulators would not be able to
9 detect the fraud using conventional examination techniques.

10 383. The role of Volkswagen’s top management in the fraud has recently come under
11 increased scrutiny after reports have emerged that Winterkorn was aware that Volkswagen was
12 rigging emissions tests on its vehicles more than a year before the scandal emerged, yet did
13 nothing to stop the practice.¹⁴⁰

14 384. According to German newspaper *Bild-Zeitung*, Winterkorn and other high-level
15 Volkswagen managers were warned by a senior executive about the risk of a U.S. investigation
16 into the use of the defeat devices back in May 2014.¹⁴¹ The newspaper reported that the warning
17 came in the form of a letter from Bernd Gottweis, an employee known internally as the “fire-
18 fighter,” who led a team called the “Product Safety Taskforce,” which concentrated on crisis
19 prevention and management. The letter, which was uncovered by the internal investigation
20 carried out on Volkswagen’s order, stated: “There is no well-founded explanation for the
21 dramatically higher NOX emissions that can be given to the authorities. It is to be suspected, that
22 the authorities will examine the VW systems to see whether Volkswagen has installed engine
23 management software (a so-called Defeat Device).” Thus, senior Volkswagen executives were

24 _____
25 ¹³⁸ Georgina Proshan, *Volkswagen probe finds manipulation was open secret in department:*
26 *newspaper*, Reuters (Jan. 23, 2016), <http://www.reuters.com/article/us-volkswagen-emissions-investigation-idUSKCN0V02E7>.

27 ¹³⁹ *Id.*

28 ¹⁴⁰ Geoffrey Smith, *VW’s ex-CEO Winterkorn ‘Knew About Defeat Device in Early 2014,’*
Fortune (Feb. 15, 2016), <http://fortune.com/2016/02/15/vw-ceo-winterkorn-defeat-device/>.

¹⁴¹ *Id.*

1 well aware of the issue a year and a half before the company's admission. In fact, issues related
2 to the defeat device had been presented in meetings with senior management at least by
3 November 2013. According to *Fortune* magazine, Audi engineers had considered use of defeat
4 device software as early as 1999, when Winterkorn was head of Audi.

5 385. The *Bild-Zeitung* newspaper also reported that a senior Volkswagen manager had
6 admitted the true level of emissions to a CARB official on August 5, 2015, over a month before
7 the EPA issued the First NOV I, and that Volkswagen brand chief Herbert Diess had convened
8 meetings on August 24th and August 25th to discuss how to react to the scandal that was about to
9 break.¹⁴²

10 386. The letter, of which *Bild-Zeitung* claims to have a copy, is the second leak
11 suggesting that knowledge of the emissions problems and use of the defeat devices extended far
12 higher, far earlier, than Volkswagen has admitted. Indeed, the German magazine *Manager* has
13 reported that Volkswagen's management had already discussed the issue in the spring of 2014 in
14 reference to a letter received from the EPA.¹⁴³ The revelations from these reports directly
15 contradict arguments made by Winterkorn and Horn that they were unaware of the use of defeat
16 devices applied specifically to circumvent U.S. regulations.

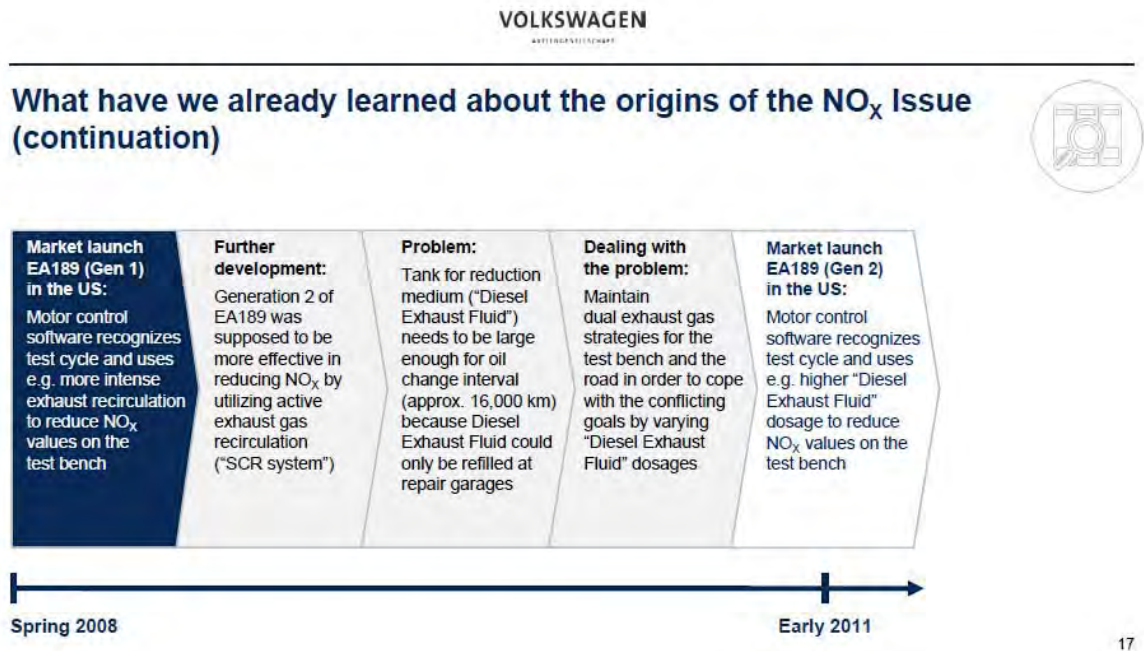
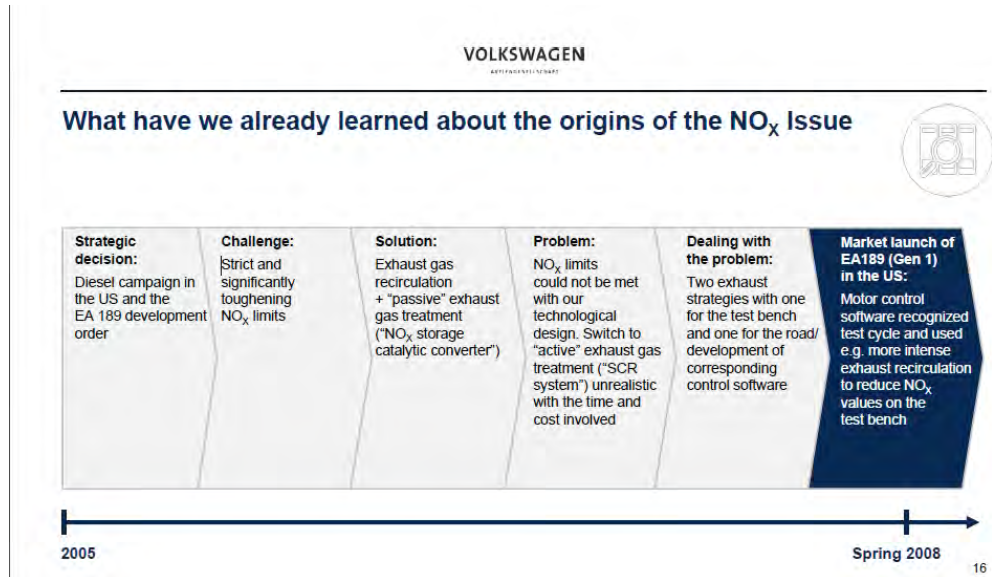
17 387. At a December 10, 2015, press conference, during which Volkswagen discussed
18 preliminary results of their internal investigation, executives summed up the state of affairs, and
19 admitted that Volkswagen had installed defeat devices to take shortcuts around engineering
20 challenges. Faced with "[s]trict and significantly toughening NO_x limits," Volkswagen knew
21 those "NO_x limits could not be met with [their] technological design" for lean NO_x traps so
22 instead they dealt with the problem by installing defeat devices on those Class Vehicles. The
23 Class Vehicles with urea treatments faced a separate problem: the urea tanks were too small for
24 consumers to maintain urea levels at standard maintenance intervals. Volkswagen also took
25 shortcuts around these engineering challenges by implementing a defeat device to reduce urea
26 consumption and illegally stretch the capacity of its urea tanks outside of test

27 ¹⁴² *Id.*

28 ¹⁴³ *Id.*

1 conditions. Volkswagen concluded this presentation by implicitly acknowledging the toxicity of
 2 its corporate culture, as Volkswagen announced it would establish a “new mindset” among
 3 Volkswagen leadership that has “[m]ore capacity for criticism.”¹⁴⁴

4 388. The entire after-the-fact chronology and explanation of how and why Volkswagen
 5 perpetrated its fraud is set forth in its December 10, 2015, presentation, as follows:



26 ¹⁴⁴ Volkswagen AG, *The Volkswagen Group is moving ahead: Investigation, customer solutions, realignment*, Volkswagen AG (Dec. 10, 2015),
 27 http://www.volkswagenag.com/content/vwcorp/info_center/en/talks_and_presentations/2015/12/Presentation_MUE_POE.bin.html/binarystorageitem/file/2015_12_10_Pr%C3%A4sentation+PK_Final_ENG.pdf.

1 **H. Volkswagen’s Failed Attempts at Remedial Action**

2 389. While Volkswagen has repeatedly expressed its commitment to fix the problem
3 and restore the public’s trust, its attempts at remedial action have been wholly inadequate.

4 390. On November 8, 2015, Volkswagen announced a “goodwill package” to owners of
5 Class Vehicles subject to the First NOV, but not the Second NOV.¹⁴⁵ The “goodwill package”
6 consisted of a \$500 Volkswagen Prepaid Visa Loyalty Card, a \$500 Volkswagen Dealership
7 Card, and 24-hour Roadside Assistance for three years. Volkswagen is on record that this
8 package is provided to consumers “without any strings attached,” and disavowed any attempt to
9 claim offset for this “goodwill.” U.S. Senators Richard Blumenthal and Edward J. Markey
10 decried the program as “insultingly inadequate” and “a fig leaf attempting to hide the true depths
11 of Volkswagen’s deception.” Volkswagen has since expanded the “goodwill package” to owners
12 of 3.0-liter TDI Touareg models; however, the remaining vehicles at issue in the Second NOV are
13 still excluded.

14 391. While Volkswagen claims to have a software fix for European cars, it has
15 struggled to find a solution for U.S. cars. In a statement discussing the European fix, it said:

16 Due to far stricter nitrogen oxide limits in the United States, it is a
17 greater technical challenge to retrofit the vehicles such that all
18 applicable emissions limits can be met with one and the same
19 emissions strategy. . . . To this end, Volkswagen is cooperating
20 closely with the United States Environmental Protection Agency
21 and the California Air Resources Board.¹⁴⁶

22 392. However, that cooperation has not yet been met with any success. On January 12,
23 2016, CARB rejected Volkswagen’s proposal to recall and remedy Class Vehicles equipped with
24 2.0-liter diesel engines, finding that the plans were “incomplete, substantially deficient, and fall
25 far short of meeting the legal requirements to return these vehicles to the claimed certification

26 ¹⁴⁵ Joseph White, *et al.*, *Volkswagen Offers U.S. Diesel Owners \$1,000 in Credit Cards*, Reuters
(Nov. 9, 2015), <http://www.reuters.com/article/2015/11/09/volkswagen-emissionsid-idUSL1N1341ET20151109#eARbZZJFyIQvGmG1.99>.

27 ¹⁴⁶ Jay Ramey, *VW chairman Poetsch: Company ‘tolerated breaches of rules,’* Autoweek
28 (Dec. 10, 2015), <http://autoweek.com/article/vw-diesel-scandal/vw-chairman-poetsch-company-tolerated-breaches-rules>.

1 configuration.”¹⁴⁷ Following the rejection, CARB initiated an enforcement action against
 2 Volkswagen and CARB Chair Mary D. Nichols released the following statement:

3 Volkswagen made a decision to cheat on emissions tests and then
 4 tried to cover it up. They continued and compounded the lie and
 5 when they were caught they tried to deny it. The result is thousands
 6 of tons of nitrogen oxide that have harmed the health of
 Californians. They need to make it right. Today’s action is a step in
 the direction of assuring that will happen.¹⁴⁸

7 Shortly thereafter, the EPA issued a statement of its own backing CARB’s decision not to
 8 approve Volkswagen’s recall plans.¹⁴⁹ Volkswagen’s efforts to meet EPA and CARB emission
 9 standards are ongoing, and are a component of currently proposed governmental and class action
 10 settlements addressing Volkswagen’s 2.0-liter vehicles, which are pending before this Court and
 11 undergoing an approval process.

12 **I. Volkswagen Caused Billions of Dollars in Harm to U.S. Consumers**

13 393. Volkswagen’s illegal scheme duped hundreds of thousands of U.S. consumers into
 14 buying Class Vehicles that never should have left the factory, let alone been sold, at a cost of
 15 billions of dollars.

16 394. In addition, Volkswagen charged premiums of several thousands of dollars for the
 17 Class Vehicles, as compared to non-diesel vehicles. Using recent pricing figures, it has been
 18 estimated that Volkswagen charged premiums of from 7 to 27 percent for its 2.0-liter diesel
 19 models.¹⁵⁰ For example, the non-diesel 2015 Passat started at \$21,340, while the “clean” diesel
 20 fetched at least \$27,100.¹⁵¹ Though the “clean” diesel model achieves greater mileage, the
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 24 ¹⁴⁷ Ashlee Kieler, *California Rejects VW Proposal To Fix Emissions-Cheating Vehicles*,
 Consumerist (Jan. 12, 2016), <http://consumerist.com/2016/01/12/california-rejects-vw-proposal-to-fix-emissions-cheating-vehicles/>.

25 ¹⁴⁸ *Id.*

26 ¹⁴⁹ *Id.*

27 ¹⁵⁰ Kyle Stock, *Volkswagen’s Other Diesel Ruse: Premium Pricing*, Bloomberg (Sept. 23, 2015),
<http://www.bloomberg.com/news/articles/2015-09-23/volkswagen-s-other-diesel-ruse-premium-pricing>.

28 ¹⁵¹ *Id.*

1 premium—some \$5,755—would buy enough gas to drive the non-diesel model approximately
2 88,000 miles at current gas prices.¹⁵²

3 395. Class members purchased the Class Vehicles only because Volkswagen
4 fraudulently obtained COCs from the EPA to illegally introduce them into the U.S. stream of
5 commerce. In addition, Volkswagen engaged in a false and misleading advertising campaign that
6 the “clean” diesel engine system was an environmentally friendly, fuel efficient, and low
7 emission vehicle with high performance. Plaintiffs and Class members bought or leased the Class
8 Vehicles based on these claims, and were harmed as the cars were neither legal nor clean.

9 396. While Volkswagen once claimed that these vehicles would have “a higher resale
10 value versus comparable gasoline vehicles,”¹⁵³ the cars are, in fact, now virtually unsellable and
11 subject to a recall for the indefinite future. With the revelations of Volkswagen’s fraud, the Class
12 Vehicles have decreased sharply in value. Within several weeks of the announcement of
13 Volkswagen’s emissions fraud, the value of the Class Vehicles plummeted by nearly 16%.¹⁵⁴ In
14 fact, VW, Audi, and Porsche have halted all sales of the Class Vehicles, new or used, so that even
15 dealers are stuck with tainted, stigmatized, and unsellable Class Vehicles.

16 397. As an illustration of the quantifiable financial loss suffered by Class Members, the
17 charts below demonstrate that the retail values prices of Audi, Porsche, and Volkswagen models
18 equipped with 3.0-liter engines that incorporated the “defeat device” experienced significantly
19 greater rates of depreciation than competitive models following revelation of the scandal in or
20 about September of 2015. Examples of the accelerated monthly depreciation rates illustrative of
21 the decline in the NADA Clean Retail Values of the affected models appear below.

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25 ¹⁵² *Id.*

26 ¹⁵³ See Audi of America, TDI® clean diesel (2015),
<http://drivedigitalgroup.com/Dealer/classicaudi/brochures/tdi.pdf>.

27 ¹⁵⁴ See Ryan Beene, *Used VW diesel prices nosedive as fix remains unclear*, Autoweek (Oct. 26,
28 2015), <http://autoweek.com/article/vw-diesel-scandal/used-vw-diesels-prices-nosedive-while-waiting-repair-news>.

Average (Geometric Mean) Monthly Depreciation Rates

Q7 TDI vs. Competitive Vehicles by Model Year		
	<u>Q7 TDI</u>	<u>Competitive Vehicles</u>
2009 Model Year (1/2012 – 9/2015) (10/2015 – 6/2016)	1.23% 2.80%	1.46% 1.65%
2010 Model Year (1/2012 – 9/2015) (10/2015 – 6/2016)	1.30% 1.86%	1.41% 1.26%
2011 Model Year (1/2012 – 9/2015) (10/2015 – 6/2016)	1.23% 1.70%	1.43% 1.24%
2012 Model Year (1/2012 – 9/2015) (10/2015 – 6/2016)	1.17% 2.62%	1.24% 1.63%
2013 Model Year (11/2013 – 6/2016) (10/2015 – 6/2016)	1.23% 2.35%	1.10% 1.28%
2014 Model Year (5/2014 – 9/2015) (10/2015 – 6/2016)	0.96% 1.89%	0.90% 0.95%
CAYENNE DIESEL vs. Competitive Vehicles by Model Year		
	<u>Cayenne Diesel</u>	<u>Competitive Vehicles</u>
2013 Model Year (11/2013 – 9/2015) (10/2015 – 6/2016)	1.22% 2.31%	1.16% 1.18%
2014 Model Year (1/2015 – 9/2015) (10/2015 – 6/2016)	1.50% 1.84%	1.10% 1.12%
Q5 TDI vs. Competitive Vehicles by Model Year		
	<u>Q5 TDI</u>	<u>Competitive Vehicles</u>
2014 Model Year (9/2014 – 9/2015) (10/2015 – 6/2016)	-0.24% 2.04%	0.11% 1.07%
TOUAREG TDI vs. Competitive Vehicles by Model Year		
	<u>Touareg TDI</u>	<u>Competitive Vehicles</u>
2009 Model Year (1/2012 – 9/2015) (10/2015 – 6/2016)	1.30% 2.27%	1.40% 1.52%

1	2010 Model Year (1/2012 – 9/2015)	1.40%	1.35%
2	(10/2015 – 6/2016)	2.01%	1.43%
3	2011 Model Year (1/2012 – 9/2015)	0.98%	1.22%
4	(10/2015 – 6/2016)	2.30%	1.26%
5	2012 Model Year (8/2012 – 9/2015)	0.99%	1.08%
6	(10/2015 – 6/2016)	2.49%	1.44%
7	2013 Model Year (5/2013 – 9/2015)	1.06%	0.86%
8	(10/2015 – 6/2016)	1.95%	1.20%
9	2014 Model Year (7/2014 – 9/2015)	1.09%	0.42%
10	(10/2015 – 6/2016)	2.57%	1.12%
A6 TDI vs. Competitive Vehicles by Model Year			
11		<u>A6 TDI</u>	<u>Competitive Vehicles</u>
12	2014 Model Year (7/2014 – 9/2015)	1.29%	1.20%
13	(10/2015 – 6/2016)	2.53%	1.55%
A7 TDI vs. Competitive Vehicles by Model Year			
14		<u>A7 TDI</u>	<u>Competitive Vehicles</u>
15	2014 Model Year (5/2014 – 9/2015)	0.90%	0.53%
16	(10/2015 – 6/2016)	2.32%	1.51%
A8 TDI vs. Competitive Vehicles by Model Year			
17		<u>A8 TDI</u>	<u>Competitive Vehicles</u>
18	2014 Model Year (6/2014 – 9/2015)	1.53%	0.70%
19	(10/2015 – 6/2016)	2.04%	1.76%

22 398. Adding insult to injury, the diesel vehicles that Volkswagen peddled as
23 environmentally responsible spew pollutants up to 40 times the legal limits. It is a cruel irony
24 that Volkswagen has forced Plaintiffs to either sideline their cars (which most people cannot
25 practically do) or drive the Class Vehicles with the knowledge that they are emitting toxic NO_x
26 far in excess of legal limits, exactly what they paid a premium to avoid. Consumers are
27 justifiably outraged about the untenable position Volkswagen has put them in.
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1 399. Moreover, many Plaintiffs and Class members purchased the Class Vehicles with
2 financing in the form of car loans or leases. The plunge in value of the Class Vehicles has caused
3 some Class members to be upside down on their loans, meaning that Class members now owe—
4 often to Volkswagen’s financing arm—more than the vehicle is worth—and for a car that is not
5 legal, to boot.

6 400. Volkswagen cannot fix the Class Vehicles without degrading their performance,
7 including horsepower and/or efficiency. As a result, even if Volkswagen is able to make the
8 Class Vehicles compliant, Class members will nonetheless suffer actual harm and damages
9 because their vehicles will no longer perform as promised. This will necessarily result in a
10 diminution in value of every Class Vehicle.

11 401. Moreover, many Class members purchased extended warranties for their Class
12 Vehicles, intending to own the vehicles beyond the initial warranty period. Class members no
13 longer want to own the Class Vehicles due to revelations of Volkswagen’s fraud and, when they
14 sell them, they will lose the value of the extended warranties that they purchased.

15 402. The harm described herein is quantifiable and ongoing. As a result of
16 Volkswagen’s illegal scheme, owners and lessees of the Class Vehicles have suffered losses—and
17 continue to lose—money and property in the magnitude of billions of dollars.

18 **J. Defendants’ Illegal Scheme Caused Health Risks and Quantifiable Harm to**
19 **the Environment**

20 403. Defendants’ illegal scheme has also caused significant injury to public health,
21 including increased health risks to Plaintiffs and Class members, as well as harm to the
22 environment due to the Class Vehicles’ emission of hazardous pollutants far in excess of legal
23 limits.

24 404. As mentioned above, NO_x is a hazardous pollutant and “an indirect greenhouse
25 gas” that contributes to the formation of ground-level ozone, a greenhouse gas, and can travel
26 hundreds of miles from the source of emission. Ozone is a colorless and odorless gas that, even
27 at low levels, can cause cardiovascular and respiratory health problems, including chest pain,
28 coughing, throat irritation, and congestion. The human health concerns from over-exposure to

1 NO_x are well established, and include negative effects on the respiratory system, damage to lung
2 tissue, and premature death. NO_x can penetrate deeply into sensitive parts of the lungs, and is
3 known to cause or worsen respiratory diseases like asthma, emphysema, and bronchitis, as well as
4 aggravate existing heart disease. Children, the elderly, people with lung diseases such as asthma,
5 and people who work or exercise outside are particularly susceptible to such adverse health
6 effects, though its effects are felt on all of society. Public health literature has firmly established
7 a direct link between marginal short run fluctuations in ambient ozone concentrations and
8 mortality rates.¹⁵⁵

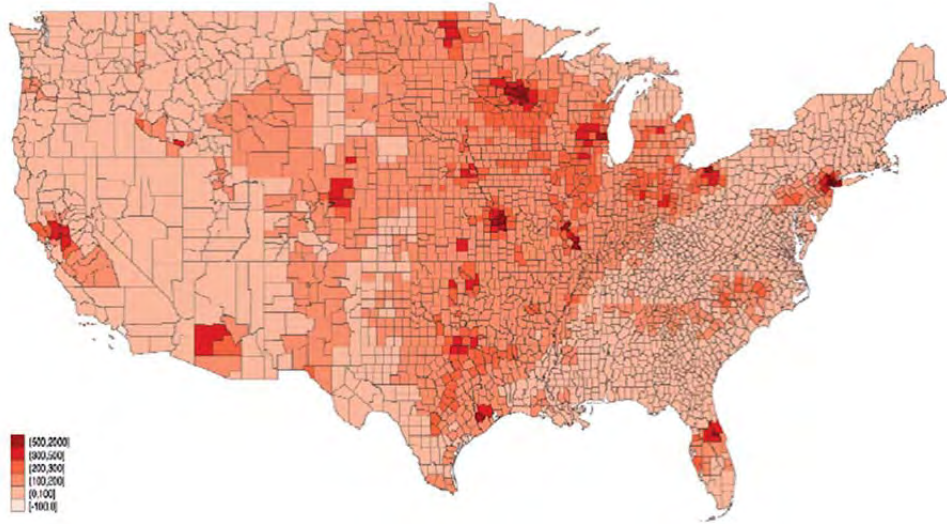
9 405. Tracing NO_x emissions in one location into economic damages to health can be
10 done through a model that translates the ground-level emissions of NO_x in one location into
11 ozone damages everywhere, as NO_x travels and reacts in spatially heterogeneous ways across the
12 country. One such model is the AP2 Model (Muller, 2015), which has county level resolution,
13 translates NO_x emissions at ground level (and a variety of other pollutants) into economic
14 damage across all other counties in the U.S. and aggregates the results.

15 406. According to the WVU study, Figure 1 below demonstrates an estimate of
16 marginal damages for driving a representative VW 3.0 TDI Jetta (just one of many models of
17 Class Vehicles), emitting 1.5g of NO_x/km for 100,000 miles.¹⁵⁶

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21 ¹⁵⁵ Bell *et al.*, *Ozone and Short-term Mortality in 95 US Urban Communities, 1987-2000*, JAMA
22 (Nov. 17, 2004), show evidence of a short-term 10 parts per billion (ppb) rise in ozone
23 concentrations would result in 3,767 additional premature deaths across 95 urban areas in the U.S.
24 For evidence regarding ozone's morbidity and environmental impacts, *see* EPA (2006), Moretti
25 and Neidell (2008), and Neidell (2004, 2009).

26 ¹⁵⁶ The model does not include damages on crops or effects on morbidity, so it is a strict lower
27 bound. It uses the Bell, *et al.* (2004) dose response curve for ozone and a conservative value of a
28 statistical life (VSL) of \$2 million as applied in Müller, Mendelsohn and Nordhaus (2011). The
standard requires a NO_x limit per kilometer of 0.043 grams. The lower range of the vehicle
tested by WVU was 0.61 grams per kilometer and the upper bound was 1.5 grams per kilometer.
It is possible to calculate the damages from a vehicle driven for 100,000 miles in any of the over
3,000 counties in the U.S. For the low end of the range of the Jetta test (0.61 g/km), a vehicle
driven 100,000 miles emits an additional 201 pounds of NO_x above a compliant car. For the high
end of the range of the Jetta test (1.5 g/km), a vehicle driven 100,000 miles emits an additional
516 pounds of NO_x above a compliant car. Figure 1 applies these numbers to the AP2 Model to
illustrate the physicality of ozone formation.

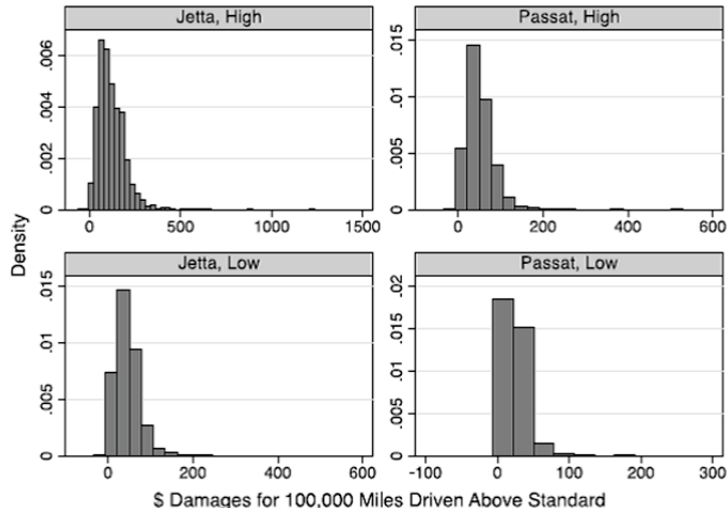
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407. Figure 1 (above) displays the spatial damage distribution across the U.S. for the high emitting Jetta. Figure 2 (below) displays the distributions of damages for the low and high emitting versions of the Jetta and Passat for 100,000 miles as tested by WVU.¹⁵⁷ The spatial patterns are not affected by the difference in emissions by vehicle type and emissions scenario, yet the overall range of damages is. The range of damages for the Jetta under the high emissions scenario is roughly \$62 to \$1,346. The range for the vehicle with lowest emissions (Passat, low) is roughly \$13 to \$274.

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¹⁵⁷ In addition to the Jetta assumptions described, *supra*, for the low end of the range of the Passat test (0.34 g/km), a vehicle driven 100,000 miles emits an additional 105 pounds of NO_x above a compliant car. For the high end of the range of the Passat test (0.67 g/km) a vehicle driven 100,000 miles emits an additional 222 pounds of NO_x above a compliant car. Figure 1 applies these numbers to the AP2 Model to illustrate the physicality of ozone formation.

1 408. In addition, as a result of the negative environmental and health impacts, one
2 environmental research paper has estimated that the excess emissions from the Class Vehicles
3 between 2008 and 2015 will cause nearly 60 early deaths with a monetized cost of \$450
4 million.¹⁵⁸ Other reports have estimated that the defeat devices “allowed VWs to spew enough
5 pollution to cause somewhere between 16 and 94 deaths over seven years.”¹⁵⁹ Regardless of the
6 precise number of deaths, the serious environmental and physical harm will continue to grow as
7 long as the Class Vehicles remain on the roads.

8 409. The notorious legacy of Defendants’ unprecedented fraud will live long and spread
9 far. Defendants’ conduct was, and the impact of the conduct remains, highly reprehensible within
10 the meaning of that term, as used by the United States Supreme Court in its jurisprudence guiding
11 the calculation and scaling of punitive damages. The conduct alleged herein involved repeated,
12 purposeful actions, was the result of intentional deceit, left Plaintiffs defrauded and without
13 remedy, and evinced an indifference and reckless disregard of public health.

14 410. Plaintiffs and Class members, whose unwitting and undesired operation of the
15 Class Vehicles is implicated in the environmental impact of Defendants’ scheme, have a real,
16 compelling, and express interest in effectuating and expediting the necessary repairs and
17 reparations to the environment, and in assisting governmental efforts to do so. It is practicable as
18 well as necessary to remediate, mitigate, and offset this harm. For example, the odometer
19 readings of Class members’ vehicles, which are practical to obtain and total, provide a ready
20 measure upon which to base monetary offsets to be imposed upon Defendants, and collected by
21 the appropriate governmental entities and used to repair the environment.

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25 ¹⁵⁸ Steven R H Barrett, *et al.*, *Impact of the Volkswagen emissions control defeat device on US*
26 *public health*, IOP Science (Oct. 29, 2015), [http://iopscience.iop.org/article/10.1088/1748-](http://iopscience.iop.org/article/10.1088/1748-9326/10/11/114005?fromSearchPage=true)
[9326/10/11/114005?fromSearchPage=true](http://iopscience.iop.org/article/10.1088/1748-9326/10/11/114005?fromSearchPage=true).

27 ¹⁵⁹ Seth Borenstein, *Volkswagen’s emissions cheating likely caused dozens of deaths in the US*,
28 *Business Insider* (Oct. 5, 2015), [http://www.businessinsider.com/ap-ap-analysis-vw-evasion-](http://www.businessinsider.com/ap-ap-analysis-vw-evasion-likely-led-to-dozens-of-deaths-2015-10)
[likely-led-to-dozens-of-deaths-2015-10](http://www.businessinsider.com/ap-ap-analysis-vw-evasion-likely-led-to-dozens-of-deaths-2015-10).

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TOLLING OF THE STATUTES OF LIMITATIONS

Discovery Rule

411. The tolling doctrine was made for cases of concealment like this one. Plaintiffs and Class members did not discover, and could not have discovered through the exercise of reasonable diligence, that Defendants had conspired to install software that would evade emissions regulations, and that Volkswagen was concealing and misrepresenting the true emissions levels of its vehicles.

412. Defendants’ fraud was elaborate and well concealed. Indeed, the EPA and CARB uncovered the software manipulation only through a sophisticated and costly investigation involving highly technical equipment.

413. Plaintiffs and Class members had no realistic ability to discover the presence of the defeat devices, or to otherwise learn of the fraud, until it was discovered by the EPA and CARB and revealed to the public through the September 18, 2015, and November 2, 2015, NOVs.

414. Any statutes of limitation otherwise-applicable to any claims asserted herein have thus been tolled by the discovery rule.

Fraudulent Concealment

415. All applicable statutes of limitation have also been tolled by Volkswagen’s knowing, active and ongoing fraudulent concealment of the facts alleged herein.

416. Defendants have known of the defeat devices installed in the Class Vehicles since at least 2009 when Volkswagen began installing them. Since then Volkswagen has intentionally concealed from or failed to notify Plaintiffs, Class members, and the public of the defeat devices and the true emissions and performance of the Class Vehicles.

417. There is no question that Volkswagen installed the defeat devices intentionally to deceive, regulators, and the public, as Volkswagen has publicly conceded.

418. Despite knowing about the defeat device and unlawful emissions, Volkswagen did not acknowledge the problem, and in fact actively concealed it, until after the EPA issued its NOVs on September 18, 2015 and November 2, 2015.

1 419. Any otherwise-applicable statutes of limitation have therefore been tolled by
 2 Defendants' exclusive knowledge and Volkswagen's active concealment of the facts alleged
 3 herein.

4 **Estoppel**

5 420. Defendants were and are under a continuous duty to disclose to Plaintiffs and
 6 Class members the true character, quality, and nature of the Class Vehicles, including their
 7 emissions systems and their compliance with applicable federal and state law. Instead,
 8 Volkswagen actively concealed the true character, quality, and nature of the Class Vehicles and
 9 knowingly made misrepresentations about the quality, reliability, characteristics, and performance
 10 of the Class Vehicles.

11 421. Plaintiffs and Class members reasonably relied upon Volkswagen's knowing and
 12 affirmative misrepresentations and/or active concealment of these facts.

13 422. Based on the foregoing, Defendants are estopped from relying on any statutes of
 14 limitation in defense of this action.

15 **CLASS ACTION ALLEGATIONS**

16 423. Plaintiffs bring this lawsuit as a class action pursuant to Federal Rules of Civil
 17 Procedure 23(a); (b)(1); (b)(2); (b)(3); and/or (c)(4), on behalf of themselves and all others
 18 similarly situated as members of the following Nationwide Class and State Classes (collectively,
 19 the "Classes"); on their federal and state claims as the purchasers and lessees of the following
 20 Class Vehicles:

2.0-liter Class Vehicles	
Volkswagen Jetta TDI	2009-2015
Volkswagen Jetta SportWagen TDI	2009-2014
Volkswagen Beetle TDI	2012-2015
Volkswagen Beetle Convertible TDI	2012-2015
Audi A3 TDI	2010-2015
Volkswagen Golf TDI	2010-2015
Volkswagen Golf SportWagen TDI	2015
Volkswagen Passat TDI	2012-2015

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3.0-liter Class Vehicles	
Volkswagen Touareg TDI	2009-2016
Porsche Cayenne Diesel	2013-2016
Audi A6 Quattro TDI	2014-2016
Audi A7 Quattro TDI	2014-2016
Audi A8 TDI	2014-2016
Audi A8L TDI	2014-2016
Audi Q5 TDI	2014-2016
Audi Q7 TDI	2009-2016

424. The proposed Classes are defined as:

Nationwide Class

All persons and entities in the United States, including its territories, who purchased or leased a Class Vehicle.

Alabama Class

All persons and entities in the state of Alabama who purchased or leased a Class Vehicle.

Alaska Class

All persons and entities in the state of Alaska who purchased or leased a Class Vehicle.

Arizona Class

All persons and entities in the state of Arizona who purchased or leased a Class Vehicle.

Arkansas Class

All persons and entities in the state of Arkansas who purchased or leased a Class Vehicle.

California Class

All persons and entities in the state of California who purchased or leased a Class Vehicle.

Colorado Class

All persons and entities in the state of Colorado who purchased or leased a Class Vehicle.

Connecticut Class

All persons and entities in the state of Connecticut who purchased or leased a Class Vehicle.

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Delaware Class

All persons and entities in the state of Delaware who purchased or leased a Class Vehicle.

District of Columbia Class

All persons and entities in the District of Columbia who purchased or leased a Class Vehicle.

Florida Class

All persons and entities in the state of Florida who purchased or leased a Class Vehicle.

Georgia Class

All persons and entities in the state of Georgia who purchased or leased a Class Vehicle.

Hawaii Class

All persons and entities in the state of Hawaii who purchased or leased a Class Vehicle.

Idaho Class

All persons and entities in the state of Idaho who purchased or leased a Class Vehicle.

Illinois Class

All persons and entities in the state of Illinois who purchased or leased a Class Vehicle.

Indiana Class

All persons and entities in the state of Indiana who purchased or leased a Class Vehicle.

Iowa Class

All persons and entities in the state of Iowa who purchased or leased a Class Vehicle.

Kansas Class

All persons and entities in the state of Kansas who purchased or leased a Class Vehicle.

Kentucky Class

All persons and entities in the state of Kentucky who purchased or leased a Class Vehicle.

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Louisiana Class

All persons and entities in the state of Louisiana who purchased or leased a Class Vehicle.

Maine Class

All persons and entities in the state of Maine who purchased or leased a Class Vehicle.

Maryland Class

All persons and entities in the state of Maryland who purchased or leased a Class Vehicle.

Massachusetts Class

All persons and entities in the state of Massachusetts who purchased or leased a Class Vehicle.

Michigan Class

All persons and entities in the state of Michigan who purchased or leased a Class Vehicle.

Minnesota Class

All persons and entities in the state of Minnesota who purchased or leased a Class Vehicle.

Mississippi Class

All persons and entities in the state of Mississippi who purchased or leased a Class Vehicle.

Missouri Class

All persons and entities in the state of Missouri who purchased or leased a Class Vehicle.

Montana Class

All persons and entities in the state of Montana who purchased or leased a Class Vehicle.

Nebraska Class

All persons and entities in the state of Nebraska who purchased or leased a Class Vehicle.

Nevada Class

All persons and entities in the state of Nevada who purchased or leased a Class Vehicle.

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New Hampshire Class

All persons and entities in the state of New Hampshire who purchased or leased a Class Vehicle.

New Jersey Class

All persons and entities in the state of New Jersey who purchased or leased a Class Vehicle.

New Mexico Class

All persons and entities in the state of New Mexico who purchased or leased a Class Vehicle.

New York Class

All persons and entities in the state of New York who purchased or leased a Class Vehicle.

North Carolina Class

All persons and entities in the state of North Carolina who purchased or leased a Class Vehicle.

North Dakota Class

All persons and entities in the state of North Dakota who purchased or leased a Class Vehicle.

Ohio Class

All persons and entities in the state of Ohio who purchased or leased a Class Vehicle.

Oklahoma Class

All persons and entities in the state of Oklahoma who purchased or leased a Class Vehicle.

Oregon Class

All persons and entities in the state of Oregon who purchased or leased a Class Vehicle.

Pennsylvania Class

All persons and entities in the state of Pennsylvania who purchased or leased a Class Vehicle.

Rhode Island Class

All persons and entities in the state of Rhode Island who purchased or leased a Class Vehicle.

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South Carolina Class

All persons and entities in the state of South Carolina who purchased or leased a Class Vehicle.

South Dakota Class

All persons and entities in the state of South Dakota who purchased or leased a Class Vehicle.

Tennessee State Class

All persons and entities in the state of Tennessee who purchased or leased a Class Vehicle.

Texas Class

All persons and entities in the state of Texas who purchased or leased a Class Vehicle.

Utah Class

All persons and entities in the state of Utah who purchased or leased a Class Vehicle.

Vermont Class

All persons and entities in the state of Vermont who purchased or leased a Class Vehicle.

Virginia Class

All persons and entities in the state of Virginia who purchased or leased a Class Vehicle.

Washington Class

All persons and entities in the state of Washington who purchased or leased a Class Vehicle.

West Virginia Class

All persons and entities in the state of West Virginia who purchased or leased a Class Vehicle.

Wisconsin Class

All persons and entities in the state of Wisconsin who purchased or leased a Class Vehicle.

Wyoming Class

All persons and entities in the state of Wyoming who purchased or leased a Class Vehicle.

1 425. Excluded from the Classes are: (A) Defendants, including any entity or division in
2 which Defendants have a controlling interest, as well as their agents, representatives, officers,
3 directors, employees, trustees, parents, children, heirs, assigns, and successors, and other persons
4 or entities related to, or affiliated with Defendants; (B) the Judges to whom this case is assigned,
5 their staff, and their immediate families; and (C) governmental entities. Plaintiffs reserve the
6 right to amend the Class definitions if discovery and further investigation reveal that any Class
7 should be expanded, divided into additional subclasses under Rule 23(c)(5), or modified in any
8 other way.

9 426. Certification of Plaintiffs' claims for class-wide treatment is appropriate because
10 Plaintiffs can prove the elements of their claims on a class-wide basis using the same evidence as
11 would be used in individual actions alleging the same claims.

12 427. This action has been brought and may be properly maintained on behalf of each of
13 the Classes proposed herein under Federal Rule of Civil Procedure 23 and satisfies the
14 numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of its
15 provisions.

16 **Numerosity and Ascertainability**

17 428. The members of the Classes are so numerous and geographically dispersed that
18 individual joinder of all Class members is impracticable. There are no less than five hundred
19 thousand members in the Nationwide Class, and at least hundreds of members in each State Class.
20 The precise number and identities of Nationwide Class and State Class members may be
21 ascertained from Volkswagen's books and records and motor vehicle regulatory data. Defendants
22 have comprehensive lists of Class Vehicle owners and lessees in their possession, and are using
23 them to communicate in writing to the Class members. To date, approximately 580,000 vehicles
24 identified as Class Vehicles have been sold in the United States. Accordingly, the disposition of
25 the claims of Class members in a single action will provide substantial benefits to all parties and
26 to the Court. Class members may be readily notified of the pendency of this action by
27 recognized, Court-approved notice dissemination methods, which may include U.S. mail,
28 electronic mail, Internet postings, and/or published notice.

1 **Typicality**

2 429. The claims of the representative Plaintiffs are typical of the claims of the other
3 Class members in that the representative Plaintiffs, like all Class members, purchased or leased a
4 Class Vehicle designed, manufactured, and distributed by Volkswagen, which was equipped with
5 a defeat device designed, manufactured and supplied by Bosch. The representative Plaintiffs, like
6 all Class members, have been damaged by Defendants' misconduct in that they have incurred
7 similar or identical losses relating to the Class Vehicles. Furthermore, the factual bases of
8 Defendants' misconduct are common to all Class members and represent a common thread of
9 misconduct resulting in injury to all Class members.

10 **Adequate Representation**

11 430. Plaintiffs are members of the Nationwide and State Classes and will fairly and
12 adequately represent and protect the interests of the Classes. Plaintiffs have retained, and this
13 Court has appointed, counsel with substantial experience in prosecuting consumer class actions,
14 including actions involving defective products generally, and defective automobile systems and
15 parts specifically. Plaintiffs and their counsel are committed to vigorously prosecuting this action
16 on behalf of the Classes and have the financial resources to do so. Neither Plaintiffs nor their
17 counsel have interests adverse to those of the Classes.

18 **Predominance of Common Questions**

19 431. There are numerous questions of law and fact common to Plaintiffs and Class
20 members that predominate over any question affecting only individual Class members. The
21 answers to these common questions will advance the adjudication or resolution of the litigation as
22 to all Class members. These common legal and factual questions include:

- 23 a. whether Defendants designed, manufactured, advertised,
24 marketed, distributed, leased, sold, or otherwise placed the
25 Class Vehicles and/or their emissions-related systems,
including "defeat devices," into the stream, of commerce in
the United States;
- 26 b. whether the Class Vehicles contained a "defeat device" and
27 emitted unlawful levels of pollutants under normal
28 operation;

- 1 c. whether Defendants knew or should have known about the
- 2 defeat device and emission levels in the Class Vehicles;
- 3 d. whether the true nature of the Class Vehicles' performance,
- 4 emissions levels, fuel economy, and the inclusion of the
- 5 defeat device constitute material facts that reasonable
- 6 consumers would have considered in deciding whether to
- 7 purchase a Class Vehicle;
- 8 e. whether Class members overpaid for their Class Vehicles;
- 9 f. whether Defendants made material misrepresentations
- 10 regarding the Class Vehicles.
- 11 g. whether Defendants had a duty to disclose the true nature of
- 12 the Class Vehicles to Plaintiffs and Class members;
- 13 h. whether Defendants omitted, actively concealed and/or
- 14 failed to disclose material facts about the Class Vehicles;
- 15 i. whether Defendants' concealment of the true nature of the
- 16 Class Vehicles would have induced a reasonable consumer
- 17 to act to their detriment by purchasing and/or leasing the
- 18 Class Vehicles;
- 19 j. whether the Class Vehicles can be made to comply with
- 20 EPA and state emission standard without substantially
- 21 degrading their performance and/or efficiency;
- 22 k. whether Bosch supplied the "defeat device" to Volkswagen
- 23 with the knowledge that Volkswagen would use it in
- 24 production of Class Vehicles;
- 25 l. whether Bosch acted in concert with Volkswagen and aided
- 26 and abetted Volkswagen's fraud;
- 27 m. whether Defendants' conduct violated RICO, the MMWA,
- 28 consumer protection statutes, warranty laws, and other laws
- as alleged herein;
- n. whether Plaintiffs and Class members are entitled to a
- declaratory judgment;
- o. whether Plaintiffs and Class members are entitled to
- equitable relief, including, but not limited to, a preliminary
- and/or permanent injunction; and
- p. whether Plaintiffs and Class members are entitled to
- damages and other monetary relief, and, if so, of what types
- and under what formula.

Superiority

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2 432. Defendants' scheme treated consumers as a Class to be uniformly deceived. A
3 class action is superior to all other available methods for the fair and efficient adjudication of this
4 controversy. Plaintiffs and Class members have all suffered and will continue to suffer economic
5 harm and damage as a result of Defendants' unlawful and wrongful conduct, which was directed
6 toward Class members and the public as a whole, rather than specifically or uniquely against any
7 individual Class members.

8 433. Defendants have acted in a uniform manner with respect to the Plaintiffs and Class
9 members. Absent a class action, most Class members would likely find the cost of litigating their
10 claims prohibitively high and would therefore have no effective remedy at law. Because of the
11 relatively small size of the individual Class members' claims, it is likely that only a few Class
12 members could afford to seek legal redress for Defendants' misconduct. Absent a class action,
13 Class members will continue to incur damages, and Defendants' misconduct will continue
14 without effective remedy.

15 434. Class treatment in this Court, as a court with original jurisdiction over the Class
16 claims and as an MDL Transferee Court under 28 U.S. § 1407, will conserve the resources of the
17 courts and the litigants, and will promote consistency and efficiency of adjudication by providing
18 common answers to the common questions of knowledge, conduct, duty and breach, that
19 predominate in this action.

20 435. Classwide declaratory, equitable, and injunctive relief is appropriate under
21 Rule 23(b)(1) and/or (b)(2) because Defendants have acted on grounds that apply generally to the
22 class, and inconsistent adjudications with respect to the Defendants' liability would establish
23 incompatible standards and substantially impair or impede the ability of Class members to protect
24 their interests. Classwide relief and Court supervision under Rule 23 assures fair, consistent, and
25 equitable treatment and protection of all Class members, and uniformity and consistency in
26 Defendants' discharge of their duties to perform corrective action regarding the Class Vehicles.

CLAIMS FOR RELIEF

FEDERAL CLAIMS

FEDERAL COUNT I:

Violation of 18 U.S.C. § 1962(c)-(d)

The Racketeer Influenced And Corrupt Organizations Act (“RICO”)

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5 436. Plaintiffs incorporate by reference each preceding paragraph as though fully set
6 forth herein.

7 437. Plaintiffs bring this Count on behalf of the Nationwide Class against the following
8 Defendants: VW AG, Audi AG, Porsche AG, Winterkorn, Müller, Horn, Stadler, Bosch GmbH,
9 Bosch LLC, and Denner (inclusively, for purpose of this Count, the “RICO Defendants”).

10 438. Volkswagen conducts its business—legitimate and illegitimate—through various
11 affiliates and subsidiaries, each of which is a separate legal entity. Bosch also conducts its
12 business, both legitimate and illegitimate, through hundreds of subsidiaries and affiliates.¹⁶⁰ At
13 all relevant times, the RICO Defendants have been “persons” under 18 U.S.C. § 1961(3) because
14 they are capable of holding, and do hold, “a legal or beneficial interest in property.”

15 439. Section 1962(c) makes it “unlawful for any person employed by or associated with
16 any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to
17 conduct or participate, directly or indirectly, in the conduct of such enterprise’s affairs through a
18 pattern of racketeering activity.” 18 U.S.C. § 1962(c).

19 440. Section 1962(d) makes it unlawful for “any person to conspire to violate” Section
20 1962(c), among other provisions. *See* 18 U.S.C. § 1962(d).

21 441. For many years, the RICO Defendants aggressively sought to increase their sales
22 of the Class Vehicles (and components contained therein) in an effort to bolster their revenues,
23 augment profits, and increase their market share of the diesel vehicle market. Finding it
24 impossible to achieve their ambitious goals lawfully, however, the RICO Defendants resorted to
25 cheating through their fraudulent scheme and conspiracy. The illegal scheme was hatched
26 overseas by VW AG, Audi AG, and/or Porsche AG (“the German Volkswagen Defendants”),

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28 ¹⁶⁰http://www.bosch.com/en/com/bosch_group/business_sectors_divisions/business_sectors_divisions_2.php (last visited on Feb. 20, 2016).

1 brought to U.S. shores by and through the vehicles of VW America, Audi America, and Porsche
2 America (collectively, the “American Volkswagen Defendants”), and executed in conjunction
3 with Bosch. In particular, the RICO Defendants, along with other entities and individuals, were
4 employed by or associated with, and conducted or participated in the affairs of, one or several
5 RICO enterprises (defined below and referred to collectively as the “Defeat Device RICO
6 Enterprise”), whose purpose was to deceive regulators and the driving public into believing that
7 the Class Vehicles were compliant with emission standards, “clean,” and “environmentally
8 friendly” so as to increase revenues and minimize losses from the design, manufacture,
9 distribution and sale of the Class Vehicles and the defeat devices installed therein. As a direct
10 and proximate result of their fraudulent scheme and common course of conduct, Defendants were
11 able to extract revenues of billions of dollars from Plaintiffs and the Class. As explained in detail
12 below, the RICO Defendants’ years-long misconduct violated Sections 1962(c) and (d).

13 **A. Description of the Defeat Device RICO Enterprise**

14 442. In an effort to expand its global reach, market share, and standardized marketing
15 and sales in the U.S., VW AG, a publicly-traded German company, formed VW America, a
16 separate New Jersey company, which is headquartered in Virginia. VW America is not publicly
17 traded and thus has no SEC reporting obligations, but it does have reporting obligations,
18 protections and responsibilities unique to the State of New Jersey. VW AG also controls Audi
19 AG and Porsche AG which, in turn, formed separate U.S. subsidiaries that are not publicly traded
20 – Audi America and Porsche America, respectively – to market and sell the Class Vehicles
21 throughout the U.S. At all relevant times, VW AG maintained tight control over the design,
22 manufacture, and testing of the Class Vehicles.

23 443. At all relevant times, the RICO Defendants, along with other individuals and
24 entities, including unknown third parties involved in the design, manufacture, testing, and sale of
25 the Class Vehicles, operated an association-in-fact enterprise, which was formed for the purpose
26 of fraudulently obtaining COCs from the EPA (and EOs from CARB) in order to import and sell
27 the Class Vehicles containing the defeat device throughout the U.S., and through which they
28 conducted a pattern of racketeering activity under 18 U.S.C. § 1961(4).

1 444. Alternatively, each of the American Volkswagen Defendants constitutes a single
2 legal entity “enterprise” within the meaning of 18 U.S.C. § 1961(4), through which the RICO
3 Defendants conducted their pattern of racketeering activity in the U.S. Specifically, VW America
4 is the entity through which Volkswagen applied for, and obtained, the EPA COCs for the VW-
5 and Audi-branded Class Vehicles with material misrepresentations and omissions about their
6 specifications in order to introduce them into the U.S. stream of commerce. Similarly, Porsche
7 America is the entity through which Volkswagen applied for, and obtained, the EPA COCs for
8 the Porsche-branded Class Vehicles with material misrepresentations and omissions about their
9 specifications in order to introduce them into the U.S. stream of commerce. And, on information
10 and belief, the German Volkswagen Defendants and Individual Volkswagen Defendants
11 (Winterkorn, Müller, Horn, and Stadler) used each of the American Volkswagen Defendants to
12 distribute and sell the illegal Class Vehicles throughout the U.S. Finally, Bosch participated,
13 either directly or indirectly, in the conduct of the enterprise’s affairs by developing, supplying,
14 and concealing the defeat devices. The American Volkswagen Defendants’ separate legal
15 statuses facilitated the fraudulent scheme and provided a hoped-for shield from liability for the
16 RICO Defendants and their co-conspirators. The enterprises, alleged in this and the previous
17 paragraph, are referred to collectively as the “Defeat Device RICO Enterprise.”

18 445. At all relevant times, the Defeat Device RICO Enterprise constituted a single
19 “enterprise” or multiple enterprises within the meaning of 18 U.S.C. § 1961(4), as legal entities,
20 as well as individuals and legal entities associated-in-fact for the common purpose of engaging in
21 RICO Defendants’ profit-making scheme.

22 446. The association-in-fact Defeat Device RICO Enterprise consisted of the following
23 entities and individuals.

24 **1. The Volkswagen Entity Defendants**

25 447. Each Volkswagen Entity Defendant is a distinct legal entity, but they are all
26 controlled (directly or indirectly) by Defendant VW AG.¹⁶¹ Specifically, Audi AG is a majority-

27 ¹⁶¹ http://www.volkswagenag.com/content/vwcorp/content/en/brands_and_products.html;
28 [http://www.volkswagenag.com/content/vwcorp/info_center/en/publications/2015/03/Y_2014_e.bi
n.html/binarystorageitem/file/GB+2014_e.pdf](http://www.volkswagenag.com/content/vwcorp/info_center/en/publications/2015/03/Y_2014_e.bin.html/binarystorageitem/file/GB+2014_e.pdf)

1 owned subsidiary of VW AG. Audi America is also a subsidiary of VW AG. Porsche AG is a
2 wholly-owned subsidiary of VW AG, and Porsche America is, in turn, a wholly-owned subsidiary
3 of Porsche AG.

4 448. As noted previously, the Volkswagen RICO Defendants made it their mission to
5 become the dominant automotive manufacturing conglomerate in the world. At the time they
6 articulated this goal, however, Volkswagen was struggling to retain its foothold in the U.S.
7 market. The strategy of wooing customers with premium products was not paying off, and VW
8 America's costly plant in Chattanooga, Tennessee was "woefully underutilized."¹⁶²

9 449. In response to these obstacles, VW AG and its leader at the time, Defendant
10 Winterkorn, set in motion an ambitious plan to triple Volkswagen's sales in the U.S. The
11 linchpin of this strategy was increasing sales of "diesel-powered cars . . . [and] promising high
12 mileage and low emissions without sacrificing performance."¹⁶³

13 450. Additionally, to achieve their lofty sales goals, the Volkswagen RICO Defendants
14 made a business-driven decision to move away from the original selective catalytic reduction
15 ("SCR") emission control systems they had previously used in their vehicles and focused instead
16 on a less expensive and easier to maintain lean NO_x trap system.¹⁶⁴ Critically, however, the NO_x
17 trap technology that the Volkswagen RICO Defendants implemented could not effectively reduce
18 the Class Vehicles' toxic NO_x emissions to lawful levels under normal operating conditions.

19 451. Accordingly, working with the other members of the Defeat Device RICO
20 Enterprise, including the Bosch Defendants, the Volkswagen RICO Defendants devised a scheme
21 to illegally circumvent the U.S.'s stringent emissions standards by incorporating a "defeat device"

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23 ¹⁶² Anton Watts. *VW Drama: Why Piech Wants Winterkorn Out-and What the Future May Hold*.
Car and Driver (Apr. 16, 2015).

24 ¹⁶³ Danny Kim, Aaron Danny Hakim, Aaron Kessler, and Jack Ewing, "As Volkswagen Pushed
to Be No. 1, Ambitions Fueled a Scandal," *New York Times* (Sept. 26, 2015).

25 ¹⁶⁴ The term "NO_x trap" refers to any device whose purpose is to reduce the oxides of nitrogen.
26 See https://en.wikipedia.org/wiki/NOx_adsorber. However, the term here is used as a shorthand,
27 informal reference to the emissions control system developed by the Volkswagen Defendants as
28 an alternative to the SCR system. Unlike the NO_x trap, SCR systems require vehicles to carry an
onboard tank of an exhaust additive, often urea crystals in mineralized water, that has to be
refilled every 10,000 miles at a cost of around \$300. Additionally, SCR systems also increase the
vehicles' initial purchase price.

1 into the Class Vehicles' Electronic Diesel Control Units. Employing this technology, Defendants
2 fraudulently obtained COCs (and EOs) for the Class Vehicles even though they emit unlawful
3 levels of toxic pollutants into the atmosphere during normal operating conditions.¹⁶⁵

4 452. Moreover, in order to profit from the scheme and increase their sales according to
5 plan, the Volkswagen RICO Defendants falsely marketed the Class Vehicles as not only
6 compliant but “*clean*” and “*environmentally friendly*” vehicles.¹⁶⁶

7 453. In sum, as part of their effort to become the dominant automotive manufacturing
8 conglomerate in the world, the Volkswagen RICO Defendants controlled and directed a decade-
9 long enterprise with the common purpose of deceiving regulators and the public through lies and
10 deception to increase their market shares and profits, and minimize losses.

11 2. The Volkswagen Entity Defendants' Directors, Officers, and Engineers

12 454. Volkswagen's leaders—including the Individual Defendants (Winterkorn, Müller,
13 Horn, and Stadler) and their unnamed co-conspirators—Ulrich Hackenberg (“Hackenberg”),
14 Frank Tuch (“Tuch”), Wolfgang Hatz (“Hatz”), Scott Keogh (“Keogh”), and Detlev von Platen
15 (“von Platen”)—played pivotal roles in the Defeat Device RICO Enterprise's unlawful scheme,
16 common course of conduct, and conspiracy.

17 a. Martin Winterkorn

18 455. Defendant Winterkorn took the helm of VW AG in 2007 and was the chief
19 architect of Volkswagen's strategy to triple sales in the U.S. market by relying more heavily on
20 “clean” diesel vehicles.¹⁶⁷

21 456. Winterkorn quickly realized his strategy could not succeed if Volkswagen relied
22 on the same SCR technology that they had used up until then. Winterkorn instead advocated an
23 alternative course of action that enabled Volkswagen to cut costs and offer the public lower-
24 priced diesel vehicles. To that end, he appointed Hackenberg and Hatz, two former Audi

25 ¹⁶⁵ *Id.*

26 ¹⁶⁶ See Jad Mouawad & Sydney Ember, *VW's Pitch to Americans Relied on Fun and Fantasy*,
27 New York Times (Sept. 27, 2015), <http://nytimes.com/2015/09/28/business/media/vws-pitch-to-americans-relied-on-fun-and-fantasy.html?ref=business>.

28 ¹⁶⁷ Volkswagen AG, *TDI: U.S. Market Success*, Clean Diesel Delivers (March, 2015),
http://cleandieseldelivers.com/media/Douglas-Skorupski-VWoA_DTF_March2015.pdf.

1 engineers and unnamed co-conspiring members of the Defeat Device RICO Enterprise, to lead
2 the research and development facet of the “clean” diesel project.

3 457. Nevertheless, despite Hackenberg and Hatz’s efforts, the technological hurdles
4 were too formidable, and a lawful alternative could not apparently be found. Although Defendant
5 Winterkorn was routinely apprised of these obvious technical setbacks, he continued to pursue the
6 aggressive cost-cutting, profit driven plan he had originally envisioned. In so doing, he set into
7 motion the fraudulent scheme to defraud regulators and consumers.

8 458. Winterkorn knew that the Class Vehicles were unable to comply with emission
9 standards and thus utilized defeat devices in order to evade federal and state emission standards.

10 **b. Matthias Müller**

11 459. Defendant Müller has worked at Volkswagen for nearly his entire life, starting as
12 an Audi toolmaker and climbing the corporate ladder to become VW’s Head of Product
13 Management in 2007, and later, became the CEO of Porsche AG in October 2010. As CEO of
14 Porsche AG, Müller was a trusted “longtime lieutenant of Mr. Winterkorn,”¹⁶⁸ and grew sales and
15 profits at Porsche AG dramatically.

16 460. During Müller’s reign over Porsche AG, he oversaw the release of the Porsche
17 Cayenne Diesels discovered by the EPA to be equipped with defeat devices.

18 461. Further, after the revelation of Volkswagen’s fraud, Müller was appointed CEO of
19 VW AG on September 25, 2015. He is suspected to be a protégé of VW AG’s former CEO
20 Ferdinand Piëch, whom some blame for propagating the Volkswagen culture that ultimately led
21 to the defeat device conspiracy alleged herein.¹⁶⁹

22 462. Müller knew or recklessly disregarded that the Class Vehicles utilized defeat
23 devices to evade federal and state vehicle emissions standards.

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26 ¹⁶⁸ Danny Hakim and Jack Ewing, *Matthias Müller, in the Driver’s Seat at Volkswagen*, New
27 York Times (Oct. 1, 2015), [http://www.nytimes.com/2015/10/02/business/international/matthias-](http://www.nytimes.com/2015/10/02/business/international/matthias-muller-in-the-drivers-seat-at-volkswagen.html)
[muller-in-the-drivers-seat-at-volkswagen.html](http://www.nytimes.com/2015/10/02/business/international/matthias-muller-in-the-drivers-seat-at-volkswagen.html).

28 ¹⁶⁹ Victor Luckerson, *5 things to know about Volkswagen’s new CEO Matthias Müller*, Fortune
(Sept. 25, 2015), <http://fortune.com/2015/09/25/volkswagen-ceo-muller/>.

1 **c. Michael Horn**

2 463. On January 1, 2014, Defendant Horn became CEO and President of VW America
3 after 23 years working at Volkswagen in various sales leadership positions, until he resigned on
4 March 9, 2016. Defendant Horn was tasked with continuing Winterkorn's aggressive ambitions
5 to reach 800,000 in U.S. sales by 2018. As part of his position, Defendant Horn oversaw VW
6 America emissions labs, regulatory compliance efforts, and development of new vehicles.

7 464. As alleged above, Defendant Horn admitted to Volkswagen's intentional use of
8 defeat devices to overcome state and federal regulation.

9 465. Moreover, Defendant Horn admittedly knew about Volkswagen's use of defeat
10 devices at least as early as 2014, and also knew (and concealed) the existence of defeat devices in
11 Class Vehicles when Volkswagen initiated a recall in December 2014 to purportedly update
12 emission control software in the Class Vehicles without notifying regulators, or the Class, about
13 the use of the illegal defeat devices.

14 **d. Rupert Stadler**

15 466. In 1990, Defendant Stadler joined Audi AG, assuming various roles in Audi and
16 VW as he ascended the ranks at Volkswagen. On January 1, 2010, he was appointed CEO of
17 Audi AG, which he remains to present day. As the CEO of Audi AG, Stadler was tasked with
18 implementing Winterkorn's lofty growth goals, as well as overseeing unnamed co-conspirators
19 Hatz and Hackenberg's development of the "clean" diesel engines in Audi vehicles.

20 467. Though presumed by many to be Winterkorn's heir apparent, the revelation of
21 Volkswagen's emissions and Audi's extensive involvement in the conspiracy caused Stadler to be
22 passed over for the position of VW AG CEO in favor of Matthias Müller.¹⁷⁰

23 468. Stadler knew or recklessly disregarded that the Class Vehicles utilized defeat
24 devices in order to evade federal and state vehicle emissions standards.

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27 ¹⁷⁰ *Audi CEO Rupert Stadler to continue with his post*, THE ECONOMIC TIMES (Sept. 25, 2015),
28 <http://auto.economictimes.indiatimes.com/news/industry/audi-ceo-rupert-stadler-to-continue-with-his-post/49103955>.

1 **e. Scott Keogh**

2 469. Since June 2012, unnamed co-conspirator Keogh has served as President of Audi
3 America, after a six period as the Chief Marketing Officer of Audi America. His primary
4 missions was “rallying the company’s internal and external constituencies to focus on Audi goals
5 for further expansion in the U.S. market,”¹⁷¹ as promulgated by Winterkorn.

6 470. After the revelation of Volkswagen’s fraud, Keogh publicly apologized for Audi
7 America’s involvement in the defeat device scandal¹⁷² and agreed to return “Green Car of the
8 Year” awards,¹⁷³ though he continues to tout the future of Audi diesel vehicles in the U.S.¹⁷⁴

9 471. Keogh knew or recklessly disregarded that the Class Vehicles utilized defeat
10 devices in order to evade federal and state vehicle emissions standards.

11 **f. Detlev von Platen**

12 472. In 1997, unnamed co-conspirator von Platen joined Porsche AG, managing the
13 Porsche brand in France. Over the following decade, von Platen climbed the ranks at Porsche to
14 assume the position of President and CEO of Porsche America on April 1, 2008.

15 473. As President and CEO of Porsche America, von Platen was charged with
16 implementing Winterkorn’s vision for the Porsche brand in the U.S., as he had oversight
17 “responsibility for the importation and distribution of Porsche cars in North America.”¹⁷⁵ Porsche
18 America was expected to contribute to Winterkorn’s lofty sales goals, bolstered by the
19 introduction of “clean” diesel engines for the Porsche Cayenne and increasing sales from 26,035
20 to a record 47,007 sales in 2014.

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22

¹⁷¹ *Scott Keogh*, AUDI USA (last visited Feb. 27, 2016),
23 <https://www.audiusa.com/newsroom/corporate/executive-team/scott-keogh>.

24 ¹⁷² Michael Walker, *L.A. Auto Show: VW, Porsche, Audi Execs Address Diesel Emissions*
Scandal, THE HOLLYWOOD REPORTER (Nov. 20, 2015),
25 <http://www.hollywoodreporter.com/news/vw-porsche-audi-execs-apologize-842581>.

26 ¹⁷³ Jackie Wattles, *Volkswagen stripped of two 'Green Car of the Year' titles*, CNN MONEY (Oct.
27 1, 2015), <http://money.cnn.com/2015/10/01/news/companies/volkswagen-green-car-of-year-awards-rescinded/>.

28 ¹⁷⁴ Mike Duff, *Audi Chief Thinks Diesel Has a Future in the U.S.*, CAR AND DRIVER (Jan. 19,
29 2016), <http://blog.caranddriver.com/audi-chief-thinks-diesel-has-a-future-in-the-u-s/>.

30 ¹⁷⁵ *President and Chief Executive Officer - PCNA, Inc.*, PORSCHE CARS NORTH AMERICA (last
31 visited Feb. 7, 2016), http://press.porsche.com/more_about/executives/pcna/platen.php.

1 474. On November 1, 2015, as part of a management shakeup in the wake of
2 Volkswagen's diesel scandal, von Platen left his position at Porsche America to become a
3 member of the Executive Board for Sales and Marketing at Porsche AG.

4 475. Von Platen knew or recklessly disregarded that the Class Vehicles utilized defeat
5 devices in order to evade federal and state vehicle emissions standards.

6 **g. Ulrich Hackenberg**

7 476. On February 1, 2007, unnamed co-conspirator Hackenberg was appointed to
8 Volkswagen's Brand Board of Development. In this capacity, he was responsible for the
9 technical development of all of the Volkswagen Defendant's brands.¹⁷⁶

10 477. On July 1, 2013, Hackenberg was appointed to the Board of Management of Audi
11 AG and made responsible for its Technical Development department. In this capacity,
12 Hackenberg spearheaded the development of Audi's TDI "CleanDiesel" engines, which
13 ultimately contained the illegal defeat devices at issue in this case. As he explained in a press
14 release, Hackenberg's strategy for Audi's technical development included the following:

15 [P]ushing forward with development in . . . our TDI engines in the
16 USA -- our clean diesel offensive is bearing substantial fruit. In
17 China, too, we are already introducing the first clean diesel models
18 and watching developments there very closely. We also expect a
 great deal from g-tron technology, the most sustainable type of gas
 drive.¹⁷⁷

19 Hackenberg's statement is illustrative of the Volkswagen Defendants' efforts to falsely bill Class
20 Vehicles as "clean," "environmentally friendly," and "fuel efficient" when the opposite was true.

21 **h. Frank Tuch**

22 478. In 2010, unnamed co-conspirator Tuch was appointed head of quality control
23 across the various Volkswagen Defendants' brands. Defendant Winterkorn hoped Tuch would
24 bring the Volkswagen Defendants "forward in the USA."¹⁷⁸ Volkswagen's in-house magazine

25 ¹⁷⁶ [https://www.audiusa.com/newsroom/corporate/audi-ag-board-of-management/ulrich-](https://www.audiusa.com/newsroom/corporate/audi-ag-board-of-management/ulrich-hackenberg)
26 [hackenberg](https://www.audiusa.com/newsroom/corporate/audi-ag-board-of-management/ulrich-hackenberg)

27 ¹⁷⁷ "Gentlemen Start Your Engines," [http://audi-encounter.com/magazine/technology/01-](http://audi-encounter.com/magazine/technology/01-2015/126-gentlemen-start-your-engines)
28 [2015/126-gentlemen-start-your-engines](http://audi-encounter.com/magazine/technology/01-2015/126-gentlemen-start-your-engines) (2014).

¹⁷⁸ [http://www.marketwatch.com/story/volkswagen-suspends-quality-control-chief-2015-10-20-](http://www.marketwatch.com/story/volkswagen-suspends-quality-control-chief-2015-10-20-84855452)
[84855452](http://www.marketwatch.com/story/volkswagen-suspends-quality-control-chief-2015-10-20-84855452)

1 reported that Tuch and Winterkorn worked closely to honor that pledge, meeting “every Monday
2 to discuss quality issues, often taking test drives in vehicles manufactured by the company.” In
3 his role as head of quality assurance, Tuch was also intimately familiar with Volkswagen, Audi,
4 and Porsche engines and transmissions. Among his duties was “the development and production
5 of components such as engines, transmissions, seats and suspension parts” for small, compact,
6 midsize, and full size product lines, including all the Class Vehicles.¹⁷⁹

7 479. Significantly, Tuch also oversaw “36 laboratory locations throughout the world in
8 terms of training and auditing and also finds staff to fill laboratory manager positions,” including
9 the Volkswagen Defendants’ laboratories in the United States, which were primarily responsible
10 for emissions testing of the Class Vehicles.¹⁸⁰

11 480. Tuch knew or recklessly disregarded that the Class Vehicles used defeat devices to
12 evade federal and state vehicle emissions standards.

13 **i. Wolfgang Hatz**

14 481. Unnamed co-conspirator Hatz directed engine development for the Porsche, Audi
15 and Volkswagen brands. In this role, he supervised the development of the engines and
16 transmissions for the Class Vehicles issue and had intimate knowledge of their technical details.

17 482. Hatz knew or recklessly disregarded that the Class Vehicles used defeat devices to
18 evade federal and state vehicle emissions standards.

19 **3. The Bosch Defendants**

20 483. As explained above, Bosch supplied the EDC Unit 17 that was used as the defeat
21 device in the Class Vehicles.¹⁸¹

22 484. Defendant Bosch GmbH is a multinational engineering and electronics company
23 headquartered in Gerlingen, Germany, which has hundreds of subsidiaries and companies. It
24 wholly owns defendant Bosch LLC, a Delaware limited liability company headquartered in
25

26 ¹⁷⁹ Jack Ewing. “Volkswagen Suspends 5th Executive in Emissions Scandal,” The New York
Times (Oct. 20, 2015).

27 ¹⁸⁰ [http://www.volkswagen-
larriere.de/en/what we do/corporate divisions/quality assurance.html](http://www.volkswagen-larriere.de/en/what_we_do/corporate_divisions/quality_assurance.html)

28 ¹⁸¹ http://www.bosch-presse.de/presseforum/details.htm?txtID=7421&tk_id=108

1 Farmington Hills, Michigan. As explained above, Bosch's sectors and divisions are grouped by
2 subject matter, not location. The Mobility Solutions (formerly Automotive Technology) is the
3 Bosch sector at issue, particularly its Diesel Services division, and it encompasses employees of
4 Bosch GmbH and Bosch LLC. These individuals were responsible for the design, manufacture,
5 development, customization, and supply of the defeat device to Volkswagen for use in the Class
6 Vehicles.

7 485. Defendant Denner has been Chairman and CEO of Bosch since July 2012, after
8 decades of working in Bosch's Engine ECU Development division, managing the development
9 and sale of automotive engine computers, such as the EDC units that Volkswagen used as defeat
10 devices. Denner fostered Bosch's relationship with key corporate partners, such as Volkswagen,
11 which brought in billions of dollars in annual revenue for Bosch. Denner communicated directly
12 with Winterkorn about products sold to Volkswagen. For example, when Bosch had a shortage of
13 oxygen sensor parts that Volkswagen had ordered, Denner reached out directly to Winterkorn.
14 Further, Bosch met in 2014 in person with Winterkorn at VW AG headquarters to discuss, among
15 other topics, the "akustikfunktion" in diesel engines.

16 486. Bosch worked with Volkswagen to develop and implement a specific and unique
17 set of software algorithms to surreptitiously evade emissions regulations. Bosch customized their
18 EDC Unit 17s for installation in the Class Vehicles with unique software code to detect when it
19 was undergoing emissions testing, as described above.¹⁸²

20 487. Bosch was well aware that the EDC Unit 17 would be used by Volkswagen to
21 cheat on emissions testing. As described above, on June 2, 2008, Bosch's [REDACTED] wrote to
22 his counterparts at Volkswagen, seeking legal indemnification from Volkswagen for the
23 "expanded use" of the EDC Unit 17s which it called a "defeat device."¹⁸³ [REDACTED] explained that
24 "[t]he usage of a defeat device is prohibited pursuant to . . . US Law (CARB/EPA) (see definition
25 footnote 2),"¹⁸⁴ and warned that the agreed-to software modifications would allow "the certified
26

27 ¹⁸² <http://blog.caranddriver.com/epa-investigating-bosch-over-vw-diesel-cheater-software>

28 ¹⁸³ VW-MDL2672-02570091 (English translation).

¹⁸⁴ *Id.* at -92.

1 dataset [to be] replaced with another, possibly non-certified data set,” which could cause “the
2 vehicle’s general operating license (registration) [to] become void.”¹⁸⁵ Volkswagen rebuffed
3 Bosch’s request, yet Bosch nonetheless shipped the modified software to Volkswagen for use in
4 the Class Vehicles for another seven years. Bosch was also critical to the concealment of the
5 defeat device in communications with U.S. regulators and went even further to actively lobby
6 U.S. lawmakers on behalf of Volkswagen and its “Clean Diesel” vehicles.

7 **B. The Defeat Device RICO Enterprise Sought to Increase Defendants’ Profits**
8 **and Revenues**

9 488. The Defeat Device RICO Enterprise began as early as 2005, when an internal
10 feasibility study at VW AG identified Bosch’s EDC17 as a solution to their engineering dilemma
11 by reducing diesel vehicle emissions of nitrogen oxides (“NOx”) through a change in engine
12 electronics. Starting in mid-2005, Volkswagen and Bosch entered into a series of agreements to
13 develop what ultimately became the defeat device for the Class Vehicles. The Defeat Device
14 RICO Enterprise continued without interruption for a decade, as Defendants successfully installed
15 Bosch EDC Unit 17’s in hundreds of thousands of the Class Vehicles sold in the U.S. It was not
16 until September 2015 that the Defeat Device RICO Enterprise began to unravel, when U.S.
17 regulators finally uncovered Defendants’ scheme.

18 489. At all relevant times, the Defeat Device RICO Enterprise: (a) had an existence
19 separate and distinct from each RICO Defendant; (b) was separate and distinct from the pattern of
20 racketeering in which the RICO Defendants engaged; and (c) was an ongoing and continuing
21 organization consisting of legal entities, including the Volkswagen Defendants, their network of
22 dealerships, the Individual Defendants, the Bosch Defendants, and other entities and individuals
23 associated for the common purpose of designing, manufacturing, distributing, testing, and selling
24 the Class Vehicles to Plaintiffs and the Nationwide Class through fraudulent COCs and EOs, false
25 emissions tests, deceptive and misleading sales tactics and materials, and deriving profits and
26 revenues from those activities. Each member of the Defeat Device RICO Enterprise shared in the
27

28 ¹⁸⁵ *Id.* at -93.

1 bounty generated by the enterprise, *i.e.*, by sharing the benefit derived from increased sales
2 revenue generated by the scheme to defraud Class members nationwide.¹⁸⁶

3 490. The Defeat Device RICO Enterprise functioned by selling vehicles and component
4 parts to the consuming public. Many of these products are legitimate, including vehicles that do
5 not contain defeat devices. However, the RICO Defendants and their co-conspirators, through
6 their illegal Enterprise, engaged in a pattern of racketeering activity, which involves a fraudulent
7 scheme to increase revenue for Defendants and the other entities and individuals associated-in-
8 fact with the Enterprise's activities through the illegal scheme to sell the Class Vehicles.

9 491. The Defeat Device RICO Enterprise engaged in, and its activities affected
10 interstate and foreign commerce, because it involved commercial activities across state
11 boundaries, such as the marketing, promotion, advertisement and sale or lease of the Class
12 Vehicles throughout the country, and the receipt of monies from the sale of the same.

13 492. Within the Defeat Device RICO Enterprise, there was a common communication
14 network by which co-conspirators shared information on a regular basis. The Defeat Device
15 RICO Enterprise used this common communication network for the purpose of manufacturing,
16 marketing, testing, and selling the Class Vehicles to the general public nationwide.

17 493. Each participant in the Defeat Device RICO Enterprise had a systematic linkage to
18 each other through corporate ties, contractual relationships, financial ties, and continuing
19 coordination of activities. Through the Defeat Device RICO Enterprise, the RICO Defendants
20 functioned as a continuing unit with the purpose of furthering the illegal scheme and their
21 common purposes of increasing their revenues and market share, and minimizing losses.

22 494. The RICO Defendants participated in the operation and management of the Defeat
23 Device RICO Enterprise by directing its affairs, as described herein. While the RICO Defendants
24 participated in, and are members of, the enterprise, they have a separate existence from the
25

26 ¹⁸⁶ The Volkswagen Defendants sold more Class Vehicles by utilizing an emissions control
27 system that was cheaper than SCRs, all the while charging consumers a premium for purportedly
28 "clean," "environmentally friendly" and "fuel efficient" Class Vehicles. Bosch, in turn, sold
more EDC Units because the Volkswagen Defendants manufactured and sold more Class
Vehicles.

1 enterprise, including distinct legal statuses, different offices and roles, bank accounts, officers,
2 directors, employees, individual personhood, reporting requirements, and financial statements.

3 495. The Volkswagen RICO Defendants exerted substantial control over the Defeat
4 Device RICO Enterprise, and participated in the affairs of the Defeat Device RICO Enterprise by:

- 5 a. transitioning their diesel vehicle design away from an effective SCR emissions
6 control system and adopting instead the ineffective NO_x trap technology that
7 generates high levels of toxic pollutants;
- 8 b. designing the Class Vehicles with defeat devices;
- 9 c. failing to correct or disable the defeat devices when warned;
- 10 d. manufacturing, distributing, and selling the Class Vehicles that emitted greater
11 pollution than allowable under the applicable regulations;
- 12 e. misrepresenting and omitting (or causing such misrepresentations and
13 omissions to be made) vehicle specifications on COC and EO applications;
- 14 f. introducing the Class Vehicles into the stream of U.S. commerce without a
15 valid EPA COC and/or CARB EO;
- 16 g. concealing the existence of the defeat devices and the unlawfully high
17 emissions from regulators and the public;
- 18 h. persisting in the manufacturing, distribution, and sale of the Class Vehicles
19 even after questions were raised about the emissions testing and discrepancies
20 concerning the same;
- 21 i. misleading government regulators as to the nature of the defeat devices and the
22 defects in the Class Vehicles;
- 23 j. misleading the driving public as to the nature of the defeat devices and the
24 defects in the Class Vehicles;
- 25 k. designing and distributing marketing materials that misrepresented and
26 concealed the defect in the vehicles;
- 27 l. otherwise misrepresenting or concealing the defective nature of the Class
28 Vehicles from the public and regulators;

- 1 m. illegally selling and/or distributing the Class Vehicles;
- 2 n. collecting revenues and profits from the sale of such products; and
- 3 o. ensuring that the other RICO Defendants and unnamed co-conspirators
- 4 complied with the fraudulent scheme.

5 496. Bosch also participated in, operated and/or directed the Defeat Device RICO
6 Enterprise. Bosch participated in the fraudulent scheme by manufacturing, installing, testing,
7 modifying, and supplying the EDC Unit 17 which operated as a “defeat device” in the Class
8 Vehicles. Bosch exercised tight control over the coding and other aspects of the defeat device
9 software and was closely collaborated with Volkswagen to develop, customize, and calibrate the
10 defeat devices. Additionally, Bosch continuously cooperated with the Volkswagen Defendants to
11 ensure that the EDC Unit 17 was fully integrated into the Class Vehicles. Bosch also participated
12 in the affairs of the Enterprise by concealing the defeat devices on U.S. documentation and in
13 communications with U.S. regulators. Finally, Bosch actively lobbied lawmakers in the U.S. on
14 Volkswagen’s behalf. Bosch collected tens of millions of dollars in revenues and profits from
15 the hidden defeat devices installed in the Class Vehicles.

16 497. Without the RICO Defendants’ willing participation, including Bosch’s active
17 involvement in developing and supplying the critical defeat devices for the Class Vehicles, the
18 Defeat Device RICO Enterprise’s scheme and common course of conduct would not have been
19 successful.

20 498. The RICO Defendants directed and controlled the ongoing organization necessary
21 to implement the scheme at meetings and through communications of which Plaintiffs cannot
22 fully know at present, because such information lies in the Defendants’ and others’ hands.

23 **C. Mail and Wire Fraud**

24 499. To carry out, or attempt to carry out the scheme to defraud, the RICO Defendants,
25 each of whom is a person associated-in-fact with the Defeat Device RICO Enterprise, did
26 knowingly conduct or participate, directly or indirectly, in the conduct of the affairs of the Defeat
27 Device RICO Enterprise through a pattern of racketeering activity within the meaning of 18
28

1 U.S.C. §§ 1961(1), 1961(5) and 1962(c), and which employed the use of the mail and wire
2 facilities, in violation of 18 U.S.C. § 1341 (mail fraud) and § 1343 (wire fraud).

3 500. Specifically, the RICO Defendants have committed, conspired to commit, and/or
4 aided and abetted in the commission of, at least two predicate acts of racketeering activity (*i.e.*,
5 violations of 18 U.S.C. §§ 1341 and 1343), within the past ten years. The multiple acts of
6 racketeering activity which the RICO Defendants committed, or aided or abetted in the
7 commission of, were related to each other, posed a threat of continued racketeering activity, and
8 therefore constitute a “pattern of racketeering activity.” The racketeering activity was made
9 possible by the RICO Defendants’ regular use of the facilities, services, distribution channels, and
10 employees of the Defeat Device RICO Enterprise. The RICO Defendants participated in the
11 scheme to defraud by using mail, telephone and the Internet to transmit mailings and wires in
12 interstate or foreign commerce.

13 501. The RICO Defendants used, directed the use of, and/or caused to be used,
14 thousands of interstate mail and wire communications in service of their scheme through virtually
15 uniform misrepresentations, concealments and material omissions.

16 502. In devising and executing the illegal scheme, the RICO Defendants devised and
17 knowingly carried out a material scheme and/or artifice to defraud Plaintiffs and the Nationwide
18 Class or to obtain money from Plaintiffs and the Nationwide Class by means of materially false or
19 fraudulent pretenses, representations, promises, or omissions of material facts. For the purpose of
20 executing the illegal scheme, the RICO Defendants committed these racketeering acts, which
21 number in the thousands, intentionally and knowingly with the specific intent to advance the
22 illegal scheme.

23 503. The RICO Defendants’ predicate acts of racketeering (18 U.S.C. § 1961(1))
24 include, but are not limited to:

- 25 a. Mail Fraud: The RICO Defendants violated 18 U.S.C. §
26 1341 by sending or receiving, or by causing to be sent
27 and/or received, materials via U.S. mail or commercial
28 interstate carriers for the purpose of executing the unlawful
scheme to design, manufacture, market, and sell the Class
Vehicles by means of false pretenses, misrepresentations,
promises, and omissions.

1 b. Wire Fraud: The RICO Defendants violated 18 U.S.C. §
2 1343 by transmitting and/or receiving, or by causing to be
3 transmitted and/or received, materials by wire for the
4 purpose of executing the unlawful scheme to defraud and
 obtain money on false pretenses, misrepresentations,
 promises, and omissions.

5 504. The RICO Defendants' use of the mails and wires include, but are not limited to,
6 the transmission, delivery, or shipment of the following by the RICO Defendants or third parties
7 that were foreseeably caused to be sent as a result of Defendants' illegal scheme:

- 8 a. the Class Vehicles themselves;
- 9 b. component parts for the defeat devices;
- 10 c. essential hardware for the Class Vehicles;
- 11 d. falsified emission tests;
- 12 e. fraudulent applications for EPA COCs and CARB EOs;
- 13 f. fraudulently-obtained EPA COCs and CARB EOs;
- 14 g. vehicle registrations and plates as a result of the fraudulently-obtained EPA
15 COCs and CARB EOs;
- 16 h. documents and communications that facilitated the falsified emission tests;
- 17 i. false or misleading communications intended to lull the public and regulators
18 from discovering the defeat devices and/or other auxiliary devices;
- 19 j. sales and marketing materials, including advertising, websites, product
20 packaging, brochures, and labeling, which misrepresented and concealed the
21 true nature of the Class Vehicles;
- 22 k. documents intended to facilitate the manufacture and sale of the Class
23 Vehicles, including bills of lading, invoices, shipping records, reports and
24 correspondence;
- 25 l. documents to process and receive payment for the Class Vehicles by
26 unsuspecting Class members, including invoices and receipts;
- 27 m. payments to Bosch;
- 28 n. millions of dollars in compensation to the Individual Defendants;

1 o. deposits of proceeds; and

2 p. other documents and things, including electronic communications.

3 505. The RICO Defendants (or their agents), for the purpose of executing the illegal
4 scheme, sent and/or received (or caused to be sent and/or received) by mail or by private or
5 interstate carrier, shipments of the Class Vehicles and related documents by mail or a private
6 carrier affecting interstate commerce, including the items described above and alleged below:

<u>From</u>	<u>To</u>	<u>Date</u>	<u>Description</u>
Bosch LLC	VW America	December 2009	Documents and communications related to Volkswagen "Clean Diesel" Partnership, 2009 Review and 2010 Opportunities, Bosch Diesel Systems North America Marketing. ¹⁸⁷
Bosch LLC	CARB	September 2009	Documents and communications related to Diesel Tech Day in El Monte, CA. ¹⁸⁸
VW America Manufacturing Plant	South Bay VW	October 2011	Shipment of Volkswagen Jetta TDI Class Vehicles.
Washington State Department of Licensing	Dan Clements	October 2011	Mailed registration card for 2012 Volkswagen Toureg TDI based on false emission test due to concealed defeat device.
CARB	VW America	July 2014	Mailed EO for 2015 Class Vehicles based on fraudulent application.
Massachusetts Department of Transportation	Gregory Gotta	August 2014	Mailed certificate of registration for 2014 Porsche Cayenne Diesel based on false emission test due to concealed defeat device.
California Department of Motor Vehicles	Phillip Clark	December 2014	Mailed registration card for 2014 Volkswagen Touareg TDI based on false emission test due to concealed defeat device.
California Department of Motor Vehicles	Caroline Hoag	December 2014	Mailed renewed registration for 2011 Jetta SportWagen TDI based on false emission test due to concealed defeat device.
Washington State Department of Licensing	Dan Clements	February 2015	Mailed registration certificate for 2012 Volkswagen Touareg TDI based on false emission test due to concealed defeat device.

27 ¹⁸⁷ See VW-MDL2672-06900942.

28 ¹⁸⁸ See VW-MDL2672-07672454.

<u>From</u>	<u>To</u>	<u>Date</u>	<u>Description</u>
California Department of Motor Vehicles	Lena Brook	March 2015	Mailed validated vehicle registration for 2015 Audi Q5 TDI based on false emission test due to concealed defeat device.
California Department of Motor Vehicles	Jerome Fohet	April 2016	Mailed registration card for 2014 Porsche Cayenne Diesel based on false emission test due to concealed defeat device. ¹⁸⁹

506. The RICO Defendants (or their agents), for the purpose of executing the illegal scheme, transmitted (or caused to be transmitted) in interstate commerce by means of wire communications, certain writings, signs, signals and sounds, including those items described above and alleged below:

<u>From</u>	<u>To</u>	<u>Date</u>	<u>Description</u>
Pignataro Volkswagen, Washington	American Express, North Carolina	April 2012	Credit card transaction in the amount of \$5,000 for down payment on 2012 VW Touareg by Dan Clements.
CARB, California	VW America, Virginia	May 2014	Email communications concerning WVU study.
VW America, Michigan	EPA, Michigan; CARB, California	May 2012	Misleading application(s) for COC and EO for 2013 VW Passat TDI.
Bosch America, Farmington Hills, Michigan	Volkswagen, Virginia	January 2013	Email communications regarding Bosch's promotion of VW Passat TDI through trip from Atlanta to Washington, D.C. ¹⁹⁰
VW LLC, Michigan	EPA, Michigan; CARB, California	January 2013	Misleading application(s) for COCs and EOs for 2014 Audi A6, A7, A8L, A8, and Q5.
Porsche America, Atlanta	EPA, Michigan; CARB, California	April 2013	Misleading application(s) for COC and EO for 2014 Porsche Cayenne Diesel.
VW America, Virginia	CARB, California	October 2014	Misleading communications about discrepancies identified in WVU study.
Audi of Lynnbrook, New York	American Express, North Carolina	December 2014	Credit card transaction in the amount of \$2,586.45 for down payment on lease of 2015 Audi A3 by Kevin and Elizabeth Bedard.
VW America,	EPA, District of	December 2014	Misleading communications

¹⁸⁹ Volkswagen caused hundreds of thousands of similar registration cards to be mailed via the U.S. Mail to Class Members nationwide.

¹⁹⁰ VW-MDL2672-08348204.

<u>From</u>	<u>To</u>	<u>Date</u>	<u>Description</u>
Virginia	Columbia		about software patch for the Class Vehicles without revealing fact of the defeat device.
Bosch LLC, Michigan	CARB, California	January 2015	Email communication re: meeting with CARB. ¹⁹¹
VW America, Michigan	Audi AG, Germany	February 2015	Email communication concerning meeting with Bosch and CARB re: fault codes. ¹⁹²

507. The RICO Defendants also used the internet and other electronic facilities to carry out the scheme and conceal the ongoing fraudulent activities. Specifically, the American Volkswagen Defendants, under the direction and control of the German Volkswagen and Individual Volkswagen Defendants, made misrepresentations about the Class Vehicles on their websites, YouTube, and through ads online, all of which were intended to mislead regulators and the public about the fuel efficiency, emissions standards, and other performance metrics.

508. The RICO Defendants also communicated by U.S. mail, by interstate facsimile, and by interstate electronic mail with various other affiliates, regional offices, divisions, dealerships and other third-party entities in furtherance of the scheme.

509. The mail and wire transmissions described herein were made in furtherance of Defendants' scheme and common course of conduct to deceive regulators and consumers and lure consumers into purchasing the Class Vehicles, which Defendants knew or recklessly disregarded as emitting illegal amounts of pollution, despite their advertising campaign that the Class Vehicles were "clean" diesel cars.

510. Many of the precise dates of the fraudulent uses of the U.S. mail and interstate wire facilities have been deliberately hidden, and cannot be alleged without access to Defendants' books and records. However, Plaintiffs have described the types of, and in some instances, occasions on which the predicate acts of mail and/or wire fraud occurred. They include thousands of communications to perpetuate and maintain the scheme, including the things and documents described in the preceding paragraphs.

¹⁹¹ VW-MDL-2672-02461438.

¹⁹² VW-MDL2672-00902633.

1 511. The RICO Defendants have not undertaken the practices described herein in
2 isolation, but as part of a common scheme and conspiracy. In violation of 18 U.S.C. § 1962(d),
3 the RICO Defendants conspired to violate 18 U.S.C. § 1962(c), as described herein. Various
4 other persons, firms and corporations, including third-party entities and individuals not named as
5 defendants in this Complaint, have participated as co-conspirators with the RICO Defendants in
6 these offenses and have performed acts in furtherance of the conspiracy to increase or maintain
7 revenues, increase market share, and/or minimize losses for the Defendants and their unnamed
8 co-conspirators throughout the illegal scheme and common course of conduct.

9 512. The RICO Defendants aided and abetted others in the violations of the above laws,
10 thereby rendering them indictable as principals in the 18 U.S.C. §§ 1341 and 1343 offenses.

11 513. To achieve their common goals, the RICO Defendants hid from the general public
12 the unlawfulness and emission dangers of the Class Vehicles and obfuscated the true nature of the
13 defect even after regulators raised concerns. The RICO Defendants suppressed and/or ignored
14 warnings from third parties, whistleblowers, and governmental entities about the discrepancies in
15 emissions testing and the defeat devices present in the Class Vehicles.

16 514. The RICO Defendants and each member of the conspiracy, with knowledge and
17 intent, have agreed to the overall objectives of the conspiracy and participated in the common
18 course of conduct to commit acts of fraud and indecency in designing, manufacturing,
19 distributing, marketing, testing, and/or selling the Class Vehicles (and the defeat devices
20 contained therein).

21 515. Indeed, for the conspiracy to succeed each of the RICO Defendants and their co-
22 conspirators had to agree to implement and use the similar devices and fraudulent tactics—
23 specifically complete secrecy about the defeat devices in the Class Vehicles.

24 516. The RICO Defendants knew and intended that government regulators, as well as
25 Plaintiffs and Class members, would rely on the material misrepresentations and omissions made
26 by them and the American Volkswagen Defendants about the Class Vehicles. The RICO
27 Defendants knew and intended that consumers would incur costs as a result. As fully alleged
28 herein, Plaintiffs, along with hundreds of thousands of other consumers, relied upon Defendants’

1 representations and omissions that were made or caused by them. Plaintiffs' reliance is made
2 obvious by the fact that they purchased illegal vehicles that never should have been introduced
3 into the U.S. stream of commerce and whose worth has now plummeted since the scheme was
4 revealed. In addition, the EPA, CARB, and other regulators relied on the misrepresentations and
5 material omissions made or caused to be made by the RICO Defendants; otherwise Volkswagen
6 could not have obtained valid COCs and EOs to sell the Class Vehicles.

7 517. As described herein, the RICO Defendants engaged in a pattern of related and
8 continuous predicate acts for years. The predicate acts constituted a variety of unlawful activities,
9 each conducted with the common purpose of obtaining significant monies and revenues from
10 Plaintiffs and Class members based on their misrepresentations and omissions, while providing
11 Class Vehicles that were worth significantly less than the purchase price paid. The predicate acts
12 also had the same or similar results, participants, victims, and methods of commission. The
13 predicate acts were related and not isolated events.

14 518. The predicate acts all had the purpose of generating significant revenue and profits
15 for the RICO Defendants at the expense of Plaintiffs and Class members. The predicate acts were
16 committed or caused to be committed by the RICO Defendants through their participation in the
17 Defeat Device RICO Enterprise and in furtherance of its fraudulent scheme, and were interrelated
18 in that they involved obtaining Plaintiffs' and Class members' funds and avoiding the expenses
19 associated with remediating the Class Vehicles.

20 519. During the design, manufacture, testing, marketing and sale of the Class Vehicles,
21 the RICO Defendants shared technical, marketing, and financial information that revealed the
22 existence of the defeat devices contained therein. Nevertheless, the RICO Defendants shared and
23 disseminated information that deliberately misrepresented the Class Vehicles as legal, "clean,"
24 "environmentally friendly," and "fuel efficient."

25 520. By reason of, and as a result of the conduct of the RICO Defendants, and in
26 particular, their pattern of racketeering activity, Plaintiffs and Class members have been injured in
27 their business and/or property in multiple ways, including but not limited to:

- 28 a. Purchase or lease of an illegal, defective Class Vehicle;

- b. Overpayment for a Class Vehicle, in that Plaintiffs and Class members believed they were paying for a vehicle that met certain emission and fuel efficiency standards and obtained a vehicle that was anything but;
- c. The value of the Class Vehicles has diminished, thus reducing their resale value;
- d. Other out-of-pocket and loss-of-use expenses;
- e. Payment for alternative transportation; and
- f. Loss of employment due to lack of transportation.

521. The RICO Defendants' violations of 18 U.S.C. § 1962(c) and (d) have directly and proximately caused injuries and damages to Plaintiffs and Class members, and Plaintiffs and Class members are entitled to bring this action for three times their actual damages, as well as injunctive/equitable relief, costs, and reasonable attorneys' fees pursuant to 18 U.S.C. § 1964(c).

**FEDERAL COUNT II:
Violations of 15 U.S.C. §§ 2301, *et seq.*,
The Magnuson-Moss Warranty Act ("MMWA")**

522. Plaintiffs incorporate by reference each preceding paragraph as though fully set forth herein.

523. Plaintiffs bring this Count on behalf of the Nationwide Class and against the following Defendants: VW AG, VW America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the "VW Entity Defendants").

524. This Court has jurisdiction to decide claims brought under 15 U.S.C. § 2301 by virtue of 28 U.S.C. § 1332 (a)-(d).

525. Plaintiffs are "consumers" within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(3).

526. The VW Entity Defendants are "supplier[s]" and "warrantor[s]" within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(4)-(5).

527. The Class Vehicles are "consumer products" within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(1).

1 528. 15 U.S.C. § 2310(d)(1) provides a cause of action for any consumer who is
2 damaged by the failure of a warrantor to comply with a written or implied warranty.

3 529. The VW Entity Defendants’ provided Plaintiffs and the Nationwide Class with the
4 following two express warranties, which are covered under 15 U.S.C. § 2301(6):

- 5 a. **Manufacturer’s Warranty**—This written warranty
6 provides “bumper-to-bumper” limited express warranty
7 coverage for a minimum of 3 years or 36,000 miles,
8 whichever comes first. The warranty covers emissions
9 related repairs.
- 10 b. **Federal Emissions Warranty**—Consistent with federal
11 law, the Volkswagen Defendants provided a “performance
12 warranty” and a “design and defect warranty.” In the event
13 that a vehicle fails an emissions test, these warranties cover
14 the repair and replacement of: all emission control and
15 emission-related parts for two years or 24,000 miles
16 (whichever comes first); and specified major emission
17 control components, including catalytic converters,
18 electronic emissions control unit or computer and on-board
19 emissions diagnostic device or computer for 8 years or
20 80,000 miles (whichever comes first).

21 530. The Class Vehicles’ implied warranties are covered under 15 U.S.C. § 2301(7).

22 531. The VW Entity Defendants breached these warranties as described in more detail
23 above. Without limitation, the Class Vehicles share a common design defect in that they emit
24 more pollutants than (a) is allowable under the applicable regulations and (b) the VW Entity
25 Defendants repeatedly represented were emitted to their customers, the public, and regulators.
26 The VW Entity Defendants have admitted that the Class Vehicles are illegal, defective and of
27 lesser quality than advertised.

28 532. Plaintiffs and members of the Nationwide Class have had sufficient direct dealings
with the VW Entity Defendants or their agents (dealerships) to establish privity of contract
between the VW Entity Defendants, on the one hand, and Plaintiffs and other Class members, on
the other hand. Nonetheless, privity is not required here because Plaintiffs and each of the other
Class members are intended third-party beneficiaries of contracts between the VW Entity
Defendants or their dealers, and of their implied warranties. The dealers were not intended to be
the ultimate users of the Class Vehicles and have no rights under the warranty agreements

1 provided with the Class Vehicles; the warranty agreements were designed for and intended to
2 benefit consumers only.

3 533. Affording the VW Entity Defendants a reasonable opportunity to cure their breach
4 of written warranties would be unnecessary and futile. At the time of sale or lease of each Class
5 Vehicle, the Volkswagen Defendants knew of the misrepresentations concerning the Class
6 Vehicles' inability to perform as warranted, but nonetheless failed to rectify the situation and/or
7 disclose the defective design. Indeed, the VW Entity Defendants' quest for remedies has been
8 unsuccessful to date.¹⁹³ Under the circumstances, the remedies available under any informal
9 settlement procedure would be inadequate, and any requirement that Plaintiffs or Class members
10 resort to an informal dispute resolution procedure and/or afford the VW Entity Defendants a
11 reasonable opportunity to cure their breach of warranties is excused and thereby deemed satisfied.

12 534. Plaintiffs and the other Nationwide Class members would suffer economic
13 hardship if they returned their Class Vehicles, but did not receive the return of all payments made
14 by them to the VW Entity Defendants. Because the VW Entity Defendants are refusing to
15 acknowledge any revocation of acceptance and have not immediately returned any payments
16 made, Plaintiffs and the Nationwide Class have not re-accepted their Class Vehicles by retaining
17 them.

18 535. The amount in controversy of Plaintiffs' individual claims meets or exceeds the
19 sum of \$25. The amount in controversy of this action exceeds the sum of \$50,000, exclusive of
20 interest and costs, computed on the basis of all claims to be determined in this lawsuit. Plaintiffs,
21 individually and on behalf of the Nationwide Class, seek all damages permitted by law, including
22 diminution in the value of their vehicles, in an amount to be proven at trial.

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28 ¹⁹³ <http://arstechnica.com/cars/2016/01/california-regulator-rejects-volkswagens-plan-to-fix-2-0l-diesels-epa-agrees/>

COMMON LAW CLAIMS**COMMON LAW COUNT I:
FRAUD**

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4 536. Plaintiffs incorporate by reference each preceding paragraph as though fully set
5 forth herein.

6 537. Plaintiffs bring this Count on behalf of the Nationwide Class or, in the alternative,
7 on behalf of the State Classes, against all Defendants.

8 538. As alleged extensively above, Volkswagen intentionally concealed and suppressed
9 material facts concerning the illegality and quality of the Class Vehicles in order to defraud and
10 mislead both regulators and the Class about the true nature of the Class Vehicles. Defendants
11 accomplished their scheme (and the concealment thereof) by installing, aiding in the installation
12 of, and/or failing to disclose the defeat devices in the Class Vehicles that caused the vehicles to
13 operate in a low-emission test mode only during testing. During normal operation and use, the
14 Class Vehicles emitted grossly larger quantities of noxious pollutants and contaminants, up to 40
15 times the legal limit. The result was precisely what Volkswagen had intended—the Class
16 Vehicles were able to “pass” emission testing by way of deliberately-induced false readings and
17 thus successfully imported and sold and/or leased to hundreds of thousands of unwitting
18 American consumers.

19 539. Volkswagen valued its profits over the trust that Plaintiffs and other Class
20 members entrusted to it. As one customer, Priya Shah, put it: “It’s just a blatant disregard and
21 intentional manipulation of the system. That’s just a whole other level of not only lying to the
22 government, but also lying to your consumer. People buy diesel cars from Volkswagen because
23 they feel they are “clean” diesel cars.”¹⁹⁴ In the words of Ms. Shah, which no doubt reflect the
24 sentiments of other Class members: “I don’t want to be spewing noxious gases into the
25 environment.”¹⁹⁵

26
27 ¹⁹⁴ <http://www.latimes.com/business/la-fi-vw-reaction-20150918-htlstory.html> (last visited on
Feb. 22, 2016).

28 ¹⁹⁵ *Id.*

1 540. Necessarily, Volkswagen also took steps to ensure that its employees and co-
2 conspirators like Bosch, did not reveal the details of its scheme to regulators or consumers,
3 including Plaintiffs and Class members. Volkswagen did so to falsely assure purchasers and
4 lessors of its vehicles, including previously-owned vehicles, that Volkswagen is a reputable
5 manufacturer that complies with applicable law, including federal and state clean air laws and
6 emission regulations, and that its vehicles likewise comply with applicable laws and regulations.

7 541. Volkswagen’s false representations and omissions were material to consumers, as
8 they concerned both the legality and core marketing features of the Class Vehicles. As
9 Volkswagen well knew, Plaintiffs and other Class members highly valued that the vehicles they
10 were purchasing or leasing were “clean” diesel cars, and they paid a premium accordingly.

11 542. Plaintiffs and Class members reasonably relied on Defendants’ deception, and
12 Defendants intended that they would so rely. Plaintiffs and Class members had no way of
13 discerning that Defendants were, in fact, deceiving them because the defeat devices were
14 extremely sophisticated technology and could not be discerned by regulators, much less
15 consumers. Plaintiffs and Class members did not, and could not, unravel Defendants’ scheme on
16 their own. In fact, it took years before the engineering community—specifically a research team
17 at WVU’s Center for Alternative Fuels, Engines & Emissions—detected the discrepancy of the
18 emissions spewed from the Class Vehicles using sophisticated, expensive equipment and
19 applying decades of combined experience. And even then, Volkswagen continued to conceal its
20 fraud until the EPA and CARB applied their collective expertise and leverage.

21 543. Defendants’ devious scheme to design and install defeat device software in the
22 Class Vehicles for the specific purpose of circumventing U.S. law, and then concealing their
23 fraudulent scheme through seven model years, reveals a corporate culture that emphasized sales
24 and profits over integrity. Further, it demonstrates a callous disregard for not only the rule of law
25 but also public health and Volkswagen’s customers, including Plaintiffs and Class members.

26 544. Defendants had a duty to disclose the defeat devices to regulators and the driving
27 public. That includes Bosch, who had a duty to disclose the scheme, given its knowledge of and
28 complicity in, the design and customization of the defeat devices for the Class Vehicles.

1 545. Volkswagen hatched the deceptive scheme and knew that its customers, including
2 Plaintiffs and Class members, did not know about (and could not reasonably discover) its scheme.
3 Volkswagen not only concealed the illegal defeat devices, which posed a safety harm, but went
4 further to make affirmative misrepresentations about the quality of the Class Vehicles as “Clean
5 Diesel” vehicles. Having “opened its mouth” to claim the Class Vehicles were “clean,”
6 Volkswagen had the duty to come clean about its dirty defeat devices – but it failed to do so.

7 546. Volkswagen actively concealed the defeat devices and actual emission levels of
8 the Class Vehicles to pad its profits and avoid the perception that the Class Vehicles did not
9 comply with federal and state laws governing clean air and emissions. Volkswagen engaged in
10 this fraudulent concealment at the expense of Plaintiffs and Class members.

11 547. Plaintiffs and Class members were not aware of the concealed and misrepresented
12 material facts referenced above, and they would not have acted as they did had regulators or the
13 driving public know the truth—Volkswagen would not have been able to obtain COCs or EOs for
14 the sale of the Class Vehicles and as a consequence Plaintiffs and Class members would never
15 have purchased or leased the Class Vehicles in the first place.

16 548. As a direct and proximate result of Defendants’ fraudulent scheme, Plaintiffs and
17 Class members sustained damages. They own or lease Class Vehicles that are non-compliant and
18 severely diminished in value as compared to the vehicles that were advertised and marketed.
19 Moreover, the Class Vehicles either cannot be repaired to comply with applicable emissions
20 standards, or if they can be made compliant, their performance, fuel efficiency, and longevity will
21 be compromised.

22 549. Defendants are liable to Plaintiffs and Class members for damages in an amount to
23 be proven at trial. Moreover, because Defendants acted wantonly, maliciously, oppressively,
24 recklessly, deliberately, and with intent to defraud Plaintiffs and Class members for the purpose
25 of enriching themselves at Plaintiffs’ and Class members’ detriment, Defendants’ conduct
26 warrants substantial punitive and exemplary damages in an amount to be determined at trial.

**COMMON LAW COUNT II:
BREACH OF CONTRACT**

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3 550. Plaintiffs incorporate by reference each preceding paragraph as though fully set
4 forth herein.

5 551. Plaintiffs bring this Count on behalf of the Nationwide Class and, in the
6 alternative, on behalf of the State Classes against VW AG, VW America, Audi AG, Audi
7 America, Porsche AG, and Porsche America (collectively, the “VW Entity Defendants”).

8 552. Every purchase or lease of a Class Vehicle from an authorized dealer of the VW
9 Entity Defendants constitutes a contract between the VW Entity Defendants and the purchaser or
10 lessee. The VW Entity Defendants materially breached these contracts by selling or leasing
11 Plaintiffs and Class members defective, non-compliant Class Vehicles and by misrepresenting or
12 failing to disclose the existence of the “clean” diesel engine system’s defeat device, rendering the
13 Vehicles substantially less valuable than the vehicles that the VW Entity Defendants advertised
14 and promised to deliver to Plaintiffs and Class members.

15 553. The VW Entity Defendants’ misrepresentations and omissions alleged herein,
16 including the VW Entity Defendants’ misrepresentation of the “Clean Diesel” system and failure
17 to disclose the existence of the defeat, caused Plaintiffs and the other Class members to enter into
18 their agreements to purchase or lease their Class Vehicles. Absent those misrepresentations and
19 omissions, Plaintiffs and Class members would not have purchased or leased their Class Vehicles,
20 would not have purchased or leased their Class Vehicles at the prices they paid, and/or would
21 have purchased or leased less expensive alternative vehicles that did not contain the “clean”
22 diesel engine system and which were not marketed as including such a system. Accordingly,
23 Plaintiffs and Class members overpaid for their Class Vehicles and did not receive the benefit of
24 their bargain.

25 554. The VW Entity Defendants also breached their implied covenant of good faith and
26 fair dealing under the laws of all 50 States and the District of Columbia. By delivering a vehicle
27 that contained defeat device software and thus exceeded, during normal use, federal and state
28 emission limits—and the VW Entity Defendants’ advertised and promised emission levels—by

1 up to 40 times, the VW Entity Defendants’ blatantly violated Plaintiffs’ and Class members’ fair
2 and reasonable expectations under their respective contracts. In addition, the VW Entity
3 Defendants’ misrepresentations and omissions violated Volkswagen’s implied duty to deal
4 honestly, and within reasonable commercial standards of fair dealing, with Plaintiffs and Class
5 members.

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

10 **COMMON LAW COUNT III:**
11 **UNJUST ENRICHMENT**

12 556. Plaintiffs incorporate by reference each preceding paragraph as though fully set
13 forth herein.

14 557. Plaintiffs bring this Count on behalf of the Nationwide Class and, in the
15 alternative, on behalf of the State Classes against all Defendants.

16 558. Defendants have benefitted from selling and leasing at an unjust profit defective
17 Class Vehicles whose value was artificially inflated by Volkswagen’s concealment of the “defeat
18 device,” and Plaintiffs and Class members have overpaid for the vehicles.

19 559. Defendants have received and retained unjust benefits from the Plaintiffs and Class
20 members, and inequity has resulted.

21 560. It is inequitable and unconscionable for Defendants to retain these benefits.

22 561. Because Volkswagen concealed its fraud and deception, Plaintiffs and Class
23 members were not aware of the true facts concerning the Class Vehicles and did not benefit from
24 Defendants’ misconduct.

25 562. Defendants knowingly accepted the unjust benefits of its fraudulent conduct.

26 563. As a result of Defendants’ misconduct, the amount of its unjust enrichment should
27 be disgorged and returned to Plaintiffs and Class members, in an amount to be proven at trial.
28

1 STATE LAW CLAIMS

2 ALABAMA

3 ALABAMA COUNT I:
4 VIOLATIONS OF ALABAMA DECEPTIVE TRADE PRACTICES ACT
(Ala. Code § 8-19-1, *et seq.*)

5 564. Plaintiffs incorporate by reference each preceding paragraph as though fully set
6 forth herein.

7 565. Plaintiffs McIntosh, Rutland, and Scharein (for the purpose of this section,
8 “Plaintiffs”) bring this action on behalf of themselves and the Alabama Class against all
9 Defendants.

10 566. Plaintiffs and the Alabama Class are “consumers” within the meaning of Ala.
11 Code § 8-19-3(2).

12 567. Plaintiffs, the Alabama Class, and Defendants are “persons” within the meaning of
13 Ala. Code § 8-19-3(5).

14 568. The Class Vehicles are “goods” within the meaning of Ala. Code § 8-19-3(3).

15 569. Defendants were and are engaged in “trade or commerce” within the meaning of
16 Ala. Code § 8-19-3(8).

17 570. The Alabama Deceptive Trade Practices Act (“Alabama DTPA”) declares several
18 specific actions to be unlawful, including: “(5) Representing that goods or services have
19 sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities that they do not
20 have,” “(7) Representing that goods or services are of a particular standard, quality, or grade, or
21 that goods are of a particular style or model, if they are of another,” and “(27) Engaging in any
22 other unconscionable, false, misleading, or deceptive act or practice in the conduct of trade or
23 commerce.” Ala. Code § 8-19-5.

24 571. In the course of their business, Defendants concealed and suppressed material facts
25 concerning the Class Vehicles. Volkswagen accomplished this by installing defeat device
26 software in the Class Vehicles that caused the vehicles to operate in a low emission test mode
27 only during emissions testing. During normal operations, the Class Vehicles would emit grossly
28 larger quantities of noxious contaminants, sometimes 40 times over applicable standards. The

1 result was what Volkswagen intended—the Class Vehicles passed emissions testing by way of
2 deliberately induced false readings. Plaintiffs and Alabama Class members had no way of
3 discerning that Volkswagen’s representations were false and misleading because Volkswagen’s
4 defeat device software was extremely sophisticated technology. Plaintiffs and Alabama Class
5 members did not and could not unravel Volkswagen’s deception on their own. In fact, it took
6 years before the academic engineering community—specifically a research team at WVU’s
7 Center for Alternative Fuels, Engines & Emissions—detected Volkswagen’s cheat using
8 sophisticated, expensive equipment and applying decades of combined experience.

9 572. Defendants thus violated the Act by, at minimum: representing that Class Vehicles
10 have characteristics, uses, benefits, and qualities which they do not have; representing that Class
11 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
12 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of
13 a transaction involving Class Vehicles has been supplied in accordance with a previous
14 representation when it has not.

15 573. Bosch played a critical role in facilitating, and itself contributed to, Volkswagen’s
16 unfair and deceptive conduct, as alleged herein. Bosch knew or should have known that
17 Volkswagen would use and had used the Bosch technology as an emission defeat device, and in
18 fact helped it do so. Without Bosch’s complicity and silence, Volkswagen could not have
19 perpetrated the fraudulent, deceptive, and unfair practices alleged herein, and Bosch’s actions
20 themselves constitute fraudulent, deceptive, and unfair practices.

21 574. Defendants engaged in misleading, false, unfair or deceptive acts or practices that
22 violated the Alabama DTPA by installing, failing to disclose and actively concealing the illegal
23 defeat device and the true cleanliness and performance of the “clean” diesel engine system, by
24 marketing its vehicles as legal, reliable, environmentally clean, efficient, and of high quality, and
25 by presenting itself as a reputable manufacturer that valued environmental cleanliness and
26 efficiency, and that stood behind its vehicles after they were sold.

27 575. The Clean Air Act and EPA regulations require that automobiles limit their
28 emissions output to specified levels. These laws are intended for the protection of public health

1 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the
2 Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 CFR § 86.1809. By
3 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available
4 for purchase, Volkswagen violated federal law and therefore engaged in conduct that violates the
5 Alabama DTPA.

6 576. Defendants knew the true nature of its “clean” diesel engine system for at least six
7 years, but concealed all of that information until recently. Volkswagen also knew that it valued
8 profits over environmental cleanliness, efficiency, and compliance with the law, and that it was
9 manufacturing, selling, and distributing vehicles throughout the United States that did not comply
10 with EPA regulations. Volkswagen concealed this information as well.

11 577. Volkswagen intentionally and knowingly misrepresented material facts regarding
12 the Class Vehicles with intent to mislead Plaintiffs and the Alabama Class.

13 578. Volkswagen knew or should have known that its conduct violated the Alabama
14 DTPA.

15 579. Defendants owed Plaintiffs and the Alabama Class a duty to disclose illegality,
16 public health and safety risks, the true environmental cleanliness and efficiency of the Class
17 Vehicles and the devaluing of safety at Volkswagen, because Volkswagen:

- 18 a. possessed exclusive knowledge that they were
19 manufacturing, selling, and distributing vehicles throughout
20 the United States that did not comply with EPA regulations;
- 21 b. intentionally concealed the foregoing from regulators,
22 Plaintiffs, Class members; and/or
- 23 c. made incomplete representations about the environmental
24 cleanliness and efficiency of the Class Vehicles generally,
25 and the use of the defeat device in particular, while
26 purposefully withholding material facts from Plaintiffs that
27 contradicted these representations.

28 580. Defendants concealed the illegal defeat device and the true emissions, efficiency,
and performance of the “clean” diesel system, resulting in a raft of negative publicity once the
defects finally began to be disclosed. The value of the Class Vehicles has greatly diminished. In

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

3 581. Volkswagen’s fraudulent use of the “defeat device” and its concealment of the true
4 characteristics of the “clean” diesel engine system were material to Plaintiffs and the Alabama
5 Class.

6 582. Defendants’ unfair or deceptive acts or practices were likely to and did in fact
7 deceive regulators and reasonable consumers, including Plaintiffs, about the true environmental
8 cleanliness and efficiency of Volkswagen-branded vehicles, the quality of the Volkswagen brand,
9 the devaluing of environmental cleanliness and integrity at Volkswagen, and the true value of the
10 Class Vehicles.

11 583. Plaintiffs and the Alabama Class suffered ascertainable loss an actual damages as a
12 direct and proximate result of Volkswagen’s misrepresentations and its concealment of and
13 failure to disclose material information. Plaintiffs and the Alabama Class members who
14 purchased or leased the Class Vehicles would not have purchased or leased them at all and/or—if
15 the Vehicles’ true nature had been disclosed and mitigated, and the Vehicles rendered legal to
16 sell—would have paid significantly less for them. Plaintiffs also suffered diminished value of
17 their vehicles, as well as lost or diminished use.

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

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

26 586. As a direct and proximate result of Defendants’ violations of the Alabama DTPA,
27 Plaintiffs and the Alabama Class have suffered injury-in-fact and/or actual damage.
28

1 587. Pursuant to Ala. Code § 8-19-10, Plaintiffs and the Alabama Class seek monetary
2 relief against Defendants measured as the greater of (a) actual damages in an amount to be
3 determined at trial and (b) statutory damages in the amount of \$100 for each Plaintiff and each
4 Alabama Class member.

5 588. Plaintiffs also seek an order enjoining Defendants' unfair, unlawful, and/or
6 deceptive practices, attorneys' fees, and any other just and proper relief available under the Ala.
7 Code § 8-19-1, *et seq.*

8 589. On September 30, 2015, certain Plaintiffs sent a letter complying with Ala. Code
9 § 8-19-10(e). Because Volkswagen failed to remedy its unlawful conduct within the requisite
10 time period, Plaintiffs seek all damages and relief to which Plaintiffs and the Alabama Class are
11 entitled.

12 **ALABAMA COUNT II:**
13 **BREACH OF EXPRESS WARRANTY**
14 **(Ala. Code §§ 7-2-313 and 7-2A-210)**

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

17 591. Plaintiffs bring this Count on behalf of the Alabama Class against VW AG, VW
18 America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the "VW
19 Entity Defendants").

20 592. The VW Entity Defendants are and were at all relevant times "merchants" with
21 respect to motor vehicles under Ala. Code §§ 7-2-104(1) and 7-2A-103(3), and "sellers" of motor
22 vehicles under § 7-2-103(1)(d).

23 593. With respect to leases, the VW Entity Defendants are and were at all relevant
24 times "lessors" of motor vehicles under Ala. Code. § 7-2A-103(1)(p).

25 594. The Class Vehicles are and were at all relevant times "goods" within the meaning
26 of Ala. Code §§ 7-2-105(1) and 7-2A-103(1)(h).

27 595. In connection with the purchase or lease of each one of its new vehicles, the VW
28 Entity Defendants provide an express New Vehicle Limited Warranty ("NVLW") for a period of

1 three years or 36,000 miles, whichever occurs first. This NVLW exists to cover “any repair to
2 correct a manufacturers defect in materials or workmanship.”

3 596. The Clean Air Act requires manufacturers of light-duty vehicles to provide two
4 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
5 Warranty.”

6 597. The EPA requires vehicle manufacturers to provide a Performance Warranty with
7 respect to the vehicles’ emission systems. Thus, Volkswagen also provides an express warranty
8 for its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
9 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
10 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
11 emission control components are covered for the first eight years or 80,000 miles, whichever
12 comes first. These major emission control components subject to the longer warranty include the
13 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
14 device or computer.

15 598. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
16 with respect to their vehicles’ emission systems. Thus, the VW Entity Defendants also provide an
17 express warranty for their vehicles through a Federal Emission Control System Defect Warranty.
18 The Design and Defect Warranty required by the EPA covers repair of emission control or
19 emission related parts which fail to function or function improperly because of a defect in
20 materials or workmanship. This warranty provides protection for two years or 24,000 miles,
21 whichever comes first, or, for the major emission control components, for eight years or 80,000
22 miles, whichever comes first.

23 599. As manufacturers of light-duty vehicles, the VW Entity Defendants were required
24 to provide these warranties to purchasers or lessees of their “clean” diesel vehicles.

25 600. The VW Entity Defendants’ warranties formed a basis of the bargain that was
26 reached when Plaintiffs and other Alabama Class members purchased or leased their Class
27 Vehicles equipped with the non-compliant “clean” diesel engine and emission systems.
28

1 601. Plaintiffs and the Alabama Class members experienced defects within the warranty
2 period. Despite the existence of warranties, the VW Entity Defendants failed to inform Plaintiffs
3 and Alabama Class members that the Class Vehicles were intentionally designed and
4 manufactured to be out of compliance with applicable state and federal emissions laws, and failed
5 to fix the defective emission components free of charge.

6 602. The VW Entity Defendants breached the express warranty promising to repair and
7 correct a manufacturing defect or materials or workmanship of any parts they supplied. The VW
8 Entity Defendants have not repaired or adjusted, and have been unable to repair or adjust, the
9 Class Vehicles' materials and workmanship defects.

10 603. Affording the VW Entity Defendants a reasonable opportunity to cure their breach
11 of written warranties would be unnecessary and futile here. For example, the Frequently Asked
12 Questions ("FAQ") section of VW's informational website states:

13 **How soon will the remedy be available, and how am I going to**
14 **be compensated for this?**

15 We cannot offer a firm date now because we need to work on a
16 remedy and review it with the government. We are proceeding as
 quickly as possible.

17 604. In his Congressional testimony on October 8, 2015, Michael Horn stated that
18 Volkswagen intends to make Class Vehicles compliant with emission standards through software
19 fixes and the installation of auxiliary hardware, but that fix will take "1 to 2 years, minimum."
20 When questioned on remedies for consumers, he stated that Volkswagen may pay customers for a
21 loss in resale values because of the scandal. He said that Volkswagen is not considering
22 providing loaner vehicles because the U.S. government says the vehicles are safe to drive.

23 605. Michael Horn's testimony serves as an admission that the limited warranty
24 promising to repair and/or correct a manufacturing defect fails in its essential purpose because the
25 VW Entity Defendants cannot meet that promise within a reasonable time.

26 606. Furthermore, the limited warranty promising to repair and/or correct a
27 manufacturing defect fails in its essential purpose because the contractual remedy is insufficient
28 to make Plaintiffs and the other Alabama Class members whole and because the VW Entity

1 Defendants have failed and/or have refused to adequately provide the promised remedies within a
2 reasonable time.

3 607. Accordingly, recovery by Plaintiffs and the other Alabama Class members is not
4 restricted to the limited warranty promising to repair and/or correct a manufacturing defect, and
5 Plaintiffs, individually and on behalf of the other Alabama Class members, seek all remedies as
6 allowed by law.

7 608. Also, as alleged in more detail herein, at the time the VW Entity Defendants
8 warranted and sold or leased the Class Vehicles, they knew that the Class Vehicles were
9 inherently defective and did not conform to their warranties; further, the VW Entity Defendants
10 had wrongfully and fraudulently concealed material facts regarding the Class Vehicles. Plaintiffs
11 and the other Alabama Class members were therefore induced to purchase or lease the Class
12 Vehicles under false and/or fraudulent pretenses.

13 609. Moreover, many of the injuries flowing from the Class Vehicles cannot be
14 resolved through the limited remedy of “replacements or adjustments,” as many incidental and
15 consequential damages have already been suffered because of Volkswagen’s fraudulent conduct
16 as alleged herein, and because of its failure and/or continued failure to provide such limited
17 remedy within a reasonable time, and any limitation on Plaintiffs’ and the other Alabama Class
18 members’ remedies would be insufficient to make Plaintiffs and the other Alabama Class
19 members whole.

20 610. Finally, because of the VW Entity Defendants’ breach of warranty as set forth
21 herein, Plaintiffs and the other Alabama Class members assert, as additional and/or alternative
22 remedies, the revocation of acceptance of the goods and the return to Plaintiffs and the other
23 Alabama Class members of the purchase or lease price of all Class Vehicles currently owned or
24 leased, and for such other incidental and consequential damages as allowed.

25 611. The VW Entity Defendants were provided notice of these issues by numerous
26 complaints filed against them, including the instant Complaint, within a reasonable amount of
27 time after Volkswagen publicly admitted to using a defeat device in the Class Vehicles to evade
28 clean air standards.

1 612. As a direct and proximate result of the VW Entity Defendants’ breach of express
2 warranties, Plaintiff and the other Alabama Class members have been damaged in an amount to
3 be determined at trial.

4 **ALABAMA COUNT III:**
5 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
6 **(Ala. Code §§ 7-2-314 and 7-2A-212)**

7 613. Plaintiffs reallege and incorporate by reference all allegations of the preceding
8 paragraphs as though fully set forth herein.

9 614. Plaintiffs bring this Count on behalf of the Alabama Class, against VW AG, VW
10 America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the “VW
11 Entity Defendants”).

12 615. The VW Entity Defendants are and were at all relevant times “merchants” with
13 respect to motor vehicles under Ala. Code §§ 7-2-104(1) and 7-2A-103(3), and “sellers” of motor
14 vehicles under § 7-2-103(1)(d).

15 616. With respect to leases, the VW Entity Defendants are and were at all relevant
16 times “lessors” of motor vehicles under Ala. Code. § 7-2A-103(1)(p).

17 617. The Class Vehicles are and were at all relevant times “goods” within the meaning
18 of Ala. Code §§ 7-2-105(1) and 7-2A-103(1)(h).

19 618. A warranty that the Class Vehicles were in merchantable condition and fit for the
20 ordinary purpose for which vehicles are used is implied by law pursuant to Ala. Code §§ 7-2-314
21 and 7-2A-212.

22 619. These Class Vehicles, when sold or leased and at all times thereafter, were not in
23 merchantable condition and are not fit for the ordinary purpose for which vehicles are used.
24 Specifically, the Class Vehicles are inherently defective in that they do not comply with federal
25 and state emissions standards, rendering certain emissions functions inoperative; and the “clean”
26 diesel engine system was not adequately designed, manufactured, and tested.

27 620. Volkswagen was provided notice of these issues by the investigations of the EPA
28 and individual state regulators, numerous complaints filed against it including the instant

1 complaint, and by numerous individual letters and communications sent by Plaintiffs and others
2 within a reasonable amount of time after the allegations of Class Vehicle defects became public.

3 621. As a direct and proximate result of the VW Entity Defendants' breach of the
4 implied warranty of merchantability, Plaintiffs and the other Alabama Class members have been
5 damaged in an amount to be proven at trial.

6 **ALASKA**

7 **ALASKA COUNT I:**
8 **VIOLATIONS OF THE ALASKA UNFAIR TRADE**
9 **PRACTICES AND CONSUMER PROTECTION ACT**
(Alaska Stat. § 45.50.471, *et seq.*)

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

12 623. Plaintiff Hill (for the purpose of this section, "Plaintiffs") bring this action on
13 behalf of themselves and the Alaska Class against all Defendants.

14 624. The Alaska Unfair Trade Practices And Consumer Protection Act ("Alaska CPA")
15 declares unfair methods of competition and unfair or deceptive acts or practices in the conduct of
16 trade or commerce unlawful, including: "(4) representing that goods or services have sponsorship,
17 approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a
18 person has a sponsorship, approval, status, affiliation, or connection that the person does not
19 have;" "(6) representing that goods or services are of a particular standard, quality, or grade, or
20 that goods are of a particular style or model, if they are of another;" "(8) advertising goods or
21 services with intent not to sell them as advertised;" or "(12) using or employing deception, fraud,
22 false pretense, false promise, misrepresentation, or knowingly concealing, suppressing, or
23 omitting a material fact with intent that others rely upon the concealment, suppression or
24 omission in connection with the sale or advertisement of goods or services whether or not a
25 person has in fact been misled, deceived or damaged." Alaska Stat. § 45.50.471.

26 625. In the course of their business, Defendants concealed and suppressed material facts
27 concerning the Class Vehicles. Defendants accomplished this by installing illegal defeat device
28 software in the Class Vehicles that caused the vehicles to operate in a low emission test mode

1 only during emissions testing. During normal operations, the Class Vehicles would emit grossly
2 larger quantities of noxious contaminants, sometimes 40 times over applicable standards. The
3 result was what Volkswagen intended—the Class Vehicles passed emissions testing by way of
4 deliberately induced false readings. Plaintiffs and Alaska Class members had no way of
5 discerning that Volkswagen’s representations were false and misleading because Volkswagen’s
6 defeat device software was extremely sophisticated technology. Plaintiffs and Alaska Class
7 members did not and could not unravel Volkswagen’s deception on their own. In fact, it took
8 years before the academic engineering community—specifically a research team at WVU’s
9 Center for Alternative Fuels, Engines & Emissions—detected Volkswagen’s cheat using
10 sophisticated, expensive equipment and applying decades of combined experience.

11 626. Defendants thus violated the Act by, at minimum, representing that the Class
12 Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing
13 that the Class Vehicles are of a particular standard and quality when they are not; advertising the
14 Class Vehicles with the intent not to sell them as advertised; and omitting material facts in
15 describing the Class Vehicles.

16 627. Bosch played a critical role in facilitating, and itself contributed to, Volkswagen’s
17 unfair and deceptive conduct, as alleged herein. Bosch knew or should have known that
18 Volkswagen would use and had used the Bosch technology as an emission defeat device, and in
19 fact helped it do so. Without Bosch’s complicity and silence, Volkswagen could not have
20 perpetrated the fraudulent, deceptive, and unfair practices alleged herein, and Bosch’s actions
21 themselves constitute fraudulent, deceptive, and unfair practices.

22 628. Defendants engaged in misleading, false, unfair or deceptive acts or practices that
23 violated the Alaska CPA by installing, failing to disclose and actively concealing the illegal
24 defeat device and the true cleanliness and performance of the “clean” diesel engine system, by
25 marketing its vehicles as legal, reliable, environmentally clean, efficient, and of high quality, and
26 by presenting itself as a reputable manufacturer that valued environmental cleanliness and
27 efficiency, and that stood behind its vehicles after they were sold.
28

1 629. The Clean Air Act and EPA regulations require that automobiles limit their
2 emissions output to specified levels. These laws are intended for the protection of public health
3 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the
4 Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 CFR § 86.1809. By
5 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available
6 for purchase, Volkswagen violated federal law and therefore engaged in conduct that violates the
7 Alaska CPA.

8 630. Defendants knew the true nature of its “clean” diesel engine system for at least six
9 years, but concealed all of that information until recently. Volkswagen was also aware that it
10 valued profits over environmental cleanliness, efficiency, and compliance with the law, and that it
11 was manufacturing, selling, and distributing vehicles throughout the United States that did not
12 comply with EPA regulations. Volkswagen concealed this information as well.

13 631. Volkswagen intentionally and knowingly misrepresented material facts regarding
14 the Class Vehicles with intent to mislead Plaintiffs and the Alaska Class.

15 632. Volkswagen knew or should have known that its conduct violated the Alaska CPA.

16 633. Volkswagen owed Plaintiffs a duty to disclose illegality, public health and safety
17 risks, the true environmental cleanliness and efficiency of the Class Vehicles and the devaluing of
18 safety at Volkswagen, because Volkswagen:

- 19 a. possessed exclusive knowledge that they were
20 manufacturing, selling, and distributing vehicles throughout
21 the United States that did not comply with EPA regulations;
22 b. intentionally concealed the foregoing from regulators,
23 Plaintiffs, Class members; and/or
24 c. made incomplete representations about the environmental
25 cleanliness and efficiency of the Class Vehicles generally,
26 and the use of the defeat device in particular, while
27 purposefully withholding material facts from Plaintiffs that
28 contradicted these representations.

29 634. Defendants concealed the illegal defeat device and the true emissions, efficiency,
30 and performance of the “clean” diesel system, resulting in a raft of negative publicity once the
31 defects finally began to be disclosed, the value of the Class Vehicles has greatly diminished. In

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

3 635. Volkswagen’s fraudulent use of the “defeat device” and its concealment of the true
4 characteristics of the “clean” diesel engine system were material to Plaintiffs and the Alaska
5 Class.

6 636. Defendants’ unfair or deceptive acts or practices were likely to and did in fact
7 deceive regulators and reasonable consumers, including Plaintiffs, about the true environmental
8 cleanliness and efficiency of Volkswagen-branded vehicles, the quality of the Volkswagen brand,
9 the devaluing of environmental cleanliness and integrity at Volkswagen, and the true value of the
10 Class Vehicles.

11 637. Plaintiffs and the Alaska Class suffered ascertainable and actual damages as a
12 direct and proximate result of Volkswagen’s misrepresentations and its concealment of and
13 failure to disclose material information. Plaintiffs and the Alaska Class members who purchased
14 or leased the Class Vehicles would not have purchased or leased them at all and/or—if the
15 Vehicles’ true nature had been disclosed and mitigated, and the Vehicles rendered legal to sell—
16 would have paid significantly less for them. Plaintiffs also suffered diminished value of their
17 vehicles, as well as lost or diminished use.

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

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

26 640. As a direct and proximate result of Defendants’ violations of the Alaska CPA,
27 Plaintiffs and the Alaska Class have suffered injury-in-fact and/or actual damage.
28

1 641. Pursuant to Alaska Stat. § 45.50. 531, Plaintiffs and the Alaska Class seek
2 monetary relief against Defendants measured as the greater of (a) three times the actual damages
3 in an amount to be determined at trial or (b) \$500 for each Plaintiff and each Alaska Class
4 member.

5 642. Plaintiffs also seek an order enjoining Defendants' unfair, unlawful, and/or
6 deceptive practices pursuant to Alaska Stat. § 45.50. 535, attorneys' fees, and any other just and
7 proper relief available under the Alaska CPA.

8 643. On September 21, 2015, certain Plaintiffs sent a letter complying with Alaska Stat.
9 § 45.40.535(b)(1).

10 **ALASKA COUNT II:**
11 **BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY**
12 **(Alaska Stat. §§ 45.02.314 and 45.12.212)**

13 644. Plaintiffs reallege and incorporate by reference all allegations of the preceding
14 paragraphs as though fully set forth herein.

15 645. Plaintiffs bring this Count on behalf of the Alaska Class, against VW AG, VW
16 America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the "VW
17 Entity Defendants").

18 646. The VW Entity Defendants are and were at all relevant times "merchant[s]" under
19 Alaska Stat. §§ 45.02.104(a) and 45.12.103(c)(11); and are "seller[s]" of motor vehicles under
20 Alaska Stat. § 45.02.103(a)(4).

21 647. With respect to leases, the VW Entity Defendants are and were at all relevant
22 times "lessors" of motor vehicles under Alaska Stat. § 45.12.103(a)(16).

23 648. The Class Vehicles are and were at all relevant times "goods" within the meaning
24 of Alaska Stat. §§ 45.02.105(a) and 45.12.103(a)(8).

25 649. A warranty that the Class Vehicles were in merchantable condition and fit for the
26 ordinary purpose for which vehicles are used is implied by law pursuant to Alaska Stat.
27 §§ 45.02.314 and 45.12.212.

28 650. These Class Vehicles, when sold or leased and at all times thereafter, were not in
merchantable condition and are not fit for the ordinary purpose for which vehicles are used.

1 Specifically, the Class Vehicles are inherently defective in that they do not comply with federal
2 and state emissions standards, rendering certain emissions functions inoperative; and the “clean”
3 diesel engine system was not adequately designed, manufactured, and tested.

4 651. Volkswagen was provided notice of these issues by the investigations of the EPA
5 and individual state regulators, numerous complaints filed against it including the instant
6 Complaint, and by numerous individual letters and communications sent by Plaintiffs and others
7 within a reasonable amount of time after the allegations of Class Vehicle defects became public.

8 652. As a direct and proximate result of the VW Entity Defendants’ breach of the
9 implied warranty of merchantability, Plaintiffs and the other Alaska Class members have been
10 damaged in an amount to be proven at trial.

11 **ALASKA COUNT III:**
12 **BREACH OF EXPRESS WARRANTY**
13 **(Alaska Stat. §§ 45.02.313 and 45.12.210)**

14 653. Plaintiffs reallege and incorporate by reference all preceding allegations as though
15 fully set forth herein.

16 654. Plaintiffs bring this Count on behalf of the Alaska Class, against VW AG, VW
17 America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the “VW
18 Entity Defendants”).

19 655. The VW Entity Defendants are and were at all relevant times “merchants” with
20 respect to motor vehicles under Alaska Stat. §§ 45.02.104(a) and 45.12.103(c)(11); and is a
21 “seller” of motor vehicles under Alaska Stat. § 45.02.103(a)(4).

22 656. With respect to leases, the VW Entity Defendants are and were at all relevant
23 times “lessors” of motor vehicles under Alaska Stat. § 45.12.103(a)(16).

24 657. The Class Vehicles are and were at all relevant times “goods” within the meaning
25 of Alaska Stat. §§ 45.02.105(a) and 45.12.103(a)(8).

26 658. In connection with the purchase or lease of each one of its new vehicles, the VW
27 Entity Defendants provide an express New Vehicle Limited Warranty (“NVLW”) for a period of
28 three years or 36,000 miles, whichever occurs first. This NVLW exists to cover “any repair to
correct a manufacturers defect in materials or workmanship.”

1 659. The Clean Air Act requires manufacturers of light-duty vehicles to provide two
2 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
3 Warranty.”

4 660. The EPA requires vehicle manufacturers to provide a Performance Warranty with
5 respect to the vehicles’ emission systems. Thus, Volkswagen also provides an express warranty
6 for its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
7 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
8 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
9 emission control components are covered for the first eight years or 80,000 miles, whichever
10 comes first. These major emission control components subject to the longer warranty include the
11 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
12 device or computer.

13 661. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
14 with respect to their vehicles’ emission systems. Thus, the VW Entity Defendants also provide an
15 express warranty for their vehicles through a Federal Emission Control System Defect Warranty.
16 The Design and Defect Warranty required by the EPA covers repair of emission control or
17 emission related parts which fail to function or function improperly because of a defect in
18 materials or workmanship. This warranty provides protection for two years or 24,000 miles,
19 whichever comes first, or, for the major emission control components, for eight years or 80,000
20 miles, whichever comes first.

21 662. As manufacturers of light-duty vehicles, the VW Entity Defendants were required
22 to provide these warranties to purchasers or lessees of their “clean” diesel vehicles.

23 663. The VW Entity Defendants’ warranties formed a basis of the bargain that was
24 reached when Plaintiffs and other Alaska Class members purchased or leased their Class Vehicles
25 equipped with the non-compliant “clean” diesel engine and emission systems.

26 664. Plaintiffs and the Alaska Class members experienced defects within the warranty
27 period. Despite the existence of warranties, the VW Entity Defendants failed to inform Plaintiffs
28 and Alaska Class members that the Class Vehicles were intentionally designed and manufactured

1 to be out of compliance with applicable state and federal emissions laws, and failed to fix the
2 defective emission components free of charge.

3 665. The VW Entity Defendants breached the express warranty promising to repair and
4 correct a manufacturing defect or materials or workmanship of any parts they supplied. The VW
5 Entity Defendants have not repaired or adjusted, and have been unable to repair or adjust, the
6 Class Vehicles' materials and workmanship defects.

7 666. Affording the VW Entity Defendants a reasonable opportunity to cure their breach
8 of written warranties would be unnecessary and futile here. For example, the Frequently Asked
9 Questions ("FAQ") section of VW's informational website states:

10 **How soon will the remedy be available, and how am I going to**
11 **be compensated for this?**

12 We cannot offer a firm date now because we need to work on a
13 remedy and review it with the government. We are proceeding as
quickly as possible.

14 667. In his Congressional testimony on October 8, 2015, Michael Horn stated that
15 Volkswagen intends to make Class Vehicles compliant with emission standards through software
16 fixes and the installation of auxiliary hardware, but that fix will take "1 to 2 years, minimum."
17 When questioned on remedies for consumers, he stated that Volkswagen may pay customers for a
18 loss in resale values because of the scandal. He said that Volkswagen is not considering
19 providing loaner vehicles because the U.S. government says the vehicles are safe to drive.

20 668. Michael Horn's testimony serves as an admission that the limited warranty
21 promising to repair and/or correct a manufacturing defect fails in its essential purpose because the
22 VW Entity Defendants cannot meet that promise within a reasonable time.

23 669. Furthermore, the limited warranty promising to repair and/or correct a
24 manufacturing defect fails in its essential purpose because the contractual remedy is insufficient
25 to make Plaintiffs and the other Alaska Class members whole and because the VW Entity
26 Defendants have failed and/or have refused to adequately provide the promised remedies within a
27 reasonable time.

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1 670. Accordingly, recovery by Plaintiffs and the other Alaska Class members is not
2 restricted to the limited warranty promising to repair and/or correct a manufacturing defect, and
3 Plaintiffs, individually and on behalf of the other Alaska Class members, seek all remedies as
4 allowed by law.

5 671. Also, as alleged in more detail herein, at the time the VW Entity Defendants
6 warranted and sold or leased the Class Vehicles, they knew that the Class Vehicles were
7 inherently defective and did not conform to their warranties; further, the VW Entity Defendants
8 had wrongfully and fraudulently concealed material facts regarding the Class Vehicles. Plaintiffs
9 and the other Alaska Class members were therefore induced to purchase or lease the Class
10 Vehicles under false and/or fraudulent pretenses.

11 672. Moreover, many of the injuries flowing from the Class Vehicles cannot be
12 resolved through the limited remedy of “replacements or adjustments,” as many incidental and
13 consequential damages have already been suffered because of Volkswagen’s fraudulent conduct
14 as alleged herein, and because of its failure and/or continued failure to provide such limited
15 remedy within a reasonable time, and any limitation on Plaintiffs’ and the other Alaska Class
16 members’ remedies would be insufficient to make Plaintiffs and the other Alaska Class members
17 whole.

18 673. Finally, because of the VW Entity Defendants’ breach of warranty as set forth
19 herein, Plaintiffs and the other Alaska Class members assert, as additional and/or alternative
20 remedies, the revocation of acceptance of the goods and the return to Plaintiffs and the other
21 Alaska Class members of the purchase or lease price of all Class Vehicles currently owned or
22 leased, and for such other incidental and consequential damages as allowed.

23 674. The VW Entity Defendants were provided notice of these issues by numerous
24 complaints filed against them, including the instant Complaint, within a reasonable amount of
25 time after Volkswagen publicly admitted to using a defeat device in the Class Vehicles to evade
26 clean air standards.

1 defeat device software was extremely sophisticated technology. Plaintiffs and Arizona Class
2 members did not and could not unravel Volkswagen's deception on their own. In fact, it took
3 years before the academic engineering community—specifically a research team at WVU's
4 Center for Alternative Fuels, Engines & Emissions—detected Volkswagen's cheat using
5 sophisticated, expensive equipment and applying decades of combined experience.

6 682. Defendants thus violated the Act by, at minimum: employing deception, deceptive
7 acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any
8 material fact with intent that others rely upon such concealment, suppression or omission, in
9 connection with the sale of Class Vehicles.

10 683. Bosch played a critical role in facilitating, and itself contributed to, Volkswagen's
11 unfair and deceptive conduct, as alleged herein. Bosch knew or should have known that
12 Volkswagen would use and had used the Bosch technology as an emission defeat device, and in
13 fact helped it do so. Without Bosch's complicity and silence, Volkswagen could not have
14 perpetrated the fraudulent, deceptive, and unfair practices alleged herein, and Bosch's actions
15 themselves constitute fraudulent, deceptive, and unfair practices.

16 684. Defendants engaged in misleading, false, unfair or deceptive acts or practices that
17 violated the Arizona CFA by installing, failing to disclose and actively concealing the illegal
18 defeat device and the true cleanliness and performance of the "clean" diesel engine system, by
19 marketing its vehicles as legal, reliable, environmentally clean, efficient, and of high quality, and
20 by presenting itself as a reputable manufacturer that valued environmental cleanliness and
21 efficiency, and that stood behind its vehicles after they were sold.

22 685. The Clean Air Act and EPA regulations require that automobiles limit their
23 emissions output to specified levels. These laws are intended for the protection of public health
24 and welfare. "Defeat devices" like those in the Class Vehicles are defined and prohibited by the
25 Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 CFR § 86.1809. By
26 installing illegal "defeat devices" in the Class Vehicles and by making those vehicles available
27 for purchase, Volkswagen violated federal law and therefore engaged in conduct that violates the
28 Arizona CFA.

1 686. Defendants knew the true nature of its “clean” diesel engine system for at least six
2 years, but concealed all of that information until recently. Volkswagen also knew that it valued
3 profits over environmental cleanliness, efficiency, and compliance with the law, and that it was
4 manufacturing, selling, and distributing vehicles throughout the United States that did not comply
5 with EPA regulations. Volkswagen concealed this information as well.

6 687. Volkswagen intentionally and knowingly misrepresented material facts regarding
7 the Class Vehicles with intent to mislead Plaintiffs and the Arizona Class.

8 688. Volkswagen knew or should have known that its conduct violated the Arizona
9 CFA.

10 689. Volkswagen owed Plaintiffs a duty to disclose illegality, public health and safety
11 risks, the true environmental cleanliness and efficiency of the Class Vehicles and the devaluing of
12 safety at Volkswagen, because Volkswagen:

- 13 a. possessed exclusive knowledge that they were
14 manufacturing, selling, and distributing vehicles throughout
 the United States that did not comply with EPA regulations;
- 15 b. intentionally concealed the foregoing from regulators,
16 Plaintiffs, Class members; and/or
- 17 c. made incomplete representations about the environmental
18 cleanliness and efficiency of the Class Vehicles generally,
 and the use of the defeat device in particular, while
19 purposefully withholding material facts from Plaintiffs that
 contradicted these representations.

20 690. Defendants concealed the illegal defeat device and the true emissions, efficiency,
21 and performance of the “clean” diesel system, resulting in a raft of negative publicity once the
22 defects finally began to be disclosed. The value of the Class Vehicles has greatly diminished. In
23 light of the stigma attached to those vehicles by Volkswagen’s conduct, they are now worth
24 significantly less than they otherwise would be worth.

25 691. Volkswagen’s fraudulent use of the “defeat device” and its concealment of the true
26 characteristics of the “clean” diesel engine system were material to Plaintiffs and the Arizona
27 Class.

1 692. Defendants’ unfair or deceptive acts or practices were likely to and did in fact
2 deceive regulators and reasonable consumers, including Plaintiffs, about the true environmental
3 cleanliness and efficiency of Volkswagen-branded vehicles, the quality of the Volkswagen brand,
4 the devaluing of environmental cleanliness and integrity at Volkswagen, and the true value of the
5 Class Vehicles.

6 693. Plaintiffs and the Arizona Class suffered ascertainable loss and actual damages as
7 a direct and proximate result of Defendants’ misrepresentations and its concealment of and failure
8 to disclose material information. Plaintiffs and the Arizona Class members who purchased or
9 leased the Class Vehicles would not have purchased or leased them at all and/or—if the Vehicles’
10 true nature had been disclosed and mitigated, and the Vehicles rendered legal to sell—would have
11 paid significantly less for them. Plaintiffs also suffered diminished value of their vehicles, as well
12 as lost or diminished use.

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

18 695. Defendants’ violations present a continuing risk to Plaintiffs as well as to the
19 general public. Defendants’ unlawful acts and practices complained of herein affect the public
20 interest.

21 696. The recalls and modifications instituted by Volkswagen have not been adequate.

22 697. As a direct and proximate result of Defendants’ violations of the Arizona CFA,
23 Plaintiffs and the Arizona Class have suffered injury-in-fact and/or actual damage.

24 698. Plaintiffs and the Arizona Class seek monetary relief against Defendants in an
25 amount to be determined at trial. Plaintiffs and the Arizona Class also seek punitive damages
26 because Volkswagen engaged in aggravated and outrageous conduct with an evil mind.

27
28

1 699. Plaintiffs also seek an order enjoining Defendants' unfair, unlawful, and/or
2 deceptive practices, attorneys' fees, and any other just and proper relief available under the
3 Arizona CFA.

4 **ARIZONA COUNT II:**
5 **BREACH OF EXPRESS WARRANTY**
6 **(Ariz. Rev. Stat. §§ 47-2313 and 47-2A210)**

7 700. Plaintiffs reallege and incorporate by reference all preceding allegations as though
8 fully set forth herein.

9 701. Plaintiffs bring this Count on behalf of the Arizona Class, against VW AG, VW
10 America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the "VW
11 Entity Defendants").

12 702. The VW Entity Defendants are and were at all relevant times "merchants" with
13 respect to motor vehicles under Ariz. Rev. Stat. §§ 47-2104(A) and 47-2a103(c); and is a "seller"
14 of motor vehicles under Ariz. Rev. Stat. § 47-2103(A)(4).

15 703. With respect to leases, the VW Entity Defendants are and were at all relevant
16 times "lessors" of motor vehicles under Ariz. Rev. Stat. § 47-2a103(A)(16).

17 704. The Class Vehicles are and were at all relevant times "goods" within the meaning
18 of Ariz. Rev. Stat. §§ 47-2105(A) and 47-2a103(A)(8).

19 705. In connection with the purchase or lease of each one of its new vehicles, the VW
20 Entity Defendants provide an express New Vehicle Limited Warranty ("NVLW") for a period of
21 three years or 36,000 miles, whichever occurs first. This NVLW exists to cover "any repair to
22 correct a manufacturers defect in materials or workmanship."

23 706. The Clean Air Act requires manufacturers of light-duty vehicles to provide two
24 federal emission control warranties: a "Performance Warranty" and a "Design and Defect
25 Warranty."

26 707. The EPA requires vehicle manufacturers to provide a Performance Warranty with
27 respect to the vehicles' emission systems. Thus, Volkswagen also provides an express warranty
28 for its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
required by the EPA applies to repairs that are required during the first two years or 24,000 miles,

1 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
2 emission control components are covered for the first eight years or 80,000 miles, whichever
3 comes first. These major emission control components subject to the longer warranty include the
4 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
5 device or computer.

6 708. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
7 with respect to their vehicles' emission systems. Thus, the VW Entity Defendants also provide an
8 express warranty for their vehicles through a Federal Emission Control System Defect Warranty.
9 The Design and Defect Warranty required by the EPA covers repair of emission control or
10 emission related parts which fail to function or function improperly because of a defect in
11 materials or workmanship. This warranty provides protection for two years or 24,000 miles,
12 whichever comes first, or, for the major emission control components, for eight years or 80,000
13 miles, whichever comes first.

14 709. As manufacturers of light-duty vehicles, the VW Entity Defendants were required
15 to provide these warranties to purchasers or lessees of their "clean" diesel vehicles.

16 710. The VW Entity Defendants' warranties formed a basis of the bargain that was
17 reached when Plaintiffs and other Arizona Class members purchased or leased their Class
18 Vehicles equipped with the non-compliant "clean" diesel engine and emission systems.

19 711. Plaintiffs and the Arizona Class members experienced defects within the warranty
20 period. Despite the existence of warranties, the VW Entity Defendants failed to inform Plaintiffs
21 and Arizona Class members that the Class Vehicles were intentionally designed and
22 manufactured to be out of compliance with applicable state and federal emissions laws, and failed
23 to fix the defective emission components free of charge.

24 712. The VW Entity Defendants breached the express warranty promising to repair and
25 correct a manufacturing defect or materials or workmanship of any parts they supplied. The VW
26 Entity Defendants have not repaired or adjusted, and have been unable to repair or adjust, the
27 Class Vehicles' materials and workmanship defects.

28

1 713. Affording the VW Entity Defendants a reasonable opportunity to cure their breach
2 of written warranties would be unnecessary and futile here. For example, the Frequently Asked
3 Questions (“FAQ”) section of VW’s informational website states:

4 **How soon will the remedy be available, and how am I going to**
5 **be compensated for this?**

6 We cannot offer a firm date now because we need to work on a
7 remedy and review it with the government. We are proceeding as
8 quickly as possible.

8 714. In his Congressional testimony on October 8, 2015, Michael Horn stated that
9 Volkswagen intends to make Class Vehicles compliant with emission standards through software
10 fixes and the installation of auxiliary hardware, but that fix will take “1 to 2 years, minimum.”
11 When questioned on remedies for consumers, he stated that Volkswagen may pay customers for a
12 loss in resale values because of the scandal. He said that Volkswagen is not considering
13 providing loaner vehicles because the U.S. government says the vehicles are safe to drive.

14 715. Michael Horn’s testimony serves as an admission that the limited warranty
15 promising to repair and/or correct a manufacturing defect fails in its essential purpose because the
16 VW Entity Defendants cannot meet that promise within a reasonable time.

17 716. Furthermore, the limited warranty promising to repair and/or correct a
18 manufacturing defect fails in its essential purpose because the contractual remedy is insufficient
19 to make Plaintiffs and the other Arizona Class members whole and because the VW Entity
20 Defendants have failed and/or have refused to adequately provide the promised remedies within a
21 reasonable time.

22 717. Accordingly, recovery by Plaintiffs and the other Arizona Class members is not
23 restricted to the limited warranty promising to repair and/or correct a manufacturing defect, and
24 Plaintiffs, individually and on behalf of the other Arizona Class members, seek all remedies as
25 allowed by law.

26 718. Also, as alleged in more detail herein, at the time the VW Entity Defendants
27 warranted and sold or leased the Class Vehicles, they knew that the Class Vehicles were
28 inherently defective and did not conform to their warranties; further, the VW Entity Defendants

1 had wrongfully and fraudulently concealed material facts regarding the Class Vehicles. Plaintiffs
2 and the other Arizona Class members were therefore induced to purchase or lease the Class
3 Vehicles under false and/or fraudulent pretenses.

4 719. Moreover, many of the injuries flowing from the Class Vehicles cannot be
5 resolved through the limited remedy of “replacements or adjustments,” as many incidental and
6 consequential damages have already been suffered because of Volkswagen’s fraudulent conduct
7 as alleged herein, and because of its failure and/or continued failure to provide such limited
8 remedy within a reasonable time, and any limitation on Plaintiffs’ and the other Arizona Class
9 members’ remedies would be insufficient to make Plaintiffs and the other Arizona Class members
10 whole.

11 720. Finally, because of the VW Entity Defendants’ breach of warranty as set forth
12 herein, Plaintiffs and the other Arizona Class members assert, as additional and/or alternative
13 remedies, the revocation of acceptance of the goods and the return to Plaintiffs and the other
14 Arizona Class members of the purchase or lease price of all Class Vehicles currently owned or
15 leased, and for such other incidental and consequential damages as allowed.

16 721. The VW Entity Defendants were provided notice of these issues by numerous
17 complaints filed against them, including the instant Complaint, within a reasonable amount of
18 time after Volkswagen publicly admitted to using a defeat device in the Class Vehicles to evade
19 clean air standards.

20 722. As a direct and proximate result of the VW Entity Defendants’ breach of express
21 warranties, Plaintiff and the other Arizona Class members have been damaged in an amount to be
22 determined at trial.

23 **ARIZONA COUNT III:**
24 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
25 **(Ariz. Rev. Stat. §§ 47-2314 and 47-2A212)**

26 723. Plaintiffs reallege and incorporate by reference all allegations of the preceding
27 paragraphs as though fully set forth herein.
28

1 724. Plaintiffs bring this Count on behalf of the Arizona Class, against VW AG, VW
2 America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the “VW
3 Entity Defendants”).

4 725. The VW Entity Defendants are and were at all relevant times “merchants” with
5 respect to motor vehicles under Ariz. Rev. Stat. §§ 47-2104(A) and 47-2a103(c); and is a “seller”
6 of motor vehicles under Ariz. Rev. Stat. § 47-2103(A)(4).

7 726. With respect to leases, the VW Entity Defendants are and were at all relevant
8 times “lessors” of motor vehicles under Ariz. Rev. Stat. § 47-2a103(A)(16).

9 727. The Class Vehicles are and were at all relevant times “goods” within the meaning
10 of Ariz. Rev. Stat. §§ 47-2105(A) and 47-2a103(A)(8).

11 728. A warranty that the Class Vehicles were in merchantable condition and fit for the
12 ordinary purpose for which vehicles are used is implied by law pursuant to Ariz. Rev. Stat. §§ 47-
13 2314 and 47-2a212.

14 729. These Class Vehicles, when sold or leased and at all times thereafter, were not in
15 merchantable condition and are not fit for the ordinary purpose for which vehicles are used.
16 Specifically, the Class Vehicles are inherently defective in that they do not comply with federal
17 and state emissions standards, rendering certain emissions functions inoperative; and the “clean”
18 diesel engine system was not adequately designed, manufactured, and tested.

19 730. Volkswagen was provided notice of these issues by the investigations of the EPA
20 and individual state regulators, numerous complaints filed against it including the instant
21 Complaint, and by numerous individual letters and communications sent by Plaintiffs and others
22 within a reasonable amount of time after the allegations of Class Vehicle defects became public.

23 731. As a direct and proximate result of the VW Entity Defendants’ breach of the
24 implied warranty of merchantability, Plaintiffs and the other Arizona Class members have been
25 damaged in an amount to be proven at trial.

ARKANSAS

**ARKANSAS COUNT I:
VIOLATIONS OF THE DECEPTIVE TRADE PRACTICE ACT
(Ark. Code Ann. § 4-88-101, *et seq.*)**

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4 732. Plaintiffs incorporate by reference each preceding paragraph as though fully set
5 forth herein.

6 733. Plaintiff Rima (for the purpose of this section, “Plaintiffs”) bring this action on
7 behalf of themselves and the Arkansas Class against all Defendants.

8 734. Defendants, Plaintiffs, and the Arkansas Class are “persons” within the meaning of
9 Arkansas Deceptive Trade Practices Act (“Arkansas DTPA”), Ark. Code Ann. § 4-88-102(5).

10 735. The Class Vehicles are “goods” within the meaning of Ark. Code Ann. § 4-88-
11 102(4).

12 736. The Arkansas DTPA prohibits “[d]eceptive and unconscionable trade practices,”
13 which include, but are not limited to, a list of enumerated items, including “[e]ngaging in any
14 other unconscionable, false, or deceptive act or practice in business, commerce, or trade[.]” Ark.
15 Code Ann. § 4-88-107(a)(10). The Arkansas DTPA also prohibits the following when utilized in
16 connection with the sale or advertisement of any goods: “(1) The act, use, or employment by any
17 person of any deception, fraud, or false pretense; or (2) The concealment, suppression, or
18 omission of any material fact with intent that others rely upon the concealment, suppression, or
19 omission.” Ark. Code Ann. § 4-88-108.

20 737. In the course of their business, Defendants concealed and suppressed material facts
21 concerning the Class Vehicles. Defendants accomplished this by installing illegal defeat device
22 software in the Class Vehicles that caused the vehicles to operate in a low emission test mode
23 only during emissions testing. During normal operations, the Class Vehicles would emit grossly
24 larger quantities of noxious contaminants, sometimes 40 times over applicable standards. The
25 result was what Volkswagen intended—the Class Vehicles passed emissions testing by way of
26 deliberately induced false readings. Plaintiffs and Arkansas Class members had no way of
27 discerning that Volkswagen’s representations were false and misleading because Volkswagen’s
28 defeat device software was extremely sophisticated technology. Plaintiffs and Arkansas Class

1 members did not and could not unravel Volkswagen's deception on their own. In fact, it took
2 years before the academic engineering community—specifically a research team at WVU's
3 Center for Alternative Fuels, Engines & Emissions—detected Volkswagen's cheat using
4 sophisticated, expensive equipment and applying decades of combined experience.

5 738. Defendants thus violated the Act by, at minimum: employing deception, deceptive
6 acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any
7 material fact with intent that others rely upon such concealment, suppression or omission, in
8 connection with the sale of Class Vehicles.

9 739. Bosch played a critical role in facilitating, and itself contributed to, Volkswagen's
10 unfair and deceptive conduct, as alleged herein. Bosch knew or should have known that
11 Volkswagen would use and had used the Bosch technology as an emission defeat device, and in
12 fact helped it do so. Without Bosch's complicity and silence, Volkswagen could not have
13 perpetrated the fraudulent, deceptive, and unfair practices alleged herein, and Bosch's actions
14 themselves constitute fraudulent, deceptive, and unfair practices.

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

17 741. Defendants engaged in misleading, false, unfair or deceptive acts or practices that
18 violated the Arkansas DTPA by installing, failing to disclose and actively concealing the illegal
19 defeat device and the true cleanliness and performance of the "clean" diesel engine system, by
20 marketing its vehicles as legal, reliable, environmentally clean, efficient, and of high quality, and
21 by presenting itself as a reputable manufacturer that valued environmental cleanliness and
22 efficiency, and that stood behind its vehicles after they were sold.

23 742. The Clean Air Act and EPA regulations require that automobiles limit their
24 emissions output to specified levels. These laws are intended for the protection of public health
25 and welfare. "Defeat devices" like those in the Class Vehicles are defined and prohibited by the
26 Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 CFR § 86.1809. By
27 installing illegal "defeat devices" in the Class Vehicles and by making those vehicles available
28

1 for purchase, Volkswagen violated federal law and therefore engaged in conduct that violates the
2 Arkansas DTPA.

3 743. Defendants knew the true nature of its “clean” diesel engine system for at least six
4 years, but concealed all of that information until recently. Volkswagen also knew that it valued
5 profits over environmental cleanliness, efficiency, and compliance with the law, and that it was
6 manufacturing, selling, and distributing vehicles throughout the United States that did not comply
7 with EPA regulations. Volkswagen concealed this information as well.

8 744. Volkswagen intentionally and knowingly misrepresented material facts regarding
9 the Class Vehicles with intent to mislead Plaintiffs and the Arkansas Class.

10 745. Volkswagen knew or should have known that its conduct violated the Arkansas
11 DTPA.

12 746. Volkswagen owed Plaintiffs a duty to disclose illegality, public health and safety
13 risks, the true environmental cleanliness and efficiency of the Class Vehicles and the devaluing of
14 safety at Volkswagen, because Volkswagen:

- 15 a. possessed exclusive knowledge that they were
16 manufacturing, selling, and distributing vehicles throughout
the United States that did not comply with EPA regulations;
- 17 b. intentionally concealed the foregoing from regulators,
18 Plaintiffs, Class members; and/or
- 19 c. made incomplete representations about the environmental
20 cleanliness and efficiency of the Class Vehicles generally,
and the use of the defeat device in particular, while
21 purposefully withholding material facts from Plaintiffs that
contradicted these representations.

22 747. Defendants concealed the illegal defeat device and the true emissions, efficiency,
23 and performance of the “clean” diesel system, resulting in a raft of negative publicity once the
24 defects finally began to be disclosed. The value of the Class Vehicles has greatly diminished. In
25 light of the stigma attached to those vehicles by Volkswagen’s conduct, they are now worth
26 significantly less than they otherwise would be worth.

1 748. Volkswagen’s fraudulent use of the “defeat device” and its concealment of the true
2 characteristics of the “clean” diesel engine system were material to Plaintiffs and the Arkansas
3 Class.

4 749. Defendants’ unfair or deceptive acts or practices were likely to and did in fact
5 deceive regulators and reasonable consumers, including Plaintiffs, about the true environmental
6 cleanliness and efficiency of Volkswagen-branded vehicles, the quality of the Volkswagen brand,
7 the devaluing of environmental cleanliness and integrity at Volkswagen, and the true value of the
8 Class Vehicles

9 750. Plaintiffs and the Arkansas Class suffered ascertainable loss and actual damages as
10 a direct and proximate result of Defendants’ misrepresentations and its concealment of and failure
11 to disclose material information. Plaintiffs and the Arkansas Class members who purchased or
12 leased the Class Vehicles would not have purchased or leased them at all and/or—if the Vehicles’
13 true nature had been disclosed and mitigated, and the Vehicles rendered legal to sell—would have
14 paid significantly less for them. Plaintiffs also suffered diminished value of their vehicles, as well
15 as lost or diminished use.

16 751. Defendants had an ongoing duty to all Volkswagen customers to refrain from
17 unfair and deceptive practices under the Arkansas DTPA. All owners of Class Vehicles suffered
18 ascertainable loss in the form of the diminished value of their vehicles as a result of
19 Volkswagen’s deceptive and unfair acts and practices made in the course of Volkswagen’s
20 business.

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

24 753. As a direct and proximate result of Defendants’ violations of the Arkansas DTPA,
25 Plaintiffs and the Arkansas Class have suffered injury-in-fact and/or actual damage.

26 754. Plaintiffs and the Arkansas Class seek monetary relief against Defendants in an
27 amount to be determined at trial. Plaintiffs and the Arkansas Class also seek punitive damages
28

1 because Volkswagen acted wantonly in causing the injury or with such a conscious indifference
2 to the consequences that malice may be inferred.

3 755. Plaintiffs also seek an order enjoining Defendants' unfair, unlawful, and/or
4 deceptive practices, attorneys' fees, and any other just and proper relief available under the
5 Arkansas DTPA.

6 **ARKANSAS COUNT II:**
7 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
8 **(Ark. Code §§ 4-2-314 and 4-2A-212)**

9 756. Plaintiffs reallege and incorporate by reference all allegations of the preceding
10 paragraphs as though fully set forth herein.

11 757. Plaintiffs bring this Count on behalf of the Arkansas Class against VW AG, VW
12 America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the "VW
13 Entity Defendants").

14 758. The VW Entity Defendants are and were at all relevant times "merchant[s]" with
15 respect to motor vehicles under Ark. Code §§ 4-2-104(1) and 4-2A-103(3), and "seller[s]" of
16 motor vehicles under § 4-2-103(1)(d).

17 759. With respect to leases, the VW Entity Defendants are and were at all relevant
18 times "lessor[s]" of motor vehicles under Ark. Code § 4-2A-103(1)(p).

19 760. The Class Vehicles are and were at all relevant times "goods" within the meaning
20 of Ark. Code §§ 4-2-105(1) and 4-2A-103(1)(h).

21 761. A warranty that the Class Vehicles were in merchantable condition and fit for the
22 ordinary purpose for which vehicles are used is implied by law pursuant to Ark. Code §§ 4-2-314
23 and 4-2A-212.

24 762. These Class Vehicles, when sold or leased and at all times thereafter, were not in
25 merchantable condition and are not fit for the ordinary purpose for which vehicles are used.
26 Specifically, the Class Vehicles are inherently defective in that they do not comply with federal
27 and state emissions standards. The Class Vehicles have emissions systems that can be rendered
28 inoperative and a "clean" diesel engine system that was not adequately designed, manufactured,
and tested.

1 763. Volkswagen was provided notice of these issues by the investigations of the EPA
2 and individual state regulators, numerous complaints filed against it including the instant
3 Complaint, and by numerous individual letters and communications sent by Plaintiffs and others
4 within a reasonable amount of time after the allegations of Class Vehicle defects became public.

5 764. As a direct and proximate result of the VW Entity Defendants' breach of the
6 implied warranty of merchantability, Plaintiffs and the other Arkansas Class members have been
7 damaged in an amount to be proven at trial.

8 **ARKANSAS COUNT III:**
9 **BREACH OF EXPRESS WARRANTY**
10 **(Ark. Code Ann. §§ 4-2-313 and 4-2A-210)**

11 765. Plaintiffs reallege and incorporate by reference all preceding allegations as though
12 fully set forth herein.

13 766. Plaintiffs bring this Count on behalf of the Arkansas Class, against all Defendants.

14 767. The VW Entity Defendants are and were at all relevant times "merchants" with
15 respect to motor vehicles under Ark. Code §§ 4-2-104(1) and 4-2A-103(3), and "sellers" of motor
16 vehicles under § 4-2-103(1)(d).

17 768. With respect to leases, the VW Entity Defendants are and were at all relevant
18 times "lessors" of motor vehicles under Ark. Code § 4-2A-103(1)(p).

19 769. The Class Vehicles are and were at all relevant times "goods" within the meaning
20 of Ark. Code §§ 4-2-105(1) and 4-2A-103(1)(h).

21 770. In connection with the purchase or lease of each one of its new vehicles, the VW
22 Entity Defendants provide an express New Vehicle Limited Warranty ("NVLW") for a period of
23 three years or 36,000 miles, whichever occurs first. This NVLW exists to cover "any repair to
24 correct a manufacturers defect in materials or workmanship."

25 771. The Clean Air Act requires manufacturers of light-duty vehicles to provide two
26 federal emission control warranties: a "Performance Warranty" and a "Design and Defect
27 Warranty."

28 772. The EPA requires vehicle manufacturers to provide a Performance Warranty with
respect to the vehicles' emission systems. Thus, Volkswagen also provides an express warranty

1 for its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
2 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
3 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
4 emission control components are covered for the first eight years or 80,000 miles, whichever
5 comes first. These major emission control components subject to the longer warranty include the
6 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
7 device or computer.

8 773. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
9 with respect to their vehicles' emission systems. Thus, the VW Entity Defendants also provide an
10 express warranty for their vehicles through a Federal Emission Control System Defect Warranty.
11 The Design and Defect Warranty required by the EPA covers repair of emission control or
12 emission related parts which fail to function or function improperly because of a defect in
13 materials or workmanship. This warranty provides protection for two years or 24,000 miles,
14 whichever comes first, or, for the major emission control components, for eight years or 80,000
15 miles, whichever comes first.

16 774. As manufacturers of light-duty vehicles, the VW Entity Defendants were required
17 to provide these warranties to purchasers or performance of their "clean" diesel system.

18 775. The VW Entity Defendants' warranties formed a basis of the bargain that was
19 reached when Plaintiffs and other Arkansas Class members purchased or leased their Class
20 Vehicles equipped with the non-compliant "clean" diesel engine and emission systems.

21 776. Plaintiffs and the Arkansas Class members experienced defects within the
22 warranty period. Despite the existence of warranties, the VW Entity Defendants failed to inform
23 Plaintiffs and Arkansas Class members that the Class Vehicles were intentionally designed and
24 manufactured to be out of compliance with applicable state and federal emissions laws, and failed
25 to fix the defective emission components free of charge.

26 777. The VW Entity Defendants breached the express warranty promising to repair and
27 correct a manufacturing defect or materials or workmanship of any parts they supplied. The VW
28

1 Entity Defendants have not repaired or adjusted, and have been unable to repair or adjust, the
2 Class Vehicles' materials and workmanship defects.

3 778. Affording the VW Entity Defendants a reasonable opportunity to cure their breach
4 of written warranties would be unnecessary and futile here. For example, the Frequently Asked
5 Questions ("FAQ") section of VW's informational website states:

6 **How soon will the remedy be available, and how am I going to**
7 **be compensated for this?**

8 We cannot offer a firm date now because we need to work on a
9 remedy and review it with the government. We are proceeding as
quickly as possible.

10 779. In his Congressional testimony on October 8, 2015, Michael Horn stated that
11 Volkswagen intends to make Class Vehicles compliant with emission standards through software
12 fixes and the installation of auxiliary hardware, but that fix will take "1 to 2 years, minimum."
13 When questioned on remedies for consumers, he stated that Volkswagen may pay customers for a
14 loss in resale values because of the scandal. He said that Volkswagen is not considering
15 providing loaner vehicles because the U.S. government says the vehicles are safe to drive.

16 780. Michael Horn's testimony serves as an admission that the limited warranty
17 promising to repair and/or correct a manufacturing defect fails in its essential purpose because the
18 VW Entity Defendants cannot meet that promise within a reasonable time.

19 781. Furthermore, the limited warranty promising to repair and/or correct a
20 manufacturing defect fails in its essential purpose because the contractual remedy is insufficient
21 to make Plaintiffs and the other Arkansas Class members whole and because the VW Entity
22 Defendants have failed and/or have refused to adequately provide the promised remedies within a
23 reasonable time.

24 782. Accordingly, recovery by Plaintiffs and the other Arkansas Class members is not
25 restricted to the limited warranty promising to repair and/or correct a manufacturing defect, and
26 Plaintiffs, individually and on behalf of the other Arkansas Class members, seek all remedies as
27 allowed by law.
28

1 783. Also, as alleged in more detail herein, at the time the VW Entity Defendants
2 warranted and sold or leased the Class Vehicles, they knew that the Class Vehicles were
3 inherently defective and did not conform to their warranties; further, the VW Entity Defendants
4 had wrongfully and fraudulently concealed material facts regarding the Class Vehicles. Plaintiffs
5 and the other Arkansas Class members were therefore induced to purchase or lease the Class
6 Vehicles under false and/or fraudulent pretenses.

7 784. Moreover, many of the injuries flowing from the Class Vehicles cannot be
8 resolved through the limited remedy of “replacements or adjustments,” as many incidental and
9 consequential damages have already been suffered because of Volkswagen’s fraudulent conduct
10 as alleged herein, and because of its failure and/or continued failure to provide such limited
11 remedy within a reasonable time, and any limitation on Plaintiffs’ and the other Arkansas Class
12 members’ remedies would be insufficient to make Plaintiffs and the other Arkansas Class
13 members whole.

14 785. Finally, because of the VW Entity Defendants’ breach of warranty as set forth
15 herein, Plaintiffs and the other Arkansas Class members assert, as additional and/or alternative
16 remedies, the revocation of acceptance of the goods and the return to Plaintiffs and the other
17 Arkansas Class members of the purchase or lease price of all Class Vehicles currently owned or
18 leased, and for such other incidental and consequential damages as allowed.

19 786. The VW Entity Defendants were provided notice of these issues by numerous
20 complaints filed against them, including the instant Complaint, within a reasonable amount of
21 time after Volkswagen publicly admitted to using a defeat device in the Class Vehicles to evade
22 clean air standards.

23 787. As a direct and proximate result of the VW Entity Defendants’ breach of express
24 warranties, Plaintiff and the other Arkansas Class members have been damaged in an amount to
25 be determined at trial.

CALIFORNIA

**CALIFORNIA COUNT I:
VIOLATIONS OF THE CONSUMER LEGAL REMEDIES ACT
(Cal. Civ. Code § 1750, *et seq.*)**

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4 788. Plaintiffs incorporate by reference each preceding paragraph as though fully set
5 forth herein.

6 789. Plaintiffs Alba, Argento, Beaven, Brodie, Brook, Catherine, Burt, Clark, Dodge,
7 Epstein, Farquar, Fohet, Hoag, Houle, Kaplan, Kosik-Westly, Krein, McGuire, Meyler, Smith,
8 Pellegrini, Truong, Verner, and Winternitz (for the purpose of this section, “Plaintiffs”) bring this
9 action on behalf of themselves and the California Class against all Defendants.

10 790. Defendants are “person[s]” under Cal. Civ. Code § 1761(c).

11 791. Plaintiffs and the California Class are “consumers,” as defined by Cal. Civ. Code
12 § 1761(d), who purchased or leased one or more Class Vehicles.

13 792. The California Legal Remedies Act (“CLRA”) prohibits “unfair or deceptive acts
14 or practices undertaken by any person in a transaction intended to result or which results in the
15 sale or lease of goods or services to any consumer[.]” Cal. Civ. Code § 1770(a). Volkswagen has
16 engaged in unfair or deceptive acts or practices that violated Cal. Civ. Code § 1750, *et seq.*, as
17 described above and below by, at a minimum, representing that Class Vehicles have
18 characteristics, uses, benefits, and qualities which they do not have; representing that Class
19 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
20 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of
21 a transaction involving Class Vehicles has been supplied in accordance with a previous
22 representation when it has not.

23 793. In the course of their business, Defendants concealed and suppressed material facts
24 concerning the Class Vehicles. Defendants accomplished this by installing illegal defeat device
25 software in the Class Vehicles that caused the vehicles to operate in a low emission test mode
26 only during emissions testing. During normal operations, the Class Vehicles would emit grossly
27 larger quantities of noxious contaminants, sometimes 40 times over applicable standards. The
28 result was what Volkswagen intended—the Class Vehicles passed emissions testing by way of

1 deliberately induced false readings. Plaintiffs and California Class members had no way of
2 discerning that Volkswagen’s representations were false and misleading because Volkswagen’s
3 defeat device software was extremely sophisticated technology. Plaintiffs and California Class
4 members did not and could not unravel Volkswagen’s deception on their own. In fact, it took
5 years before the academic engineering community—specifically a research team at WVU’s
6 Center for Alternative Fuels, Engines & Emissions—detected Volkswagen’s cheat using
7 sophisticated, expensive equipment and applying decades of combined experience.

8 794. Defendants engaged in misleading, false, unfair or deceptive acts or practices that
9 violated the CLRA by installing, failing to disclose and actively concealing the illegal defeat
10 device and the true cleanliness and performance of the “clean” diesel engine system, by
11 marketing its vehicles as legal, reliable, environmentally clean, efficient, and of high quality, and
12 by presenting itself as a reputable manufacturer that valued environmental cleanliness and
13 efficiency, and that stood behind its vehicles after they were sold.

14 795. Bosch played a critical role in facilitating, and itself contributed to, Volkswagen’s
15 unfair and deceptive conduct, as alleged herein. Bosch knew or should have known that
16 Volkswagen would use and had used the Bosch technology as an emission defeat device, and in
17 fact helped it do so. Without Bosch’s complicity and silence, Volkswagen could not have
18 perpetrated the fraudulent, deceptive, and unfair practices alleged herein, and Bosch’s actions
19 themselves constitute fraudulent, deceptive, and unfair practices.

20 796. The Clean Air Act and EPA regulations require that automobiles limit their
21 emissions output to specified levels. These laws are intended for the protection of public health
22 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the
23 Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 CFR § 86.1809. By
24 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available
25 for purchase, Volkswagen violated federal law and therefore engaged in conduct that violates the
26 CLRA

27 797. Defendants knew the true nature of its “clean” diesel engine system for at least six
28 years, but concealed all of that information until recently. Volkswagen was also aware that it

1 valued profits over environmental cleanliness, efficiency, and compliance with the law, and that it
2 was manufacturing, selling, and distributing vehicles throughout the United States that did not
3 comply with EPA regulations. Volkswagen concealed this information as well.

4 798. Volkswagen intentionally and knowingly misrepresented material facts regarding
5 the Class Vehicles with intent to mislead Plaintiffs and the California Class.

6 799. Volkswagen knew or should have known that its conduct violated the CLRA.

7 800. Defendants owed Plaintiffs a duty to disclose the illegality and public health and
8 safety risks of the Class Vehicles because they:

- 9 a. possessed exclusive knowledge that they were
10 manufacturing, selling, and distributing vehicles throughout
11 the United States that did not comply with EPA regulations;
12 b. intentionally concealed the foregoing from regulators,
13 Plaintiffs, Class members; and/or
14 c. made incomplete representations about the environmental
15 cleanliness and efficiency of the Class Vehicles generally,
16 and the use of the defeat device in particular, while
17 purposefully withholding material facts from Plaintiffs that
18 contradicted these representations.

16 801. Defendants concealed the illegal defeat device and the true emissions, efficiency,
17 and performance of the “clean” diesel system, resulting in a raft of negative publicity once the
18 defects finally began to be disclosed. The value of the Class Vehicles has therefore greatly
19 diminished. In light of the stigma attached to those vehicles by Volkswagen’s conduct, they are
20 now worth significantly less than they otherwise would be worth.

21 802. Volkswagen’s fraudulent use of the “defeat device” and its concealment of the true
22 characteristics of the “clean” diesel engine system were material to Plaintiffs and the California
23 Class. A vehicle made by a reputable manufacturer of safe vehicles is safer and worth more than
24 an otherwise comparable vehicle made by a disreputable manufacturer of unsafe vehicles that
25 conceals defects rather than promptly remedying them.

26 803. Defendants’ unfair or deceptive acts or practices were likely to and did in fact
27 deceive regulators and reasonable consumers, including Plaintiffs, about the true environmental
28 cleanliness and efficiency of Volkswagen-branded vehicles, the quality of the Volkswagen brand,

1 the devaluing of environmental cleanliness and integrity at Volkswagen, and the true value of the
2 Class Vehicles

3 804. Plaintiffs and the California ascertainable loss and actual damages as a direct and
4 proximate result of Volkswagen's misrepresentations and its concealment of and failure to
5 disclose material information. Plaintiffs and the California Class members who purchased or
6 leased the Class Vehicles would not have purchased or leased them at all and/or—if the Vehicles'
7 true nature had been disclosed and mitigated, and the Vehicles rendered legal to sell—would have
8 paid significantly less for them. Plaintiffs also suffered diminished value of their vehicles, as well
9 as lost or diminished use.

10 805. Defendants had an ongoing duty to all Volkswagen customers to refrain from
11 unfair and deceptive practices under the CLRA. All owners of Class Vehicles suffered
12 ascertainable loss in the form of the diminished value of their vehicles as a result of
13 Volkswagen's deceptive and unfair acts and practices made in the course of Volkswagen's
14 business.

15 806. Defendants' violations present a continuing risk to Plaintiffs as well as to the
16 general public. Defendants' unlawful acts and practices complained of herein affect the public
17 interest.

18 807. As a direct and proximate result of Defendants' violations of the CLRA, Plaintiffs
19 and the California Class have suffered injury-in-fact and/or actual damage.

20 808. Under Cal. Civ. Code § 1780(a), Plaintiffs and the California Class seek monetary
21 relief against Defendants measured as the diminution of the value of their vehicles caused by
22 Volkswagen's violations of the CLRA as alleged herein.

23 809. Under Cal. Civ. Code § 1780(b), Plaintiffs seek an additional award against
24 Defendants of up to \$5,000 for each California Class member who qualifies as a "senior citizen"
25 or "disabled person" under the CLRA. Defendants knew or should have known that their
26 conduct was directed to one or more California Class members who are senior citizens or disabled
27 persons. Defendants' conduct caused one or more of these senior citizens or disabled persons to
28 suffer a substantial loss of property set aside for retirement or for personal or family care and

1 maintenance, or assets essential to the health or welfare of the senior citizen or disabled person.
2 One or more California Class members who are senior citizens or disabled persons are
3 substantially more vulnerable to Defendants’ conduct because of age, poor health or infirmity,
4 impaired understanding, restricted mobility, or disability, and each of them suffered substantial
5 physical, emotional, or economic damage resulting from Defendants’ conduct.

6 810. Plaintiffs also seek punitive damages against Defendants because it carried out
7 reprehensible conduct with willful and conscious disregard of the rights and safety of others,
8 subjecting Plaintiffs and the California Class to potential cruel and unjust hardship as a result.
9 Defendants intentionally and willfully deceived Plaintiffs on life-or-death matters, and concealed
10 material facts that only Defendants knew. Defendants’ unlawful conduct constitutes malice,
11 oppression, and fraud warranting punitive damages under Cal. Civ. Code § 3294.

12 811. Plaintiffs further seek an order enjoining Volkswagen’s unfair or deceptive acts or
13 practices, restitution, punitive damages, costs of court, attorneys’ fees under Cal. Civ. Code
14 § 1780(e), and any other just and proper relief available under the CLRA.

15 812. Certain Plaintiffs have sent a letter complying with Cal. Civ. Code § 1780(b).

16 **CALIFORNIA COUNT II:**
17 **VIOLATIONS OF THE CALIFORNIA UNFAIR COMPETITION LAW**
18 **(Cal. Bus. & Prof. Code § 17200, et seq.)**

19 813. Plaintiffs incorporate by reference each preceding paragraph as though fully set
20 forth herein.

21 814. This claim is brought on behalf of the California Class against all Defendants.

22 815. California Business and Professions Code § 17200 prohibits any “unlawful, unfair,
23 or fraudulent business act or practices.” Volkswagen has engaged in unlawful, fraudulent, and
24 unfair business acts and practices in violation of the UCL.

25 816. Defendants’ conduct, as described herein, was and is in violation of the UCL.
26 Volkswagen’s conduct violates the UCL in at least the following ways:

- 27 a. by knowingly and intentionally concealing from Plaintiffs
28 and the other California Class members that the Class
Vehicles suffer from a design defect while obtaining money
from Plaintiffs and Class members;

- 1 b. by marketing Class Vehicles as possessing functional and
2 defect-free, EPA-compliant “clean” diesel engine systems;
- 3 c. by purposefully installing an illegal “defeat device” in the
4 Class Vehicles to fraudulently obtain EPA certification and
5 cause Class Vehicles to pass emissions tests when in truth
6 and fact they did not pass such tests;
- 7 d. by violating federal laws, including the Clean Air Act; and
- 8 e. by violating other California laws, including California laws
9 governing vehicle emissions and emission testing
10 requirements.

11 817. Defendants’ misrepresentations and omissions alleged herein caused Plaintiffs and
12 the other California Class members to make their purchases or leases of their Class Vehicles.
13 Absent those misrepresentations and omissions, Plaintiffs and the other California Class members
14 would not have purchased or leased these vehicles, would not have purchased or leased these
15 Class Vehicles at the prices they paid, and/or would have purchased or leased less expensive
16 alternative vehicles that did not contain “clean” diesel engine systems that failed to comply with
17 EPA and California emissions standards.

18 818. Bosch played a critical role in facilitating, and itself contributed to, Volkswagen’s
19 unfair and deceptive conduct, as alleged herein. Bosch knew or should have known that
20 Volkswagen would use and had used the Bosch technology as an emission defeat device, and in
21 fact helped it do so. Without Bosch’s complicity and silence, Volkswagen could not have
22 perpetrated the fraudulent, deceptive, and unfair practices alleged herein, and Bosch’s actions
23 themselves constitute fraudulent, deceptive, and unfair practices.

24 819. Accordingly, Plaintiffs and the other California Class members have suffered
25 injury in fact including lost money or property as a result of Defendants’ misrepresentations and
26 omissions.

27 820. Plaintiffs seek to enjoin further unlawful, unfair, and/or fraudulent acts or practices
28 by Defendant under Cal. Bus. & Prof. Code § 17200.

 821. Plaintiffs requests that this Court enter such orders or judgments as may be
 necessary to enjoin Volkswagen from continuing its unfair, unlawful, and/or deceptive practices
 and to restore to Plaintiffs and members of the Class any money it acquired by unfair competition,

1 including restitution and/or restitutionary disgorgement, as provided in Cal. Bus. & Prof. Code
2 § 17203 and Cal. Bus. & Prof. Code § 3345; and for such other relief set forth below.

3 **CALIFORNIA COUNT III:**
4 **VIOLATIONS OF CALIFORNIA FALSE ADVERTISING LAW**
5 **(Cal. Bus. & Prof. Code §§ 17500, *et seq.*)**

6 822. Plaintiffs incorporate by reference all preceding allegations as though fully set
7 forth herein.

8 823. Plaintiffs bring this Count on behalf of the California Class against Volkswagen.

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

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

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

24 827. Plaintiffs and the other Class members have suffered an injury in fact, including
25 the loss of money or property, as a result of Volkswagen’s unfair, unlawful, and/or deceptive
26 practices. In purchasing or leasing their Class Vehicles, Plaintiffs and the other Class members
27 relied on the misrepresentations and/or omissions of Volkswagen with respect to the safety,
28 performance and reliability of the Class Vehicles. Volkswagen’s representations turned out not to
be true because the Class Vehicles are distributed with faulty and defective “clean” diesel engine

1 systems, rendering certain safety and emissions functions inoperative. Had Plaintiffs and the
2 other Class members known this, they would not have purchased or leased their Class Vehicles
3 and/or paid as much for them. Accordingly, Plaintiffs and the other Class members overpaid for
4 their Class Vehicles and did not receive the benefit of their bargain.

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

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

14 **CALIFORNIA COUNT IV:**
15 **BREACH OF EXPRESS WARRANTY**
16 **(Cal. Com. Code §§ 2313 and 10210)**

17 830. Plaintiffs reallege and incorporate by reference all preceding allegations as though
18 fully set forth herein.

19 831. Plaintiffs bring this Count on behalf of the California Class, against VW AG, VW
20 America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the "VW
21 Entity Defendants").

22 832. The VW Entity Defendants are and were at all relevant times "merchants" with
23 respect to motor vehicles under Cal. Com. Code §§ 2104(1) and 10103(c), and "sellers" of motor
24 vehicles under § 2103(1)(d).

25 833. With respect to leases, the VW Entity Defendants are and were at all relevant
26 times "lessors" of motor vehicles under Cal. Com. Code § 10103(a)(16).

27 834. The Class Vehicles are and were at all relevant times "goods" within the meaning
28 of Cal. Com. Code §§ 2105(1) and 10103(a)(8).

1 835. In connection with the purchase or lease of each one of its new vehicles, the VW
2 Entity Defendants provide an express New Vehicle Limited Warranty (“NVLW”) for a period of
3 three years or 36,000 miles, whichever occurs first. This NVLW exists to cover “any repair to
4 correct a manufacturers defect in materials or workmanship.”

5 836. The Clean Air Act requires manufacturers of light-duty vehicles to provide two
6 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
7 Warranty.”

8 837. The EPA requires vehicle manufacturers to provide a Performance Warranty with
9 respect to the vehicles’ emissions systems. Thus, Volkswagen also provides an express warranty
10 for its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
11 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
12 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
13 emission control components are covered for the first eight years or 80,000 miles, whichever
14 comes first. These major emission control components subject to the longer warranty include the
15 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
16 device or computer.

17 838. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
18 with respect to their vehicles’ emission systems. Thus, the VW Entity Defendants also provide an
19 express warranty for their vehicles through a Federal Emission Control System Defect Warranty.
20 The Design and Defect Warranty required by the EPA covers repair of emission control or
21 emission related parts which fail to function or function improperly because of a defect in
22 materials or workmanship. This warranty provides protection for two years or 24,000 miles,
23 whichever comes first, or, for the major emission control components, for eight years or 80,000
24 miles, whichever comes first.

25 839. As manufacturers of light-duty vehicles, the VW Entity Defendants were required
26 to provide these warranties to purchasers or lessees of their “clean” diesel vehicles.

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1 840. The VW Entity Defendants’ warranties formed a basis of the bargain that was
2 reached when Plaintiffs and other California Class members purchased or leased their Class
3 Vehicles equipped with the non-compliant “clean” diesel engine and emission systems.

4 841. Plaintiffs and the California Class members experienced defects within the
5 warranty period. Despite the existence of warranties, the VW Entity Defendants failed to inform
6 Plaintiffs and California Class members that the Class Vehicles were intentionally designed and
7 manufactured to be out of compliance with applicable state and federal emissions laws, and failed
8 to fix the defective emission components free of charge.

9 842. The VW Entity Defendants breached the express warranty promising to repair and
10 correct a manufacturing defect or materials or workmanship of any parts they supplied. The VW
11 Entity Defendants have not repaired or adjusted, and have been unable to repair or adjust, the
12 Class Vehicles’ materials and workmanship defects.

13 843. Affording the VW Entity Defendants a reasonable opportunity to cure their breach
14 of written warranties would be unnecessary and futile here. For example, the Frequently Asked
15 Questions (“FAQ”) section of VW’s informational website states:

16 **How soon will the remedy be available, and how am I going to**
17 **be compensated for this?**

18 We cannot offer a firm date now because we need to work on a
19 remedy and review it with the government. We are proceeding as
 quickly as possible.

20 844. In his Congressional testimony on October 8, 2015, Michael Horn stated that
21 Volkswagen intends to make Class Vehicles compliant with emission standards through software
22 fixes and the installation of auxiliary hardware, but that fix will take “1 to 2 years, minimum.”
23 When questioned on remedies for consumers, he stated that Volkswagen may pay customers for a
24 loss in resale values because of the scandal. He said that Volkswagen is not considering
25 providing loaner vehicles because the U.S. government says the vehicles are safe to drive.

26 845. Michael Horn’s testimony serves as an admission that the limited warranty
27 promising to repair and/or correct a manufacturing defect fails in its essential purpose because the
28 VW Entity Defendants cannot meet that promise within a reasonable time.

1 846. Furthermore, the limited warranty promising to repair and/or correct a
2 manufacturing defect fails in its essential purpose because the contractual remedy is insufficient
3 to make Plaintiffs and the other California Class members whole and because the VW Entity
4 Defendants have failed and/or have refused to adequately provide the promised remedies within a
5 reasonable time.

6 847. Accordingly, recovery by Plaintiffs and the other California Class members is not
7 restricted to the limited warranty promising to repair and/or correct a manufacturing defect, and
8 Plaintiffs, individually and on behalf of the other California Class members, seek all remedies as
9 allowed by law.

10 848. Also, as alleged in more detail herein, at the time the VW Entity Defendants
11 warranted and sold or leased the Class Vehicles, they knew that the Class Vehicles were
12 inherently defective and did not conform to their warranties; further, the VW Entity Defendants
13 had wrongfully and fraudulently concealed material facts regarding the Class Vehicles. Plaintiffs
14 and the other California Class members were therefore induced to purchase or lease the Class
15 Vehicles under false and/or fraudulent pretenses.

16 849. Moreover, many of the injuries flowing from the Class Vehicles cannot be
17 resolved through the limited remedy of “replacements or adjustments,” as many incidental and
18 consequential damages have already been suffered because of Volkswagen’s fraudulent conduct
19 as alleged herein, and because of its failure and/or continued failure to provide such limited
20 remedy within a reasonable time, and any limitation on Plaintiffs’ and the other California Class
21 members’ remedies would be insufficient to make Plaintiffs and the other California Class
22 members whole.

23 850. Finally, because of the VW Entity Defendants’ breach of warranty as set forth
24 herein, Plaintiffs and the other California Class members assert, as additional and/or alternative
25 remedies, the revocation of acceptance of the goods and the return to Plaintiffs and the other
26 California Class members of the purchase or lease price of all Class Vehicles currently owned or
27 leased, and for such other incidental and consequential damages as allowed.
28

1 851. The VW Entity Defendants were provided notice of these issues by numerous
2 complaints filed against them, including the instant Complaint, within a reasonable amount of
3 time after Volkswagen publicly admitted to using a defeat device in the Class Vehicles to evade
4 clean air standards.

5 852. As a direct and proximate result of the VW Entity Defendants' breach of express
6 warranties, Plaintiff and the other California Class members have been damaged in an amount to
7 be determined at trial.

8 **CALIFORNIA COUNT V:**
9 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
10 **(Cal. Com. Code §§ 2314 and 10212)**

11 853. Plaintiffs reallege and incorporate by reference all allegations of the preceding
12 paragraphs as though fully set forth herein.

13 854. Plaintiffs bring this Count on behalf of the California Class, against VW AG, VW
14 America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the "VW
15 Entity Defendants").

16 855. The VW Entity Defendants are and were at all relevant times "merchants" with
17 respect to motor vehicles under Cal. Com. Code §§ 2104(1) and 10103(c), and "sellers" of motor
18 vehicles under § 2103(1)(d).

19 856. With respect to leases, the VW Entity Defendants are and were at all relevant
20 times "lessors" of motor vehicles under Cal. Com. Code § 10103(a)(16).

21 857. The Class Vehicles are and were at all relevant times "goods" within the meaning
22 of Cal. Com. Code §§ 2105(1) and 10103(a)(8).

23 858. A warranty that the Class Vehicles were in merchantable condition and fit for the
24 ordinary purpose for which vehicles are used is implied by law pursuant to Cal. Com. Code
25 §§ 2314 and 10212.

26 859. These Class Vehicles, when sold or leased and at all times thereafter, were not in
27 merchantable condition and are not fit for the ordinary purpose for which vehicles are used.
28 Specifically, the Class Vehicles are inherently defective in that they do not comply with federal

1 and state emissions standards, rendering certain emissions functions inoperative; and the “clean”
2 diesel engine system was not adequately designed, manufactured, and tested.

3 860. The VW Entity Defendants were provided notice of these issues by the
4 investigations of the EPA and individual state regulators, numerous complaints filed against it
5 including the instant Complaint, and by numerous individual letters and communications sent by
6 Plaintiffs and others within a reasonable amount of time after the allegations of Class Vehicle
7 defects became public.

8 861. As a direct and proximate result of the VW Entity Defendants’ breach of the
9 implied warranty of merchantability, Plaintiffs and the other California Class members have been
10 damaged in an amount to be proven at trial.

11 **CALIFORNIA COUNT VI:**
12 **VIOLATIONS OF SONG-BEVERLY CONSUMER WARRANTY ACT FOR**
13 **BREACH OF EXPRESS WARRANTIES**
(Cal. Civ. Code §§ 1791.2 & 1793.2(d))

14 862. Plaintiffs incorporate by reference all preceding allegations as though fully set
15 forth herein.

16 863. Plaintiffs bring this Count on behalf of the California Class, against VW AG, VW
17 America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the “VW
18 Entity Defendants”).

19 864. Plaintiffs and the other Class members who purchased or leased the Class Vehicles
20 in California are “buyers” within the meaning of Cal. Civ. Code § 1791(b).

21 865. The Class Vehicles are “consumer goods” within the meaning of Cal. Civ. Code
22 § 1791(a).

23 866. The VW Entity Defendants are “manufacturer[s]” of the Class Vehicles within the
24 meaning of Cal. Civ. Code § 1791(j).

25 867. Plaintiffs and the other Class members bought/leased new motor vehicles
26 manufactured by the VW Entity Defendants.

27 868. The VW Entity Defendants made express warranties to Plaintiffs and the other
28 Class members within the meaning of Cal. Civ. Code §§ 1791.2 and 1793.2, as described above.

1 869. In connection with the purchase or lease of each one of its new vehicles, the VW
2 Entity Defendants provide an express New Vehicle Limited Warranty (“NVLW”) for a period of
3 three years or 36,000 miles, whichever occurs first. This NVLW exists to cover “any repair to
4 correct a manufacturers defect in materials or workmanship.”

5 870. The Clean Air Act requires manufacturers of light-duty vehicles to provide two
6 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
7 Warranty.”

8 871. The EPA requires vehicle manufacturers to provide a Performance Warranty with
9 respect to the vehicles’ emission systems. Thus, Volkswagen also provides an express warranty
10 for its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
11 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
12 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
13 emission control components are covered for the first eight years or 80,000 miles, whichever
14 comes first. These major emission control components subject to the longer warranty include the
15 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
16 device or computer.

17 872. The EPA requires vehicle manufacturers to issue Defect Warranties with respect to
18 their vehicles’ emission systems. Thus, the VW Entity Defendants also provide an express
19 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The
20 Design and Defect Warranty required by the EPA covers repair of emission control or emission
21 related parts which fail to function or function improperly because of a defect in materials or
22 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
23 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
24 comes first.

25 873. As manufacturers of light-duty vehicles, the VW Entity Defendants were required
26 to provide these warranties to purchasers of their “clean” diesel vehicles.

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1 874. The VW Entity Defendants’ warranties formed the basis of the bargain that was
2 reached when Plaintiffs and Class members purchased or leased their Class Vehicles equipped
3 with the non-EPA compliant “clean” diesel engine system from Volkswagen.

4 875. Plaintiffs and Class members experienced defects within the warranty period.
5 Despite the existence of warranties, the VW Entity Defendants failed to inform Plaintiffs and
6 class members that the Class Vehicles were intentionally designed and manufactured to be out of
7 compliance with applicable state and federal emissions laws, and failed to fix the defective
8 emission components free of charge.

9 876. Plaintiffs and class members gave the VW Entity Defendants or their authorized
10 repair facilities opportunities to fix the defects unless only one repair attempt was possible
11 because the vehicle was later destroyed or because the VW Entity Defendants or their authorized
12 repair facility refused to attempt the repair. The VW Entity Defendants did not promptly replace
13 or buy back the Class Vehicles of Plaintiffs and the other Class members.

14 877. As a result of the VW Entity Defendants’ breach of its express warranties,
15 Plaintiffs and the other Class members received goods whose dangerous condition substantially
16 impairs their value to Plaintiffs and the other Class members. Plaintiffs and the other Class
17 members have been damaged as a result of the diminished value of the VW Entity Defendants’
18 products, the products’ malfunctioning, and the nonuse of their Class Vehicles.

19 878. Pursuant to Cal. Civ. Code §§ 1793.2 & 1794, Plaintiffs and the other Class
20 members are entitled to damages and other legal and equitable relief including, at their election,
21 the purchase price of their Class Vehicles, or the overpayment or diminution in value of their
22 Class Vehicles.

23 879. Pursuant to Cal. Civ. Code § 1794, Plaintiffs and the other Class members are
24 entitled to costs and attorneys’ fees.

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1 **CALIFORNIA COUNT VII:**
2 **VIOLATIONS OF SONG-BEVERLY CONSUMER WARRANTY ACT FOR**
3 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
4 **(Cal. Civ. Code §§ 1791.1 and 1792)**

5 880. Plaintiffs incorporate by reference all preceding allegations as though fully set
6 forth herein.

7 881. Plaintiffs bring this Count on behalf of the California Class, against VW AG, VW
8 America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the “VW
9 Entity Defendants”).

10 882. Plaintiffs and the other Class members who purchased or leased the Class Vehicles
11 in California are “buyers” within the meaning of Cal. Civ. Code § 1791(b).

12 883. The Class Vehicles are “consumer goods” within the meaning of Cal. Civ. Code
13 § 1791(a).

14 884. The VW Entity Defendants are “manufacturer[s]” of the Class Vehicles within the
15 meaning of Cal. Civ. Code § 1791(j).

16 885. Volkswagen impliedly warranted to Plaintiffs and the other Class members that its
17 Class Vehicles were “merchantable” within the meaning of Cal. Civ. Code §§ 1791.1(a) & 1792,
18 however, the Class Vehicles do not have the quality that a buyer would reasonably expect.

19 886. Cal. Civ. Code § 1791.1(a) states:

20 “Implied warranty of merchantability” or “implied warranty that
21 goods are merchantable” means that the consumer goods meet each
22 of the following:

- 23 (1) Pass without objection in the trade under the contract
24 description.
- 25 (2) Are fit for the ordinary purposes for which such goods are
26 used.
- 27 (3) Are adequately contained, packaged, and labeled.
- 28 (4) Conform to the promises or affirmations of fact made on the
container or label.

887. The Class Vehicles would not pass without objection in the automotive trade
because of the defects in the Class Vehicles’ “clean” diesel engine system. Specifically, the Class

1 Vehicles do not comply with federal and state emissions standards, rendering certain safety and
2 emissions functions inoperative. In addition, the “clean” diesel engine system was not adequately
3 designed, manufactures, and tested.

4 888. Because of the defects in the Class Vehicles’ “clean” diesel engine system, they
5 are not in merchantable condition and thus not fit for ordinary purposes.

6 889. The Class Vehicles are not adequately labeled because the labeling fails to disclose
7 the defects in the Class Vehicles’ “clean” diesel engine system.

8 890. The VW Entity Defendants breached the implied warranty of merchantability by
9 manufacturing and selling Class Vehicles containing defects associated with the “clean” diesel
10 engine system. Furthermore, these defects have caused Plaintiffs and the other Class members to
11 not receive the benefit of their bargain and have caused Class Vehicles to depreciate in value.

12 891. As a direct and proximate result of the VW Entity Defendants’ breach of the
13 implied warranty of merchantability, Plaintiffs and the other Class members received goods
14 whose defective condition substantially impairs their value to Plaintiffs and the other Class
15 members. Plaintiffs and the other Class members have been damaged as a result of the
16 diminished value of Volkswagen’s products, the products’ malfunctioning, and the nonuse of
17 their Class Vehicles.

18 892. Pursuant to Cal. Civ. Code §§ 1791.1(d) & 1794, Plaintiffs and the other Class
19 members are entitled to damages and other legal and equitable relief including, at their election,
20 the purchase price of their Class Vehicles, or the overpayment or diminution in value of their
21 Class Vehicles.

22 893. Pursuant to Cal. Civ. Code § 1794, Plaintiffs and the other Class members are
23 entitled to costs and attorneys’ fees.

24 **CALIFORNIA COUNT VIII:**
25 **BREACH OF EXPRESS CALIFORNIA EMISSIONS**
26 **WARRANTIES**
27 **(Cal. Civ. Code §§ 1793.2, et seq.)**

28 894. Plaintiffs incorporate by reference all preceding allegations as though fully set
forth herein.

1 895. Plaintiffs bring this Count on behalf of the California Class, against VW AG, VW
2 America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the “VW
3 Entity Defendants”).

4 896. Each class vehicle is covered by express California Emissions Warranties as a
5 matter of law. *See* Cal. Health & Safety Code § 43205; Cal. Code Regs. tit. 13, § 2037.

6 897. The express California Emissions Warranties generally provide “that the vehicle or
7 engine is...[d]esigned, built, and equipped so as to conform with all applicable regulations
8 adopted by the Air Resources Board.” *Id.* This provision applies without any time or mileage
9 limitation. *See id.*

10 898. The California Emissions Warranties also specifically warrant Class members
11 against any performance failure of the emissions control system for three years or 50,000 miles,
12 whichever occurs first, and against any defect in any emission-related part for seven years or
13 70,000 miles, whichever occurs first. *See id.*

14 899. California law imposes express duties “on the manufacturer of consumer goods
15 sold in this state and for which the manufacturer has made an express warranty.” Cal. Civ. Code
16 § 1793.2.

17 900. Among those duties, “[i]f the manufacturer or its representative in this state is
18 unable to service or repair a new motor vehicle...to conform to the applicable express warranties
19 after a reasonable number of attempts, the manufacturer shall either promptly replace the new
20 motor vehicle or promptly make restitution to the buyer” at the vehicle owner’s option. *See* Cal.
21 Civ. Code § 1793.2(d)(2).

22 901. Class members are excused from the requirement to “deliver nonconforming
23 goods to the manufacturer’s service and repair facility within this state” because Volkswagen is
24 refusing to accept them and delivery of the California Vehicles “cannot reasonably be
25 accomplished.” Cal. Civ. Code § 1793.2(c).

26 902. This complaint is written notice of nonconformity to Volkswagen and “shall
27 constitute return of the goods.” *Id.*

28

1 903. Class members are excused from any requirement that they allow a “reasonable
2 number of attempts” to bring California Vehicles into conformity with their California Emissions
3 Warranties based on futility because Volkswagen admits it has no ability to do so at this time.
4 *See In re MyFord Touch Consumer Litig.*, 46 F. Supp. 3d 936, 970-71 (N.D. Cal. 2014).

5 904. In addition to all other damages and remedies, Class members are entitled to
6 “recover a civil penalty of up to two times the amount of damages” for the aforementioned
7 violation. *See* Cal. Civ. Code § 1794(e)(1). Volkswagen’s existing “qualified third-party dispute
8 resolution process” does not relieve Volkswagen from the civil penalty imposed because
9 Volkswagen is not offering the process to Class members for resolution of these California
10 Emissions Warranties issues and the process is not “substantially” compliant. *See* Cal. Civ. Code
11 § 1794(e)(2); Cal. Civ. Code § 1793.22(d); 16 C.F.R. § 703.2.

12 **CALIFORNIA COUNT IX:**
13 **FAILURE TO RECALL/RETROFIT**

14 905. Plaintiffs incorporate by reference each preceding paragraph as though fully set
15 forth herein.

16 906. Plaintiffs bring this Count on behalf of the California State Class against
17 Volkswagen.

18 907. Volkswagen manufactured, marketed, distributed, sold, or otherwise placed into
19 the stream of U.S. commerce the Class Vehicles, as set forth above.

20 908. Volkswagen knew or reasonably should have known that the Class Vehicles were
21 dangerous when used in a reasonably foreseeable manner, and posed an unreasonable.

22 909. Volkswagen became aware that the Class Vehicles were dangerous when used in a
23 reasonably foreseeable manner, and posed an unreasonable after the Vehicles were sold.

24 910. Volkswagen failed to recall the Class Vehicles in a timely manner or warn of the
25 dangers posed by Class Vehicles. In addition, Volkswagens’ December 2014 recall in connection
26 with the 2.0-liter Class Vehicles in December 2014 was ineffective because it did not mitigate or
27 otherwise resolve the illegal and excessive NOx emissions.
28

1 911. A reasonable manufacturer in same or similar circumstances would have timely
2 and properly recalled the Class Vehicles.

3 912. Plaintiffs and Class members were harmed by Volkswagen’s failure to recall the
4 Class Vehicles properly and in a timely manner and, as a result, have suffered damages, including
5 their out-of-pocket costs, losses, and inconvenience expended in complying with the false recall,
6 and caused by Volkswagen’s ongoing failure to properly recall, retrofit, and fully repair the Class
7 Vehicles.

8 913. Volkswagen’s failure to timely recall the Class Vehicles was a substantial factor in
9 causing the harm to Plaintiffs and Class members as alleged herein.

10 **COLORADO**

11 **COLORADO COUNT I:**
12 **VIOLATIONS OF THE COLORADO CONSUMER PROTECTION ACT**
13 **(Col. Rev. Stat. § 6-1-101, *et seq.*)**

14 914. Plaintiffs incorporate by reference each preceding paragraph as though fully set
15 forth herein.

16 915. Plaintiffs Doege, Reiser, and Zvyagelsky (for the purpose of this section,
17 “Plaintiffs”) bring this action on behalf of themselves and the Colorado Class against all
18 Defendants.

19 916. Defendants are “person[s]” under § 6-1-102(6) of the Colorado Consumer
20 Protection Act (“Colorado CPA”), Col. Rev. Stat. § 6-1-101, *et seq.*

21 917. Plaintiffs and Colorado Class members are “consumers” for purposes of Col. Rev.
22 Stat § 6-1-113(1)(a) who purchased or leased one or more Class Vehicles.

23 918. The Colorado CPA prohibits deceptive trade practices in the course of a person’s
24 business. Volkswagen engaged in deceptive trade practices prohibited by the Colorado CPA,
25 including: (1) knowingly making a false representation as to the characteristics, uses, and benefits
26 of the Class Vehicles that had the capacity or tendency to deceive Colorado Class members; (2)
27 representing that the Class Vehicles are of a particular standard, quality, and grade even though
28 Volkswagen knew or should have known they are not; (3) advertising the Class Vehicles with the
intent not to sell them as advertised; and (4) failing to disclose material information concerning

1 the Class Vehicles that was known to Volkswagen at the time of advertisement or sale with the
2 intent to induce Colorado Class members to purchase, lease or retain the Class Vehicles.

3 919. In the course of their business, Defendants concealed and suppressed material facts
4 concerning the Class Vehicles. Defendants accomplished this by installing illegal defeat device
5 software in the Class Vehicles that caused the vehicles to operate in a low emission test mode
6 only during emissions testing. During normal operations, the Class Vehicles would emit grossly
7 larger quantities of noxious contaminants, sometimes 40 times over applicable standards. The
8 result was what Volkswagen intended—the Class Vehicles passed emissions testing by way of
9 deliberately induced false readings. Plaintiffs and Colorado Class members had no way of
10 discerning that Volkswagen’s representations were false and misleading because Volkswagen’s
11 defeat device software was extremely sophisticated technology. Plaintiffs and Colorado Class
12 members did not and could not unravel Volkswagen’s deception on their own. In fact, it took
13 years before the academic engineering community—specifically a research team at WVU’s
14 Center for Alternative Fuels, Engines & Emissions—detected Volkswagen’s cheat using
15 sophisticated, expensive equipment and applying decades of combined experience.

16 920. Defendants thus violated the Act by, at minimum: employing deception, deceptive
17 acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any
18 material fact with intent that others rely upon such concealment, suppression or omission, in
19 connection with the sale of Class Vehicles.

20 921. Bosch played a critical role in facilitating, and itself contributed to, Volkswagen’s
21 unfair and deceptive conduct, as alleged herein. Bosch knew or should have known that
22 Volkswagen would use and had used the Bosch technology as an emission defeat device, and in
23 fact helped it do so. Without Bosch’s complicity and silence, Volkswagen could not have
24 perpetrated the fraudulent, deceptive, and unfair practices alleged herein, and Bosch’s actions
25 themselves constitute fraudulent, deceptive, and unfair practices.

26 922. Defendants engaged in misleading, false, unfair or deceptive acts or practices that
27 violated the Colorado CPA by installing, failing to disclose and actively concealing the illegal
28 defeat device and the true cleanliness and performance of the “clean” diesel engine system, by

1 marketing its vehicles as legal, reliable, environmentally clean, efficient, and of high quality, and
2 by presenting itself as a reputable manufacturer that valued environmental cleanliness and
3 efficiency, and that stood behind its vehicles after they were sold.

4 923. The Clean Air Act and EPA regulations require that automobiles limit their
5 emissions output to specified levels. These laws are intended for the protection of public health
6 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the
7 Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 CFR § 86.1809. By
8 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available
9 for purchase, Volkswagen violated federal law and therefore engaged in conduct that violates the
10 Colorado CPA.

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

13 925. Defendants knew the true nature of its “clean” diesel engine system for at least six
14 years, but concealed all of that information until recently. Volkswagen was also aware that it
15 valued profits over environmental cleanliness, efficiency, and compliance with the law, and that it
16 was manufacturing, selling, and distributing vehicles throughout the United States that did not
17 comply with EPA regulations. Volkswagen concealed this information as well.

18 926. Volkswagen intentionally and knowingly misrepresented material facts regarding
19 the Class Vehicles with intent to mislead Plaintiffs and the Colorado Class.

20 927. Volkswagen knew or should have known that its conduct violated the Colorado
21 CPA.

22 928. Volkswagen owed Plaintiffs a duty to disclose illegality, public health and safety
23 risks, the true environmental cleanliness and efficiency of the Class Vehicles and the devaluing of
24 safety at Volkswagen, because Volkswagen:

- 25 a. possessed exclusive knowledge that they were
26 manufacturing, selling, and distributing vehicles throughout
the United States that did not comply with EPA regulations;
- 27 b. intentionally concealed the foregoing from regulators,
28 Plaintiffs, Class members; and/or

1 c. made incomplete representations about the environmental
2 cleanliness and efficiency of the Class Vehicles generally,
3 and the use of the defeat device in particular, while
4 purposefully withholding material facts from Plaintiffs that
5 contradicted these representations.

6 929. Defendants concealed the illegal defeat device and the true emissions, efficiency,
7 and performance of the “clean” diesel system, resulting in a raft of negative publicity once the
8 defects finally began to be disclosed. The value of the Class Vehicles has therefore greatly
9 diminished. In light of the stigma attached to those vehicles by Volkswagen’s conduct, they are
10 now worth significantly less than they otherwise would be worth.

11 930. Volkswagen’s fraudulent use of the “defeat device” and its concealment of the true
12 characteristics of the “clean” diesel engine system were material to Plaintiffs and the Colorado
13 Class.

14 931. Defendants’ unfair or deceptive acts or practices were likely to and did in fact
15 deceive regulators and reasonable consumers, including Plaintiffs, about the true environmental
16 cleanliness and efficiency of Volkswagen-branded vehicles, the quality of the Volkswagen brand,
17 the devaluing of environmental cleanliness and integrity at Volkswagen, and the true value of the
18 Class Vehicles

19 932. Plaintiffs and the Colorado Class suffered ascertainable loss and actual damages as
20 a direct and proximate result of Defendants’ misrepresentations and its concealment of and failure
21 to disclose material information. Plaintiffs and the Colorado Class members who purchased or
22 leased the Class Vehicles would not have purchased or leased them at all and/or—if the Vehicles’
23 true nature had been disclosed and mitigated, and the Vehicles rendered legal to sell—would have
24 paid significantly less for them. Plaintiffs also suffered diminished value of their vehicles, as well
25 as lost or diminished use.

26 933. Defendants had an ongoing duty to all Volkswagen customers to refrain from
27 unfair and deceptive practices under the Colorado CPA. All owners of Class Vehicles suffered
28 ascertainable loss in the form of the diminished value of their vehicles as a result of
Volkswagen’s deceptive and unfair acts and practices made in the course of Volkswagen’s
business.

1 934. Plaintiffs and Colorado Class members risk irreparable injury as a result of
2 Volkswagen’s act and omissions in violation of the Colorado CPA, and these violations present a
3 continuing risk to Plaintiffs as well as to the general public. Defendants’ unlawful acts and
4 practices complained of herein affect the public interest.

5 935. As a direct and proximate result of Defendants’ violations of the Colorado CPA,
6 Plaintiffs and the Colorado Class have suffered injury-in-fact and/or actual damage.

7 936. Pursuant to Colo. Rev. Stat. § 6-1-113, Plaintiffs, individually and on behalf of the
8 Colorado Class, seek monetary relief against Defendants measured as the greater of (a) actual
9 damages in an amount to be determined at trial and discretionary trebling of such damages, or (b)
10 statutory damages in the amount of \$500 for each Plaintiff and each Colorado Class member.

11 937. Plaintiffs also seek an order enjoining Defendants’ unfair, unlawful, and/or
12 deceptive practices, declaratory relief, attorneys’ fees, and any other just and proper relief
13 available under the Colorado CPA.

14 **COLORADO COUNT II:**
15 **BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY**
16 **(Col. Rev. Stat. §§ 4-2-313 and 4-2.5-212)**

17 938. Plaintiffs reallege and incorporate by reference all allegations of the preceding
18 paragraphs as though fully set forth herein.

19 939. Plaintiffs bring this Count on behalf of the Colorado Class, against VW AG, VW
20 America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the “VW
21 Entity Defendants”).

22 940. The VW Entity Defendants are and were at all relevant times “merchants” with
23 respect to motor vehicles under Colo. Rev. Stat. §§ 4-2-104(1) and 4-2.5-103(3), and “sellers” of
24 motor vehicles under § 4-2-103(1)(d).

25 941. With respect to leases, the VW Entity Defendants are and were at all relevant
26 times “lessors” of motor vehicles under Colo. Rev. Stat. § 4-2.5-103(1)(p).

27 942. The Class Vehicles are and were at all relevant times “goods” within the meaning
28 of Colo. Rev. Stat. §§ 4-2-105(1) and 4-2.5-103(1)(h).

1 943. A warranty that the Class Vehicles were in merchantable condition and fit for the
2 ordinary purpose for which vehicles are used is implied by law pursuant to Colo. Rev. Stat. § § 4-
3 2-313 and 4-2.5-212)

4 944. These Class Vehicles, when sold or leased and at all times thereafter, were not in
5 merchantable condition and are not fit for the ordinary purpose for which vehicles are used.
6 Specifically, the Class Vehicles are inherently defective in that they do not comply with federal
7 and state emissions standards, rendering certain emissions functions inoperative; and the “clean”
8 diesel engine system was not adequately designed, manufactured, and tested.

9 945. Volkswagen was provided notice of these issues by the investigations of the EPA
10 and individual state regulators, numerous complaints filed against it including the instant
11 Complaint, and by numerous individual letters and communications sent by Plaintiffs and others
12 within a reasonable amount of time after the allegations of Class Vehicle defects became public.

13 946. As a direct and proximate result of the VW Entity Defendants’ breach of the
14 implied warranty of merchantability, Plaintiffs and the other Colorado Class members have been
15 damaged in an amount to be proven at trial.

16 **COLORADO COUNT III:**
17 **BREACH OF EXPRESS WARRANTY**
18 **(Colo. Rev. Stat. §§ 4-2-313 and 4-2.5-210)**

19 947. Plaintiffs reallege and incorporate by reference all preceding allegations as though
20 fully set forth herein.

21 948. Plaintiffs bring this Count on behalf of the Colorado Class, against VW AG, VW
22 America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the “VW
23 Entity Defendants”).

24 949. The VW Entity Defendants are and were at all relevant times “merchants” with
25 respect to motor vehicles under Colo. Rev. Stat. §§ 4-2-104(1) and 4-2.5-103(3), and “sellers” of
26 motor vehicles under § 4-2-103(1)(d).

27 950. With respect to leases, the VW Entity Defendants are and were at all relevant
28 times “lessors” of motor vehicles under Colo. Rev. Stat. § 4-2.5-103(1)(p).

1 951. The Class Vehicles are and were at all relevant times “goods” within the meaning
2 of Colo. Rev. Stat. §§ 4-2-105(1) and 4-2.5-103(1)(h).

3 952. In connection with the purchase or lease of each one of its new vehicles, the VW
4 Entity Defendants provide an express New Vehicle Limited Warranty (“NVLW”) for a period of
5 three years or 36,000 miles, whichever occurs first. This NVLW exists to cover “any repair to
6 correct a manufacturers defect in materials or workmanship.”

7 953. The Clean Air Act requires manufacturers of light-duty vehicles to provide two
8 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
9 Warranty.”

10 954. The EPA requires vehicle manufacturers to provide a Performance Warranty with
11 respect to the vehicles’ emissions systems. Thus, Volkswagen also provides an express warranty
12 for its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
13 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
14 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
15 emission control components are covered for the first eight years or 80,000 miles, whichever
16 comes first. These major emission control components subject to the longer warranty include the
17 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
18 device or computer.

19 955. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
20 with respect to their vehicles’ emission systems. Thus, the VW Entity Defendants also provide an
21 express warranty for their vehicles through a Federal Emission Control System Defect Warranty.
22 The Design and Defect Warranty required by the EPA covers repair of emission control or
23 emission related parts which fail to function or function improperly because of a defect in
24 materials or workmanship. This warranty provides protection for two years or 24,000 miles,
25 whichever comes first, or, for the major emission control components, for eight years or 80,000
26 miles, whichever comes first.

27 956. As manufacturers of light-duty vehicles, the VW Entity Defendants were required
28 to provide these warranties to purchasers or lessees of their “clean” diesel vehicles.

1 957. The VW Entity Defendants’ warranties formed a basis of the bargain that was
2 reached when Plaintiffs and other Colorado Class members purchased or leased their Class
3 Vehicles equipped with the non-compliant “clean” diesel engine and emission systems.

4 958. Plaintiffs and the Colorado Class members experienced defects within the
5 warranty period. Despite the existence of warranties, the VW Entity Defendants failed to inform
6 Plaintiffs and Colorado Class members that the Class Vehicles were intentionally designed and
7 manufactured to be out of compliance with applicable state and federal emissions laws, and failed
8 to fix the defective emission components free of charge.

9 959. The VW Entity Defendants breached the express warranty promising to repair and
10 correct a manufacturing defect or materials or workmanship of any parts they supplied. The VW
11 Entity Defendants have not repaired or adjusted, and have been unable to repair or adjust, the
12 Class Vehicles’ materials and workmanship defects.

13 960. Affording the VW Entity Defendants a reasonable opportunity to cure their breach
14 of written warranties would be unnecessary and futile here. For example, the Frequently Asked
15 Questions (“FAQ”) section of VW’s informational website states:

16 **How soon will the remedy be available, and how am I going to**
17 **be compensated for this?**

18 We cannot offer a firm date now because we need to work on a
19 remedy and review it with the government. We are proceeding as
 quickly as possible.

20 961. In his Congressional testimony on October 8, 2015, Michael Horn stated that
21 Volkswagen intends to make Class Vehicles compliant with emission standards through software
22 fixes and the installation of auxiliary hardware, but that fix will take “1 to 2 years, minimum.”
23 When questioned on remedies for consumers, he stated that Volkswagen may pay customers for a
24 loss in resale values because of the scandal. He said that Volkswagen is not considering
25 providing loaner vehicles because the U.S. government says the vehicles are safe to drive.

26 962. Michael Horn’s testimony serves as an admission that the limited warranty
27 promising to repair and/or correct a manufacturing defect fails in its essential purpose because the
28 VW Entity Defendants cannot meet that promise within a reasonable time.

1 963. Furthermore, the limited warranty promising to repair and/or correct a
2 manufacturing defect fails in its essential purpose because the contractual remedy is insufficient
3 to make Plaintiffs and the other Colorado Class members whole and because the VW Entity
4 Defendants have failed and/or have refused to adequately provide the promised remedies within a
5 reasonable time.

6 964. Accordingly, recovery by Plaintiffs and the other Colorado Class members is not
7 restricted to the limited warranty promising to repair and/or correct a manufacturing defect, and
8 Plaintiffs, individually and on behalf of the other Colorado Class members, seek all remedies as
9 allowed by law.

10 965. Also, as alleged in more detail herein, at the time the VW Entity Defendants
11 warranted and sold or leased the Class Vehicles, they knew that the Class Vehicles were
12 inherently defective and did not conform to their warranties; further, the VW Entity Defendants
13 had wrongfully and fraudulently concealed material facts regarding the Class Vehicles. Plaintiffs
14 and the other Colorado Class members were therefore induced to purchase or lease the Class
15 Vehicles under false and/or fraudulent pretenses.

16 966. Moreover, many of the injuries flowing from the Class Vehicles cannot be
17 resolved through the limited remedy of “replacements or adjustments,” as many incidental and
18 consequential damages have already been suffered because of Volkswagen’s fraudulent conduct
19 as alleged herein, and because of its failure and/or continued failure to provide such limited
20 remedy within a reasonable time, and any limitation on Plaintiffs’ and the other Colorado Class
21 members’ remedies would be insufficient to make Plaintiffs and the other Colorado Class
22 members whole.

23 967. Finally, because of the VW Entity Defendants’ breach of warranty as set forth
24 herein, Plaintiffs and the other Colorado Class members assert, as additional and/or alternative
25 remedies, the revocation of acceptance of the goods and the return to Plaintiffs and the other
26 Colorado Class members of the purchase or lease price of all Class Vehicles currently owned or
27 leased, and for such other incidental and consequential damages as allowed.
28

1 968. The VW Entity Defendants were provided notice of these issues by numerous
2 complaints filed against them, including the instant Complaint, within a reasonable amount of
3 time after Volkswagen publicly admitted to using a defeat device in the Class Vehicles to evade
4 clean air standards.

5 969. As a direct and proximate result of the VW Entity Defendants’ breach of express
6 warranties, Plaintiff and the other Colorado Class members have been damaged in an amount to
7 be determined at trial.

8 **CONNECTICUT**

9 **CONNECTICUT COUNT I:**
10 **VIOLATIONS OF CONNECTICUT UNLAWFUL TRADE PRACTICES ACT**
11 **(Conn. Gen. Stat. § 42-110A, *et seq.*)**

12 970. Plaintiffs incorporate by reference each preceding paragraph as though fully set
13 forth herein.

14 971. Plaintiffs MacLise-Kane, Watson, and Willingham (for the purpose of this section,
15 “Plaintiffs”) bring this action on behalf of themselves and the Connecticut Class against all
16 Defendants.

17 972. The Connecticut Unfair Trade Practices Act (“Connecticut UTPA”) provides: “No
18 person shall engage in unfair methods of competition and unfair or deceptive acts or practices in
19 the conduct of any trade or commerce.” Conn. Gen. Stat. § 42-110b(a).

20 973. Defendants are “person[s]” within the meaning of Conn. Gen. Stat. § 42-110a(3).
21 Volkswagen is in “trade” or “commerce” within the meaning of Conn. Gen. Stat. § 42-110a(4).

22 974. Volkswagen participated in deceptive trade practices that violated the Connecticut
23 UTPA as described herein.

24 975. In the course of their business, Defendants concealed and suppressed material facts
25 concerning the Class Vehicles. Defendants accomplished this by installing illegal defeat device
26 software in the Class Vehicles that caused the vehicles to operate in a low emission test mode
27 only during emissions testing. During normal operations, the Class Vehicles would emit grossly
28 larger quantities of noxious contaminants, sometimes 40 times over applicable standards. The
result was what Volkswagen intended—the Class Vehicles passed emissions testing by way of

1 deliberately induced false readings. Plaintiffs and Connecticut Class members had no way of
2 discerning that Volkswagen’s representations were false and misleading because Volkswagen’s
3 defeat device software was extremely sophisticated technology. Plaintiffs and Connecticut Class
4 members did not and could not unravel Volkswagen’s deception on their own. In fact, it took
5 years before the academic engineering community—specifically a research team at WVU’s
6 Center for Alternative Fuels, Engines & Emissions—detected Volkswagen’s cheat using
7 sophisticated, expensive equipment and applying decades of combined experience.

8 976. Defendants thus violated the Act by, at minimum: employing deception, deceptive
9 acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any
10 material fact with intent that others rely upon such concealment, suppression or omission, in
11 connection with the sale of Class Vehicles.

12 977. Bosch played a critical role in facilitating, and itself contributed to, Volkswagen’s
13 unfair and deceptive conduct, as alleged herein. Bosch knew or should have known that
14 Volkswagen would use and had used the Bosch technology as an emission defeat device, and in
15 fact helped it do so. Without Bosch’s complicity and silence, Volkswagen could not have
16 perpetrated the fraudulent, deceptive, and unfair practices alleged herein, and Bosch’s actions
17 themselves constitute fraudulent, deceptive, and unfair practices.

18 978. Defendants engaged in misleading, false, unfair or deceptive acts or practices that
19 violated the Connecticut UTPA by installing, failing to disclose and actively concealing the
20 illegal defeat device and the true cleanliness and performance of the “clean” diesel engine system,
21 by marketing its vehicles as legal, reliable, environmentally clean, efficient, and of high quality,
22 and by presenting itself as a reputable manufacturer that valued environmental cleanliness and
23 efficiency, and that stood behind its vehicles after they were sold.

24 979. The Clean Air Act and EPA regulations require that automobiles limit their
25 emissions output to specified levels. These laws are intended for the protection of public health
26 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the
27 Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 CFR § 86.1809. By
28 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available

1 for purchase, Volkswagen violated federal law and therefore engaged in conduct that violates the
2 Connecticut UTPA.

3 980. Defendants knew the true nature of its “clean” diesel engine system for at least six
4 years, but concealed all of that information until recently. Volkswagen also knew that it valued
5 profits over environmental cleanliness, efficiency, and compliance with the law, and that it was
6 manufacturing, selling, and distributing vehicles throughout the United States that did not comply
7 with EPA regulations. Volkswagen concealed this information as well.

8 981. Volkswagen intentionally and knowingly misrepresented material facts regarding
9 the Class Vehicles with intent to mislead Plaintiffs and the Connecticut Class.

10 982. Volkswagen knew or should have known that its conduct violated the Connecticut
11 UTPA.

12 983. Volkswagen owed Plaintiffs a duty to disclose illegality, public health and safety
13 risks, the true environmental cleanliness and efficiency of the Class Vehicles and the devaluing of
14 safety at Volkswagen, because Volkswagen:

- 15 a. possessed exclusive knowledge that they were
16 manufacturing, selling, and distributing vehicles throughout
17 the United States that did not comply with EPA regulations;
18 b. intentionally concealed the foregoing from regulators,
19 Plaintiffs, Class members; and/or
20 c. made incomplete representations about the environmental
21 cleanliness and efficiency of the Class Vehicles generally,
22 and the use of the defeat device in particular, while
23 purposefully withholding material facts from Plaintiffs that
24 contradicted these representations.

25 984. Defendants concealed the illegal defeat device and the true emissions, efficiency,
26 and performance of the “clean” diesel system, resulting in a raft of negative publicity once the
27 defects finally began to be disclosed. The value of the Class Vehicles has therefore greatly
28 diminished. In light of the stigma attached to those vehicles by Volkswagen’s conduct, they are
now worth significantly less than they otherwise would be worth.

1 985. Volkswagen’s fraudulent use of the “defeat device” and its concealment of the true
2 characteristics of the “clean” diesel engine system were material to Plaintiffs and the Connecticut
3 Class.

4 986. Defendants’ unfair or deceptive acts or practices were likely to and did in fact
5 deceive regulators and reasonable consumers, including Plaintiffs, about the true environmental
6 cleanliness and efficiency of Volkswagen-branded vehicles, the quality of the Volkswagen brand,
7 the devaluing of environmental cleanliness and integrity at Volkswagen, and the true value of the
8 Class Vehicles

9 987. Plaintiffs and the Connecticut suffered ascertainable loss and actual damages as a
10 direct and proximate result of Volkswagen’s misrepresentations and its concealment of and
11 failure to disclose material information. Plaintiffs and the Connecticut Class members who
12 purchased or leased the Class Vehicles would not have purchased or leased them at all and/or—if
13 the Vehicles’ true nature had been disclosed and mitigated, and the Vehicles rendered legal to
14 sell—would have paid significantly less for them. Plaintiffs also suffered diminished value of
15 their vehicles, as well as lost or diminished use.

16 988. Defendants had an ongoing duty to all Volkswagen customers to refrain from
17 unfair and deceptive practices under the Connecticut UTPA. All owners of Class Vehicles
18 suffered ascertainable loss in the form of the diminished value of their vehicles as a result of
19 Volkswagen’s deceptive and unfair acts and practices made in the course of Volkswagen’s
20 business.

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

24 990. As a direct and proximate result of Defendants’ violations of the Connecticut
25 UTPA, Plaintiffs and the Connecticut Class have suffered injury-in-fact and/or actual damage.

26 991. Plaintiffs and Class members are entitled to recover their actual damages, punitive
27 damages, and attorneys’ fees pursuant to Conn. Gen. Stat. § 42-110g.
28

1 992. Defendants acted with a reckless indifference to another’s rights or wanton or
2 intentional violation to another’s rights and otherwise engaged in conduct amounting to a
3 particularly aggravated, deliberate disregard of the rights and safety of others.

4 **CONNECTICUT COUNT II:**
5 **BREACH OF EXPRESS WARRANTY**
6 **(Conn. Gen. Stat. Ann. § 42A-2-313)**

7 993. Plaintiffs reallege and incorporate by reference all preceding allegations as though
8 fully set forth herein.

9 994. Plaintiffs bring this Count on behalf of the Connecticut Class, against VW AG,
10 VW America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the
11 “VW Entity Defendants”).

12 995. Volkswagen is and was at all relevant times a merchant with respect to motor
13 vehicles under Conn. Gen. Stat. Ann. § 42a-2-104(1).

14 996. In connection with the purchase or lease of each one of its new vehicles, the VW
15 Entity Defendants provide an express New Vehicle Limited Warranty (“NVLW”) for a period of
16 three years or 36,000 miles, whichever occurs first. This NVLW exists to cover “any repair to
17 correct a manufacturers defect in materials or workmanship.”

18 997. The Clean Air Act requires manufacturers of light-duty vehicles to provide two
19 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
20 Warranty.”

21 998. The EPA requires vehicle manufacturers to provide a Performance Warranty with
22 respect to the vehicles’ emission systems. Thus, Volkswagen also provides an express warranty
23 for its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
24 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
25 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
26 emission control components are covered for the first eight years or 80,000 miles, whichever
27 comes first. These major emission control components subject to the longer warranty include the
28 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
device or computer.

1 999. The EPA requires vehicle manufacturers to issue Defect Warranties with respect to
2 their vehicles' emission systems. Thus, the VW Entity Defendants also provide an express
3 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The
4 Design and Defect Warranty required by the EPA covers repair of emission control or emission
5 related parts which fail to function or function improperly because of a defect in materials or
6 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
7 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
8 comes first.

9 1000. As manufacturers of light-duty vehicles, the VW Entity Defendants were required
10 to provide these warranties to purchasers of their "clean" diesel vehicles.

11 1001. The VW Entity Defendants' warranties formed the basis of the bargain that was
12 reached when Plaintiffs and other Class members purchased or leased their Class Vehicles
13 equipped with the non-EPA complaint "clean" diesel engine system from Volkswagen.

14 1002. Plaintiffs and Class members experienced defects within the warranty period.
15 Despite the existence of warranties, the VW Entity Defendants failed to inform Plaintiffs and
16 class members that the Class Vehicles were intentionally designed and manufactured to be out of
17 compliance with applicable state and federal emissions laws, and failed to fix the defective
18 emission components free of charge.

19 1003. The VW Entity Defendants breached the express warranty promising to repair and
20 correct a manufacturing defect or materials or workmanship of any parts they supplied. The VW
21 Entity Defendants have not repaired or adjusted, and have been unable to repair or adjust, the
22 Class Vehicles' materials and workmanship defects.

23 1004. Affording the VW Entity Defendants a reasonable opportunity to cure their breach
24 of written warranties would be unnecessary and futile here. For example, the Frequently Asked
25 Questions ("FAQ") section of VW's informational website states:

26 **How soon will the remedy be available, and how am I going to**
27 **be compensated for this?**
28

1 We cannot offer a firm date now because we need to work on a
2 remedy and review it with the government. We are proceeding as
quickly as possible.

3 1005. In his Congressional testimony on October 8, 2015, Michael Horn stated that
4 Volkswagen intends to make Class Vehicles compliant with emission standards through software
5 fixes and the installation of auxiliary hardware, but that fix will take “1 to 2 years, minimum.”
6 When questioned on remedies for consumers, he stated that Volkswagen may pay customers for a
7 loss in resale values because of the scandal. He said that Volkswagen is not considering
8 providing loaner vehicles because the U.S. government says the vehicles are safe to drive.

9 1006. Michael Horn’s testimony serves as an admission that the limited warranty
10 promising to repair and/or correct a manufacturing defect fails in its essential purpose because the
11 VW Entity Defendants cannot meet that promise within a reasonable time.

12 1007. Furthermore, the limited warranty promising to repair and/or correct a
13 manufacturing defect fails in its essential purpose because the contractual remedy is insufficient
14 to make Plaintiffs and the other Class members whole and because the VW Entity Defendants
15 have failed and/or have refused to adequately provide the promised remedies within a reasonable
16 time.

17 1008. Accordingly, recovery by Plaintiffs and the other Class members is not restricted
18 to the limited warranty promising to repair and/or correct a manufacturing defect, and Plaintiffs,
19 individually and on behalf of the other Class members, seek all remedies as allowed by law.

20 1009. Also, as alleged in more detail herein, at the time Volkswagen warranted and sold
21 the Class Vehicles they knew that the Class Vehicles were inherently defective and did not
22 conform to their warranties; further, the VW Entity Defendants had wrongfully and fraudulently
23 concealed material facts regarding the Class Vehicles. Plaintiffs and the other Class members
24 were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent
25 pretenses.

26 1010. Moreover, many of the injuries flowing from the Class Vehicles cannot be
27 resolved through the limited remedy of “replacements or adjustments,” as many incidental and
28 consequential damages have already been suffered because of Volkswagen’s fraudulent conduct

1 as alleged herein, and because of its failure and/or continued failure to provide such limited
2 remedy within a reasonable time, and any limitation on Plaintiffs' and the other Class members'
3 remedies would be insufficient to make Plaintiffs and the other Class members whole.

4 1011. Finally, due to Volkswagen's breach of warranty as set forth herein, Plaintiffs and
5 the other Class members assert as an additional and/or alternative remedy, as set forth in Conn.
6 Gen. Stat. Ann. § 42a-2-711, for a revocation of acceptance of the goods, and for a return to
7 Plaintiffs and the other Class members of the purchase price of all Class Vehicles currently
8 owned or leased, and for such other incidental and consequential damages as allowed under
9 Conn. Gen. Stat. Ann. §§ 42a-2-711 and 42a-2-608.

10 1012. The VW Entity Defendants were provided notice of these issues by numerous
11 complaints filed against them, including the instant Complaint within a reasonable amount of
12 time after Volkswagen publicly admitted to using a defeat device in the Class Vehicles to evade
13 clean air standards.

14 1013. As a direct and proximate result of the VW Entity Defendants' breach of express
15 warranties, Plaintiff and the other Class members have been damaged in an amount to be
16 determined at trial.

17 **CONNECTICUT COUNT III:**
18 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
19 **(Conn. Gen. Stat. Ann. § 42A-2-314)**

20 1014. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as
21 though fully set forth herein.

22 1015. Plaintiffs bring this Count on behalf of the Connecticut Class, against VW AG,
23 VW America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the
24 "VW Entity Defendants").

25 1016. Volkswagen is and was at all relevant times a merchant with respect to motor
26 vehicles under Conn. Gen. Stat. Ann. § 42a-2-104(1).

27 1017. A warranty that the Class Vehicles were in merchantable condition is implied by
28 law in the instant transactions pursuant to Conn. Gen. Stat. Ann. § 42a-2-314. These Class
Vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit

1 for the ordinary purpose for which cars are used. Specifically, the Class Vehicles are inherently
2 defective in that they do not comply with federal and state emissions standards, rendering certain
3 safety and emissions functions inoperative; and the “clean” diesel engine system was not
4 adequately designed, manufactured, and tested.

5 1018. Volkswagen was provided notice of these issues by the investigations of the EPA
6 and individual state regulators, numerous complaints filed against it including the instant
7 complaint, and by numerous individual letters and communications sent by Plaintiffs and other
8 Class members before or within a reasonable amount of time after the allegations of Class
9 Vehicle defects became public.

10 1019. As a direct and proximate result of Volkswagen’s breach of the warranties of
11 merchantability, Plaintiffs and the other Class members have been damaged in an amount to be
12 proven at trial.

13 **DELAWARE**

14 **DELAWARE COUNT I:**
15 **VIOLATIONS OF THE DELAWARE CONSUMER FRAUD ACT**
16 **(6 Del. Code § 2513, et seq.)**

17 1020. Plaintiffs incorporate by reference each preceding paragraph as though fully set
18 forth herein.

19 1021. Plaintiffs Fox and Shelton (for the purpose of this section, “Plaintiffs”) bring this
20 action on behalf of themselves and the Delaware Class against all Defendants.

21 1022. Defendants are “person[s]” within the meaning of 6 Del. Code § 2511(7).

22 1023. The Delaware Consumer Fraud Act (“Delaware CFA”) prohibits the “act, use or
23 employment by any person of any deception, fraud, false pretense, false promise,
24 misrepresentation, or the concealment, suppression, or omission of any material fact with intent
25 that others rely upon such concealment, suppression or omission, in connection with the sale,
26 lease or advertisement of any merchandise, whether or not any person has in fact been misled,
27 deceived or damaged thereby.” 6 Del. Code § 2513(a).

28 1024. In the course of their business, Defendants concealed and suppressed material facts
concerning the Class Vehicles. Defendants accomplished this by installing illegal defeat device

1 software in the Class Vehicles that caused the vehicles to operate in a low emission test mode
2 only during emissions testing. During normal operations, the Class Vehicles would emit grossly
3 larger quantities of noxious contaminants, sometimes 40 times over applicable standards. The
4 result was what Volkswagen intended—the Class Vehicles passed emissions testing by way of
5 deliberately induced false readings. Plaintiffs and Delaware Class members had no way of
6 discerning that Volkswagen’s representations were false and misleading because Volkswagen’s
7 defeat device software was extremely sophisticated technology. Plaintiffs and Delaware Class
8 members did not and could not unravel Volkswagen’s deception on their own. In fact, it took
9 years before the academic engineering community—specifically a research team at WVU’s
10 Center for Alternative Fuels, Engines & Emissions—detected Volkswagen’s cheat using
11 sophisticated, expensive equipment and applying decades of combined experience.

12 1025. Defendants thus violated the Act by, at minimum: by employing deception,
13 deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of
14 any material fact with intent that others rely upon such concealment, suppression or omission, in
15 connection with the sale of Class Vehicles.

16 1026. Bosch played a critical role in facilitating, and itself contributed to, Volkswagen’s
17 unfair and deceptive conduct, as alleged herein. Bosch knew or should have known that
18 Volkswagen would use and had used the Bosch technology as an emission defeat device, and in
19 fact helped it do so. Without Bosch’s complicity and silence, Volkswagen could not have
20 perpetrated the fraudulent, deceptive, and unfair practices alleged herein, and Bosch’s actions
21 themselves constitute fraudulent, deceptive, and unfair practices.

22 1027. Defendants engaged in misleading, false, unfair or deceptive acts or practices that
23 violated the Delaware CFA by installing, failing to disclose and actively concealing the illegal
24 defeat device and the true cleanliness and performance of the “clean” diesel engine system, by
25 marketing its vehicles as legal, reliable, environmentally clean, efficient, and of high quality, and
26 by presenting itself as a reputable manufacturer that valued environmental cleanliness and
27 efficiency, and that stood behind its vehicles after they were sold.

28

1 1028. The Clean Air Act and EPA regulations require that automobiles limit their
2 emissions output to specified levels. These laws are intended for the protection of public health
3 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the
4 Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 CFR § 86.1809. By
5 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available
6 for purchase, Volkswagen violated federal law and therefore engaged in conduct that violates the
7 Delaware CFA.

8 1029. Defendants knew the true nature of its “clean” diesel engine system for at least six
9 years, but concealed all of that information until recently. Volkswagen was also aware that it
10 valued profits over environmental cleanliness, efficiency, and compliance with the law, and that it
11 was manufacturing, selling, and distributing vehicles throughout the United States that did not
12 comply with EPA regulations. Volkswagen concealed this information as well.

13 1030. Volkswagen intentionally and knowingly misrepresented material facts regarding
14 the Class Vehicles with intent to mislead Plaintiffs and the Delaware Class.

15 1031. Volkswagen knew or should have known that its conduct violated the Delaware
16 CFA.

17 1032. Defendants owed Plaintiffs a duty to disclose the illegality and public health and
18 safety risks of the Class Vehicles because they:

- 19 a. possessed exclusive knowledge that they were
20 manufacturing, selling, and distributing vehicles throughout
the United States that did not comply with EPA regulations;
- 21 b. intentionally concealed the foregoing from regulators,
22 Plaintiffs, Class members; and/or
- 23 c. made incomplete representations about the environmental
24 cleanliness and efficiency of the Class Vehicles generally,
and the use of the defeat device in particular, while
25 purposefully withholding material facts from Plaintiffs that
contradicted these representations.

26 1033. Defendants concealed the illegal defeat device and the true emissions, efficiency,
27 and performance of the “clean” diesel system, resulting in a raft of negative publicity once the
28 defects finally began to be disclosed. The value of the Class Vehicles has therefore greatly

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

3 1034. Volkswagen’s fraudulent use of the “defeat device” and its concealment of the true
4 characteristics of the “clean” diesel engine system were material to Plaintiffs and the Delaware
5 Class.

6 1035. Defendants’ unfair or deceptive acts or practices were likely to and did in fact
7 deceive regulators and reasonable consumers, including Plaintiffs, about the true environmental
8 cleanliness and efficiency of Volkswagen-branded vehicles, the quality of the Volkswagen brand,
9 the devaluing of environmental cleanliness and integrity at Volkswagen, and the true value of the
10 Class Vehicles

11 1036. Plaintiffs and the Delaware Class suffered ascertainable loss and actual damages as
12 a direct and proximate result of Defendants’ misrepresentations and its concealment of and failure
13 to disclose material information. Plaintiffs and the Delaware Class members who purchased or
14 leased the Class Vehicles would not have purchased or leased them at all and/or—if the Vehicles’
15 true nature had been disclosed and mitigated, and the Vehicles rendered legal to sell—would have
16 paid significantly less for them. Plaintiffs also suffered diminished value of their vehicles, as well
17 as lost or diminished use.

18 1037. Defendants had an ongoing duty to all Volkswagen customers to refrain from
19 unfair and deceptive practices under the Delaware CFA. All owners of Class Vehicles suffered
20 ascertainable loss in the form of the diminished value of their vehicles as a result of
21 Volkswagen’s deceptive and unfair acts and practices made in the course of Volkswagen’s
22 business.

23 1038. Defendants’ violations present a continuing risk to Plaintiffs as well as to the
24 general public. Defendants’ unlawful acts and practices complained of herein affect the public
25 interest.

26 1039. As a direct and proximate result of Defendants’ violations of the Delaware CFA,
27 Plaintiffs and the Delaware Class have suffered injury-in-fact and/or actual damage.
28

1 1040. Plaintiffs seek damages under the Delaware CFA for injury resulting from the
2 direct and natural consequences of Defendants’ unlawful conduct. *See, e.g., Stephenson v.*
3 *Capano Dev., Inc.*, 462 A.2d 1069, 1077 (Del. 1983). Plaintiffs also seek an order enjoining
4 Defendants’ unfair, unlawful, and/or deceptive practices, declaratory relief, attorneys’ fees, and
5 any other just and proper relief available under the Delaware CFA.

6 1041. Defendants engaged in gross, oppressive or aggravated conduct justifying the
7 imposition of punitive damages.

8 **DELAWARE COUNT II:**
9 **BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY**
10 **(6 Del. Code §§ 2-314 and 2A-212)**

11 1042. Plaintiffs reallege and incorporate by reference all allegations of the preceding
12 paragraphs as though fully set forth herein.

13 1043. Plaintiffs bring this Count on behalf of the Delaware Class, against VW AG, VW
14 America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the “VW
15 Entity Defendants”).

16 1044. The VW Entity Defendants are and were at all relevant times “merchants” with
17 respect to motor vehicles under 6 Del. C. §§ 2-104(1) and 2A-103(3), and “sellers” of motor
18 vehicles under § 2-103(1)(d).

19 1045. With respect to leases, the VW Entity Defendants are and were at all relevant
20 times “lessors” of motor vehicles under 6 Del. C. § 2A-103(1)(p).

21 1046. The Class Vehicles are and were at all relevant times “goods” within the meaning
22 of 6 Del. C. §§ 2-105(1) and 2A-103(1)(h).

23 1047. A warranty that the Class Vehicles were in merchantable condition and fit for the
24 ordinary purpose for which vehicles are used is implied by law pursuant to 6 Del. C. §§ 2-314 and
25 2A-212)

26 1048. These Class Vehicles, when sold or leased and at all times thereafter, were not in
27 merchantable condition and are not fit for the ordinary purpose for which vehicles are used.
28 Specifically, the Class Vehicles are inherently defective in that they do not comply with federal

1 and state emissions standards, rendering certain emissions functions inoperative; and the “clean”
2 diesel engine system was not adequately designed, manufactured, and tested.

3 1049. Volkswagen was provided notice of these issues by the investigations of the EPA
4 and individual state regulators, numerous complaints filed against it including the instant
5 Complaint, and by numerous individual letters and communications sent by Plaintiffs and others
6 within a reasonable amount of time after the allegations of Class Vehicle defects became public.

7 1050. As a direct and proximate result of the VW Entity Defendants’ breach of the
8 implied warranty of merchantability, Plaintiffs and the other Delaware Class members have been
9 damaged in an amount to be proven at trial.

10 **DELAWARE COUNT III:**
11 **BREACH OF EXPRESS WARRANTY**
12 **(6 Del. Code §§ 2-313 and 2A-210)**

13 1051. Plaintiffs reallege and incorporate by reference all preceding allegations as though
14 fully set forth herein.

15 1052. Plaintiffs bring this Count on behalf of the Delaware Class, against VW AG, VW
16 America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the “VW
17 Entity Defendants”).

18 1053. The VW Entity Defendants are and were at all relevant times “merchants” with
19 respect to motor vehicles under 6 Del. C. §§ 2-104(1) and 2A-103(3), and “sellers” of motor
20 vehicles under § 2-103(1)(d).

21 1054. With respect to leases, the VW Entity Defendants are and were at all relevant
22 times “lessors” of motor vehicles under 6 Del. C. § 2A-103(1)(p).

23 1055. The Class Vehicles are and were at all relevant times “goods” within the meaning
24 of 6 Del. C. §§ 2-105(1) and 2A-103(1)(h).

25 1056. In connection with the purchase or lease of each one of its new vehicles, the VW
26 Entity Defendants provide an express New Vehicle Limited Warranty (“NVLW”) for a period of
27 three years or 36,000 miles, whichever occurs first. This NVLW exists to cover “any repair to
28 correct a manufacturers defect in materials or workmanship.”

1 1057. The Clean Air Act requires manufacturers of light-duty vehicles to provide two
2 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
3 Warranty.”

4 1058. The EPA requires vehicle manufacturers to provide a Performance Warranty with
5 respect to the vehicles’ emission systems. Thus, Volkswagen also provides an express warranty
6 for its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
7 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
8 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
9 emission control components are covered for the first eight years or 80,000 miles, whichever
10 comes first. These major emission control components subject to the longer warranty include the
11 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
12 device or computer.

13 1059. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
14 with respect to their vehicles’ emission systems. Thus, the VW Entity Defendants also provide an
15 express warranty for their vehicles through a Federal Emission Control System Defect Warranty.
16 The Design and Defect Warranty required by the EPA covers repair of emission control or
17 emission related parts which fail to function or function improperly because of a defect in
18 materials or workmanship. This warranty provides protection for two years or 24,000 miles,
19 whichever comes first, or, for the major emission control components, for eight years or 80,000
20 miles, whichever comes first.

21 1060. As manufacturers of light-duty vehicles, the VW Entity Defendants were required
22 to provide these warranties to purchasers or lessees of their “clean” diesel vehicles.

23 1061. The VW Entity Defendants’ warranties formed a basis of the bargain that was
24 reached when Plaintiffs and other Delaware Class members purchased or leased their Class
25 Vehicles equipped with the non-compliant “clean” diesel engine and emission systems.

26 1062. Plaintiffs and the Delaware Class members experienced defects within the
27 warranty period. Despite the existence of warranties, the VW Entity Defendants failed to inform
28 Plaintiffs and Delaware Class members that the Class Vehicles were intentionally designed and

1 manufactured to be out of compliance with applicable state and federal emissions laws, and failed
2 to fix the defective emission components free of charge.

3 1063. The VW Entity Defendants breached the express warranty promising to repair and
4 correct a manufacturing defect or materials or workmanship of any parts they supplied. The VW
5 Entity Defendants have not repaired or adjusted, and have been unable to repair or adjust, the
6 Class Vehicles' materials and workmanship defects.

7 1064. Affording the VW Entity Defendants a reasonable opportunity to cure their breach
8 of written warranties would be unnecessary and futile here. For example, the Frequently Asked
9 Questions ("FAQ") section of VW's informational website states:

10 **How soon will the remedy be available, and how am I going to**
11 **be compensated for this?**

12 We cannot offer a firm date now because we need to work on a
13 remedy and review it with the government. We are proceeding as
quickly as possible.

14 1065. In his Congressional testimony on October 8, 2015, Michael Horn stated that
15 Volkswagen intends to make Class Vehicles compliant with emission standards through software
16 fixes and the installation of auxiliary hardware, but that fix will take "1 to 2 years, minimum."
17 When questioned on remedies for consumers, he stated that Volkswagen may pay customers for a
18 loss in resale values because of the scandal. He said that Volkswagen is not considering
19 providing loaner vehicles because the U.S. government says the vehicles are safe to drive.

20 1066. Michael Horn's testimony serves as an admission that the limited warranty
21 promising to repair and/or correct a manufacturing defect fails in its essential purpose because the
22 VW Entity Defendants cannot meet that promise within a reasonable time.

23 1067. Furthermore, the limited warranty promising to repair and/or correct a
24 manufacturing defect fails in its essential purpose because the contractual remedy is insufficient
25 to make Plaintiffs and the other Delaware Class members whole and because the VW Entity
26 Defendants have failed and/or have refused to adequately provide the promised remedies within a
27 reasonable time.

28

1 1068. Accordingly, recovery by Plaintiffs and the other Delaware Class members is not
2 restricted to the limited warranty promising to repair and/or correct a manufacturing defect, and
3 Plaintiffs, individually and on behalf of the other Delaware Class members, seek all remedies as
4 allowed by law.

5 1069. Also, as alleged in more detail herein, at the time the VW Entity Defendants
6 warranted and sold or leased the Class Vehicles, they knew that the Class Vehicles were
7 inherently defective and did not conform to their warranties; further, the VW Entity Defendants
8 had wrongfully and fraudulently concealed material facts regarding the Class Vehicles. Plaintiffs
9 and the other Delaware Class members were therefore induced to purchase or lease the Class
10 Vehicles under false and/or fraudulent pretenses.

11 1070. Moreover, many of the injuries flowing from the Class Vehicles cannot be
12 resolved through the limited remedy of “replacements or adjustments,” as many incidental and
13 consequential damages have already been suffered because of Volkswagen’s fraudulent conduct
14 as alleged herein, and because of its failure and/or continued failure to provide such limited
15 remedy within a reasonable time, and any limitation on Plaintiffs’ and the other Delaware Class
16 members’ remedies would be insufficient to make Plaintiffs and the other Delaware Class
17 members whole.

18 1071. Finally, because of the VW Entity Defendants’ breach of warranty as set forth
19 herein, Plaintiffs and the other Delaware Class members assert, as additional and/or alternative
20 remedies, the revocation of acceptance of the goods and the return to Plaintiffs and the other
21 Delaware Class members of the purchase or lease price of all Class Vehicles currently owned or
22 leased, and for such other incidental and consequential damages as allowed.

23 1072. The VW Entity Defendants were provided notice of these issues by numerous
24 complaints filed against them, including the instant Complaint, within a reasonable amount of
25 time after Volkswagen publicly admitted to using a defeat device in the Class Vehicles to evade
26 clean air standards.

1 1073. As a direct and proximate result of the VW Entity Defendants’ breach of express
2 warranties, Plaintiff and the other Delaware Class members have been damaged in an amount to
3 be determined at trial.

4 **DISTRICT OF COLUMBIA**

5 **DISTRICT OF COLUMBIA COUNT I:**
6 **VIOLATIONS OF THE CONSUMER PROTECTION PROCEDURES ACT**
7 **(D.C. Code § 28-3901, *et seq.*)**

8 1074. Plaintiffs reallege and incorporate by reference all paragraphs as if fully set forth
9 herein.

10 1075. Plaintiff Terrell (for the purpose of this section, “Plaintiffs”) bring this action on
11 behalf of themselves and the District of Columbia Class against all Defendants.

12 1076. Defendants are “person[s]” under the Consumer Protection Procedures Act
13 (“District of Columbia CPPA”), D.C. Code § 28-3901(a)(1).

14 1077. Class members are “consumers,” as defined by D.C. Code § 28-3901(1)(2), who
15 purchased or leased one or more Class Vehicles.

16 1078. Defendants’ actions as set forth herein constitute “trade practices” under D.C.
17 Code § 28-3901.

18 1079. Volkswagen participated in unfair or deceptive acts or practices that violated the
19 District of Columbia CPPA. By willfully failing to disclose and actively concealing the illegal
20 defeat device and the true cleanliness and performance of the “clean” diesel engine system,
21 Volkswagen engaged in unfair or deceptive practices prohibited by the District of Columbia
22 CPPA, D.C. Code § 28-3901, *et seq.*, including: (1) representing that the Class Vehicles have
23 characteristics, uses, benefits, and qualities which they do not have; (2) representing that the Class
24 Vehicles are of a particular standard, quality, and grade when they are not; (3) advertising the
25 Class Vehicles with the intent not to sell them as advertised; (4) representing that the subject of a
26 transaction involving the Class Vehicles has been supplied in accordance with a previous
27 representation when it has not; (5) misrepresenting as to a material fact which has a tendency to
28 mislead; and (6) failing to state a material fact when such failure tends to mislead.

1 1080. In the course of their business, Defendants concealed and suppressed material facts
2 concerning the Class Vehicles. Defendants accomplished this by installing illegal defeat device
3 software in the Class Vehicles that caused the vehicles to operate in a low emission test mode
4 only during emissions testing. During normal operations, the Class Vehicles would emit grossly
5 larger quantities of noxious contaminants, sometimes 40 times over applicable standards. The
6 result was what Volkswagen intended—the Class Vehicles passed emissions testing by way of
7 deliberately induced false readings. Plaintiffs and District of Columbia Class members had no
8 way of discerning that Volkswagen’s representations were false and misleading because
9 Volkswagen’s defeat device software was extremely sophisticated technology. Plaintiffs and
10 District of Columbia Class members did not and could not unravel Volkswagen’s deception on
11 their own. In fact, it took years before the academic engineering community—specifically a
12 research team at WVU’s Center for Alternative Fuels, Engines & Emissions—detected
13 Volkswagen’s cheat using sophisticated, expensive equipment and applying decades of combined
14 experience.

15 1081. Defendants thus violated the Act by, at minimum: employing deception, deceptive
16 acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any
17 material fact with intent that others rely upon such concealment, suppression or omission, in
18 connection with the sale of Class Vehicles.

19 1082. Bosch played a critical role in facilitating, and itself contributed to, Volkswagen’s
20 unfair and deceptive conduct, as alleged herein. Bosch knew or should have known that
21 Volkswagen would use and had used the Bosch technology as an emission defeat device, and in
22 fact helped it do so. Without Bosch’s complicity and silence, Volkswagen could not have
23 perpetrated the fraudulent, deceptive, and unfair practices alleged herein, and Bosch’s actions
24 themselves constitute fraudulent, deceptive, and unfair practices.

25 1083. Defendants engaged in misleading, false, unfair or deceptive acts or practices that
26 violated the District of Columbia CPPA by installing, failing to disclose and actively concealing
27 the illegal defeat device and the true cleanliness and performance of the “clean” diesel engine
28 system, by marketing its vehicles as legal, reliable, environmentally clean, efficient, and of high

1 quality, and by presenting itself as a reputable manufacturer that valued environmental cleanliness
2 and efficiency, and that stood behind its vehicles after they were sold.

3 1084. The Clean Air Act and EPA regulations require that automobiles limit their
4 emissions output to specified levels. These laws are intended for the protection of public health
5 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the
6 Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 CFR § 86.1809. By
7 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available
8 for purchase, Volkswagen violated federal law and therefore engaged in conduct that violates the
9 District of Columbia CPPA.

10 1085. Defendants knew the true nature of its “clean” diesel engine system for at least six
11 years, but concealed all of that information until recently. also knew that it valued profits over
12 environmental cleanliness, efficiency, and compliance with the law, and that it was
13 manufacturing, selling, and distributing vehicles throughout the United States that did not comply
14 with EPA regulations. Volkswagen concealed this information as well.

15 1086. Volkswagen intentionally and knowingly misrepresented material facts regarding
16 the Class Vehicles with intent to mislead Plaintiffs and the District of Columbia Class.

17 1087. Volkswagen knew or should have known that its conduct violated the District of
18 Columbia CPPA.

19 1088. As alleged above, Volkswagen made material statements about the environmental
20 cleanliness and efficiency of the Class Vehicles and the Volkswagen brand that were either false
21 or misleading.

22 1089. Defendants owed Plaintiffs a duty to disclose the illegality and public health and
23 safety risks of the Class Vehicles because they:

- 24 a. possessed exclusive knowledge that they were
25 manufacturing, selling, and distributing vehicles throughout
26 the United States that did not comply with EPA regulations;
27 b. intentionally concealed the foregoing from regulators,
28 Plaintiffs, Class members; and/or
c. made incomplete representations about the environmental
cleanliness and efficiency of the Class Vehicles generally,

1 and the use of the defeat device in particular, while
2 purposefully withholding material facts from Plaintiffs that
3 contradicted these representations.

4 1090. Defendants concealed the illegal defeat device and the true emissions, efficiency,
5 and performance of the “clean” diesel system, resulting in a raft of negative publicity once the
6 defects finally began to be disclosed. The value of the Class Vehicles has therefore greatly
7 diminished. In light of the stigma attached to those vehicles by Volkswagen’s conduct, they are
8 now worth significantly less than they otherwise would be worth.

9 1091. Volkswagen’s fraudulent use of the “defeat device” and its concealment of the true
10 characteristics of the “clean” diesel engine system were material to Plaintiffs and the District of
11 Columbia Class.

12 1092. Defendants’ unfair or deceptive acts or practices were likely to and did in fact
13 deceive regulators and reasonable consumers, including Plaintiffs, about the true environmental
14 cleanliness and efficiency of Volkswagen-branded vehicles, the quality of the Volkswagen brand,
15 the devaluing of environmental cleanliness and integrity at Volkswagen, and the true value of the
16 Class Vehicles

17 1093. Plaintiffs and the District of Columbia Class suffered ascertainable loss and actual
18 damages as a direct and proximate result of Defendants’ misrepresentations and its concealment
19 of and failure to disclose material information. Plaintiffs and the District of Columbia Class
20 members who purchased or leased the Class Vehicles would not have purchased or leased them at
21 all and/or—if the Vehicles’ true nature had been disclosed and mitigated, and the Vehicles
22 rendered legal to sell—would have paid significantly less for them. Plaintiffs also suffered
23 diminished value of their vehicles, as well as lost or diminished use.

24 1094. Defendants had an ongoing duty to all Volkswagen customers to refrain from
25 unfair and deceptive practices under the District of Columbia CPPA. All owners of Class
26 Vehicles suffered ascertainable loss in the form of the diminished value of their vehicles as a
27 result of Volkswagen’s deceptive and unfair acts and practices made in the course of
28 Volkswagen’s business.

1 1095. Defendants’ violations present a continuing risk to Plaintiffs as well as to the
2 general public. Defendants’ unlawful acts and practices complained of herein affect the public
3 interest.

4 1096. As a direct and proximate result of Defendants’ violations of the District of
5 Columbia CPPA, Plaintiffs and the District of Columbia Class have suffered injury-in-fact and/or
6 actual damage.

7 1097. Plaintiff and the District of Columbia Class are entitled to recover treble damages
8 or \$1,500, whichever is greater, punitive damages, reasonable attorneys’ fees, and any other relief
9 the Court deems proper, under D.C. Code § 28-3901.

10 1098. Plaintiffs seek punitive damages against Defendants because their conduct
11 evidences malice and/or egregious conduct. Defendants maliciously and egregiously
12 misrepresented the environmental cleanliness and efficiency of the Class Vehicles, concealed
13 material facts that only it knew, and repeatedly promised Class members that all vehicles were
14 environmentally clean—all to avoid the expense and public relations nightmare of revealing its
15 fraudulent use of the “defeat device.” Defendants’ unlawful conduct constitutes malice
16 warranting punitive damages.

17 **DISTRICT OF COLUMBIA COUNT II:**
18 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
19 **(D.C. Code §§ 28:2-314 and 28:2A-212)**

20 1099. Plaintiffs reallege and incorporate by reference all allegations of the preceding
21 paragraphs as though fully set forth herein.

22 1100. Plaintiffs bring this Count on behalf of the District of Columbia Class, against VW
23 AG, VW America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the
24 “VW Entity Defendants”).

25 1101. The VW Entity Defendants are and were at all relevant times “merchants” with
26 respect to motor vehicles under D.C. Code §§ 28:2-104(1) and 28:2A-103(a)(20), and “sellers” of
27 motor vehicles under § 28:2-103(1)(d).

28 1102. With respect to leases, the VW Entity Defendants are and were at all relevant
times “lessors” of motor vehicles under D.C. Code § 28:2A-103(a)(16).

1 1103. The Class Vehicles are and were at all relevant times “goods” within the meaning
2 of D.C. Code §§ 28:2-105(1) and 28:2A-103(a)(8).

3 1104. A warranty that the Class Vehicles were in merchantable condition and fit for the
4 ordinary purpose for which vehicles are used is implied by law pursuant to D.C. Code §§ 28:2-
5 314 and 28:2A-212.

6 1105. These Class Vehicles, when sold or leased and at all times thereafter, were not in
7 merchantable condition and are not fit for the ordinary purpose for which vehicles are used.
8 Specifically, the Class Vehicles are inherently defective in that they do not comply with federal
9 and state emissions standards, rendering certain emissions functions inoperative; and the “clean”
10 diesel engine system was not adequately designed, manufactured, and tested.

11 1106. Volkswagen was provided notice of these issues by the investigations of the EPA
12 and individual state regulators, numerous complaints filed against it including the instant
13 Complaint, and by numerous individual letters and communications sent by Plaintiffs and others
14 within a reasonable amount of time after the allegations of Class Vehicle defects became public.

15 1107. As a direct and proximate result of the VW Entity Defendants’ breach of the
16 implied warranty of merchantability, Plaintiffs and the other District of Columbia Class members
17 have been damaged in an amount to be proven at trial.

18 **DISTRICT OF COLUMBIA COUNT III:**
19 **BREACH OF EXPRESS WARRANTY**
20 **(D.C. Code §§ 28:2-313 and 28:2A-210)**

21 1108. Plaintiffs reallege and incorporate by reference all preceding allegations as though
22 fully set forth herein.

23 1109. Plaintiffs bring this Count on behalf of the District of Columbia Class, against VW
24 AG, VW America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the
25 “VW Entity Defendants”).

26 1110. The VW Entity Defendants are and were at all relevant times “merchants” with
27 respect to motor vehicles under D.C. Code §§ 28:2-104(1) and 28:2A-103(a)(20), and “sellers” of
28 motor vehicles under § 28:2-103(1)(d).

1 1111. With respect to leases, the VW Entity Defendants are and were at all relevant
2 times “lessors” of motor vehicles under D.C. Code § 28:2A-103(a)(16).

3 1112. The Class Vehicles are and were at all relevant times “goods” within the meaning
4 of D.C. Code §§ 28:2-105(1) and 28:2A-103(a)(8).

5 1113. In connection with the purchase or lease of each one of its new vehicles, the VW
6 Entity Defendants provide an express New Vehicle Limited Warranty (“NVLW”) for a period of
7 three years or 36,000 miles, whichever occurs first. This NVLW exists to cover “any repair to
8 correct a manufacturers defect in materials or workmanship.”

9 1114. The Clean Air Act requires manufacturers of light-duty vehicles to provide two
10 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
11 Warranty.”

12 1115. The EPA requires vehicle manufacturers to provide a Performance Warranty with
13 respect to the vehicles’ emission systems. Thus, Volkswagen also provides an express warranty
14 for its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
15 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
16 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
17 emission control components are covered for the first eight years or 80,000 miles, whichever
18 comes first. These major emission control components subject to the longer warranty include the
19 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
20 device or computer.

21 1116. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
22 with respect to their vehicles’ emission systems. Thus, the VW Entity Defendants also provide an
23 express warranty for their vehicles through a Federal Emission Control System Defect Warranty.
24 The Design and Defect Warranty required by the EPA covers repair of emission control or
25 emission related parts which fail to function or function improperly because of a defect in
26 materials or workmanship. This warranty provides protection for two years or 24,000 miles,
27 whichever comes first, or, for the major emission control components, for eight years or 80,000
28 miles, whichever comes first.

1 1117. As manufacturers of light-duty vehicles, the VW Entity Defendants were required
2 to provide these warranties to purchasers or lessees of their “clean” diesel vehicles.

3 1118. The VW Entity Defendants’ warranties formed a basis of the bargain that was
4 reached when Plaintiffs and other District of Columbia Class members purchased or leased their
5 Class Vehicles equipped with the non-compliant “clean” diesel engine and emission systems.

6 1119. Plaintiffs and the District of Columbia Class members experienced defects within
7 the warranty period. Despite the existence of warranties, the VW Entity Defendants failed to
8 inform Plaintiffs and District of Columbia Class members that the Class Vehicles were
9 intentionally designed and manufactured to be out of compliance with applicable state and federal
10 emissions laws, and failed to fix the defective emission components free of charge.

11 1120. The VW Entity Defendants breached the express warranty promising to repair and
12 correct a manufacturing defect or materials or workmanship of any parts they supplied. The VW
13 Entity Defendants have not repaired or adjusted, and have been unable to repair or adjust, the
14 Class Vehicles’ materials and workmanship defects.

15 1121. Affording the VW Entity Defendants a reasonable opportunity to cure their breach
16 of written warranties would be unnecessary and futile here. For example, the Frequently Asked
17 Questions (“FAQ”) section of VW’s informational website states:

18 **How soon will the remedy be available, and how am I going to**
19 **be compensated for this?**

20 We cannot offer a firm date now because we need to work on a
21 remedy and review it with the government. We are proceeding as
quickly as possible.

22 1122. In his Congressional testimony on October 8, 2015, Michael Horn stated that
23 Volkswagen intends to make Class Vehicles compliant with emission standards through software
24 fixes and the installation of auxiliary hardware, but that fix will take “1 to 2 years, minimum.”
25 When questioned on remedies for consumers, he stated that Volkswagen may pay customers for a
26 loss in resale values because of the scandal. He said that Volkswagen is not considering
27 providing loaner vehicles because the U.S. government says the vehicles are safe to drive.
28

1 1123. Michael Horn’s testimony serves as an admission that the limited warranty
2 promising to repair and/or correct a manufacturing defect fails in its essential purpose because the
3 VW Entity Defendants cannot meet that promise within a reasonable time.

4 1124. Furthermore, the limited warranty promising to repair and/or correct a
5 manufacturing defect fails in its essential purpose because the contractual remedy is insufficient
6 to make Plaintiffs and the other District of Columbia Class members whole and because the VW
7 Entity Defendants have failed and/or have refused to adequately provide the promised remedies
8 within a reasonable time.

9 1125. Accordingly, recovery by Plaintiffs and the other District of Columbia Class
10 members is not restricted to the limited warranty promising to repair and/or correct a
11 manufacturing defect, and Plaintiffs, individually and on behalf of the other District of Columbia
12 Class members, seek all remedies as allowed by law.

13 1126. Also, as alleged in more detail herein, at the time the VW Entity Defendants
14 warranted and sold or leased the Class Vehicles, they knew that the Class Vehicles were
15 inherently defective and did not conform to their warranties; further, the VW Entity Defendants
16 had wrongfully and fraudulently concealed material facts regarding the Class Vehicles. Plaintiffs
17 and the other District of Columbia Class members were therefore induced to purchase or lease the
18 Class Vehicles under false and/or fraudulent pretenses.

19 1127. Moreover, many of the injuries flowing from the Class Vehicles cannot be
20 resolved through the limited remedy of “replacements or adjustments,” as many incidental and
21 consequential damages have already been suffered because of Volkswagen’s fraudulent conduct
22 as alleged herein, and because of its failure and/or continued failure to provide such limited
23 remedy within a reasonable time, and any limitation on Plaintiffs’ and the other District of
24 Columbia Class members’ remedies would be insufficient to make Plaintiffs and the other District
25 of Columbia Class members whole.

26 1128. Finally, because of the VW Entity Defendants’ breach of warranty as set forth
27 herein, Plaintiffs and the other District of Columbia Class members assert, as additional and/or
28 alternative remedies, the revocation of acceptance of the goods and the return to Plaintiffs and the

1 other District of Columbia Class members of the purchase or lease price of all Class Vehicles
2 currently owned or leased, and for such other incidental and consequential damages as allowed.

3 1129. The VW Entity Defendants were provided notice of these issues by numerous
4 complaints filed against them, including the instant Complaint, within a reasonable amount of
5 time after Volkswagen publicly admitted to using a defeat device in the Class Vehicles to evade
6 clean air standards.

7 1130. As a direct and proximate result of the VW Entity Defendants' breach of express
8 warranties, Plaintiff and the other District of Columbia Class members have been damaged in an
9 amount to be determined at trial.

10 **FLORIDA**

11 **FLORIDA COUNT I:**
12 **VIOLATIONS OF FLORIDA'S UNFAIR &**
13 **DECEPTIVE TRADE PRACTICES ACT**
(Fla. Stat. § 501.201, *et seq.*)

14 1131. Plaintiffs incorporate by reference each preceding paragraph as though fully set
15 forth herein.

16 1132. Plaintiffs Bell and Lawhon (for the purpose of this section, "Plaintiffs") bring this
17 action on behalf of themselves and the Florida Class against all Defendants.

18 1133. Plaintiffs are "consumers" within the meaning of the Florida Unfair and Deceptive
19 Trade Practices Act ("FUDTPA"), Fla. Stat. § 501.203(7).

20 1134. Defendants are engaged in "trade or commerce" within the meaning of Fla. Stat.
21 § 501.203(8).

22 1135. FUDTPA prohibits "[u]nfair methods of competition, unconscionable acts or
23 practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce ..."
24 Fla. Stat. § 501.204(1). Defendants participated in unfair and deceptive trade practices that
25 violated the FUDTPA as described herein.

26 1136. In the course of their business, Defendants concealed and suppressed material facts
27 concerning the Class Vehicles. Defendants accomplished this by designing and installing illegal
28 defeat device software in the Class Vehicles that caused the vehicles to operate in a low emission

1 test mode only during emissions testing. During normal operations, the Class Vehicles would
2 emit grossly larger quantities of noxious contaminants, sometimes 40 times over applicable
3 standards. The result was what Volkswagen intended—the Class Vehicles passed emissions
4 testing by way of deliberately induced false readings. Plaintiffs and Florida Class members had
5 no way of discovering this because Volkswagen’s defeat device software was extremely
6 sophisticated technology. Plaintiffs and Florida Class members did not and could not unravel
7 Volkswagen’s deception on their own. In fact, it took years before the academic engineering
8 community—specifically a research team at WVU’s Center for Alternative Fuels, Engines &
9 Emissions—detected the discrepancies in the emissions using sophisticated, expensive equipment
10 and applying decades of combined experience.

11 1137. Defendants thus violated the Act by, at minimum employing deception, deceptive
12 acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any
13 material fact with intent that others rely upon such concealment, suppression or omission, in
14 connection with the sale of Class Vehicles.

15 1138. Bosch played a critical role in facilitating, and itself contributed to, Volkswagen’s
16 unfair and deceptive conduct, as alleged herein. Bosch knew or should have known that
17 Volkswagen would use and had used the Bosch technology as an emission defeat device, and in
18 fact helped it do so. Without Bosch’s complicity and silence, Volkswagen could not have
19 perpetrated the fraudulent, deceptive, and unfair practices alleged herein, and Bosch’s actions
20 themselves constitute fraudulent, deceptive, and unfair practices.

21 1139. Defendants engaged in misleading, false, unfair or deceptive acts or practices that
22 violated the FUDTPA by designing, installing, failing to disclose and actively concealing the
23 illegal defeat device, the vehicles illegality, and the true nature of the “clean” diesel engine
24 system.

25 1140. The Clean Air Act and EPA regulations require that automobiles limit their
26 emissions output to specified levels. These laws are intended for the protection of public health
27 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the
28 Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 CFR § 86.1809. By

1 supplying and installing illegal “defeat devices” in the Class Vehicles and by making those
2 vehicles available for purchase equipped with the defeat devices. Defendants violated federal law
3 and therefore engaged in conduct that violates the FUDTPA.

4 1141. Defendants owed Plaintiffs a duty to disclose the illegality and public health and
5 safety risks of the Class Vehicles because they:

- 6 a. possessed exclusive knowledge that they were
7 manufacturing, selling, and distributing vehicles throughout
8 the United States that did not comply with EPA and state
9 emissions regulations;
- 10 b. intentionally concealed the foregoing from regulators,
11 Plaintiffs, Class members; and/or
- 12 c. made incomplete representations about the illegality,
13 emissions and efficiency of the Class Vehicles generally,
14 and the use of the defeat device in particular, while
15 purposefully withholding material facts from Plaintiffs that
16 contradicted these representations.

17 1142. Because Defendants fraudulently concealed the illegal defeat device and the true
18 nature of the “clean” diesel system, resulting in a raft of negative publicity once the defects
19 finally began to be disclosed, the value of the Class Vehicles has greatly diminished.

20 1143. Volkswagen’s fraudulent and illegal use of the “defeat device” and its concealment
21 of the true characteristics of the “clean” diesel engine system were material to Plaintiffs and the
22 Florida Class.

23 1144. Defendants’ unfair or deceptive acts or practices were likely to and did in fact
24 deceive regulators and reasonable consumers, including Plaintiffs and Florida Class members,
25 about illegality, emissions, and efficiency of the Class Vehicles, the quality of the Volkswagen
26 brand, the devaluing of environmental cleanliness and integrity at Volkswagen, and the true value
27 of the Class Vehicles.

28 1145. Plaintiffs and the Florida Class suffered ascertainable loss and actual damages as a
direct and proximate result of Defendants’ misrepresentations and their concealment of and
failure to disclose material information. Plaintiffs and the Florida Class members who purchased
or leased the Class Vehicles would not have purchased or leased the vehicles at all, or

1 alternatively, would have paid less for them. Plaintiffs also suffered diminished value of their
2 vehicles, as well as lost or diminished use.

3 1146. Defendants had an ongoing duty to all Volkswagen customers to refrain from
4 unfair and deceptive practices under the FUDTPA. All owners of Class Vehicles suffered
5 ascertainable loss in the form of the purchase or lease price as well as the diminished value of
6 their vehicles as a result of Defendants' deceptive and unfair acts and practices.

7 1147. Plaintiffs and Florida Class members risk irreparable injury as a result of
8 Defendants' acts and omissions in violation of the FUDTPA, and these violations present a
9 continuing risk to Plaintiffs as well as to the general public. Defendants' unlawful acts and
10 practices complained of herein affect the public interest.

11 1148. As a direct and proximate result of Defendants' violations of the FUDTPA,
12 Plaintiffs and the Florida Class have suffered injury-in-fact and/or actual damage.

13 1149. Plaintiffs and the Florida Class are entitled to recover their actual damages under
14 Fla. Stat. § 501.211(2) and attorneys' fees under Fla. Stat. § 501.2105(1).

15 1150. Plaintiffs also seek an order enjoining Defendants' unfair, unlawful, and/or
16 deceptive practices, declaratory relief, attorneys' fees, and any other just and proper relief
17 available under the FUDTPA.

18 **FLORIDA COUNT II:**
19 **BREACH OF EXPRESS WARRANTY**
20 **(F.S.A. §§ 672.313 and 680.21)**

21 1151. Plaintiffs reallege and incorporate by reference all preceding allegations as though
22 fully set forth herein.

23 1152. Plaintiffs bring this Count on behalf of the Florida Class, against VW AG, VW
24 America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the "VW
25 Entity Defendants").

26 1153. The VW Entity Defendants are and were at all relevant times "merchants" with
27 respect to motor vehicles under F.S.A. §§ 672.104(1) and 680.1031(3)(k), and "sellers" of motor
28 vehicles under § 672.103(1)(d).

1 1154. With respect to leases, the VW Entity Defendants are and were at all relevant
2 times “lessors” of motor vehicles under F.S.A. § 680.1031(1)(p).

3 1155. The Class Vehicles are and were at all relevant times “goods” within the meaning
4 of F.S.A. §§ 672.105(1) and 680.1031(1)(h).

5 1156. In connection with the purchase or lease of each one of its new vehicles, the VW
6 Entity Defendants provide an express New Vehicle Limited Warranty (“NVLW”) for a period of
7 three years or 36,000 miles, whichever occurs first. This NVLW exists to cover “any repair to
8 correct a manufacturers defect in materials or workmanship.”

9 1157. The Clean Air Act requires manufacturers of light-duty vehicles to provide two
10 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
11 Warranty.”

12 1158. The EPA requires vehicle manufacturers to provide a Performance Warranty with
13 respect to the vehicles’ emission systems. Thus, the VW Entity Defendants also provides an
14 express warranty for its vehicles through a Federal Emissions Performance Warranty. The
15 Performance Warranty required by the EPA applies to repairs that are required during the first
16 two years or 24,000 miles, whichever occurs first, when a vehicle fails an emissions test. Under
17 this warranty, certain major emission control components are covered for the first eight years or
18 80,000 miles, whichever comes first. These major emission control components subject to the
19 longer warranty include the catalytic converters, the electronic emission control unit, and the
20 onboard emission diagnostic device or computer.

21 1159. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
22 with respect to their vehicles’ emission systems. Thus, the VW Entity Defendants also provide an
23 express warranty for their vehicles through a Federal Emission Control System Defect Warranty.
24 The Design and Defect Warranty required by the EPA covers repair of emission control or
25 emission related parts which fail to function or function improperly because of a defect in
26 materials or workmanship. This warranty provides protection for two years or 24,000 miles,
27 whichever comes first, or, for the major emission control components, for eight years or 80,000
28 miles, whichever comes first.

1 1160. As manufacturers of light-duty vehicles, the VW Entity Defendants were required
2 to provide these warranties to purchasers or lessees of their “clean” diesel vehicles.

3 1161. The VW Entity Defendants’ warranties formed a basis of the bargain that was
4 reached when Plaintiffs and other Florida Class members purchased or leased their Class Vehicles
5 equipped with the non-compliant “clean” diesel engine and emission systems.

6 1162. Plaintiffs and the Florida Class members experienced defects within the warranty
7 period. Despite the existence of warranties, the VW Entity Defendants failed to inform Plaintiffs
8 and Florida Class members that the Class Vehicles were intentionally designed and manufactured
9 to be out of compliance with applicable state and federal emissions laws, and failed to fix the
10 defective emission components free of charge.

11 1163. The VW Entity Defendants breached the express warranty promising to repair and
12 correct a manufacturing defect or materials or workmanship of any parts they supplied. The VW
13 Entity Defendants have not repaired or adjusted, and have been unable to repair or adjust, the
14 Class Vehicles’ materials and workmanship defects.

15 1164. Affording the VW Entity Defendants a reasonable opportunity to cure their breach
16 of written warranties would be unnecessary and futile here. For example, the Frequently Asked
17 Questions (“FAQ”) section of VW’s informational website states:

18 **How soon will the remedy be available, and how am I going to**
19 **be compensated for this?**

20 We cannot offer a firm date now because we need to work on a
21 remedy and review it with the government. We are proceeding as
quickly as possible.

22 1165. In his Congressional testimony on October 8, 2015, Michael Horn stated that
23 Volkswagen intends to make Class Vehicles compliant with emission standards through software
24 fixes and the installation of auxiliary hardware, but that fix will take “1 to 2 years, minimum.”
25 When questioned on remedies for consumers, he stated that Volkswagen may pay customers for a
26 loss in resale values because of the scandal. He said that Volkswagen is not considering
27 providing loaner vehicles because the U.S. government says the vehicles are safe to drive.
28

1 1166. Michael Horn’s testimony serves as an admission that the limited warranty
2 promising to repair and/or correct a manufacturing defect fails in its essential purpose because the
3 VW Entity Defendants cannot meet that promise within a reasonable time.

4 1167. Furthermore, the limited warranty promising to repair and/or correct a
5 manufacturing defect fails in its essential purpose because the contractual remedy is insufficient
6 to make Plaintiffs and the other Florida Class members whole and because the VW Entity
7 Defendants have failed and/or have refused to adequately provide the promised remedies within a
8 reasonable time.

9 1168. Accordingly, recovery by Plaintiffs and the other Florida Class members is not
10 restricted to the limited warranty promising to repair and/or correct a manufacturing defect, and
11 Plaintiffs, individually and on behalf of the other Florida Class members, seek all remedies as
12 allowed by law.

13 1169. Also, as alleged in more detail herein, at the time the VW Entity Defendants
14 warranted and sold or leased the Class Vehicles, they knew that the Class Vehicles were illegal
15 and inherently defective and did not conform to their warranties; further, the VW Entity
16 Defendants had wrongfully and fraudulently concealed material facts regarding the Class
17 Vehicles. Plaintiffs and the other Florida Class members were therefore induced to purchase or
18 lease the Class Vehicles under false and/or fraudulent pretenses.

19 1170. Moreover, many of the injuries flowing from the Class Vehicles cannot be
20 resolved through the limited remedy of “replacements or adjustments,” as many incidental and
21 consequential damages have already been suffered because of Volkswagen’s fraudulent conduct
22 as alleged herein, and because of its failure and/or continued failure to provide such limited
23 remedy within a reasonable time, and any limitation on Plaintiffs’ and the other Florida Class
24 members’ remedies would be insufficient to make Plaintiffs and the other Florida Class members
25 whole.

26 1171. Finally, because of the VW Entity Defendants’ breach of warranty as set forth
27 herein, Plaintiffs and the other Florida Class members assert, as additional and/or alternative
28 remedies, the revocation of acceptance of the goods and the return to Plaintiffs and the other

1 Florida Class members of the purchase or lease price of all Class Vehicles currently owned or
2 leased, and for such other incidental and consequential damages as allowed.

3 1172. The VW Entity Defendants were provided notice of these issues by numerous
4 complaints filed against them, including the instant Complaint, within a reasonable amount of
5 time after Volkswagen publicly admitted to using a defeat device in the Class Vehicles to evade
6 clean air standards.

7 1173. As a direct and proximate result of the VW Entity Defendants' breach of express
8 warranties, Plaintiff and the other Florida Class members have been damaged in an amount to be
9 determined at trial.

10 **FLORIDA COUNT III:**
11 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
12 **(F.S.A. §§ 672.314 and 680.212)**

13 1174. Plaintiffs reallege and incorporate by reference all allegations of the preceding
14 paragraphs as though fully set forth herein.

15 1175. Plaintiffs bring this Count on behalf of the Florida Class, against VW AG, VW
16 America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the "VW
17 Entity Defendants").

18 1176. The VW Entity Defendants are and were at all relevant times "merchants" with
19 respect to motor vehicles under F.S.A. §§ 672.104(1) and 680.1031(3)(k), and "sellers" of motor
20 vehicles under § 672.103(1)(d).

21 1177. With respect to leases, the VW Entity Defendants are and were at all relevant
22 times "lessors" of motor vehicles under F.S.A. § 680.1031(1)(p).

23 1178. The Class Vehicles are and were at all relevant times "goods" within the meaning
24 of F.S.A. §§ 672.105(1) and 680.1031(1)(h).

25 1179. A warranty that the Class Vehicles were in merchantable condition and fit for the
26 ordinary purpose for which vehicles are used is implied by law pursuant to F.S.A. §§ 672.314 and
27 680.212.

28 1180. These Class Vehicles, when sold or leased and at all times thereafter, were not in
merchantable condition and are not fit for the ordinary purpose for which vehicles are used.

1 Specifically, the Class Vehicles are inherently defective in that they do not comply with federal
2 and state emissions standards, rendering certain emissions functions inoperative; and the “clean”
3 diesel engine system was not adequately designed, manufactured, and tested.

4 1181. Volkswagen was provided notice of these issues by the investigations of the EPA
5 and individual state regulators, numerous complaints filed against it including the instant
6 Complaint, and by numerous individual letters and communications sent by Plaintiffs and others
7 within a reasonable amount of time after the allegations of Class Vehicle defects became public.

8 1182. As a direct and proximate result of the VW Entity Defendants’ breach of the
9 implied warranty of merchantability, Plaintiffs and the other Florida Class members have been
10 damaged in an amount to be proven at trial.

11 **GEORGIA**

12 **GEORGIA COUNT I:**
13 **VIOLATIONS OF GEORGIA’S FAIR BUSINESS PRACTICES ACT**
14 **(Ga. Code Ann. § 10-1-390, *et seq.*)**

15 1183. Plaintiffs incorporate by reference each preceding paragraph as though fully set
16 forth herein.

17 1184. Plaintiffs Pejsa, Ray, and Terry (for the purpose of this section, “Plaintiffs”) bring
18 this action on behalf of themselves and the Georgia Class against all Defendants.

19 1185. The Georgia Fair Business Practices Act (“Georgia FBPA”) declares “[u]nfair or
20 deceptive acts or practices in the conduct of consumer transactions and consumer acts or practices
21 in trade or commerce” to be unlawful, Ga. Code. Ann. § 10-1-393(a), including but not limited to
22 “representing that goods or services have sponsorship, approval, characteristics, ingredients, uses,
23 benefits, or quantities that they do not have,” “[r]epresenting that goods or services are of a
24 particular standard, quality, or grade ... if they are of another,” and “[a]dvertising goods or
25 services with intent not to sell them as advertised,” Ga. Code. Ann. § 10-1-393(b).

26 1186. In the course of their business, Defendants concealed and suppressed material facts
27 concerning the Class Vehicles. Defendants accomplished this by installing illegal defeat device
28 software in the Class Vehicles that caused the vehicles to operate in a low emission test mode
only during emissions testing. During normal operations, the Class Vehicles would emit grossly

1 larger quantities of noxious contaminants, sometimes 40 times over applicable standards. The
2 result was what Volkswagen intended—the Class Vehicles passed emissions testing by way of
3 deliberately induced false readings. Plaintiffs and Georgia Class members had no way of
4 discerning that Volkswagen’s representations were false and misleading because Volkswagen’s
5 defeat device software was extremely sophisticated technology. Plaintiffs and Georgia Class
6 members did not and could not unravel Volkswagen’s deception on their own. In fact, it took
7 years before the academic engineering community—specifically a research team at WVU’s
8 Center for Alternative Fuels, Engines & Emissions—detected Volkswagen’s cheat using
9 sophisticated, expensive equipment and applying decades of combined experience.

10 1187. Defendants thus violated the Act by, at minimum: (1) representing that the Class
11 Vehicles have characteristics, uses, benefits, and qualities which they do not have; (2)
12 representing that the Class Vehicles are of a particular standard, quality, and grade when they are
13 not; and (3) advertising the Class Vehicles with the intent not to sell them as advertised.

14 1188. Bosch played a critical role in facilitating, and itself contributed to, Volkswagen’s
15 unfair and deceptive conduct, as alleged herein. Bosch knew or should have known that
16 Volkswagen would use and had used the Bosch technology as an emission defeat device, and in
17 fact helped it do so. Without Bosch’s complicity and silence, Volkswagen could not have
18 perpetrated the fraudulent, deceptive, and unfair practices alleged herein, and Bosch’s actions
19 themselves constitute fraudulent, deceptive, and unfair practices.

20 1189. Defendants engaged in misleading, false, unfair or deceptive acts or practices that
21 violated the Georgia FBPA by installing, failing to disclose and actively concealing the illegal
22 defeat device and the true cleanliness and performance of the “clean” diesel engine system, by
23 marketing its vehicles as legal, reliable, environmentally clean, efficient, and of high quality, and
24 by presenting itself as a reputable manufacturer that valued environmental cleanliness and
25 efficiency, and that stood behind its vehicles after they were sold.

26 1190. The Clean Air Act and EPA regulations require that automobiles limit their
27 emissions output to specified levels. These laws are intended for the protection of public health
28 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the

1 Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 CFR § 86.1809. By
2 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available
3 for purchase, Volkswagen violated federal law and therefore engaged in conduct that violates the
4 Georgia FBPA.

5 1191. Defendants knew the true nature of its “clean” diesel engine system for at least six
6 years, but concealed all of that information until recently. Volkswagen also knew that it valued
7 profits over environmental cleanliness, efficiency, and compliance with the law, and that it was
8 manufacturing, selling, and distributing vehicles throughout the United States that did not comply
9 with EPA regulations. Volkswagen concealed this information as well.

10 1192. Volkswagen intentionally and knowingly misrepresented material facts regarding
11 the Class Vehicles with intent to mislead Plaintiffs and the Georgia Class.

12 1193. Volkswagen knew or should have known that its conduct violated the Georgia
13 FBPA.

14 1194. Defendants owed Plaintiffs a duty to disclose the illegality and public health and
15 safety risks of the Class Vehicles because they:

- 16 a. possessed exclusive knowledge that they were
17 manufacturing, selling, and distributing vehicles throughout
the United States that did not comply with EPA regulations;
- 18 b. intentionally concealed the foregoing from regulators,
19 Plaintiffs, Class members; and/or
- 20 c. made incomplete representations about the environmental
21 cleanliness and efficiency of the Class Vehicles generally,
and the use of the defeat device in particular, while
22 purposefully withholding material facts from Plaintiffs that
contradicted these representations.

23 1195. Defendants concealed the illegal defeat device and the true emissions, efficiency,
24 and performance of the “clean” diesel system, resulting in a raft of negative publicity once the
25 defects finally began to be disclosed. The value of the Class Vehicles has therefore greatly
26 diminished. In light of the stigma attached to those vehicles by Volkswagen’s conduct, they are
27 now worth significantly less than they otherwise would be worth.
28

1 1196. Volkswagen’s fraudulent use of the “defeat device” and its concealment of the true
2 characteristics of the “clean” diesel engine system were material to Plaintiffs and the Georgia
3 Class.

4 1197. Defendants’ unfair or deceptive acts or practices were likely to and did in fact
5 deceive regulators and reasonable consumers, including Plaintiffs, about the true environmental
6 cleanliness and efficiency of Volkswagen-branded vehicles, the quality of the Volkswagen brand,
7 the devaluing of environmental cleanliness and integrity at Volkswagen, and the true value of the
8 Class Vehicles.

9 1198. Plaintiffs and the Georgia Class suffered ascertainable loss and actual damages as
10 a direct and proximate result of Defendants’ misrepresentations and its concealment of and failure
11 to disclose material information. Plaintiffs and the Georgia Class members who purchased or
12 leased the Class Vehicles would not have purchased or leased them at all and/or—if the Vehicles’
13 true nature had been disclosed and mitigated, and the Vehicles rendered legal to sell—would have
14 paid significantly less for them. Plaintiffs also suffered diminished value of their vehicles, as well
15 as lost or diminished use.

16 1199. Defendants had an ongoing duty to all Volkswagen customers to refrain from
17 unfair and deceptive practices under the Georgia FBPA. All owners of Class Vehicles suffered
18 ascertainable loss in the form of the diminished value of their vehicles as a result of
19 Volkswagen’s deceptive and unfair acts and practices made in the course of Volkswagen’s
20 business.

21 1200. Defendants’ violations present a continuing risk to Plaintiffs as well as to the
22 general public. Defendants’ unlawful acts and practices complained of herein affect the public
23 interest.

24 1201. As a direct and proximate result of Defendants’ violations of the Georgia FBPA,
25 Plaintiffs and the Georgia Class have suffered injury-in-fact and/or actual damage.

26 1202. Plaintiff and the Georgia Class are entitled to recover damages and exemplary
27 damages (for intentional violations) per Ga. Code. Ann. § 10-1-399(a).
28

1 1203. Plaintiffs also seek an order enjoining Defendants’ unfair, unlawful, and/or
2 deceptive practices, attorneys’ fees, and any other just and proper relief available under the
3 Georgia FBPA per Ga. Code. Ann. § 10-1-399.

4 1204. On October 30, 2015, certain Plaintiffs sent a letter complying with Ga. Code.
5 Ann. § 10-1-399(b). Because Volkswagen failed to remedy its unlawful conduct within the
6 requisite time period, Plaintiffs seek all damages and relief to which Plaintiffs and the Georgia
7 Class are entitled.

8 **GEORGIA COUNT II:**
9 **VIOLATIONS OF GEORGIA’S UNIFORM DECEPTIVE TRADE PRACTICES ACT**
10 **(Ga. Code Ann. § 10-1-370, *et seq.*)**

11 1205. Plaintiffs incorporate by reference each preceding paragraph as though fully set
12 forth herein.

13 1206. This claim is brought only on behalf of the Georgia Class against VW AG, VW
14 America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the “VW
15 Entity Defendants”).

16 1207. Defendants, Plaintiffs, and the Georgia Class are “persons’ within the meaning of
17 Georgia Uniform Deceptive Trade Practices Act (“Georgia UDTPA”), Ga. Code. Ann. § 10-1-
18 371(5).

19 1208. The Georgia UDTPA prohibits “deceptive trade practices,” which include the
20 “misrepresentation of standard or quality of goods or services,” and “engaging in any other
21 conduct which similarly creates a likelihood of confusion or of misunderstanding.” Ga. Code.
22 Ann. § 10-1-372(a).

23 1209. In the course of their business, Defendants concealed and suppressed material facts
24 concerning the Class Vehicles. Defendants accomplished this by installing illegal defeat device
25 software in the Class Vehicles that caused the vehicles to operate in a low emission test mode
26 only during emissions testing. During normal operations, the Class Vehicles would emit grossly
27 larger quantities of noxious contaminants, sometimes 40 times over applicable standards. The
28 result was what Volkswagen intended—the Class Vehicles passed emissions testing by way of
deliberately induced false readings. Plaintiffs and Georgia Class members had no way of

1 discerning that Volkswagen’s representations were false and misleading because Volkswagen’s
2 defeat device software was extremely sophisticated technology. Plaintiffs and Georgia Class
3 members did not and could not unravel Volkswagen’s deception on their own. In fact, it took
4 years before the academic engineering community—specifically a research team at WVU’s
5 Center for Alternative Fuels, Engines & Emissions—detected Volkswagen’s cheat using
6 sophisticated, expensive equipment and applying decades of combined experience.

7 1210. Defendants thus violated the Act by, at minimum: employing deception, deceptive
8 acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any
9 material fact with intent that others rely upon such concealment, suppression or omission, in
10 connection with the sale of Class Vehicles.

11 1211. Bosch played a critical role in facilitating, and itself contributed to, Volkswagen’s
12 unfair and deceptive conduct, as alleged herein. Bosch knew or should have known that
13 Volkswagen would use and had used the Bosch technology as an emission defeat device, and in
14 fact helped it do so. Without Bosch’s complicity and silence, Volkswagen could not have
15 perpetrated the fraudulent, deceptive, and unfair practices alleged herein, and Bosch’s actions
16 themselves constitute fraudulent, deceptive, and unfair practices.

17 1212. Defendants engaged in misleading, false, unfair or deceptive acts or practices that
18 violated the Georgia UDTPA by installing, failing to disclose and actively concealing the illegal
19 defeat device and the true cleanliness and performance of the “clean” diesel engine system, by
20 marketing its vehicles as legal, reliable, environmentally clean, efficient, and of high quality, and
21 by presenting itself as a reputable manufacturer that valued environmental cleanliness and
22 efficiency, and that stood behind its vehicles after they were sold.

23 1213. The Clean Air Act and EPA regulations require that automobiles limit their
24 emissions output to specified levels. These laws are intended for the protection of public health
25 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the
26 Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 CFR § 86.1809. By
27 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available
28

1 for purchase, Volkswagen violated federal law and therefore engaged in conduct that violates the
2 Georgia UDTPA.

3 1214. Defendants knew the true nature of its “clean” diesel engine system for at least six
4 years, but concealed all of that information until recently. Volkswagen also knew that it valued
5 profits over environmental cleanliness, efficiency, and compliance with the law, and that it was
6 manufacturing, selling, and distributing vehicles throughout the United States that did not comply
7 with EPA regulations. Volkswagen concealed this information as well.

8 1215. Volkswagen intentionally and knowingly misrepresented material facts regarding
9 the Class Vehicles with intent to mislead Plaintiffs and the Georgia Class.

10 1216. Volkswagen knew or should have known that its conduct violated the Georgia
11 UDTPA.

12 1217. Defendants owed Plaintiffs a duty to disclose the illegality and public health and
13 safety risks of the Class Vehicles because they:

- 14 a. possessed exclusive knowledge that they were
15 manufacturing, selling, and distributing vehicles throughout
16 the United States that did not comply with EPA regulation;
17 b. intentionally concealed the foregoing from regulators,
18 Plaintiffs, Class members; and/or
19 c. made incomplete representations about the environmental
20 cleanliness and efficiency of the Class Vehicles generally,
and the use of the defeat device in particular, while
purposefully withholding material facts from Plaintiffs that
contradicted these representations.

21 1218. Because Defendants concealed the illegal defeat device and the true emissions,
22 efficiency, and performance of the “clean” diesel system, resulting in a raft of negative publicity
23 once the defects finally began to be disclosed, the value of the Class Vehicles has greatly
24 diminished. In light of the stigma attached to those vehicles by Volkswagen’s conduct, they are
25 now worth significantly less than they otherwise would be worth.

26 1219. Volkswagen’s fraudulent use of the “defeat device” and its concealment of the true
27 characteristics of the “clean” diesel engine system were material to Plaintiffs and the Georgia
28 Class.

1 1220. Defendants' unfair or deceptive acts or practices were likely to and did in fact
2 deceive regulators and reasonable consumers, including Plaintiffs, about the true environmental
3 cleanliness and efficiency of Volkswagen-branded vehicles, the quality of the Volkswagen brand,
4 the devaluing of environmental cleanliness and integrity at Volkswagen, and the true value of the
5 Class Vehicles.

6 1221. Plaintiffs and the Georgia Class suffered ascertainable loss and actual damages as
7 a direct and proximate result of Defendants' misrepresentations and its concealment of and failure
8 to disclose material information. Plaintiffs and the Georgia Class members who purchased or
9 leased the Class Vehicles would not have purchased or leased them at all and/or—if the Vehicles'
10 true nature had been disclosed and mitigated, and the Vehicles rendered legal to sell—would have
11 paid significantly less for them. Plaintiffs also suffered diminished value of their vehicles, as well
12 as lost or diminished use.

13 1222. Defendants had an ongoing duty to all Volkswagen customers to refrain from
14 unfair and deceptive practices under the Georgia UDTPA. All owners of Class Vehicles suffered
15 ascertainable loss in the form of the diminished value of their vehicles as a result of Defendants'
16 deceptive and unfair acts and practices made in the course of Defendants' business.

17 1223. Defendants' violations present a continuing risk to Plaintiffs as well as to the
18 general public. Defendants' unlawful acts and practices complained of herein affect the public
19 interest.

20 1224. As a direct and proximate result of Defendants' violations of the Georgia UDTPA,
21 Plaintiffs and the Georgia Class have suffered injury-in-fact and/or actual damage.

22 1225. Plaintiffs seek an order enjoining Defendants' unfair, unlawful, and/or deceptive
23 practices, attorneys' fees, and any other just and proper relief available under the Georgia
24 UDTPA per Ga. Code. Ann § 10-1-373.

25 **GEORGIA COUNT III:**
26 **BREACH OF EXPRESS WARRANTY**
(Ga. Code. Ann. §§ 11-2-313 and 11-2A-210)

27 1226. Plaintiffs reallege and incorporate by reference all preceding allegations as though
28 fully set forth herein.

1 1227. Plaintiffs bring this Count on behalf of the Georgia Class, against VW AG, VW
2 America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the “VW
3 Entity Defendants”).

4 1228. The VW Entity Defendants are and were at all relevant times “merchants” with
5 respect to motor vehicles under Ga. Code Ann. §§ 11-2-104(1) and 11-2A-103(3), and “sellers”
6 of motor vehicles under § 11-2-103(1)(d).

7 1229. With respect to leases, the VW Entity Defendants are and were at all relevant
8 times “lessors” of motor vehicles under Ga. Code Ann. § 11-2A-103(1)(p).

9 1230. The Class Vehicles are and were at all relevant times “goods” within the meaning
10 of Ga. Code Ann. §§ 11-2-105(1) and 11-2A-103(1)(h).

11 1231. In connection with the purchase or lease of each one of its new vehicles, the VW
12 Entity Defendants provide an express New Vehicle Limited Warranty (“NVLW”) for a period of
13 three years or 36,000 miles, whichever occurs first. This NVLW exists to cover “any repair to
14 correct a manufacturers defect in materials or workmanship.”

15 1232. The Clean Air Act requires manufacturers of light-duty vehicles to provide two
16 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
17 Warranty.”

18 1233. The EPA requires vehicle manufacturers to provide a Performance Warranty with
19 respect to the vehicles’ emission systems. Thus, Volkswagen also provides an express warranty
20 for its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
21 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
22 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
23 emission control components are covered for the first eight years or 80,000 miles, whichever
24 comes first. These major emission control components subject to the longer warranty include the
25 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
26 device or computer.

27 1234. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
28 with respect to their vehicles’ emission systems. Thus, the VW Entity Defendants also provide an

1 express warranty for their vehicles through a Federal Emission Control System Defect Warranty.
2 The Design and Defect Warranty required by the EPA covers repair of emission control or
3 emission related parts which fail to function or function improperly because of a defect in
4 materials or workmanship. This warranty provides protection for two years or 24,000 miles,
5 whichever comes first, or, for the major emission control components, for eight years or 80,000
6 miles, whichever comes first.

7 1235. As manufacturers of light-duty vehicles, the VW Entity Defendants were required
8 to provide these warranties to purchasers or lessees of their “clean” diesel vehicles.

9 1236. The VW Entity Defendants’ warranties formed a basis of the bargain that was
10 reached when Plaintiffs and other Georgia Class members purchased or leased their Class
11 Vehicles equipped with the non-compliant “clean” diesel engine and emission systems.

12 1237. Plaintiffs and the Georgia Class members experienced defects within the warranty
13 period. Despite the existence of warranties, the VW Entity Defendants failed to inform Plaintiffs
14 and Georgia Class members that the Class Vehicles were intentionally designed and
15 manufactured to be out of compliance with applicable state and federal emissions laws, and failed
16 to fix the defective emission components free of charge.

17 1238. The VW Entity Defendants breached the express warranty promising to repair and
18 correct a manufacturing defect or materials or workmanship of any parts they supplied. The VW
19 Entity Defendants have not repaired or adjusted, and have been unable to repair or adjust, the
20 Class Vehicles’ materials and workmanship defects.

21 1239. Affording the VW Entity Defendants a reasonable opportunity to cure their breach
22 of written warranties would be unnecessary and futile here. For example, the Frequently Asked
23 Questions (“FAQ”) section of VW’s informational website states:

24 **How soon will the remedy be available, and how am I going to**
25 **be compensated for this?**

26 We cannot offer a firm date now because we need to work on a
27 remedy and review it with the government. We are proceeding as
28 quickly as possible.

1 1240. In his Congressional testimony on October 8, 2015, Michael Horn stated that
2 Volkswagen intends to make Class Vehicles compliant with emission standards through software
3 fixes and the installation of auxiliary hardware, but that fix will take “1 to 2 years, minimum.”
4 When questioned on remedies for consumers, he stated that Volkswagen may pay customers for a
5 loss in resale values because of the scandal. He said that Volkswagen is not considering
6 providing loaner vehicles because the U.S. government says the vehicles are safe to drive.

7 1241. Michael Horn’s testimony serves as an admission that the limited warranty
8 promising to repair and/or correct a manufacturing defect fails in its essential purpose because the
9 VW Entity Defendants cannot meet that promise within a reasonable time.

10 1242. Furthermore, the limited warranty promising to repair and/or correct a
11 manufacturing defect fails in its essential purpose because the contractual remedy is insufficient
12 to make Plaintiffs and the other Georgia Class members whole and because the VW Entity
13 Defendants have failed and/or have refused to adequately provide the promised remedies within a
14 reasonable time.

15 1243. Accordingly, recovery by Plaintiffs and the other Georgia Class members is not
16 restricted to the limited warranty promising to repair and/or correct a manufacturing defect, and
17 Plaintiffs, individually and on behalf of the other Georgia Class members, seek all remedies as
18 allowed by law.

19 1244. Also, as alleged in more detail herein, at the time the VW Entity Defendants
20 warranted and sold or leased the Class Vehicles, they knew that the Class Vehicles were
21 inherently defective and did not conform to their warranties; further, the VW Entity Defendants
22 had wrongfully and fraudulently concealed material facts regarding the Class Vehicles. Plaintiffs
23 and the other Georgia Class members were therefore induced to purchase or lease the Class
24 Vehicles under false and/or fraudulent pretenses.

25 1245. Moreover, many of the injuries flowing from the Class Vehicles cannot be
26 resolved through the limited remedy of “replacements or adjustments,” as many incidental and
27 consequential damages have already been suffered because of Volkswagen’s fraudulent conduct
28 as alleged herein, and because of its failure and/or continued failure to provide such limited

1 remedy within a reasonable time, and any limitation on Plaintiffs’ and the other Georgia Class
2 members’ remedies would be insufficient to make Plaintiffs and the other Georgia Class members
3 whole.

4 1246. Finally, because of the VW Entity Defendants’ breach of warranty as set forth
5 herein, Plaintiffs and the other Georgia Class members assert, as additional and/or alternative
6 remedies, the revocation of acceptance of the goods and the return to Plaintiffs and the other
7 Georgia Class members of the purchase or lease price of all Class Vehicles currently owned or
8 leased, and for such other incidental and consequential damages as allowed.

9 1247. The VW Entity Defendants were provided notice of these issues by numerous
10 complaints filed against them, including the instant Complaint, within a reasonable amount of
11 time after Volkswagen publicly admitted to using a defeat device in the Class Vehicles to evade
12 clean air standards.

13 1248. As a direct and proximate result of the VW Entity Defendants’ breach of express
14 warranties, Plaintiff and the other Georgia Class members have been damaged in an amount to be
15 determined at trial.

16 **GEORGIA COUNT IV:**
17 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
18 **(Ga. Code. Ann. §§ 11-2-314 and 11-2A-212)**

19 1249. Plaintiffs reallege and incorporate by reference all allegations of the preceding
20 paragraphs as though fully set forth herein.

21 1250. Plaintiffs bring this Count on behalf of the Georgia Class, against VW AG, VW
22 America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the “VW
23 Entity Defendants”).

24 1251. The VW Entity Defendants are and were at all relevant times “merchants” with
25 respect to motor vehicles under Ga. Code Ann. §§ 11-2-104(1) and 11-2A-103(3), and “sellers”
26 of motor vehicles under § 11-2-103(1)(d).

27 1252. With respect to leases, the VW Entity Defendants are and were at all relevant
28 times “lessors” of motor vehicles under Ga. Code Ann. § 11-2A-103(1)(p).

1 1253. The Class Vehicles are and were at all relevant times “goods” within the meaning
2 of Ga. Code Ann. §§ 11-2-105(1) and 11-2A-103(1)(h).

3 1254. A warranty that the Class Vehicles were in merchantable condition and fit for the
4 ordinary purpose for which vehicles are used is implied by law pursuant to Ga. Code Ann. §§ 11-
5 2-314 and 11-2A-212.

6 1255. These Class Vehicles, when sold or leased and at all times thereafter, were not in
7 merchantable condition and are not fit for the ordinary purpose for which vehicles are used.
8 Specifically, the Class Vehicles are inherently defective in that they do not comply with federal
9 and state emissions standards, rendering certain emissions functions inoperative; and the “clean”
10 diesel engine system was not adequately designed, manufactured, and tested.

11 1256. Volkswagen was provided notice of these issues by the investigations of the EPA
12 and individual state regulators, numerous complaints filed against it including the instant
13 Complaint, and by numerous individual letters and communications sent by Plaintiffs and others
14 within a reasonable amount of time after the allegations of Class Vehicle defects became public.

15 1257. As a direct and proximate result of the VW Entity Defendants’ breach of the
16 implied warranty of merchantability, Plaintiffs and the other Georgia Class members have been
17 damaged in an amount to be proven at trial.

18 **HAWAII**

19 **HAWAII COUNT I:**
20 **UNFAIR AND DECEPTIVE ACTS IN VIOLATION OF HAWAII LAW**
21 **(Haw. Rev. Stat. § 480, *et seq.*)**

22 1258. Plaintiffs incorporate by reference each preceding paragraph as though fully set
23 forth herein.

24 1259. Plaintiffs Cruise, Inoue, and Kettley (for the purpose of this section, “Plaintiffs”)
25 bring this action on behalf of themselves and the Hawaii Class against all Defendants.

26 1260. Defendants are “person[s]” under Haw. Rev. Stat. § 480-1.

27 1261. Class members are “consumer[s]” as defined by Haw. Rev. Stat. § 480-1, who
28 purchased or leased one or more Class Vehicles.

1 1262. Defendants’ acts or practices as set forth above occurred in the conduct of trade or
2 commerce.

3 1263. The Hawaii Act § 480-2(a) prohibits “unfair methods of competition and unfair or
4 deceptive acts or practices in the conduct of any trade or commerce....”

5 1264. In the course of their business, Defendants concealed and suppressed material facts
6 concerning the Class Vehicles. Defendants accomplished this by installing illegal defeat device
7 software in the Class Vehicles that caused the vehicles to operate in a low emission test mode
8 only during emissions testing. During normal operations, the Class Vehicles would emit grossly
9 larger quantities of noxious contaminants, sometimes 40 times over applicable standards. The
10 result was what Volkswagen intended—the Class Vehicles passed emissions testing by way of
11 deliberately induced false readings. Plaintiffs and Hawaii Class members had no way of
12 discerning that Volkswagen’s representations were false and misleading because Volkswagen’s
13 defeat device software was extremely sophisticated technology. Plaintiffs and Hawaii Class
14 members did not and could not unravel Volkswagen’s deception on their own. In fact, it took
15 years before the academic engineering community—specifically a research team at WVU’s
16 Center for Alternative Fuels, Engines & Emissions—detected Volkswagen’s cheat using
17 sophisticated, expensive equipment and applying decades of combined experience.

18 1265. Defendants thus violated the Act by, at minimum employing deception, deceptive
19 acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any
20 material fact with intent that others rely upon such concealment, suppression or omission, in
21 connection with the sale of Class Vehicles.

22 1266. Bosch played a critical role in facilitating, and itself contributed to, Volkswagen’s
23 unfair and deceptive conduct, as alleged herein. Bosch knew or should have known that
24 Volkswagen would use and had used the Bosch technology as an emission defeat device, and in
25 fact helped it do so. Without Bosch’s complicity and silence, Volkswagen could not have
26 perpetrated the fraudulent, deceptive, and unfair practices alleged herein, and Bosch’s actions
27 themselves constitute fraudulent, deceptive, and unfair practices.
28

1 1267. In the course of Volkswagen’s business, Volkswagen engaged in misleading, false,
2 unfair or deceptive acts or practices that violated Hawaii law by installing, failing to disclose and
3 actively concealing the illegal defeat device and the true cleanliness and performance of the
4 “clean” diesel engine system, by marketing its vehicles as legal, reliable, environmentally clean,
5 efficient, and of high quality, and by presenting itself as a reputable manufacturer that valued
6 environmental cleanliness and efficiency, and that stood behind its vehicles after they were sold.

7 1268. The Clean Air Act and EPA regulations require that automobiles limit their
8 emissions output to specified levels. These laws are intended for the protection of public health
9 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the
10 Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 CFR § 86.1809. By
11 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available
12 for purchase, Volkswagen violated federal law and therefore engaged in conduct that violates
13 Hawaii law

14 1269. Defendants knew the true nature of its “clean” diesel engine system for at least six
15 years, but concealed all of that information until recently. Volkswagen also knew that it valued
16 profits over environmental cleanliness, efficiency, and compliance with the law, and that it was
17 manufacturing, selling, and distributing vehicles throughout the United States that did not comply
18 with EPA regulations. Volkswagen concealed this information as well.

19 1270. Volkswagen intentionally and knowingly misrepresented material facts regarding
20 the Class Vehicles with intent to mislead Plaintiffs and the Hawaii Class.

21 1271. Volkswagen knew or should have known that its conduct violated the Hawaii Act.

22 1272. Defendants owed Plaintiffs a duty to disclose the illegality and public health and
23 safety risks of the Class Vehicles because they:

- 24 a. possessed exclusive knowledge that they were
25 manufacturing, selling, and distributing vehicles throughout
the United States that did not comply with EPA regulations;
- 26 b. intentionally concealed the foregoing from regulators,
27 Plaintiffs, Class members; and/or
- 28 c. made incomplete representations about the environmental
cleanliness and efficiency of the Class Vehicles generally,

1 and the use of the defeat device in particular, while
2 purposefully withholding material facts from Plaintiffs that
3 contradicted these representations.

4 1273. Defendants concealed the illegal defeat device and the true emissions, efficiency,
5 and performance of the “clean” diesel system, resulting in a raft of negative publicity once the
6 defects finally began to be disclosed. The value of the Class Vehicles has therefore greatly
7 diminished. In light of the stigma attached to those vehicles by Volkswagen’s conduct, they are
8 now worth significantly less than they otherwise would be worth.

9 1274. Defendants’ unfair or deceptive acts or practices were likely to and did in fact
10 deceive regulators and reasonable consumers, including Plaintiffs, about the true environmental
11 cleanliness and efficiency of Volkswagen-branded vehicles, the quality of the Volkswagen brand,
12 the devaluing of environmental cleanliness and integrity at Volkswagen, and the true value of the
13 Class Vehicles.

14 1275. Volkswagen’s fraudulent use of the “defeat device” and its concealment of the true
15 characteristics of the “clean” diesel engine system were material to Plaintiffs and the Hawaii
16 Class.

17 1276. Plaintiffs and the Hawaii Class suffered ascertainable loss and actual damages as a
18 direct and proximate result of Defendants’ misrepresentations and its concealment of and failure
19 to disclose material information. Plaintiffs and the Hawaii Class members who purchased or
20 leased the Class Vehicles would not have purchased or leased them at all and/or—if the Vehicles’
21 true nature had been disclosed and mitigated, and the Vehicles rendered legal to sell—would have
22 paid significantly less for them. Plaintiffs also suffered diminished value of their vehicles, as well
23 as lost or diminished use. .

24 1277. Defendants had an ongoing duty to all Volkswagen customers to refrain from
25 unfair and deceptive practices under the Hawaii UDTPA. All owners of Class Vehicles suffered
26 ascertainable loss in the form of the diminished value of their vehicles as a result of
27 Volkswagen’s deceptive and unfair acts and practices made in the course of Volkswagen’s
28 business.

1 1278. Defendants’ violations present a continuing risk to Plaintiffs as well as to the
2 general public. Defendants’ unlawful acts and practices complained of herein affect the public
3 interest.

4 1279. As a direct and proximate result of Defendants’ violations of the Hawaii Act,
5 Plaintiffs and the Hawaii Class have suffered injury-in-fact and/or actual damage.

6 1280. Pursuant to Haw. Rev. Stat. § 480-13, Plaintiffs and the Hawaii Class seek
7 monetary relief against Defendants measured as the greater of (a) \$1,000 and (b) threefold actual
8 damages in an amount to be determined at trial.

9 1281. Under Haw. Rev. Stat. § 480-13.5, Plaintiffs seek an additional award against
10 Volkswagen of up to \$10,000 for each violation directed at a Hawaiian elder. Volkswagen knew
11 or should have known that its conduct was directed to one or more Class members who are elders.
12 Volkswagen’s conduct caused one or more of these elders to suffer a substantial loss of property
13 set aside for retirement or for personal or family care and maintenance, or assets essential to the
14 health or welfare of the elder. One or more Hawaii Class members who are elders are
15 substantially more vulnerable to Volkswagen’s conduct because of age, poor health or infirmity,
16 impaired understanding, restricted mobility, or disability, and each of them suffered substantial
17 economic damage resulting from Volkswagen’s conduct.

18 **HAWAII COUNT II:**
19 **BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY**
20 **(Haw. Rev. Stat. §§ 490:2-314 and 490:2A-212)**

21 1282. Plaintiffs reallege and incorporate by reference all allegations of the preceding
22 paragraphs as though fully set forth herein.

23 1283. Plaintiffs bring this Count on behalf of the Hawaii Class, against VW AG, VW
24 America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the “VW
25 Entity Defendants”).

26 1284. The VW Entity Defendants are and were at all relevant times “merchants” with
27 respect to motor vehicles under Haw. Rev. Stat. §§ 490:2-104(1) and 490:2A-103(b), and
28 “sellers” of motor vehicles under § 490:2-103(1)(d).

1 1285. With respect to leases, the VW Entity Defendants are and were at all relevant
2 times “lessors” of motor vehicles under Haw. Rev. Stat. § 490:2A-103(a)(16).

3 1286. The Class Vehicles are and were at all relevant times “goods” within the meaning
4 of Haw. Rev. Stat. §§ 490:2-105(1) and 490:2A-103(a)(8).

5 1287. A warranty that the Class Vehicles were in merchantable condition and fit for the
6 ordinary purpose for which vehicles are used is implied by law pursuant to Haw. Rev. Stat.
7 §§ 490:2-314 and 490:2A-212.

8 1288. These Class Vehicles, when sold or leased and at all times thereafter, were not in
9 merchantable condition and are not fit for the ordinary purpose for which vehicles are used.
10 Specifically, the Class Vehicles are inherently defective in that they do not comply with federal
11 and state emissions standards, rendering certain emissions functions inoperative; and the “clean”
12 diesel engine system was not adequately designed, manufactured, and tested.

13 1289. Volkswagen was provided notice of these issues by the investigations of the EPA
14 and individual state regulators, numerous complaints filed against it including the instant
15 Complaint, and by numerous individual letters and communications sent by Plaintiffs and others
16 within a reasonable amount of time after the allegations of Class Vehicle defects became public.

17 1290. As a direct and proximate result of the VW Entity Defendants’ breach of the
18 implied warranty of merchantability, Plaintiffs and the other Hawaii Class members have been
19 damaged in an amount to be proven at trial.

20 **HAWAII COUNT III:**
21 **BREACH OF EXPRESS WARRANTY**
(Haw. Rev. Stat. §§ 490:2-313 and 490:2A-210)

22 1291. Plaintiffs reallege and incorporate by reference all preceding allegations as though
23 fully set forth herein.

24 1292. Plaintiffs bring this Count on behalf of the Hawaii Class, against VW AG, VW
25 America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the “VW
26 Entity Defendants”).
27
28

1 1293. The VW Entity Defendants are and were at all relevant times “merchants” with
2 respect to motor vehicles under Haw. Rev. Stat. §§ 490:2-104(1) and 490:2A-103(b), and
3 “sellers” of motor vehicles under § 490:2-103(1)(d).

4 1294. With respect to leases, the VW Entity Defendants are and were at all relevant
5 times “lessors” of motor vehicles under Haw. Rev. Stat. § 490:2A-103(a)(16).

6 1295. The Class Vehicles are and were at all relevant times “goods” within the meaning
7 of Haw. Rev. Stat. §§ 490:2-105(1) and 490:2A-103(a)(8).

8 1296. In connection with the purchase or lease of each one of its new vehicles, the VW
9 Entity Defendants provide an express New Vehicle Limited Warranty (“NVLW”) for a period of
10 three years or 36,000 miles, whichever occurs first. This NVLW exists to cover “any repair to
11 correct a manufacturers defect in materials or workmanship.”

12 1297. The Clean Air Act requires manufacturers of light-duty vehicles to provide two
13 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
14 Warranty.”

15 1298. The EPA requires vehicle manufacturers to provide a Performance Warranty with
16 respect to the vehicles’ emission systems. Thus, Volkswagen also provides an express warranty
17 for its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
18 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
19 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
20 emission control components are covered for the first eight years or 80,000 miles, whichever
21 comes first. These major emission control components subject to the longer warranty include the
22 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
23 device or computer.

24 1299. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
25 with respect to their vehicles’ emission systems. Thus, the VW Entity Defendants also provide an
26 express warranty for their vehicles through a Federal Emission Control System Defect Warranty.
27 The Design and Defect Warranty required by the EPA covers repair of emission control or
28 emission related parts which fail to function or function improperly because of a defect in

1 materials or workmanship. This warranty provides protection for two years or 24,000 miles,
2 whichever comes first, or, for the major emission control components, for eight years or 80,000
3 miles, whichever comes first.

4 1300. As manufacturers of light-duty vehicles, the VW Entity Defendants were required
5 to provide these warranties to purchasers or lessees of their “clean” diesel vehicles.

6 1301. The VW Entity Defendants’ warranties formed a basis of the bargain that was
7 reached when Plaintiffs and other Hawaii Class members purchased or leased their Class Vehicles
8 equipped with the non-compliant “clean” diesel engine and emission systems.

9 1302. Plaintiffs and the Hawaii Class members experienced defects within the warranty
10 period. Despite the existence of warranties, the VW Entity Defendants failed to inform Plaintiffs
11 and Hawaii Class members that the Class Vehicles were intentionally designed and manufactured
12 to be out of compliance with applicable state and federal emissions laws, and failed to fix the
13 defective emission components free of charge.

14 1303. The VW Entity Defendants breached the express warranty promising to repair and
15 correct a manufacturing defect or materials or workmanship of any parts they supplied. The VW
16 Entity Defendants have not repaired or adjusted, and have been unable to repair or adjust, the
17 Class Vehicles’ materials and workmanship defects.

18 1304. Affording the VW Entity Defendants a reasonable opportunity to cure their breach
19 of written warranties would be unnecessary and futile here. For example, the Frequently Asked
20 Questions (“FAQ”) section of VW’s informational website states:

21 **How soon will the remedy be available, and how am I going to**
22 **be compensated for this?**

23 We cannot offer a firm date now because we need to work on a
24 remedy and review it with the government. We are proceeding as
quickly as possible.

25 1305. In his Congressional testimony on October 8, 2015, Michael Horn stated that
26 Volkswagen intends to make Class Vehicles compliant with emission standards through software
27 fixes and the installation of auxiliary hardware, but that fix will take “1 to 2 years, minimum.”
28 When questioned on remedies for consumers, he stated that Volkswagen may pay customers for a

1 loss in resale values because of the scandal. He said that Volkswagen is not considering
2 providing loaner vehicles because the U.S. government says the vehicles are safe to drive.

3 1306. Michael Horn's testimony serves as an admission that the limited warranty
4 promising to repair and/or correct a manufacturing defect fails in its essential purpose because the
5 VW Entity Defendants cannot meet that promise within a reasonable time.

6 1307. Furthermore, the limited warranty promising to repair and/or correct a
7 manufacturing defect fails in its essential purpose because the contractual remedy is insufficient
8 to make Plaintiffs and the other Hawaii Class members whole and because the VW Entity
9 Defendants have failed and/or have refused to adequately provide the promised remedies within a
10 reasonable time.

11 1308. Accordingly, recovery by Plaintiffs and the other Hawaii Class members is not
12 restricted to the limited warranty promising to repair and/or correct a manufacturing defect, and
13 Plaintiffs, individually and on behalf of the other Hawaii Class members, seek all remedies as
14 allowed by law.

15 1309. Also, as alleged in more detail herein, at the time the VW Entity Defendants
16 warranted and sold or leased the Class Vehicles, they knew that the Class Vehicles were
17 inherently defective and did not conform to their warranties; further, the VW Entity Defendants
18 had wrongfully and fraudulently concealed material facts regarding the Class Vehicles. Plaintiffs
19 and the other Hawaii Class members were therefore induced to purchase or lease the Class
20 Vehicles under false and/or fraudulent pretenses.

21 1310. Moreover, many of the injuries flowing from the Class Vehicles cannot be
22 resolved through the limited remedy of "replacements or adjustments," as many incidental and
23 consequential damages have already been suffered because of Volkswagen's fraudulent conduct
24 as alleged herein, and because of its failure and/or continued failure to provide such limited
25 remedy within a reasonable time, and any limitation on Plaintiffs' and the other Hawaii Class
26 members' remedies would be insufficient to make Plaintiffs and the other Hawaii Class members
27 whole.
28

1 1311. Finally, because of the VW Entity Defendants’ breach of warranty as set forth
2 herein, Plaintiffs and the other Hawaii Class members assert, as additional and/or alternative
3 remedies, the revocation of acceptance of the goods and the return to Plaintiffs and the other
4 Hawaii Class members of the purchase or lease price of all Class Vehicles currently owned or
5 leased, and for such other incidental and consequential damages as allowed.

6 1312. The VW Entity Defendants were provided notice of these issues by numerous
7 complaints filed against them, including the instant Complaint, within a reasonable amount of
8 time after Volkswagen publicly admitted to using a defeat device in the Class Vehicles to evade
9 clean air standards.

10 1313. As a direct and proximate result of the VW Entity Defendants’ breach of express
11 warranties, Plaintiff and the other Hawaii Class members have been damaged in an amount to be
12 determined at trial.

13 **IDAHO**

14 **IDAHO COUNT I:**
15 **VIOLATIONS OF THE IDAHO CONSUMER PROTECTION ACT**
16 **(Idaho Code § 48-601, *et seq.*)**

17 1314. Plaintiffs incorporate by reference each preceding paragraph as though fully set
18 forth herein.

19 1315. Plaintiff Dufurrena (for the purpose of this section, “Plaintiff”) brings this action
20 on behalf of himself and the Idaho Class against all Defendants.

21 1316. Defendants are “person[s]” under the Idaho Consumer Protection Act (“Idaho
22 CPA”), Idaho Code § 48-602(1).

23 1317. Defendants’ acts or practices as set forth above occurred in the conduct of “trade”
24 or “commerce” under Idaho Code § 48-602(2).

25 1318. Defendants participated in misleading, false, or deceptive acts that violated the
26 Idaho CPA.

27 1319. In the course of their business, Defendants concealed and suppressed material facts
28 concerning the Class Vehicles. Defendants accomplished this by installing illegal defeat device
software in the Class Vehicles that caused the vehicles to operate in a low emission test mode

1 only during emissions testing. During normal operations, the Class Vehicles would emit grossly
2 larger quantities of noxious contaminants, sometimes 40 times over applicable standards. The
3 result was what Volkswagen intended—the Class Vehicles passed emissions testing by way of
4 deliberately induced false readings. Plaintiff and Idaho Class members had no way of discerning
5 that Volkswagen’s representations were false and misleading because Volkswagen’s defeat
6 device software was extremely sophisticated technology. Plaintiff and Idaho Class members did
7 not and could not unravel Volkswagen’s deception on their own. In fact, it took years before the
8 academic engineering community—specifically a research team at WVU’s Center for Alternative
9 Fuels, Engines & Emissions—detected Volkswagen’s cheat using sophisticated, expensive
10 equipment and applying decades of combined experience.

11 1320. Defendants thus violated the Act by, at minimum: (1) representing that the Class
12 Vehicles have characteristics, uses, and benefits which they do not have; (2) representing that the
13 Class Vehicles are of a particular standard, quality, and grade when they are not; (3) advertising
14 the Class Vehicles with the intent not to sell them as advertised; (4) engaging in acts or practices
15 which are otherwise misleading, false, or deceptive to the consumer; and (5) engaging in any
16 unconscionable method, act or practice in the conduct of trade or commerce. See Idaho Code
17 § 48-603.

18 1321. Bosch played a critical role in facilitating, and itself contributed to, Volkswagen’s
19 unfair and deceptive conduct, as alleged herein. Bosch knew or should have known that
20 Volkswagen would use and had used the Bosch technology as an emission defeat device, and in
21 fact helped it do so. Without Bosch’s complicity and silence, Volkswagen could not have
22 perpetrated the fraudulent, deceptive, and unfair practices alleged herein, and Bosch’s actions
23 themselves constitute fraudulent, deceptive, and unfair practices.

24 1322. In the course of its business, Volkswagen willfully failed to disclose and actively
25 concealed the illegal defeat device and the true cleanliness and performance of the “clean” diesel
26 engine system discussed herein and otherwise engaged in activities with a tendency or capacity to
27 deceive. Volkswagen also engaged in unlawful trade practices by employing deception,
28 deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of

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

3 1323. Defendants engaged in misleading, false, unfair or deceptive acts or practices that
4 violated the Idaho CPA by installing, failing to disclose and actively concealing the illegal defeat
5 device and the true cleanliness and performance of the “clean” diesel engine system, by
6 marketing its vehicles as legal, reliable, environmentally clean, efficient, and of high quality, and
7 by presenting itself as a reputable manufacturer that valued environmental cleanliness and
8 efficiency, and that stood behind its vehicles after they were sold.

9 1324. The Clean Air Act and EPA regulations require that automobiles limit their
10 emissions output to specified levels. These laws are intended for the protection of public health
11 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the
12 Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 CFR § 86.1809. By
13 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available
14 for purchase, Volkswagen violated federal law and therefore engaged in conduct that violates the
15 Idaho CPA.

16 1325. Defendants knew the true nature of its “clean” diesel engine system for at least six
17 years, but concealed all of that information until recently. Volkswagen was also aware that it
18 valued profits over environmental cleanliness, efficiency, and compliance with the law, and that it
19 was manufacturing, selling, and distributing vehicles throughout the United States that did not
20 comply with EPA regulations. Volkswagen concealed this information as well.

21 1326. Volkswagen intentionally and knowingly misrepresented material facts regarding
22 the Class Vehicles with intent to mislead Plaintiff and the Idaho Class.

23 1327. Volkswagen knew or should have known that its conduct violated the Idaho CPA.

24 1328. Defendants owed Plaintiff a duty to disclose the illegality and public health and
25 safety risks of the Class Vehicles because they:

- 26 a. possessed exclusive knowledge that they were
27 manufacturing, selling, and distributing vehicles throughout
28 the United States that did not comply with EPA regulations;

- 1 b. intentionally concealed the foregoing from regulators,
2 Plaintiff, Class members; and/or
- 3 c. made incomplete representations about the environmental
4 cleanliness and efficiency of the Class Vehicles generally,
5 and the use of the defeat device in particular, while
6 purposefully withholding material facts from Plaintiff that
7 contradicted these representations.

8 1329. Defendants concealed the illegal defeat device and the true emissions, efficiency,
9 and performance of the “clean” diesel system, resulting in a raft of negative publicity once the
10 defects finally began to be disclosed. The value of the Class Vehicles has therefore greatly
11 diminished. In light of the stigma attached to those vehicles by Volkswagen’s conduct, they are
12 now worth significantly less than they otherwise would be worth.

13 1330. Volkswagen’s fraudulent use of the “defeat device” and its concealment of the true
14 characteristics of the “clean” diesel engine system were material to Plaintiff and the Idaho Class.

15 1331. Defendants’ unfair or deceptive acts or practices were likely to and did in fact
16 deceive regulators and reasonable consumers, including Plaintiff, about the true environmental
17 cleanliness and efficiency of Volkswagen-branded vehicles, the quality of the Volkswagen brand,
18 the devaluing of environmental cleanliness and integrity at Volkswagen, and the true value of the
19 Class Vehicles.

20 1332. Plaintiff and the Idaho Class suffered ascertainable loss and actual damages as a
21 direct and proximate result of Defendants’ misrepresentations and its concealment of and failure
22 to disclose material information. Plaintiff and the Idaho Class members who purchased or leased
23 the Class Vehicles would not have purchased or leased them at all and/or—if the Vehicles’ true
24 nature had been disclosed and mitigated, and the Vehicles rendered legal to sell—would have
25 paid significantly less for them. Plaintiff also suffered diminished value of their vehicles, as well
26 as lost or diminished use.

27 1333. Defendants had an ongoing duty to all Volkswagen customers to refrain from
28 unfair and deceptive practices under the Idaho CPA. All owners of Class Vehicles suffered
29 ascertainable loss in the form of the diminished value of their vehicles as a result of

1 Volkswagen's deceptive and unfair acts and practices made in the course of Volkswagen's
2 business.

3 1334. Defendants' violations present a continuing risk to Plaintiffs as well as to the
4 general public. Defendants' unlawful acts and practices complained of herein affect the public
5 interest.

6 1335. As a direct and proximate result of Defendants' violations of the Idaho CPA,
7 Plaintiffs and the Idaho Class have suffered injury-in-fact and/or actual damage.

8 1336. Pursuant to Idaho Code § 48-608, Plaintiffs and the Idaho Class seek monetary
9 relief against Defendants measured as the greater of (a) actual damages in an amount to be
10 determined at trial and (b) statutory damages in the amount of \$1,000 for each Plaintiff and each
11 Idaho Class member.

12 1337. Plaintiffs also seek an order enjoining Defendants' unfair, unlawful, and/or
13 deceptive practices, attorneys' fees, and any other just and proper relief available under the Idaho
14 CPA.

15 1338. Plaintiff and Idaho Class members also seek punitive damages against Defendants
16 because Defendants' conduct evidences an extreme deviation from reasonable standards.
17 Volkswagen flagrantly, maliciously, and fraudulently misrepresented the safety and reliability of
18 the Class Vehicles, deceived Class members on life-or-death matters, concealed material facts
19 that only they knew, and repeatedly promised Class members all vehicles were safe—all to avoid
20 the expense and public relations nightmare of correcting a noxious flaw in the Class Vehicles.
21 Volkswagen's unlawful conduct constitutes malice, oppression, and fraud warranting punitive
22 damages.

23 **IDAHO COUNT II:**
24 **BREACH OF EXPRESS WARRANTY**
25 **(Idaho Code §§ 28-2-313 and 28-12-210)**

26 1339. Plaintiffs reallege and incorporate by reference all preceding allegations as though
27 fully set forth herein.
28

1 1340. Plaintiffs bring this Count on behalf of the Idaho Class, against VW AG, VW
2 America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the “VW
3 Entity Defendants”).

4 1341. The VW Entity Defendants are and were at all relevant times “merchants” with
5 respect to motor vehicles under Idaho Code §§ 28-2-104(1) and 28-12-103(3), and “sellers” of
6 motor vehicles under § 28-2-103(1)(d).

7 1342. With respect to leases, the VW Entity Defendants are and were at all relevant
8 times “lessors” of motor vehicles under Idaho Code § 28-12-103(1)(p).

9 1343. The Class Vehicles are and were at all relevant times “goods” within the meaning
10 of Idaho Code §§ 28-2-105(1) and 28-12-103(1)(h).

11 1344. In connection with the purchase or lease of each one of its new vehicles, the VW
12 Entity Defendants provide an express New Vehicle Limited Warranty (“NVLW”) for a period of
13 three years or 36,000 miles, whichever occurs first. This NVLW exists to cover “any repair to
14 correct a manufacturers defect in materials or workmanship.”

15 1345. The Clean Air Act requires manufacturers of light-duty vehicles to provide two
16 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
17 Warranty.”

18 1346. The EPA requires vehicle manufacturers to provide a Performance Warranty with
19 respect to the vehicles’ emission systems. Thus, Volkswagen also provides an express warranty
20 for its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
21 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
22 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
23 emission control components are covered for the first eight years or 80,000 miles, whichever
24 comes first. These major emission control components subject to the longer warranty include the
25 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
26 device or computer.

27 1347. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
28 with respect to their vehicles’ emission systems. Thus, the VW Entity Defendants also provide an

1 express warranty for their vehicles through a Federal Emission Control System Defect Warranty.
2 The Design and Defect Warranty required by the EPA covers repair of emission control or
3 emission related parts which fail to function or function improperly because of a defect in
4 materials or workmanship. This warranty provides protection for two years or 24,000 miles,
5 whichever comes first, or, for the major emission control components, for eight years or 80,000
6 miles, whichever comes first.

7 1348. As manufacturers of light-duty vehicles, the VW Entity Defendants were required
8 to provide these warranties to purchasers or lessees of their “clean” diesel vehicles.

9 1349. The VW Entity Defendants’ warranties formed a basis of the bargain that was
10 reached when Plaintiff and other Idaho Class members purchased or leased their Class Vehicles
11 equipped with the non-compliant “clean” diesel engine and emission systems.

12 1350. Plaintiff and the Idaho Class members experienced defects within the warranty
13 period. Despite the existence of warranties, the VW Entity Defendants failed to inform Plaintiff
14 and Idaho Class members that the Class Vehicles were intentionally designed and manufactured
15 to be out of compliance with applicable state and federal emissions laws, and failed to fix the
16 defective emission components free of charge.

17 1351. The VW Entity Defendants breached the express warranty promising to repair and
18 correct a manufacturing defect or materials or workmanship of any parts they supplied. The VW
19 Entity Defendants have not repaired or adjusted, and have been unable to repair or adjust, the
20 Class Vehicles’ materials and workmanship defects.

21 1352. Affording the VW Entity Defendants a reasonable opportunity to cure their breach
22 of written warranties would be unnecessary and futile here. For example, the Frequently Asked
23 Questions (“FAQ”) section of VW’s informational website states:

24 **How soon will the remedy be available, and how am I going to**
25 **be compensated for this?**

26 We cannot offer a firm date now because we need to work on a
27 remedy and review it with the government. We are proceeding as
28 quickly as possible.

1 1353. In his Congressional testimony on October 8, 2015, Michael Horn stated that
2 Volkswagen intends to make Class Vehicles compliant with emission standards through software
3 fixes and the installation of auxiliary hardware, but that fix will take “1 to 2 years, minimum.”
4 When questioned on remedies for consumers, he stated that Volkswagen may pay customers for a
5 loss in resale values because of the scandal. He said that Volkswagen is not considering
6 providing loaner vehicles because the U.S. government says the vehicles are safe to drive.

7 1354. Michael Horn’s testimony serves as an admission that the limited warranty
8 promising to repair and/or correct a manufacturing defect fails in its essential purpose because the
9 VW Entity Defendants cannot meet that promise within a reasonable time.

10 1355. Furthermore, the limited warranty promising to repair and/or correct a
11 manufacturing defect fails in its essential purpose because the contractual remedy is insufficient
12 to make Plaintiff and the other Idaho Class members whole and because the VW Entity
13 Defendants have failed and/or have refused to adequately provide the promised remedies within a
14 reasonable time.

15 1356. Accordingly, recovery by Plaintiff and the other Idaho Class members is not
16 restricted to the limited warranty promising to repair and/or correct a manufacturing defect, and
17 Plaintiff, individually and on behalf of the other Idaho Class members, seek all remedies as
18 allowed by law.

19 1357. Also, as alleged in more detail herein, at the time the VW Entity Defendants
20 warranted and sold or leased the Class Vehicles, they knew that the Class Vehicles were
21 inherently defective and did not conform to their warranties; further, the VW Entity Defendants
22 had wrongfully and fraudulently concealed material facts regarding the Class Vehicles. Plaintiff
23 and the other Idaho Class members were therefore induced to purchase or lease the Class
24 Vehicles under false and/or fraudulent pretenses.

25 1358. Moreover, many of the injuries flowing from the Class Vehicles cannot be
26 resolved through the limited remedy of “replacements or adjustments,” as many incidental and
27 consequential damages have already been suffered because of Volkswagen’s fraudulent conduct
28 as alleged herein, and because of its failure and/or continued failure to provide such limited

1 remedy within a reasonable time, and any limitation on Plaintiff's and the other Idaho Class
2 members' remedies would be insufficient to make Plaintiff and the other Idaho Class members
3 whole.

4 1359. Finally, because of the VW Entity Defendants' breach of warranty as set forth
5 herein, Plaintiff and the other Idaho Class members assert, as additional and/or alternative
6 remedies, the revocation of acceptance of the goods and the return to Plaintiff and the other Idaho
7 Class members of the purchase or lease price of all Class Vehicles currently owned or leased, and
8 for such other incidental and consequential damages as allowed.

9 1360. The VW Entity Defendants were provided notice of these issues by numerous
10 complaints filed against them, including the instant Complaint, within a reasonable amount of
11 time after Volkswagen publicly admitted to using a defeat device in the Class Vehicles to evade
12 clean air standards.

13 1361. As a direct and proximate result of the VW Entity Defendants' breach of express
14 warranties, Plaintiff and the other Idaho Class members have been damaged in an amount to be
15 determined at trial.

16 **IDAHO COUNT III:**
17 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
18 **(Idaho Code §§ 28-2-314 and 28-12-212)**

19 1362. Plaintiffs reallege and incorporate by reference all allegations of the preceding
20 paragraphs as though fully set forth herein.

21 1363. Plaintiffs bring this Count on behalf of the Idaho Class, against VW AG, VW
22 America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the "VW
23 Entity Defendants").

24 1364. The VW Entity Defendants are and were at all relevant times "merchants" with
25 respect to motor vehicles under Idaho Code §§ 28-2-104(1) and 28-12-103(3), and "sellers" of
26 motor vehicles under § 28-2-103(1)(d).

27 1365. With respect to leases, the VW Entity Defendants are and were at all relevant
28 times "lessors" of motor vehicles under Idaho Code § 28-12-103(1)(p).

1 1366. The Class Vehicles are and were at all relevant times “goods” within the meaning
2 of Idaho Code §§ 28-2-105(1) and 28-12-103(1)(h).

3 1367. A warranty that the Class Vehicles were in merchantable condition and fit for the
4 ordinary purpose for which vehicles are used is implied by law pursuant to Idaho Code §§ 28-2-
5 314 and 28-12-212.

6 1368. These Class Vehicles, when sold or leased and at all times thereafter, were not in
7 merchantable condition and are not fit for the ordinary purpose for which vehicles are used.
8 Specifically, the Class Vehicles are inherently defective in that they do not comply with federal
9 and state emissions standards, rendering certain emissions functions inoperative; and the “clean”
10 diesel engine system was not adequately designed, manufactured, and tested.

11 1369. Volkswagen was provided notice of these issues by the investigations of the EPA
12 and individual state regulators, numerous complaints filed against it including the instant
13 Complaint, and by numerous individual letters and communications sent by Plaintiff and others
14 within a reasonable amount of time after the allegations of Class Vehicle defects became public.

15 1370. As a direct and proximate result of the VW Entity Defendants’ breach of the
16 implied warranty of merchantability, Plaintiff and the other Idaho Class members have been
17 damaged in an amount to be proven at trial.

18 **ILLINOIS**

19 **ILLINOIS COUNT I:**
20 **VIOLATIONS OF ILLINOIS CONSUMER FRAUD AND**
21 **DECEPTIVE BUSINESS PRACTICES ACT**
(815 ILCS 505/1, et seq. and 720 ILCS 295/1a)

22 1371. Plaintiffs incorporate by reference each preceding paragraph as though fully set
23 forth herein.

24 1372. Plaintiffs Anderson, Bahr, Clark, and Fry (for the purpose of this section,
25 “Plaintiffs”) bring this action on behalf of themselves and the Illinois Class against all
26 Defendants.

27 1373. Defendants are “person[s]” as that term is defined in 815 ILCS 505/1(c).
28

1 1374. Plaintiff and the Illinois Class are “consumers” as that term is defined in 815 ILCS
2 505/1(e).

3 1375. The Illinois Consumer Fraud and Deceptive Business Practices Act (“Illinois
4 CFA”) prohibits “unfair or deceptive acts or practices, including but not limited to the use or
5 employment of any deception, fraud, false pretense, false promise, misrepresentation or the
6 concealment, suppression or omission of any material fact, with intent that others rely upon the
7 concealment, suppression or omission of such material fact ... in the conduct of trade or
8 commerce ... whether any person has in fact been misled, deceived or damaged thereby.” 815
9 ILCS 505/2.

10 1376. In the course of their business, Defendants concealed and suppressed material facts
11 concerning the Class Vehicles. Defendants accomplished this by installing illegal defeat device
12 software in the Class Vehicles that caused the vehicles to operate in a low emission test mode
13 only during emissions testing. During normal operations, the Class Vehicles would emit grossly
14 larger quantities of noxious contaminants, sometimes 40 times over applicable standards. The
15 result was what Volkswagen intended—the Class Vehicles passed emissions testing by way of
16 deliberately induced false readings. Plaintiffs and Illinois Class members had no way of
17 discerning that Volkswagen’s representations were false and misleading because Volkswagen’s
18 defeat device software was extremely sophisticated technology. Plaintiffs and Illinois Class
19 members did not and could not unravel Volkswagen’s deception on their own. In fact, it took
20 years before the academic engineering community—specifically a research team at WVU’s
21 Center for Alternative Fuels, Engines & Emissions—detected Volkswagen’s cheat using
22 sophisticated, expensive equipment and applying decades of combined experience.

23 1377. Defendants thus violated the Act by, at minimum willfully failing to disclose and
24 actively concealing the illegal defeat device and the true cleanliness and performance of the
25 “clean” diesel engine system.

26 1378. Bosch played a critical role in facilitating, and itself contributed to, Volkswagen’s
27 unfair and deceptive conduct, as alleged herein. Bosch knew or should have known that
28 Volkswagen would use and had used the Bosch technology as an emission defeat device, and in

1 fact helped it do so. Without Bosch's complicity and silence, Volkswagen could not have
2 perpetrated the fraudulent, deceptive, and unfair practices alleged herein, and Bosch's actions
3 themselves constitute fraudulent, deceptive, and unfair practices.

4 1379. Defendants engaged in misleading, false, unfair or deceptive acts or practices that
5 violated the Illinois CFA by installing, failing to disclose and actively concealing the illegal
6 defeat device and the true cleanliness and performance of the "clean" diesel engine system, by
7 marketing its vehicles as legal, reliable, environmentally clean, efficient, and of high quality, and
8 by presenting itself as a reputable manufacturer that valued environmental cleanliness and
9 efficiency, and that stood behind its vehicles after they were sold.

10 1380. The Clean Air Act and EPA regulations require that automobiles limit their
11 emissions output to specified levels. These laws are intended for the protection of public health
12 and welfare. "Defeat devices" like those in the Class Vehicles are defined and prohibited by the
13 Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 CFR § 86.1809. By
14 installing illegal "defeat devices" in the Class Vehicles and by making those vehicles available
15 for purchase, Volkswagen violated federal law and therefore engaged in conduct that violates the
16 Illinois CFA.

17 1381. Defendants knew the true nature of its "clean" diesel engine system for at least six
18 years, but concealed all of that information until recently. Volkswagen also knew that it valued
19 profits over environmental cleanliness, efficiency, and compliance with the law, and that it was
20 manufacturing, selling, and distributing vehicles throughout the United States that did not comply
21 with EPA regulations. Volkswagen concealed this information as well.

22 1382. Volkswagen intentionally and knowingly misrepresented material facts regarding
23 the Class Vehicles with intent to mislead Plaintiffs and the Illinois Class.

24 1383. Volkswagen knew or should have known that its conduct violated the Illinois
25 CFA.

26 1384. Defendants owed Plaintiffs a duty to disclose the illegality and public health and
27 safety risks of the Class Vehicles because they:
28

- 1 a. possessed exclusive knowledge that they were
- 2 manufacturing, selling, and distributing vehicles throughout
- 3 the United States that did not comply with EPA regulations;
- 4 b. intentionally concealed the foregoing from regulators,
- 5 Plaintiffs, Class members; and/or
- 6 c. made incomplete representations about the environmental
- 7 cleanliness and efficiency of the Class Vehicles generally,
- 8 and the use of the defeat device in particular, while
- 9 purposefully withholding material facts from Plaintiffs that
- 10 contradicted these representations.
- 11
- 12

13 1385. Defendants concealed the illegal defeat device and the true emissions, efficiency,
14 and performance of the “clean” diesel system, resulting in a raft of negative publicity once the
15 defects finally began to be disclosed. The value of the Class Vehicles has greatly diminished. In
16 light of the stigma attached to those vehicles by Volkswagen’s conduct, they are now worth
17 significantly less than they otherwise would be worth.

18 1386. Volkswagen’s fraudulent use of the “defeat device” and its concealment of the true
19 characteristics of the “clean” diesel engine system were material to Plaintiffs and the Illinois
20 Class.

21 1387. Defendants’ unfair or deceptive acts or practices were likely to and did in fact
22 deceive regulators and reasonable consumers, including Plaintiffs, about the true environmental
23 cleanliness and efficiency of Volkswagen-branded vehicles, the quality of the Volkswagen brand,
24 the devaluing of environmental cleanliness and integrity at Volkswagen, and the true value of the
25 Class Vehicles.

26 1388. Plaintiffs and the Illinois Class suffered ascertainable loss and actual damages as a
27 direct and proximate result of Defendants’ misrepresentations and its concealment of and failure
28 to disclose material information. Plaintiffs and the Illinois Class members who purchased or
leased the Class Vehicles would not have purchased or leased them at all and/or—if the Vehicles’
true nature had been disclosed and mitigated, and the Vehicles rendered legal to sell—would have
paid significantly less for them. Plaintiffs also suffered diminished value of their vehicles, as well
as lost or diminished use.

1 1389. Defendants had an ongoing duty to all Volkswagen customers to refrain from
2 unfair and deceptive practices under the Illinois CFA. All owners of Class Vehicles suffered
3 ascertainable loss in the form of the diminished value of their vehicles as a result of
4 Volkswagen’s deceptive and unfair acts and practices made in the course of Volkswagen’s
5 business.

6 1390. Defendants’ violations present a continuing risk to Plaintiffs as well as to the
7 general public. Defendants’ unlawful acts and practices complained of herein affect the public
8 interest.

9 1391. As a direct and proximate result of Defendants’ violations of the Illinois CFA,
10 Plaintiffs and the Illinois Class have suffered injury-in-fact and/or actual damage.

11 1392. Pursuant to 815 ILCS 505/10a(a), Plaintiffs and the Illinois Class seek monetary
12 relief against Volkswagen in the amount of actual damages, as well as punitive damages because
13 Volkswagen acted with fraud and/or malice and/or was grossly negligent.

14 1393. Plaintiffs also seek an order enjoining Volkswagen’s unfair and/or deceptive acts
15 or practices, punitive damages, and attorneys’ fees, and any other just and proper relief available
16 under 815 ILCS § 505/1 *et seq.*

17 **ILLINOIS COUNT II:**
18 **BREACH OF EXPRESS WARRANTY**
(810 Ill. Comp. Stat. §§ 5/2-313 and 5/2A-210)

19 1394. Plaintiffs reallege and incorporate by reference all preceding allegations as though
20 fully set forth herein.

21 1395. Plaintiffs bring this Count on behalf of the Illinois Class, against VW AG, VW
22 America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the “VW
23 Entity Defendants”).

24 1396. The VW Entity Defendants are and were at all relevant times “merchants” with
25 respect to motor vehicles under 810 Ill. Comp. Stat. §§ 5/2-104(1) and 5/2A-103(3), and “sellers”
26 of motor vehicles under § 5/2-103(1)(d).

27 1397. With respect to leases, the VW Entity Defendants are and were at all relevant
28 times “lessors” of motor vehicles under 810 Ill. Comp. Stat. § 5/2A-103(1)(p).

1 1398. The Class Vehicles are and were at all relevant times “goods” within the meaning
2 of 810 Ill. Comp. Stat. §§ 5/2-105(1) and 5/2A-103(1)(h).

3 1399. In connection with the purchase or lease of each one of its new vehicles, the VW
4 Entity Defendants provide an express New Vehicle Limited Warranty (“NVLW”) for a period of
5 three years or 36,000 miles, whichever occurs first. This NVLW exists to cover “any repair to
6 correct a manufacturers defect in materials or workmanship.”

7 1400. The Clean Air Act requires manufacturers of light-duty vehicles to provide two
8 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
9 Warranty.”

10 1401. The EPA requires vehicle manufacturers to provide a Performance Warranty with
11 respect to the vehicles’ emission systems. Thus, Volkswagen also provides an express warranty
12 for its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
13 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
14 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
15 emission control components are covered for the first eight years or 80,000 miles, whichever
16 comes first. These major emission control components subject to the longer warranty include the
17 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
18 device or computer.

19 1402. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
20 with respect to their vehicles’ emission systems. Thus, the VW Entity Defendants also provide an
21 express warranty for their vehicles through a Federal Emission Control System Defect Warranty.
22 The Design and Defect Warranty required by the EPA covers repair of emission control or
23 emission related parts which fail to function or function improperly because of a defect in
24 materials or workmanship. This warranty provides protection for two years or 24,000 miles,
25 whichever comes first, or, for the major emission control components, for eight years or 80,000
26 miles, whichever comes first.

27 1403. As manufacturers of light-duty vehicles, the VW Entity Defendants were required
28 to provide these warranties to purchasers or lessees of their “clean” diesel vehicles.

1 1404. The VW Entity Defendants’ warranties formed a basis of the bargain that was
2 reached when Plaintiffs and other Illinois Class members purchased or leased their Class Vehicles
3 equipped with the non-compliant “clean” diesel engine and emission systems.

4 1405. Plaintiffs and the Illinois Class members experienced defects within the warranty
5 period. Despite the existence of warranties, the VW Entity Defendants failed to inform Plaintiffs
6 and Illinois Class members that the Class Vehicles were intentionally designed and manufactured
7 to be out of compliance with applicable state and federal emissions laws, and failed to fix the
8 defective emission components free of charge.

9 1406. The VW Entity Defendants breached the express warranty promising to repair and
10 correct a manufacturing defect or materials or workmanship of any parts they supplied. The VW
11 Entity Defendants have not repaired or adjusted, and have been unable to repair or adjust, the
12 Class Vehicles’ materials and workmanship defects.

13 1407. Affording the VW Entity Defendants a reasonable opportunity to cure their breach
14 of written warranties would be unnecessary and futile here. For example, the Frequently Asked
15 Questions (“FAQ”) section of VW’s informational website states:

16 **How soon will the remedy be available, and how am I going to**
17 **be compensated for this?**

18 We cannot offer a firm date now because we need to work on a
19 remedy and review it with the government. We are proceeding as
quickly as possible.

20 1408. In his Congressional testimony on October 8, 2015, Michael Horn stated that
21 Volkswagen intends to make Class Vehicles compliant with emission standards through software
22 fixes and the installation of auxiliary hardware, but that fix will take “1 to 2 years, minimum.”
23 When questioned on remedies for consumers, he stated that Volkswagen may pay customers for a
24 loss in resale values because of the scandal. He said that Volkswagen is not considering
25 providing loaner vehicles because the U.S. government says the vehicles are safe to drive.

26 1409. Michael Horn’s testimony serves as an admission that the limited warranty
27 promising to repair and/or correct a manufacturing defect fails in its essential purpose because the
28 VW Entity Defendants cannot meet that promise within a reasonable time.

1 1410. Furthermore, the limited warranty promising to repair and/or correct a
2 manufacturing defect fails in its essential purpose because the contractual remedy is insufficient
3 to make Plaintiffs and the other Illinois Class members whole and because the VW Entity
4 Defendants have failed and/or have refused to adequately provide the promised remedies within a
5 reasonable time.

6 1411. Accordingly, recovery by Plaintiffs and the other Illinois Class members is not
7 restricted to the limited warranty promising to repair and/or correct a manufacturing defect, and
8 Plaintiffs, individually and on behalf of the other Illinois Class members, seek all remedies as
9 allowed by law.

10 1412. Also, as alleged in more detail herein, at the time the VW Entity Defendants
11 warranted and sold or leased the Class Vehicles, they knew that the Class Vehicles were
12 inherently defective and did not conform to their warranties; further, the VW Entity Defendants
13 had wrongfully and fraudulently concealed material facts regarding the Class Vehicles. Plaintiffs
14 and the other Illinois Class members were therefore induced to purchase or lease the Class
15 Vehicles under false and/or fraudulent pretenses.

16 1413. Moreover, many of the injuries flowing from the Class Vehicles cannot be
17 resolved through the limited remedy of “replacements or adjustments,” as many incidental and
18 consequential damages have already been suffered because of Volkswagen’s fraudulent conduct
19 as alleged herein, and because of its failure and/or continued failure to provide such limited
20 remedy within a reasonable time, and any limitation on Plaintiffs’ and the other Illinois Class
21 members’ remedies would be insufficient to make Plaintiffs and the other Illinois Class members
22 whole.

23 1414. Finally, because of the VW Entity Defendants’ breach of warranty as set forth
24 herein, Plaintiffs and the other Illinois Class members assert, as additional and/or alternative
25 remedies, the revocation of acceptance of the goods and the return to Plaintiffs and the other
26 Illinois Class members of the purchase or lease price of all Class Vehicles currently owned or
27 leased, and for such other incidental and consequential damages as allowed.
28

1 1415. The VW Entity Defendants were provided notice of these issues by numerous
2 complaints filed against them, including the instant Complaint, within a reasonable amount of
3 time after Volkswagen publicly admitted to using a defeat device in the Class Vehicles to evade
4 clean air standards.

5 1416. As a direct and proximate result of the VW Entity Defendants' breach of express
6 warranties, Plaintiff and the other Illinois Class members have been damaged in an amount to be
7 determined at trial.

8 **ILLINOIS COUNT III:**
9 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
10 **(810 Ill. Comp. Stat. §§ 5/2-314 and 5/2A-212)**

11 1417. Plaintiffs reallege and incorporate by reference all allegations of the preceding
12 paragraphs as though fully set forth herein.

13 1418. Plaintiffs bring this Count on behalf of the Illinois Class, against VW AG, VW
14 America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the "VW
15 Entity Defendants").

16 1419. The VW Entity Defendants are and were at all relevant times "merchants" with
17 respect to motor vehicles under 810 Ill. Comp. Stat. §§ 5/2-104(1) and 5/2A-103(3), and "sellers"
18 of motor vehicles under § 5/2-103(1)(d).

19 1420. With respect to leases, the VW Entity Defendants are and were at all relevant
20 times "lessors" of motor vehicles under 810 Ill. Comp. Stat. § 5/2A-103(1)(p).

21 1421. The Class Vehicles are and were at all relevant times "goods" within the meaning
22 of 810 Ill. Comp. Stat. §§ 5/2-105(1) and 5/2A-103(1)(h).

23 1422. A warranty that the Class Vehicles were in merchantable condition and fit for the
24 ordinary purpose for which vehicles are used is implied by law pursuant to 810 Ill. Comp. Stat.
25 §§ 28-2-314 and 28-12-212.

26 1423. These Class Vehicles, when sold or leased and at all times thereafter, were not in
27 merchantable condition and are not fit for the ordinary purpose for which vehicles are used.
28 Specifically, the Class Vehicles are inherently defective in that they do not comply with federal

1 and state emissions standards, rendering certain emissions functions inoperative; and the “clean”
2 diesel engine system was not adequately designed, manufactured, and tested.

3 1424. Volkswagen was provided notice of these issues by the investigations of the EPA
4 and individual state regulators, numerous complaints filed against it including the instant
5 Complaint, and by numerous individual letters and communications sent by Plaintiffs and others
6 within a reasonable amount of time after the allegations of Class Vehicle defects became public.

7 1425. As a direct and proximate result of the VW Entity Defendants’ breach of the
8 implied warranty of merchantability, Plaintiffs and the other Illinois Class members have been
9 damaged in an amount to be proven at trial.

10 **INDIANA**

11 **INDIANA COUNT I:**
12 **VIOLATIONS OF THE INDIANA DECEPTIVE CONSUMER SALES ACT**
13 **(Ind. Code § 24-5-0.5-3)**

14 1426. Plaintiffs incorporate by reference each preceding paragraph as though fully set
15 forth herein.

16 1427. Plaintiffs Olmos and Priest (for the purpose of this section, “Plaintiffs”) bring this
17 action on behalf of themselves and the Indiana Class against all Defendants.

18 1428. Defendants are “person[s]” within the meaning of Ind. Code § 24-5-0.5-2(2) and a
19 “supplier” within the meaning of Ind. Code § 24-5-.05-2(a)(3).

20 1429. Plaintiffs’ and Indiana Class members’ purchases of the Class Vehicles are
21 “consumer transactions” within the meaning of Ind. Code § 24-5-.05-2(a)(1).

22 1430. Indiana’s Deceptive Consumer Sales Act (“Indiana DCSA”) prohibits a person
23 from engaging in a “deceptive act,” which includes representing: “(1) That such subject of a
24 consumer transaction has sponsorship, approval, performance, characteristics, accessories, uses,
25 or benefits that they do not have, or that a person has a sponsorship, approval, status, affiliation,
26 or connection it does not have; (2) That such subject of a consumer transaction is of a particular
27 standard, quality, grade, style or model, if it is not and if the supplier knows or should reasonably
28 know that it is not; ... (7) That the supplier has a sponsorship, approval or affiliation in such
consumer transaction that the supplier does not have, and which the supplier knows or should

1 reasonably know that the supplier does not have; ... (c) Any representations on or within a
2 product or its packaging or in advertising or promotional materials which would constitute a
3 deceptive act shall be the deceptive act both of the supplier who places such a representation
4 thereon or therein, or who authored such materials, and such suppliers who shall state orally or in
5 writing that such representation is true if such other supplier shall know or have reason to know
6 that such representation was false.” Ind. Code § 24-5-0.5-3.

7 1431. In the course of their business, Defendants concealed and suppressed material facts
8 concerning the Class Vehicles. Defendants accomplished this by installing illegal defeat device
9 software in the Class Vehicles that caused the vehicles to operate in a low emission test mode
10 only during emissions testing. During normal operations, the Class Vehicles would emit grossly
11 larger quantities of noxious contaminants, sometimes 40 times over applicable standards. The
12 result was what Volkswagen intended—the Class Vehicles passed emissions testing by way of
13 deliberately induced false readings. Plaintiffs and Indiana Class members had no way of
14 discerning that Volkswagen’s representations were false and misleading because Volkswagen’s
15 defeat device software was extremely sophisticated technology. Plaintiffs and Indiana Class
16 members did not and could not unravel Volkswagen’s deception on their own. In fact, it took
17 years before the academic engineering community—specifically a research team at WVU’s
18 Center for Alternative Fuels, Engines & Emissions—detected Volkswagen’s cheat using
19 sophisticated, expensive equipment and applying decades of combined experience.

20 1432. Defendants thus violated the Act by, at minimum: (1) representing that the Class
21 Vehicles have characteristics, uses, benefits, and qualities which they do not have; (2)
22 representing that the Class Vehicles are of a particular standard and quality when they are not; (3)
23 advertising the Class Vehicles with the intent not to sell them as advertised; and (4) otherwise
24 engaging in conduct likely to deceive.

25 1433. Bosch played a critical role in facilitating, and itself contributed to, Volkswagen’s
26 unfair and deceptive conduct, as alleged herein. Bosch knew or should have known that
27 Volkswagen would use and had used the Bosch technology as an emission defeat device, and in
28 fact helped it do so. Without Bosch’s complicity and silence, Volkswagen could not have

1 perpetrated the fraudulent, deceptive, and unfair practices alleged herein, and Bosch's actions
2 themselves constitute fraudulent, deceptive, and unfair practices.

3 1434. Volkswagen's actions as set forth above occurred in the conduct of trade or
4 commerce.

5 1435. Defendants engaged in misleading, false, unfair or deceptive acts or practices that
6 violated the Indiana DCSA by installing, failing to disclose and actively concealing the illegal
7 defeat device and the true cleanliness and performance of the "clean" diesel engine system, by
8 marketing its vehicles as legal, reliable, environmentally clean, efficient, and of high quality, and
9 by presenting itself as a reputable manufacturer that valued environmental cleanliness and
10 efficiency, and that stood behind its vehicles after they were sold.

11 1436. The Clean Air Act and EPA regulations require that automobiles limit their
12 emissions output to specified levels. These laws are intended for the protection of public health
13 and welfare. "Defeat devices" like those in the Class Vehicles are defined and prohibited by the
14 Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 CFR § 86.1809. By
15 installing illegal "defeat devices" in the Class Vehicles and by making those vehicles available
16 for purchase, Volkswagen violated federal law and therefore engaged in conduct that violates the
17 Indiana DCSA.

18 1437. Defendants knew the true nature of its "clean" diesel engine system for at least six
19 years, but concealed all of that information until recently. Volkswagen was also aware that it
20 valued profits over environmental cleanliness, efficiency, and compliance with the law, and that it
21 was manufacturing, selling, and distributing vehicles throughout the United States that did not
22 comply with EPA regulations. Volkswagen concealed this information as well.

23 1438. Volkswagen intentionally and knowingly misrepresented material facts regarding
24 the Class Vehicles with intent to mislead Plaintiffs and the Indiana Class.

25 1439. Volkswagen knew or should have known that its conduct violated the Indiana
26 DCSA.

27 1440. Defendants owed Plaintiffs a duty to disclose the illegality and public health and
28 safety risks of the Class Vehicles because they:

- 1 a. possessed exclusive knowledge that they were
- 2 manufacturing, selling, and distributing vehicles throughout
- 3 the United States that did not comply with EPA regulations;
- 4 b. intentionally concealed the foregoing from regulators,
- 5 Plaintiffs, Class members; and/or
- 6 c. made incomplete representations about the environmental
- 7 cleanliness and efficiency of the Class Vehicles generally,
- 8 and the use of the defeat device in particular, while
- 9 purposefully withholding material facts from Plaintiffs that
- 10 contradicted these representations.

11 1441. Defendants concealed the illegal defeat device and the true emissions, efficiency,

12 and performance of the “clean” diesel system, resulting in a raft of negative publicity once the

13 defects finally began to be disclosed. The value of the Class Vehicles has therefore greatly

14 diminished. In light of the stigma attached to those vehicles by Volkswagen’s conduct, they are

15 now worth significantly less than they otherwise would be worth.

16 1442. Volkswagen’s fraudulent use of the “defeat device” and its concealment of the true

17 characteristics of the “clean” diesel engine system were material to Plaintiffs and the Indiana

18 Class.

19 1443. Defendants’ unfair or deceptive acts or practices were likely to and did in fact

20 deceive regulators and reasonable consumers, including Plaintiffs, about the true environmental

21 cleanliness and efficiency of Volkswagen-branded vehicles, the quality of the Volkswagen brand,

22 the devaluing of environmental cleanliness and integrity at Volkswagen, and the true value of the

23 Class Vehicles.

24 1444. Plaintiffs and the Indiana Class suffered ascertainable loss and actual damages as a

25 direct and proximate result of Defendants’ misrepresentations and its concealment of and failure

26 to disclose material information. Plaintiffs and the Indiana Class members who purchased or

27 leased the Class Vehicles would not have purchased or leased them at all and/or—if the Vehicles’

28 true nature had been disclosed and mitigated, and the Vehicles rendered legal to sell—would have

paid significantly less for them. Plaintiffs also suffered diminished value of their vehicles, as well

as lost or diminished use.

1 1445. Defendants had an ongoing duty to all Volkswagen customers to refrain from
2 unfair and deceptive practices under the Indiana DCSA. All owners of Class Vehicles suffered
3 ascertainable loss in the form of the diminished value of their vehicles as a result of
4 Volkswagen's deceptive and unfair acts and practices made in the course of Volkswagen's
5 business.

6 1446. Defendants' violations present a continuing risk to Plaintiffs as well as to the
7 general public. Defendants' unlawful acts and practices complained of herein affect the public
8 interest.

9 1447. As a direct and proximate result of Defendants' violations of the Indiana DCSA,
10 Plaintiffs and the Indiana Class have suffered injury-in-fact and/or actual damage.

11 1448. Pursuant to Ind. Code § 24-5-0.5-4, Plaintiffs and the Indiana Class seek monetary
12 relief against Defendants measured as the greater of (a) actual damages in an amount to be
13 determined at trial and (b) statutory damages in the amount of \$500 for each Plaintiff and each
14 Indiana Class member, including treble damages up to \$1,000 for Volkswagen's willfully
15 deceptive acts.

16 1449. Plaintiff also seeks punitive damages based on the outrageousness and
17 recklessness of the Volkswagen's conduct and Volkswagen's high net worth.

18 1450. On September 21, 2015, certain Plaintiffs sent a letter complying with Ind. Code
19 § 24-5-0.5-5(a). Because Volkswagen failed to remedy its unlawful conduct within the requisite
20 time period, Plaintiffs seek all damages and relief to which Plaintiffs and the Indiana Class are
21 entitled.

22 **INDIANA COUNT II:**
23 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
24 **(Ind. Code §§ 26-1-2-314 and 26-1-2.1-212)**

25 1451. Plaintiffs reallege and incorporate by reference all allegations of the preceding
26 paragraphs as though fully set forth herein.

27 1452. Plaintiffs bring this Count on behalf of the Indiana Class, against VW AG, VW
28 America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the "VW
Entity Defendants").

1 1453. The VW Entity Defendants are and were at all relevant times “merchants” with
2 respect to motor vehicles under Ind. Code §§ 26-1-2-104(1) and 26-1-2.1-103(3), and “sellers” of
3 motor vehicles under § 26-1-2-103(1)(d).

4 1454. With respect to leases, the VW Entity Defendants are and were at all relevant
5 times “lessors” of motor vehicles under Ind. Code § 26-1-2.1-103(1)(p).

6 1455. The Class Vehicles are and were at all relevant times “goods” within the meaning
7 of Ind. Code §§ 26-1-2-105(1) and 26-1-2.1-103(1)(h).

8 1456. A warranty that the Class Vehicles were in merchantable condition and fit for the
9 ordinary purpose for which vehicles are used is implied by law pursuant to Ind. Code §§ 26-1-2-
10 314 and 26-1-2.1-212.

11 1457. These Class Vehicles, when sold or leased and at all times thereafter, were not in
12 merchantable condition and are not fit for the ordinary purpose for which vehicles are used.
13 Specifically, the Class Vehicles are inherently defective in that they do not comply with federal
14 and state emissions standards, rendering certain emissions functions inoperative; and the “clean”
15 diesel engine system was not adequately designed, manufactured, and tested.

16 1458. Volkswagen was provided notice of these issues by the investigations of the EPA
17 and individual state regulators, numerous complaints filed against it including the instant
18 Complaint, and by numerous individual letters and communications sent by Plaintiffs and others
19 within a reasonable amount of time after the allegations of Class Vehicle defects became public.

20 1459. As a direct and proximate result of the VW Entity Defendants’ breach of the
21 implied warranty of merchantability, Plaintiffs and the other Indiana Class members have been
22 damaged in an amount to be proven at trial.

23 **INDIANA COUNT III:**
24 **BREACH OF EXPRESS WARRANTY**
25 **(Ind. Code §§ 26-1-2-313 and 26-1-2.1-210)**

26 1460. Plaintiffs reallege and incorporate by reference all preceding allegations as though
27 fully set forth herein.
28

1 1461. Plaintiffs bring this Count on behalf of the Indiana Class, against VW AG, VW
2 America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the “VW
3 Entity Defendants”).

4 1462. The VW Entity Defendants are and were at all relevant times “merchants” with
5 respect to motor vehicles under Ind. Code §§ 26-1-2-104(1) and 26-1-2.1-103(3), and “sellers” of
6 motor vehicles under § 26-1-2-103(1)(d).

7 1463. With respect to leases, the VW Entity Defendants are and were at all relevant
8 times “lessors” of motor vehicles under Ind. Code § 26-1-2.1-103(1)(p).

9 1464. The Class Vehicles are and were at all relevant times “goods” within the meaning
10 of Ind. Code §§ 26-1-2-105(1) and 26-1-2.1-103(1)(h).

11 1465. In connection with the purchase or lease of each one of its new vehicles, the VW
12 Entity Defendants provide an express New Vehicle Limited Warranty (“NVLW”) for a period of
13 three years or 36,000 miles, whichever occurs first. This NVLW exists to cover “any repair to
14 correct a manufacturers defect in materials or workmanship.”

15 1466. The Clean Air Act requires manufacturers of light-duty vehicles to provide two
16 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
17 Warranty.”

18 1467. The EPA requires vehicle manufacturers to provide a Performance Warranty with
19 respect to the vehicles’ emission systems. Thus, Volkswagen also provides an express warranty
20 for its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
21 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
22 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
23 emission control components are covered for the first eight years or 80,000 miles, whichever
24 comes first. These major emission control components subject to the longer warranty include the
25 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
26 device or computer.

27 1468. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
28 with respect to their vehicles’ emission systems. Thus, the VW Entity Defendants also provide an

1 express warranty for their vehicles through a Federal Emission Control System Defect Warranty.
2 The Design and Defect Warranty required by the EPA covers repair of emission control or
3 emission related parts which fail to function or function improperly because of a defect in
4 materials or workmanship. This warranty provides protection for two years or 24,000 miles,
5 whichever comes first, or, for the major emission control components, for eight years or 80,000
6 miles, whichever comes first.

7 1469. As manufacturers of light-duty vehicles, the VW Entity Defendants were required
8 to provide these warranties to purchasers or lessees of their “clean” diesel vehicles.

9 1470. The VW Entity Defendants’ warranties formed a basis of the bargain that was
10 reached when Plaintiffs and other Indiana Class members purchased or leased their Class
11 Vehicles equipped with the non-compliant “clean” diesel engine and emission systems.

12 1471. Plaintiffs and the Indiana Class members experienced defects within the warranty
13 period. Despite the existence of warranties, the VW Entity Defendants failed to inform Plaintiffs
14 and Indiana Class members that the Class Vehicles were intentionally designed and manufactured
15 to be out of compliance with applicable state and federal emissions laws, and failed to fix the
16 defective emission components free of charge.

17 1472. The VW Entity Defendants breached the express warranty promising to repair and
18 correct a manufacturing defect or materials or workmanship of any parts they supplied. The VW
19 Entity Defendants have not repaired or adjusted, and have been unable to repair or adjust, the
20 Class Vehicles’ materials and workmanship defects.

21 1473. Affording the VW Entity Defendants a reasonable opportunity to cure their breach
22 of written warranties would be unnecessary and futile here. For example, the Frequently Asked
23 Questions (“FAQ”) section of VW’s informational website states:

24 **How soon will the remedy be available, and how am I going to**
25 **be compensated for this?**

26 We cannot offer a firm date now because we need to work on a
27 remedy and review it with the government. We are proceeding as
28 quickly as possible.

1 1474. In his Congressional testimony on October 8, 2015, Michael Horn stated that
2 Volkswagen intends to make Class Vehicles compliant with emission standards through software
3 fixes and the installation of auxiliary hardware, but that fix will take “1 to 2 years, minimum.”
4 When questioned on remedies for consumers, he stated that Volkswagen may pay customers for a
5 loss in resale values because of the scandal. He said that Volkswagen is not considering
6 providing loaner vehicles because the U.S. government says the vehicles are safe to drive.

7 1475. Michael Horn’s testimony serves as an admission that the limited warranty
8 promising to repair and/or correct a manufacturing defect fails in its essential purpose because the
9 VW Entity Defendants cannot meet that promise within a reasonable time.

10 1476. Furthermore, the limited warranty promising to repair and/or correct a
11 manufacturing defect fails in its essential purpose because the contractual remedy is insufficient
12 to make Plaintiffs and the other Indiana Class members whole and because the VW Entity
13 Defendants have failed and/or have refused to adequately provide the promised remedies within a
14 reasonable time.

15 1477. Accordingly, recovery by Plaintiffs and the other Indiana Class members is not
16 restricted to the limited warranty promising to repair and/or correct a manufacturing defect, and
17 Plaintiffs, individually and on behalf of the other Indiana Class members, seek all remedies as
18 allowed by law.

19 1478. Also, as alleged in more detail herein, at the time the VW Entity Defendants
20 warranted and sold or leased the Class Vehicles, they knew that the Class Vehicles were
21 inherently defective and did not conform to their warranties; further, the VW Entity Defendants
22 had wrongfully and fraudulently concealed material facts regarding the Class Vehicles. Plaintiffs
23 and the other Indiana Class members were therefore induced to purchase or lease the Class
24 Vehicles under false and/or fraudulent pretenses.

25 1479. Moreover, many of the injuries flowing from the Class Vehicles cannot be
26 resolved through the limited remedy of “replacements or adjustments,” as many incidental and
27 consequential damages have already been suffered because of Volkswagen’s fraudulent conduct
28 as alleged herein, and because of its failure and/or continued failure to provide such limited

1 remedy within a reasonable time, and any limitation on Plaintiffs’ and the other Indiana Class
2 members’ remedies would be insufficient to make Plaintiffs and the other Indiana Class members
3 whole.

4 1480. Finally, because of the VW Entity Defendants’ breach of warranty as set forth
5 herein, Plaintiffs and the other Indiana Class members assert, as additional and/or alternative
6 remedies, the revocation of acceptance of the goods and the return to Plaintiffs and the other
7 Indiana Class members of the purchase or lease price of all Class Vehicles currently owned or
8 leased, and for such other incidental and consequential damages as allowed.

9 1481. The VW Entity Defendants were provided notice of these issues by numerous
10 complaints filed against them, including the instant Complaint, within a reasonable amount of
11 time after Volkswagen publicly admitted to using a defeat device in the Class Vehicles to evade
12 clean air standards.

13 1482. As a direct and proximate result of the VW Entity Defendants’ breach of express
14 warranties, Plaintiff and the other Indiana Class members have been damaged in an amount to be
15 determined at trial.

16 **IOWA**

17 **IOWA COUNT I:**
18 **VIOLATIONS OF THE PRIVATE RIGHT OF ACTION**
19 **FOR CONSUMER FRAUDS ACT**
(Iowa Code § 714h.1, et seq.)

20 1483. Plaintiffs incorporate by reference each preceding paragraph as though fully set
21 forth herein.

22 1484. Plaintiffs Foote, Lucht, Soucy, Manternach, and Schnathorst (for the purpose of
23 this section, “Plaintiffs”) bring this action on behalf of themselves and the Iowa Class against all
24 Defendants.

25 1485. Volkswagen is “person” under Iowa Code § 714H.2(7).

26 1486. Plaintiffs and the Iowa Class are “consumers,” as defined by Iowa Code
27 § 714H.2(3), who purchased or leased one or more Class Vehicles.
28

1 1487. The Iowa Private Right of Action for Consumer Frauds Act (“Iowa CFA”)
2 prohibits any “practice or act the person knows or reasonably should know is an unfair practice,
3 deception, fraud, false pretense, or false promise, or the misrepresentation, concealment,
4 suppression, or omission of a material fact, with the intent that others rely upon the unfair
5 practice, deception, fraud, false pretense, false promise, misrepresentation, concealment,
6 suppression, or omission in connection with the advertisement, sale, or lease of consumer
7 merchandise.” Iowa Code § 714H.3.

8 1488. In the course of their business, Defendants concealed and suppressed material facts
9 concerning the Class Vehicles. Defendants accomplished this by installing illegal defeat device
10 software in the Class Vehicles that caused the vehicles to operate in a low emission test mode
11 only during emissions testing. During normal operations, the Class Vehicles would emit grossly
12 larger quantities of noxious contaminants, sometimes 40 times over applicable standards. The
13 result was what Volkswagen intended—the Class Vehicles passed emissions testing by way of
14 deliberately induced false readings. Plaintiffs and Iowa Class members had no way of discerning
15 that Volkswagen’s representations were false and misleading because Volkswagen’s defeat
16 device software was extremely sophisticated technology. Plaintiffs and Iowa Class members did
17 not and could not unravel Volkswagen’s deception on their own. In fact, it took years before the
18 academic engineering community—specifically a research team at WVU’s Center for Alternative
19 Fuels, Engines & Emissions—detected Volkswagen’s cheat using sophisticated, expensive
20 equipment and applying decades of combined experience.

21 1489. Defendants thus violated the Act by, at minimum by marketing its vehicles as safe,
22 reliable, environmentally clean, efficient, and of high quality, and by presenting itself as a
23 reputable manufacturer that valued safety, environmental cleanliness, and efficiency, and stood
24 behind its vehicles after they were sold, Volkswagen engaged in deceptive business practices
25 prohibited by the Iowa CFA.

26 1490. Volkswagen’s actions as set forth above occurred in the conduct of trade or
27 commerce.
28

1 1491. Bosch played a critical role in facilitating, and itself contributed to, Volkswagen's
2 unfair and deceptive conduct, as alleged herein. Bosch knew or should have known that
3 Volkswagen would use and had used the Bosch technology as an emission defeat device, and in
4 fact helped it do so. Without Bosch's complicity and silence, Volkswagen could not have
5 perpetrated the fraudulent, deceptive, and unfair practices alleged herein, and Bosch's actions
6 themselves constitute fraudulent, deceptive, and unfair practices.

7 1492. Defendants engaged in misleading, false, unfair or deceptive acts or practices that
8 violated the Iowa CFA by installing, failing to disclose and actively concealing the illegal defeat
9 device and the true cleanliness and performance of the "clean" diesel engine system, by
10 marketing its vehicles as legal, reliable, environmentally clean, efficient, and of high quality, and
11 by presenting itself as a reputable manufacturer that valued environmental cleanliness and
12 efficiency, and that stood behind its vehicles after they were sold.

13 1493. The Clean Air Act and EPA regulations require that automobiles limit their
14 emissions output to specified levels. These laws are intended for the protection of public health
15 and welfare. "Defeat devices" like those in the Class Vehicles are defined and prohibited by the
16 Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 CFR § 86.1809. By
17 installing illegal "defeat devices" in the Class Vehicles and by making those vehicles available
18 for purchase, Volkswagen violated federal law and therefore engaged in conduct that violates the
19 Iowa CFA.407.

20 1494. Defendants knew the true nature of its "clean" diesel engine system for at least six
21 years, but concealed all of that information until recently. Volkswagen was also aware that it
22 valued profits over environmental cleanliness, efficiency, and compliance with the law, and that it
23 was manufacturing, selling, and distributing vehicles throughout the United States that did not
24 comply with EPA regulations. Volkswagen concealed this information as well.

25 1495. Volkswagen intentionally and knowingly misrepresented material facts regarding
26 the Class Vehicles with intent to mislead Plaintiffs and the Iowa Class.

27 1496. Volkswagen knew or should have known that its conduct violated the Iowa CFA.
28

1 1497. Defendants owed Plaintiffs a duty to disclose the illegality and public health and
2 safety risks of the Class Vehicles because they:

- 3 a. possessed exclusive knowledge that they were
4 manufacturing, selling, and distributing vehicles throughout
5 the United States that did not comply with EPA regulations;
6
7 b. intentionally concealed the foregoing from regulators,
8 Plaintiffs, Class members; and/or
9
10 c. made incomplete representations about the environmental
11 cleanliness and efficiency of the Class Vehicles generally,
12 and the use of the defeat device in particular, while
13 purposefully withholding material facts from Plaintiffs that
14 contradicted these representations.

15 1498. Defendants concealed the illegal defeat device and the true emissions, efficiency,
16 and performance of the “clean” diesel system, resulting in a raft of negative publicity once the
17 defects finally began to be disclosed. The value of the Class Vehicles has therefore greatly
18 diminished. In light of the stigma attached to those vehicles by Volkswagen’s conduct, they are
19 now worth significantly less than they otherwise would be worth.

20 1499. Volkswagen’s fraudulent use of the “defeat device” and its concealment of the true
21 characteristics of the “clean” diesel engine system were material to Plaintiffs and the Iowa Class.

22 1500. Defendants’ unfair or deceptive acts or practices were likely to and did in fact
23 deceive regulators and reasonable consumers, including Plaintiffs, about the true environmental
24 cleanliness and efficiency of Volkswagen-branded vehicles, the quality of the Volkswagen brand,
25 the devaluing of environmental cleanliness and integrity at Volkswagen, and the true value of the
26 Class Vehicles.

27 1501. Plaintiffs and the Iowa Class suffered ascertainable loss and actual damages as a
28 direct and proximate result of Defendants’ misrepresentations and its concealment of and failure
to disclose material information. Plaintiffs and the Iowa Class members who purchased or leased
the Class Vehicles would not have purchased or leased them at all and/or—if the Vehicles’ true
nature had been disclosed and mitigated, and the Vehicles rendered legal to sell—would have
paid significantly less for them. Plaintiffs also suffered diminished value of their vehicles, as well
as lost or diminished use.

1 1502. Defendants had an ongoing duty to all Volkswagen customers to refrain from
2 unfair and deceptive practices under the Iowa CFA. All owners of Class Vehicles suffered
3 ascertainable loss in the form of the diminished value of their vehicles as a result of
4 Volkswagen’s deceptive and unfair acts and practices made in the course of Volkswagen’s
5 business.

6 1503. Defendants’ violations present a continuing risk to Plaintiffs as well as to the
7 general public. Defendants’ unlawful acts and practices complained of herein affect the public
8 interest.

9 1504. As a direct and proximate result of Defendants’ violations of the Iowa CFA,
10 Plaintiffs and the Iowa Class have suffered injury-in-fact and/or actual damage.

11 1505. Pursuant to Iowa Code § 714H.5, Plaintiffs seek an order enjoining Volkswagen’s
12 unfair and/or deceptive acts or practices; actual damages; in addition to an award of actual
13 damages, statutory damages up to three times the amount of actual damages awarded as a result
14 of Volkswagen’s willful and wanton disregard for the rights or safety of others; attorneys’ fees;
15 and such other equitable relief as the Court deems necessary to protect the public from further
16 violations of the Iowa CFA.

17 **IOWA COUNT II:**
18 **BREACH OF EXPRESS WARRANTY**
19 **(Iowa Code §§ 554.2313 and 554.13210)**

20 1506. Plaintiffs reallege and incorporate by reference all preceding allegations as though
21 fully set forth herein.

22 1507. Plaintiffs bring this Count on behalf of the Iowa Class, against VW AG, VW
23 America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the “VW
24 Entity Defendants”).

25 1508. The VW Entity Defendants are and were at all relevant times “merchants” with
26 respect to motor vehicles under Iowa Code §§ 554.2104(1) and 554.13103(3), and “sellers” of
27 motor vehicles under § 554.2103(1)(d).

28 1509. With respect to leases, the VW Entity Defendants are and were at all relevant
times “lessors” of motor vehicles under Iowa Code § 554.13103(1)(p).

1 1510. The Class Vehicles are and were at all relevant times “goods” within the meaning
2 of Iowa Code §§ 554.2105(1) and 554.13103(1)(h).

3 1511. In connection with the purchase or lease of each one of its new vehicles, the VW
4 Entity Defendants provide an express New Vehicle Limited Warranty (“NVLW”) for a period of
5 three years or 36,000 miles, whichever occurs first. This NVLW exists to cover “any repair to
6 correct a manufacturers defect in materials or workmanship.”

7 1512. The Clean Air Act requires manufacturers of light-duty vehicles to provide two
8 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
9 Warranty.”

10 1513. The EPA requires vehicle manufacturers to provide a Performance Warranty with
11 respect to the vehicles’ emission systems. Thus, Volkswagen also provides an express warranty
12 for its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
13 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
14 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
15 emission control components are covered for the first eight years or 80,000 miles, whichever
16 comes first. These major emission control components subject to the longer warranty include the
17 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
18 device or computer.

19 1514. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
20 with respect to their vehicles’ emission systems. Thus, the VW Entity Defendants also provide an
21 express warranty for their vehicles through a Federal Emission Control System Defect Warranty.
22 The Design and Defect Warranty required by the EPA covers repair of emission control or
23 emission related parts which fail to function or function improperly because of a defect in
24 materials or workmanship. This warranty provides protection for two years or 24,000 miles,
25 whichever comes first, or, for the major emission control components, for eight years or 80,000
26 miles, whichever comes first.

27 1515. As manufacturers of light-duty vehicles, the VW Entity Defendants were required
28 to provide these warranties to purchasers or lessees of their “clean” diesel vehicles.

1 1516. The VW Entity Defendants’ warranties formed a basis of the bargain that was
2 reached when Plaintiffs and other Iowa Class members purchased or leased their Class Vehicles
3 equipped with the non-compliant “clean” diesel engine and emission systems.

4 1517. Plaintiffs and the Iowa Class members experienced defects within the warranty
5 period. Despite the existence of warranties, the VW Entity Defendants failed to inform Plaintiffs
6 and Iowa Class members that the Class Vehicles were intentionally designed and manufactured
7 to be out of compliance with applicable state and federal emissions laws, and failed to fix the
8 defective emission components free of charge.

9 1518. The VW Entity Defendants breached the express warranty promising to repair and
10 correct a manufacturing defect or materials or workmanship of any parts they supplied. The VW
11 Entity Defendants have not repaired or adjusted, and have been unable to repair or adjust, the
12 Class Vehicles’ materials and workmanship defects.

13 1519. Affording the VW Entity Defendants a reasonable opportunity to cure their breach
14 of written warranties would be unnecessary and futile here. For example, the Frequently Asked
15 Questions (“FAQ”) section of VW’s informational website states:

16 **How soon will the remedy be available, and how am I going to**
17 **be compensated for this?**

18 We cannot offer a firm date now because we need to work on a
19 remedy and review it with the government. We are proceeding as
 quickly as possible.

20 1520. In his Congressional testimony on October 8, 2015, Michael Horn stated that
21 Volkswagen intends to make Class Vehicles compliant with emission standards through software
22 fixes and the installation of auxiliary hardware, but that fix will take “1 to 2 years, minimum.”
23 When questioned on remedies for consumers, he stated that Volkswagen may pay customers for a
24 loss in resale values because of the scandal. He said that Volkswagen is not considering
25 providing loaner vehicles because the U.S. government says the vehicles are safe to drive.

26 1521. Michael Horn’s testimony serves as an admission that the limited warranty
27 promising to repair and/or correct a manufacturing defect fails in its essential purpose because the
28 VW Entity Defendants cannot meet that promise within a reasonable time.

1 1522. Furthermore, the limited warranty promising to repair and/or correct a
2 manufacturing defect fails in its essential purpose because the contractual remedy is insufficient
3 to make Plaintiffs and the other Iowa Class members whole and because the VW Entity
4 Defendants have failed and/or have refused to adequately provide the promised remedies within a
5 reasonable time.

6 1523. Accordingly, recovery by Plaintiffs and the other Iowa Class members is not
7 restricted to the limited warranty promising to repair and/or correct a manufacturing defect, and
8 Plaintiffs, individually and on behalf of the other Iowa Class members, seek all remedies as
9 allowed by law.

10 1524. Also, as alleged in more detail herein, at the time the VW Entity Defendants
11 warranted and sold or leased the Class Vehicles, they knew that the Class Vehicles were
12 inherently defective and did not conform to their warranties; further, the VW Entity Defendants
13 had wrongfully and fraudulently concealed material facts regarding the Class Vehicles. Plaintiffs
14 and the other Iowa Class members were therefore induced to purchase or lease the Class
15 Vehicles under false and/or fraudulent pretenses.

16 1525. Moreover, many of the injuries flowing from the Class Vehicles cannot be
17 resolved through the limited remedy of “replacements or adjustments,” as many incidental and
18 consequential damages have already been suffered because of Volkswagen’s fraudulent conduct
19 as alleged herein, and because of its failure and/or continued failure to provide such limited
20 remedy within a reasonable time, and any limitation on Plaintiffs’ and the other Iowa Class
21 members’ remedies would be insufficient to make Plaintiffs and the other Iowa Class members
22 whole.

23 1526. Finally, because of the VW Entity Defendants’ breach of warranty as set forth
24 herein, Plaintiffs and the other Iowa Class members assert, as additional and/or alternative
25 remedies, the revocation of acceptance of the goods and the return to Plaintiffs and the other Iowa
26 Class members of the purchase or lease price of all Class Vehicles currently owned or leased, and
27 for such other incidental and consequential damages as allowed.
28

1 1527. The VW Entity Defendants were provided notice of these issues by numerous
2 complaints filed against them, including the instant Complaint, within a reasonable amount of
3 time after Volkswagen publicly admitted to using a defeat device in the Class Vehicles to evade
4 clean air standards.

5 1528. As a direct and proximate result of the VW Entity Defendants' breach of express
6 warranties, Plaintiff and the other Iowa Class members have been damaged in an amount to be
7 determined at trial.

8 **IOWA COUNT III:**
9 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
10 **(Iowa Code §§ 554.2314 and 554.13212)**

11 1529. Plaintiffs reallege and incorporate by reference all allegations of the preceding
12 paragraphs as though fully set forth herein.

13 1530. Plaintiffs bring this Count on behalf of the Iowa Class, against VW AG, VW
14 America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the "VW
15 Entity Defendants").

16 1531. The VW Entity Defendants are and were at all relevant times "merchants" with
17 respect to motor vehicles under Iowa Code §§ 554.2104(1) and 554.13103(3), and "sellers" of
18 motor vehicles under § 554.2103(1)(d).

19 1532. With respect to leases, the VW Entity Defendants are and were at all relevant
20 times "lessors" of motor vehicles under Iowa Code § 554.13103(1)(p).

21 1533. The Class Vehicles are and were at all relevant times "goods" within the meaning
22 of Iowa Code §§ 554.2105(1) and 554.13103(1)(h).

23 1534. A warranty that the Class Vehicles were in merchantable condition and fit for the
24 ordinary purpose for which vehicles are used is implied by law pursuant to Iowa Code
25 §§ 554.2314 and 554.13212.

26 1535. These Class Vehicles, when sold or leased and at all times thereafter, were not in
27 merchantable condition and are not fit for the ordinary purpose for which vehicles are used.
28 Specifically, the Class Vehicles are inherently defective in that they do not comply with federal

1 and state emissions standards, rendering certain emissions functions inoperative; and the “clean”
2 diesel engine system was not adequately designed, manufactured, and tested.

3 1536. Volkswagen was provided notice of these issues by the investigations of the EPA
4 and individual state regulators, numerous complaints filed against it including the instant
5 Complaint, and by numerous individual letters and communications sent by Plaintiffs and others
6 within a reasonable amount of time after the allegations of Class Vehicle defects became public.

7 1537. As a direct and proximate result of the VW Entity Defendants’ breach of the
8 implied warranty of merchantability, Plaintiffs and the other Iowa Class members have been
9 damaged in an amount to be proven at trial.

10 **KANSAS**

11 **KANSAS COUNT I:**
12 **VIOLATIONS OF THE KANSAS CONSUMER PROTECTION ACT**
13 **(Kan. Stat. Ann. § 50-623, *et seq.*)**

14 1538. Plaintiffs incorporate by reference each preceding paragraph as though fully set
15 forth herein.

16 1539. Plaintiffs Berg, Joy, and Rice (for the purpose of this section, “Plaintiffs”) bring
17 this action on behalf of themselves and the Kansas Class against all Defendants.

18 1540. Volkswagen is a “supplier” under the Kansas Consumer Protection Act (“Kansas
19 CPA”), Kan. Stat. Ann. § 50-624(l).

20 1541. Kansas Class members are “consumers,” within the meaning of Kan. Stat. Ann.
21 § 50-624(b), who purchased or leased one or more Class Vehicles.

22 1542. The sale of the Class Vehicles to the Kansas Class members was a “consumer
23 transaction” within the meaning of Kan. Stat. Ann. § 50-624(c).

24 1543. The Kansas CPA states “[n]o supplier shall engage in any deceptive act or practice
25 in connection with a consumer transaction,” Kan. Stat. Ann. § 50-626(a), and that deceptive acts
26 or practices include: (1) knowingly making representations or with reason to know that “(A)
27 Property or services have sponsorship, approval, accessories, characteristics, ingredients, uses,
28 benefits or quantities that they do not have;” and “(D) property or services are of particular
standard, quality, grade, style or model, if they are of another which differs materially from the

1 representation;” “(2) the willful use, in any oral or written representation, of exaggeration,
2 falsehood, innuendo or ambiguity as to a material fact;” and “(3) the willful failure to state a
3 material fact, or the willful concealment, suppression or omission of a material fact.” The Kansas
4 CPA also provides that “[n]o supplier shall engage in any unconscionable act or practice in
5 connection with a consumer transaction.” Kan. Stat. Ann. § 50-627(a).

6 1544. In the course of their business, Defendants concealed and suppressed material facts
7 concerning the Class Vehicles. Defendants accomplished this by installing illegal defeat device
8 software in the Class Vehicles that caused the vehicles to operate in a low emission test mode
9 only during emissions testing. During normal operations, the Class Vehicles would emit grossly
10 larger quantities of noxious contaminants, sometimes 40 times over applicable standards. The
11 result was what Volkswagen intended—the Class Vehicles passed emissions testing by way of
12 deliberately induced false readings. Plaintiffs and Kansas Class members had no way of
13 discerning that Volkswagen’s representations were false and misleading because Volkswagen’s
14 defeat device software was extremely sophisticated technology. Plaintiffs and Kansas Class
15 members did not and could not unravel Volkswagen’s deception on their own. In fact, it took
16 years before the academic engineering community—specifically a research team at WVU’s
17 Center for Alternative Fuels, Engines & Emissions—detected Volkswagen’s cheat using
18 sophisticated, expensive equipment and applying decades of combined experience.

19 1545. Defendants thus violated the Act by, at minimum: (1) representing that the Class
20 Vehicles have characteristics, uses, benefits, and qualities which they do not have; (2)
21 representing that the Class Vehicles are of a particular standard and quality when they are not; (3)
22 advertising the Class Vehicles with the intent not to sell them as advertised; (4) willfully using, in
23 any oral or written representation, of exaggeration, falsehood, innuendo or ambiguity as to a
24 material fact; (5) willfully failing to state a material fact, or the willfully concealing, suppressing
25 or omitting a material fact; and (6) otherwise engaging in an unconscionable act or practice in
26 connection with a consumer transaction.

27 1546. Volkswagen’s actions as set forth above occurred in the conduct of trade or
28 commerce.

1 1547. Bosch played a critical role in facilitating, and itself contributed to, Volkswagen's
2 unfair and deceptive conduct, as alleged herein. Bosch knew or should have known that
3 Volkswagen would use and had used the Bosch technology as an emission defeat device, and in
4 fact helped it do so. Without Bosch's complicity and silence, Volkswagen could not have
5 perpetrated the fraudulent, deceptive, and unfair practices alleged herein, and Bosch's actions
6 themselves constitute fraudulent, deceptive, and unfair practices.

7 1548. Defendants engaged in misleading, false, unfair or deceptive acts or practices that
8 violated the Kansas CPA by installing, failing to disclose and actively concealing the illegal
9 defeat device and the true cleanliness and performance of the "clean" diesel engine system, by
10 marketing its vehicles as legal, reliable, environmentally clean, efficient, and of high quality, and
11 by presenting itself as a reputable manufacturer that valued environmental cleanliness and
12 efficiency, and that stood behind its vehicles after they were sold.

13 1549. The Clean Air Act and EPA regulations require that automobiles limit their
14 emissions output to specified levels. These laws are intended for the protection of public health
15 and welfare. "Defeat devices" like those in the Class Vehicles are defined and prohibited by the
16 Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 CFR § 86.1809. By
17 installing illegal "defeat devices" in the Class Vehicles and by making those vehicles available
18 for purchase, Volkswagen violated federal law and therefore engaged in conduct that violates the
19 Kansas CPA.

20 1550. Defendants knew the true nature of its "clean" diesel engine system for at least six
21 years, but concealed all of that information until recently. Volkswagen also knew that it valued
22 profits over environmental cleanliness, efficiency, and compliance with the law, and that it was
23 manufacturing, selling, and distributing vehicles throughout the United States that did not comply
24 with EPA regulations. Volkswagen concealed this information as well.

25 1551. Volkswagen intentionally and knowingly misrepresented material facts regarding
26 the Class Vehicles with intent to mislead Plaintiffs and the Kansas Class.

27 1552. Volkswagen knew or should have known that its conduct violated the Kansas
28 CPA.

1 1553. Defendants owed Plaintiffs a duty to disclose the illegality and public health and
2 safety risks of the Class Vehicles because they:

- 3 a. possessed exclusive knowledge that they were
4 manufacturing, selling, and distributing vehicles throughout
5 the United States that did not comply with EPA regulations;
6 b. intentionally concealed the foregoing from regulators,
7 Plaintiffs, Class members; and/or
8 c. made incomplete representations about the environmental
9 cleanliness and efficiency of the Class Vehicles generally,
10 and the use of the defeat device in particular, while
11 purposefully withholding material facts from Plaintiffs that
12 contradicted these representations.

13 1554. Defendants concealed the illegal defeat device and the true emissions, efficiency,
14 and performance of the “clean” diesel system, resulting in a raft of negative publicity once the
15 defects finally began to be disclosed. The value of the Class Vehicles has greatly diminished. In
16 light of the stigma attached to those vehicles by Volkswagen’s conduct, they are now worth
17 significantly less than they otherwise would be worth.

18 1555. Volkswagen’s fraudulent use of the “defeat device” and its concealment of the true
19 characteristics of the “clean” diesel engine system were material to Plaintiffs and the Kansas
20 Class.

21 1556. Defendants’ unfair or deceptive acts or practices were likely to and did in fact
22 deceive regulators and reasonable consumers, including Plaintiffs, about the true environmental
23 cleanliness and efficiency of Volkswagen-branded vehicles, the quality of the Volkswagen brand,
24 the devaluing of environmental cleanliness and integrity at Volkswagen, and the true value of the
25 Class Vehicles.

26 1557. Plaintiffs and the Kansas Class suffered ascertainable loss and actual damages as a
27 direct and proximate result of Defendants’ misrepresentations and its concealment of and failure
28 to disclose material information. Plaintiffs and the Kansas Class members who purchased or
leased the Class Vehicles would not have purchased or leased them at all and/or—if the Vehicles’
true nature had been disclosed and mitigated, and the Vehicles rendered legal to sell—would have

1 paid significantly less for them. Plaintiffs also suffered diminished value of their vehicles, as well
2 as lost or diminished use.

3 1558. Defendants had an ongoing duty to all Volkswagen customers to refrain from
4 unfair and deceptive practices under the Kansas CPA. All owners of Class Vehicles suffered
5 ascertainable loss in the form of the diminished value of their vehicles as a result of
6 Volkswagen's deceptive and unfair acts and practices made in the course of Volkswagen's
7 business.

8 1559. Defendants' violations present a continuing risk to Plaintiffs as well as to the
9 general public. Defendants' unlawful acts and practices complained of herein affect the public
10 interest.

11 1560. As a direct and proximate result of Defendants' violations of the Kansas CPA,
12 Plaintiffs and the Kansas Class have suffered injury-in-fact and/or actual damage.

13 1561. Pursuant to Kan. Stat. Ann. § 50-634, Plaintiffs and the Kansas Class seek
14 monetary relief against Defendants measured as the greater of (a) actual damages in an amount to
15 be determined at trial and (b) statutory damages in the amount of \$10,000 for each Plaintiff and
16 each Kansas Class member

17 1562. Plaintiff also seeks an order enjoining Volkswagen's unfair, unlawful, and/or
18 deceptive practices, declaratory relief, attorneys' fees, and any other just and proper relief
19 available under Kan. Stat. Ann § 50-623, *et seq.*

20 **KANSAS COUNT II:**
21 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
22 **(Kan. Stat. §§ 84-2-314 and 84-2A-212)**

23 1563. Plaintiffs reallege and incorporate by reference all allegations of the preceding
24 paragraphs as though fully set forth herein.

25 1564. Plaintiffs bring this Count on behalf of the Kansas Class, against VW AG, VW
26 America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the "VW
27 Entity Defendants").
28

1 1565. The VW Entity Defendants are and were at all relevant times “merchants” with
2 respect to motor vehicles under Kan. Stat. §§ 84-2-104(1) and 84-2A-103(3), and “sellers” of
3 motor vehicles under § 84-2-103(1)(d).

4 1566. With respect to leases, the VW Entity Defendants are and were at all relevant
5 times “lessors” of motor vehicles under Kan. Stat. § 84-2A-103(1)(p).

6 1567. The Class Vehicles are and were at all relevant times “goods” within the meaning
7 of Kan. Stat. §§ 84-2-105(1) and 84-2A-103(1)(h).

8 1568. A warranty that the Class Vehicles were in merchantable condition and fit for the
9 ordinary purpose for which vehicles are used is implied by law pursuant to Kan. Stat. §§ 84-2-314
10 and 84-2A-212.

11 1569. These Class Vehicles, when sold or leased and at all times thereafter, were not in
12 merchantable condition and are not fit for the ordinary purpose for which vehicles are used.
13 Specifically, the Class Vehicles are inherently defective in that they do not comply with federal
14 and state emissions standards, rendering certain emissions functions inoperative; and the “clean”
15 diesel engine system was not adequately designed, manufactured, and tested.

16 1570. Volkswagen was provided notice of these issues by the investigations of the EPA
17 and individual state regulators, numerous complaints filed against it including the instant
18 Complaint, and by numerous individual letters and communications sent by Plaintiffs and others
19 within a reasonable amount of time after the allegations of Class Vehicle defects became public.

20 1571. As a direct and proximate result of the VW Entity Defendants’ breach of the
21 implied warranty of merchantability, Plaintiffs and the other Kansas Class members have been
22 damaged in an amount to be proven at trial.

23 **KANSAS COUNT III:**
24 **BREACH OF EXPRESS WARRANTY**
25 **(Kan. Stat. §§ 84-2-314 and 84-2A-210)**

26 1572. Plaintiffs reallege and incorporate by reference all preceding allegations as though
27 fully set forth herein.
28

1 1573. Plaintiffs bring this Count on behalf of the Kansas Class, against VW AG, VW
2 America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the “VW
3 Entity Defendants”).

4 1574. The VW Entity Defendants are and were at all relevant times “merchants” with
5 respect to motor vehicles under Kan. Stat. §§ 84-2-104(1) and 84-2A-103(3), and “sellers” of
6 motor vehicles under § 84-2-103(1)(d).

7 1575. With respect to leases, the VW Entity Defendants are and were at all relevant
8 times “lessors” of motor vehicles under Kan. Stat. § 84-2A-103(1)(p).

9 1576. The Class Vehicles are and were at all relevant times “goods” within the meaning
10 of Kan. Stat. §§ 84-2-105(1) and 84-2A-103(1)(h).

11 1577. In connection with the purchase or lease of each one of its new vehicles, the VW
12 Entity Defendants provide an express New Vehicle Limited Warranty (“NVLW”) for a period of
13 three years or 36,000 miles, whichever occurs first. This NVLW exists to cover “any repair to
14 correct a manufacturers defect in materials or workmanship.”

15 1578. The Clean Air Act requires manufacturers of light-duty vehicles to provide two
16 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
17 Warranty.”

18 1579. The EPA requires vehicle manufacturers to provide a Performance Warranty with
19 respect to the vehicles’ emission systems. Thus, Volkswagen also provides an express warranty
20 for its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
21 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
22 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
23 emission control components are covered for the first eight years or 80,000 miles, whichever
24 comes first. These major emission control components subject to the longer warranty include the
25 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
26 device or computer.

27 1580. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
28 with respect to their vehicles’ emission systems. Thus, the VW Entity Defendants also provide an

1 express warranty for their vehicles through a Federal Emission Control System Defect Warranty.
2 The Design and Defect Warranty required by the EPA covers repair of emission control or
3 emission related parts which fail to function or function improperly because of a defect in
4 materials or workmanship. This warranty provides protection for two years or 24,000 miles,
5 whichever comes first, or, for the major emission control components, for eight years or 80,000
6 miles, whichever comes first.

7 1581. As manufacturers of light-duty vehicles, the VW Entity Defendants were required
8 to provide these warranties to purchasers or lessees of their “clean” diesel vehicles.

9 1582. The VW Entity Defendants’ warranties formed a basis of the bargain that was
10 reached when Plaintiffs and other Kansas Class members purchased or leased their Class Vehicles
11 equipped with the non-compliant “clean” diesel engine and emission systems.

12 1583. Plaintiffs and the Kansas Class members experienced defects within the warranty
13 period. Despite the existence of warranties, the VW Entity Defendants failed to inform Plaintiffs
14 and Kansas Class members that the Class Vehicles were intentionally designed and manufactured
15 to be out of compliance with applicable state and federal emissions laws, and failed to fix the
16 defective emission components free of charge.

17 1584. The VW Entity Defendants breached the express warranty promising to repair and
18 correct a manufacturing defect or materials or workmanship of any parts they supplied. The VW
19 Entity Defendants have not repaired or adjusted, and have been unable to repair or adjust, the
20 Class Vehicles’ materials and workmanship defects.

21 1585. Affording the VW Entity Defendants a reasonable opportunity to cure their breach
22 of written warranties would be unnecessary and futile here. For example, the Frequently Asked
23 Questions (“FAQ”) section of VW’s informational website states:

24 **How soon will the remedy be available, and how am I going to**
25 **be compensated for this?**

26 We cannot offer a firm date now because we need to work on a
27 remedy and review it with the government. We are proceeding as
28 quickly as possible.

1 1586. In his Congressional testimony on October 8, 2015, Michael Horn stated that
2 Volkswagen intends to make Class Vehicles compliant with emission standards through software
3 fixes and the installation of auxiliary hardware, but that fix will take “1 to 2 years, minimum.”
4 When questioned on remedies for consumers, he stated that Volkswagen may pay customers for a
5 loss in resale values because of the scandal. He said that Volkswagen is not considering
6 providing loaner vehicles because the U.S. government says the vehicles are safe to drive.

7 1587. Michael Horn’s testimony serves as an admission that the limited warranty
8 promising to repair and/or correct a manufacturing defect fails in its essential purpose because the
9 VW Entity Defendants cannot meet that promise within a reasonable time.

10 1588. Furthermore, the limited warranty promising to repair and/or correct a
11 manufacturing defect fails in its essential purpose because the contractual remedy is insufficient
12 to make Plaintiffs and the other Kansas Class members whole and because the VW Entity
13 Defendants have failed and/or have refused to adequately provide the promised remedies within a
14 reasonable time.

15 1589. Accordingly, recovery by Plaintiffs and the other Kansas Class members is not
16 restricted to the limited warranty promising to repair and/or correct a manufacturing defect, and
17 Plaintiffs, individually and on behalf of the other Kansas Class members, seek all remedies as
18 allowed by law.

19 1590. Also, as alleged in more detail herein, at the time the VW Entity Defendants
20 warranted and sold or leased the Class Vehicles, they knew that the Class Vehicles were
21 inherently defective and did not conform to their warranties; further, the VW Entity Defendants
22 had wrongfully and fraudulently concealed material facts regarding the Class Vehicles. Plaintiffs
23 and the other Kansas Class members were therefore induced to purchase or lease the Class
24 Vehicles under false and/or fraudulent pretenses.

25 1591. Moreover, many of the injuries flowing from the Class Vehicles cannot be
26 resolved through the limited remedy of “replacements or adjustments,” as many incidental and
27 consequential damages have already been suffered because of Volkswagen’s fraudulent conduct
28 as alleged herein, and because of its failure and/or continued failure to provide such limited

1 remedy within a reasonable time, and any limitation on Plaintiffs’ and the other Kansas Class
2 members’ remedies would be insufficient to make Plaintiffs and the other Kansas Class members
3 whole.

4 1592. Finally, because of the VW Entity Defendants’ breach of warranty as set forth
5 herein, Plaintiffs and the other Kansas Class members assert, as additional and/or alternative
6 remedies, the revocation of acceptance of the goods and the return to Plaintiffs and the other
7 Kansas Class members of the purchase or lease price of all Class Vehicles currently owned or
8 leased, and for such other incidental and consequential damages as allowed.

9 1593. The VW Entity Defendants were provided notice of these issues by numerous
10 complaints filed against them, including the instant Complaint, within a reasonable amount of
11 time after Volkswagen publicly admitted to using a defeat device in the Class Vehicles to evade
12 clean air standards.

13 1594. As a direct and proximate result of the VW Entity Defendants’ breach of express
14 warranties, Plaintiff and the other Kansas Class members have been damaged in an amount to be
15 determined at trial.

16 **KENTUCKY**

17 **KENTUCKY COUNT I:**
18 **VIOLATIONS OF THE KENTUCKY CONSUMER PROTECTION ACT**
19 **(Ky. Rev. Stat. § 367.110, *et seq.*)**

20 1595. Plaintiffs incorporate by reference each preceding paragraph as though fully set
21 forth herein.

22 1596. Plaintiffs Kannapel and Wagner (for the purpose of this section, “Plaintiffs”) bring
23 this action on behalf of themselves and the Kentucky Class against all Defendants.

24 1597. Defendants, Plaintiffs, and the Kentucky Class are “persons” within the meaning
25 of the Ky. Rev. Stat. § 367.110(1).

26 1598. Volkswagen engaged in “trade” or “commerce” within the meaning of Ky. Rev.
27 Stat. § 367.110(2).

28 1599. The Kentucky Consumer Protection Act (“Kentucky CPA”) makes unlawful
“[u]nfair, false, misleading, or deceptive acts or practices in the conduct of any trade or

1 commerce” Ky. Rev. Stat. § 367.170(1). Volkswagen participated in misleading, false, or
2 deceptive acts that violated the Kentucky CPA. By failing to disclose and by actively concealing
3 the “defeat device” and the true cleanliness and performance of the “clean” diesel engine system,
4 by marketing its vehicles as safe, reliable, environmentally clean, efficient, and of high quality,
5 and by presenting itself as a reputable manufacturer that valued safety, environmental cleanliness,
6 and efficiency, and stood behind its vehicles after they were sold, Volkswagen engaged in
7 deceptive business practices prohibited by the Kentucky CPA.

8 1600. In the course of their business, Defendants concealed and suppressed material facts
9 concerning the Class Vehicles. Defendants accomplished this by installing illegal defeat device
10 software in the Class Vehicles that caused the vehicles to operate in a low emission test mode
11 only during emissions testing. During normal operations, the Class Vehicles would emit grossly
12 larger quantities of noxious contaminants, sometimes 40 times over applicable standards. The
13 result was what Volkswagen intended—the Class Vehicles passed emissions testing by way of
14 deliberately induced false readings. Plaintiffs and Kentucky Class members had no way of
15 discerning that Volkswagen’s representations were false and misleading because Volkswagen’s
16 defeat device software was extremely sophisticated technology. Plaintiffs and Kentucky Class
17 members did not and could not unravel Volkswagen’s deception on their own. In fact, it took
18 years before the academic engineering community—specifically a research team at WVU’s
19 Center for Alternative Fuels, Engines & Emissions—detected Volkswagen’s cheat using
20 sophisticated, expensive equipment and applying decades of combined experience.

21 1601. Defendants thus violated the Act by, at minimum employing deception, deceptive
22 acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any
23 material fact with intent that others rely upon such concealment, suppression or omission, in
24 connection with the sale of Class Vehicles.

25 1602. Bosch played a critical role in facilitating, and itself contributed to, Volkswagen’s
26 unfair and deceptive conduct, as alleged herein. Bosch knew or should have known that
27 Volkswagen would use and had used the Bosch technology as an emission defeat device, and in
28 fact helped it do so. Without Bosch’s complicity and silence, Volkswagen could not have

1 perpetrated the fraudulent, deceptive, and unfair practices alleged herein, and Bosch's actions
2 themselves constitute fraudulent, deceptive, and unfair practices.

3 1603. Defendants engaged in misleading, false, unfair or deceptive acts or practices that
4 violated the Kentucky CPA by installing, failing to disclose and actively concealing the illegal
5 defeat device and the true cleanliness and performance of the "clean" diesel engine system, by
6 marketing its vehicles as legal, reliable, environmentally clean, efficient, and of high quality, and
7 by presenting itself as a reputable manufacturer that valued environmental cleanliness and
8 efficiency, and that stood behind its vehicles after they were sold.

9 1604. The Clean Air Act and EPA regulations require that automobiles limit their
10 emissions output to specified levels. These laws are intended for the protection of public health
11 and welfare. "Defeat devices" like those in the Class Vehicles are defined and prohibited by the
12 Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 CFR § 86.1809. By
13 installing illegal "defeat devices" in the Class Vehicles and by making those vehicles available
14 for purchase, Volkswagen violated federal law and therefore engaged in conduct that violates the
15 Kentucky CPA.

16 1605. Defendants knew the true nature of its "clean" diesel engine system for at least six
17 years, but concealed all of that information until recently. Volkswagen was also aware that it
18 valued profits over environmental cleanliness, efficiency, and compliance with the law, and that it
19 was manufacturing, selling, and distributing vehicles throughout the United States that did not
20 comply with EPA regulations. Volkswagen concealed this information as well.

21 1606. Volkswagen intentionally and knowingly misrepresented material facts regarding
22 the Class Vehicles with intent to mislead Plaintiffs and the Kentucky Class.

23 1607. Volkswagen knew or should have known that its conduct violated the Kentucky
24 CPA.

25 1608. Defendants owed Plaintiffs a duty to disclose the illegality and public health and
26 safety risks of the Class Vehicles because they:

- 27 a. possessed exclusive knowledge that they were
28 manufacturing, selling, and distributing vehicles throughout
the United States that did not comply with EPA regulations;

- 1 b. intentionally concealed the foregoing from regulators,
2 Plaintiffs, Class members; and/or
- 3 c. made incomplete representations about the environmental
4 cleanliness and efficiency of the Class Vehicles generally,
5 and the use of the defeat device in particular, while
6 purposefully withholding material facts from Plaintiffs that
7 contradicted these representations.

8 1609. Defendants concealed the illegal defeat device and the true emissions, efficiency,
9 and performance of the “clean” diesel system, resulting in a raft of negative publicity once the
10 defects finally began to be disclosed. The value of the Class Vehicles has therefore greatly
11 diminished. In light of the stigma attached to those vehicles by Volkswagen’s conduct, they are
12 now worth significantly less than they otherwise would be worth.

13 1610. Volkswagen’s fraudulent use of the “defeat device” and its concealment of the true
14 characteristics of the “clean” diesel engine system were material to Plaintiffs and the Kentucky
15 Class.

16 1611. Defendants’ unfair or deceptive acts or practices were likely to and did in fact
17 deceive regulators and reasonable consumers, including Plaintiffs, about the true environmental
18 cleanliness and efficiency of Volkswagen-branded vehicles, the quality of the Volkswagen brand,
19 the devaluing of environmental cleanliness and integrity at Volkswagen, and the true value of the
20 Class Vehicles.

21 1612. Plaintiffs and the Kentucky Class suffered ascertainable loss and actual damages
22 as a direct and proximate result of Defendants’ misrepresentations and its concealment of and
23 failure to disclose material information. Plaintiffs and the Kentucky Class members who
24 purchased or leased the Class Vehicles would not have purchased or leased them at all and/or—if
25 the Vehicles’ true nature had been disclosed and mitigated, and the Vehicles rendered legal to
26 sell—would have paid significantly less for them. Plaintiffs also suffered diminished value of
27 their vehicles, as well as lost or diminished use.

28 1613. Defendants had an ongoing duty to all Volkswagen customers to refrain from
unfair and deceptive practices under the Kentucky CPA. All owners of Class Vehicles suffered
ascertainable loss in the form of the diminished value of their vehicles as a result of

1 Volkswagen’s deceptive and unfair acts and practices made in the course of Volkswagen’s
2 business.

3 1614. Defendants’ violations present a continuing risk to Plaintiffs as well as to the
4 general public. Defendants’ unlawful acts and practices complained of herein affect the public
5 interest.

6 1615. As a direct and proximate result of Defendants’ violations of the Kentucky CPA,
7 Plaintiffs and the Kentucky Class have suffered injury-in-fact and/or actual damage.

8 1616. Pursuant to Ky. Rev. Stat. Ann. § 367.220, Plaintiffs and the Kentucky Class seek
9 to recover actual damages in an amount to be determined at trial; an order enjoining
10 Volkswagen’s unfair, unlawful, and/or deceptive practices; declaratory relief; attorneys’ fees; and
11 any other just and proper relief available under Ky. Rev. Stat. Ann. § 367.220.

12 **KENTUCKY COUNT II:**
13 **BREACH OF EXPRESS WARRANTY**
14 **(Ky. Rev. Stat. §§ 335.2-313 and 355.2A-210)**

15 1617. Plaintiffs reallege and incorporate by reference all preceding allegations as though
16 fully set forth herein.

17 1618. Plaintiffs bring this Count on behalf of the Kentucky Class, against VW AG, VW
18 America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the “VW
19 Entity Defendants”).

20 1619. The VW Entity Defendants are and were at all relevant times “merchants” with
21 respect to motor vehicles under Ky. Rev. Stat. §§ 355.2-104(1) and 355.2A-103(3), and “sellers”
22 of motor vehicles under § 355.2-103(1)(d).

23 1620. With respect to leases, the VW Entity Defendants are and were at all relevant
24 times “lessors” of motor vehicles under Ky. Rev. Stat. § 355.2A-103(1)(p).

25 1621. The Class Vehicles are and were at all relevant times “goods” within the meaning
26 of Ky. Rev. Stat. §§ 355.2-105(1) and 355.2A-103(1)(h).

27 1622. In connection with the purchase or lease of each one of its new vehicles, the VW
28 Entity Defendants provide an express New Vehicle Limited Warranty (“NVLW”) for a period of

1 three years or 36,000 miles, whichever occurs first. This NVLW exists to cover “any repair to
2 correct a manufacturers defect in materials or workmanship.”

3 1623. The Clean Air Act requires manufacturers of light-duty vehicles to provide two
4 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
5 Warranty.”

6 1624. The EPA requires vehicle manufacturers to provide a Performance Warranty with
7 respect to the vehicles’ emission systems. Thus, Volkswagen also provides an express warranty
8 for its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
9 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
10 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
11 emission control components are covered for the first eight years or 80,000 miles, whichever
12 comes first. These major emission control components subject to the longer warranty include the
13 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
14 device or computer.

15 1625. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
16 with respect to their vehicles’ emission systems. Thus, the VW Entity Defendants also provide an
17 express warranty for their vehicles through a Federal Emission Control System Defect Warranty.
18 The Design and Defect Warranty required by the EPA covers repair of emission control or
19 emission related parts which fail to function or function improperly because of a defect in
20 materials or workmanship. This warranty provides protection for two years or 24,000 miles,
21 whichever comes first, or, for the major emission control components, for eight years or 80,000
22 miles, whichever comes first.

23 1626. As manufacturers of light-duty vehicles, the VW Entity Defendants were required
24 to provide these warranties to purchasers or lessees of their “clean” diesel vehicles.

25 1627. The VW Entity Defendants’ warranties formed a basis of the bargain that was
26 reached when Plaintiffs and other Kentucky Class members purchased or leased their Class
27 Vehicles equipped with the non-compliant “clean” diesel engine and emission systems.
28

1 1628. Plaintiffs and the Kentucky Class members experienced defects within the
2 warranty period. Despite the existence of warranties, the VW Entity Defendants failed to inform
3 Plaintiffs and Kentucky Class members that the Class Vehicles were intentionally designed and
4 manufactured to be out of compliance with applicable state and federal emissions laws, and failed
5 to fix the defective emission components free of charge.

6 1629. The VW Entity Defendants breached the express warranty promising to repair and
7 correct a manufacturing defect or materials or workmanship of any parts they supplied. The VW
8 Entity Defendants have not repaired or adjusted, and have been unable to repair or adjust, the
9 Class Vehicles' materials and workmanship defects.

10 1630. Affording the VW Entity Defendants a reasonable opportunity to cure their breach
11 of written warranties would be unnecessary and futile here. For example, the Frequently Asked
12 Questions ("FAQ") section of VW's informational website states:

13 **How soon will the remedy be available, and how am I going to**
14 **be compensated for this?**

15 We cannot offer a firm date now because we need to work on a
16 remedy and review it with the government. We are proceeding as
quickly as possible.

17 1631. In his Congressional testimony on October 8, 2015, Michael Horn stated that
18 Volkswagen intends to make Class Vehicles compliant with emission standards through software
19 fixes and the installation of auxiliary hardware, but that fix will take "1 to 2 years, minimum."
20 When questioned on remedies for consumers, he stated that Volkswagen may pay customers for a
21 loss in resale values because of the scandal. He said that Volkswagen is not considering
22 providing loaner vehicles because the U.S. government says the vehicles are safe to drive.

23 1632. Michael Horn's testimony serves as an admission that the limited warranty
24 promising to repair and/or correct a manufacturing defect fails in its essential purpose because the
25 VW Entity Defendants cannot meet that promise within a reasonable time.

26 1633. Furthermore, the limited warranty promising to repair and/or correct a
27 manufacturing defect fails in its essential purpose because the contractual remedy is insufficient
28 to make Plaintiffs and the other Kentucky Class members whole and because the VW Entity

1 Defendants have failed and/or have refused to adequately provide the promised remedies within a
2 reasonable time.

3 1634. Accordingly, recovery by Plaintiffs and the other Kentucky Class members is not
4 restricted to the limited warranty promising to repair and/or correct a manufacturing defect, and
5 Plaintiffs, individually and on behalf of the other Kentucky Class members, seek all remedies as
6 allowed by law.

7 1635. Also, as alleged in more detail herein, at the time the VW Entity Defendants
8 warranted and sold or leased the Class Vehicles, they knew that the Class Vehicles were
9 inherently defective and did not conform to their warranties; further, the VW Entity Defendants
10 had wrongfully and fraudulently concealed material facts regarding the Class Vehicles. Plaintiffs
11 and the other Kentucky Class members were therefore induced to purchase or lease the Class
12 Vehicles under false and/or fraudulent pretenses.

13 1636. Moreover, many of the injuries flowing from the Class Vehicles cannot be
14 resolved through the limited remedy of “replacements or adjustments,” as many incidental and
15 consequential damages have already been suffered because of Volkswagen’s fraudulent conduct
16 as alleged herein, and because of its failure and/or continued failure to provide such limited
17 remedy within a reasonable time, and any limitation on Plaintiffs’ and the other Kentucky Class
18 members’ remedies would be insufficient to make Plaintiffs and the other Kentucky Class
19 members whole.

20 1637. Finally, because of the VW Entity Defendants’ breach of warranty as set forth
21 herein, Plaintiffs and the other Kentucky Class members assert, as additional and/or alternative
22 remedies, the revocation of acceptance of the goods and the return to Plaintiffs and the other
23 Kentucky Class members of the purchase or lease price of all Class Vehicles currently owned or
24 leased, and for such other incidental and consequential damages as allowed.

25 1638. The VW Entity Defendants were provided notice of these issues by numerous
26 complaints filed against them, including the instant Complaint, within a reasonable amount of
27 time after Volkswagen publicly admitted to using a defeat device in the Class Vehicles to evade
28 clean air standards.

1 1639. As a direct and proximate result of the VW Entity Defendants’ breach of express
2 warranties, Plaintiff and the other Kentucky Class members have been damaged in an amount to
3 be determined at trial.

4 **KENTUCKY COUNT III:**
5 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
6 **(Ky. Rev. Stat. §§ 335.2-314 and 355.2A-212)**

7 1640. Plaintiffs reallege and incorporate by reference all allegations of the preceding
8 paragraphs as though fully set forth herein.

9 1641. Plaintiffs bring this Count on behalf of the Kentucky Class, against VW AG, VW
10 America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the “VW
11 Entity Defendants”).

12 1642. The VW Entity Defendants are and were at all relevant times “merchants” with
13 respect to motor vehicles under Ky. Rev. Stat. §§ 355.2-104(1) and 355.2A-103(3), and “sellers”
14 of motor vehicles under § 355.2-103(1)(d).

15 1643. With respect to leases, the VW Entity Defendants are and were at all relevant
16 times “lessors” of motor vehicles under Ky. Rev. Stat. § 355.2A-103(1)(p).

17 1644. The Class Vehicles are and were at all relevant times “goods” within the meaning
18 of Ky. Rev. Stat. §§ 355.2-105(1) and 355.2A-103(1)(h).

19 1645. A warranty that the Class Vehicles were in merchantable condition and fit for the
20 ordinary purpose for which vehicles are used is implied by law pursuant to Ky. Rev. Stat.
21 §§ 335.2-314 and 355.2A-212.

22 1646. These Class Vehicles, when sold or leased and at all times thereafter, were not in
23 merchantable condition and are not fit for the ordinary purpose for which vehicles are used.
24 Specifically, the Class Vehicles are inherently defective in that they do not comply with federal
25 and state emissions standards, rendering certain emissions functions inoperative; and the “clean”
26 diesel engine system was not adequately designed, manufactured, and tested.

27 1647. Volkswagen was provided notice of these issues by the investigations of the EPA
28 and individual state regulators, numerous complaints filed against it including the instant

1 Complaint, and by numerous individual letters and communications sent by Plaintiffs and others
2 within a reasonable amount of time after the allegations of Class Vehicle defects became public.

3 1648. As a direct and proximate result of the VW Entity Defendants' breach of the
4 implied warranty of merchantability, Plaintiffs and the other Kentucky Class members have been
5 damaged in an amount to be proven at trial.

6 **LOUISIANA**

7 **LOUISIANA COUNT I:**
8 **VIOLATIONS OF THE LOUISIANA UNFAIR TRADE PRACTICES**
9 **AND CONSUMER PROTECTION LAW**
10 **(La. Rev. Stat. § 51:1401, *et seq.*)**

11 1649. Plaintiffs incorporate by reference each preceding paragraph as though fully set
12 forth herein.

13 1650. Plaintiffs White, Malone, and Warren (for the purpose of this section, "Plaintiffs")
14 bring this action on behalf of themselves and the Louisiana Class against all Defendants.

15 1651. Defendants, Plaintiffs, and the Louisiana Class are "persons" within the meaning
16 of the La. Rev. Stat. § 51:1402(8).

17 1652. Plaintiffs and the Louisiana Class are "consumers" within the meaning of La. Rev.
18 Stat. § 51:1402(1).

19 1653. Volkswagen engaged in "trade" or "commerce" within the meaning of La. Rev.
20 Stat. § 51:1402(10).

21 1654. The Louisiana Unfair Trade Practices and Consumer Protection Law ("Louisiana
22 CPL") makes unlawful "deceptive acts or practices in the conduct of any trade or commerce."
23 La. Rev. Stat. § 51:1405(A). Volkswagen participated in misleading, false, or deceptive acts that
24 violated the Louisiana CPL.

25 1655. In the course of their business, Defendants concealed and suppressed material facts
26 concerning the Class Vehicles. Defendants accomplished this by installing illegal defeat device
27 software in the Class Vehicles that caused the vehicles to operate in a low emission test mode
28 only during emissions testing. During normal operations, the Class Vehicles would emit grossly
larger quantities of noxious contaminants, sometimes 40 times over applicable standards. The

1 result was what Volkswagen intended—the Class Vehicles passed emissions testing by way of
2 deliberately induced false readings. Plaintiffs and Louisiana Class members had no way of
3 discerning that Volkswagen’s representations were false and misleading because Volkswagen’s
4 defeat device software was extremely sophisticated technology. Plaintiffs and Louisiana Class
5 members did not and could not unravel Volkswagen’s deception on their own. In fact, it took
6 years before the academic engineering community—specifically a research team at WVU’s
7 Center for Alternative Fuels, Engines & Emissions—detected Volkswagen’s cheat using
8 sophisticated, expensive equipment and applying decades of combined experience.

9 1656. Defendants thus violated the Act by, at minimum marketing its vehicles as safe,
10 reliable, environmentally clean, efficient, and of high quality, and by presenting itself as a
11 reputable manufacturer that valued safety, environmental cleanliness, and efficiency, and stood
12 behind its vehicles after they were sold, Volkswagen engaged in deceptive business practices
13 prohibited by the Louisiana CPL.

14 1657. Bosch played a critical role in facilitating, and itself contributed to, Volkswagen’s
15 unfair and deceptive conduct, as alleged herein. Bosch knew or should have known that
16 Volkswagen would use and had used the Bosch technology as an emission defeat device, and in
17 fact helped it do so. Without Bosch’s complicity and silence, Volkswagen could not have
18 perpetrated the fraudulent, deceptive, and unfair practices alleged herein, and Bosch’s actions
19 themselves constitute fraudulent, deceptive, and unfair practices.

20 1658. Defendants engaged in misleading, false, unfair or deceptive acts or practices that
21 violated the Louisiana CPL by installing, failing to disclose and actively concealing the illegal
22 defeat device and the true cleanliness and performance of the “clean” diesel engine system, by
23 marketing its vehicles as legal, reliable, environmentally clean, efficient, and of high quality, and
24 by presenting itself as a reputable manufacturer that valued environmental cleanliness and
25 efficiency, and that stood behind its vehicles after they were sold.

26 1659. The Clean Air Act and EPA regulations require that automobiles limit their
27 emissions output to specified levels. These laws are intended for the protection of public health
28 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the

1 Clean Air Act and its regulations. See 42 U.S.C. § 7522(a)(3)(B); 40 CFR § 86.1809. By
2 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available
3 for purchase, Volkswagen violated federal law and therefore engaged in conduct that violates the
4 Louisiana CPL.

5 1660. Defendants knew the true nature of its “clean” diesel engine system for at least six
6 years, but concealed all of that information until recently. Volkswagen was also aware that it
7 valued profits over environmental cleanliness, efficiency, and compliance with the law, and that it
8 was manufacturing, selling, and distributing vehicles throughout the United States that did not
9 comply with EPA regulations. Volkswagen concealed this information as well.

10 1661. Volkswagen intentionally and knowingly misrepresented material facts regarding
11 the Class Vehicles with intent to mislead Plaintiffs and the Louisiana Class.

12 1662. Volkswagen knew or should have known that its conduct violated the Louisiana
13 CPL.

14 1663. Defendants owed Plaintiffs a duty to disclose the illegality and public health and
15 safety risks of the Class Vehicles because they:

- 16 a. possessed exclusive knowledge that they were
17 manufacturing, selling, and distributing vehicles throughout
18 the United States that did not comply with EPA regulations;
- 19 b. intentionally concealed the foregoing from regulators,
20 Plaintiffs, Class members; and/or
- 21 c. made incomplete representations about the environmental
22 cleanliness and efficiency of the Class Vehicles generally,
23 and the use of the defeat device in particular, while
24 purposefully withholding material facts from Plaintiffs that
25 contradicted these representations.

26 1664. Defendants concealed the illegal defeat device and the true emissions, efficiency,
27 and performance of the “clean” diesel system, resulting in a raft of negative publicity once the
28 defects finally began to be disclosed. The value of the Class Vehicles has therefore greatly
diminished. In light of the stigma attached to those vehicles by Volkswagen’s conduct, they are
now worth significantly less than they otherwise would be worth.

1 1665. Defendants’ supply and use of the illegal defeat device and concealment of the true
2 characteristics of the “clean” diesel engine system were material to Plaintiffs and the Louisiana
3 Class.

4 1666. Defendants’ unfair or deceptive acts or practices were likely to and did in fact
5 deceive regulators and reasonable consumers, including Plaintiffs, about the true environmental
6 cleanliness and efficiency of Volkswagen-branded vehicles, the quality of the Volkswagen brand,
7 the devaluing of environmental cleanliness and integrity at Volkswagen, and the true value of the
8 Class Vehicles.

9 1667. Plaintiffs and the Louisiana Class suffered ascertainable loss and actual damages
10 as a direct and proximate result of Defendants’ misrepresentations and its concealment of and
11 failure to disclose material information. Plaintiffs and the Louisiana Class members who
12 purchased or leased the Class Vehicles would not have purchased or leased them at all and/or—if
13 the Vehicles’ true nature had been disclosed and mitigated, and the Vehicles rendered legal to
14 sell—would have paid significantly less for them. Plaintiffs also suffered diminished value of
15 their vehicles, as well as lost or diminished use.

16 1668. Defendants had an ongoing duty to all Volkswagen customers to refrain from
17 unfair and deceptive practices under the Louisiana CPL. All owners of Class Vehicles suffered
18 ascertainable loss in the form of the diminished value of their vehicles as a result of
19 Volkswagen’s deceptive and unfair acts and practices made in the course of Volkswagen’s
20 business.

21 1669. Defendants’ violations present a continuing risk to Plaintiffs as well as to the
22 general public. Defendants’ unlawful acts and practices complained of herein affect the public
23 interest.

24 1670. As a direct and proximate result of Defendants’ violations of the Louisiana CPL,
25 Plaintiffs and the Louisiana Class have suffered injury-in-fact and/or actual damage.

26 1671. Pursuant to La. Rev. Stat. § 51:1409, Plaintiffs and the Louisiana Class seek to
27 recover actual damages in an amount to be determined at trial; treble damages for Volkswagen’s
28 knowing violations of the Louisiana CPL; an order enjoining Volkswagen’s unfair, unlawful,

1 and/or deceptive practices; declaratory relief; attorneys' fees; and any other just and proper relief
2 available under La. Rev. Stat. § 51:1409.

3 **LOUISIANA COUNT II:**
4 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY/**
5 **WARRANTY AGAINST REDHIBITORY DEFECTS**
6 **(La. Civ. Code Art. 2520, 2524)**

7 1672. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as
8 though fully set forth herein.

9 1673. Plaintiffs bring this Count on behalf of the Louisiana Class, against VW AG, VW
10 America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the "VW
11 Entity Defendants").

12 1674. Volkswagen is and was at all relevant times a merchant with respect to motor
13 vehicles.

14 1675. A warranty that the Class Vehicles were in merchantable condition is implied by
15 law in the instant transactions. These Class Vehicles, when sold and at all times thereafter, were
16 not in merchantable condition and are not fit for the ordinary purpose for which cars are used.
17 Specifically, the Class Vehicles are inherently defective in that they do not comply with federal
18 and state emissions standards, rendering certain safety and emissions functions inoperative; and
19 the "clean" diesel engine system was not adequately designed, manufactured, and tested.

20 1676. Volkswagen was provided notice of these issues by the investigations of the EPA
21 and individual state regulators, numerous complaints filed against it including the instant
22 complaint, and by numerous individual letters and communications sent by Plaintiffs and other
23 Class members before or within a reasonable amount of time after the allegations of Class
24 Vehicle defects became public.

25 1677. As a direct and proximate result of Volkswagen's breach of the warranties of
26 merchantability, Plaintiffs and the other Class members have been damaged in an amount to be
27 proven at trial.
28

MAINE

**MAINE COUNT I:
VIOLATIONS OF MAINE UNFAIR TRADE PRACTICES ACT
(Me. Rev. Stat. Ann. Tit. 5 § 205-a, *et seq.*)**

1678. Plaintiffs incorporate by reference each preceding paragraph as though fully set forth herein.

1679. Plaintiffs Buchberger, Evans and Evans, Rubin, and Sullivan (for the purpose of this section, “Plaintiffs”) bring this action on behalf of themselves and the Maine Class against all Defendants.

1680. Defendants, Plaintiffs, and the Maine Class are “persons” within the meaning of Me. Rev. Stat. Ann. Tit. 5, § 206(2).

1681. Volkswagen is engaged in “trade” or “commerce” within the meaning of Me. Rev. Stat. Ann. Tit. 5, § 206(3).

1682. The Maine Unfair Trade Practices Act (“Maine UTPA”) makes unlawful “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce....” Me. Rev. Stat. Ann. Tit. 5 § 207.

1683. In the course of their business, Defendants concealed and suppressed material facts concerning the Class Vehicles. Defendants accomplished this by installing illegal defeat device software in the Class Vehicles that caused the vehicles to operate in a low emission test mode only during emissions testing. During normal operations, the Class Vehicles would emit grossly larger quantities of noxious contaminants, sometimes 40 times over applicable standards. The result was what Volkswagen intended—the Class Vehicles passed emissions testing by way of deliberately induced false readings. Plaintiffs and Maine Class members had no way of discerning that Volkswagen’s representations were false and misleading because Volkswagen’s defeat device software was extremely sophisticated technology. Plaintiffs and Maine Class members did not and could not unravel Volkswagen’s deception on their own. In fact, it took years before the academic engineering community—specifically a research team at WVU’s Center for Alternative Fuels, Engines & Emissions—detected Volkswagen’s cheat using sophisticated, expensive equipment and applying decades of combined experience.

1 1684. Defendants thus violated the Act by, at minimum by employing deception,
2 deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of
3 any material fact with intent that others rely upon such concealment, suppression or omission, in
4 connection with the sale of Class Vehicles.

5 1685. Defendants knew the true nature of its “clean” diesel engine system for at least six
6 years, but concealed all of that information until recently.

7 1686. Bosch played a critical role in facilitating, and itself contributed to, Volkswagen’s
8 unfair and deceptive conduct, as alleged herein. Bosch knew or should have known that
9 Volkswagen would use and had used the Bosch technology as an emission defeat device, and in
10 fact helped it do so. Without Bosch’s complicity and silence, Volkswagen could not have
11 perpetrated the fraudulent, deceptive, and unfair practices alleged herein, and Bosch’s actions
12 themselves constitute fraudulent, deceptive, and unfair practices.

13 1687. Defendants engaged in misleading, false, unfair or deceptive acts or practices that
14 violated the Maine UTPA by installing, failing to disclose and actively concealing the illegal
15 defeat device and the true cleanliness and performance of the “clean” diesel engine system, by
16 marketing its vehicles as legal, reliable, environmentally clean, efficient, and of high quality, and
17 by presenting itself as a reputable manufacturer that valued environmental cleanliness and
18 efficiency, and that stood behind its vehicles after they were sold.

19 1688. The Clean Air Act and EPA regulations require that automobiles limit their
20 emissions output to specified levels. These laws are intended for the protection of public health
21 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the
22 Clean Air Act and its regulations. See 42 U.S.C. § 7522(a)(3)(B); 40 CFR § 86.1809. By
23 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available
24 for purchase, Volkswagen violated federal law and therefore engaged in conduct that violates the
25 Maine UTPA.

26 1689. Volkswagen was also aware that it valued profits over environmental cleanliness,
27 efficiency, and compliance with the law, and that it was manufacturing, selling, and distributing
28

1 vehicles throughout the United States that did not comply with EPA regulations. Volkswagen
2 concealed this information as well.

3 1690. Volkswagen intentionally and knowingly misrepresented material facts regarding
4 the Class Vehicles with intent to mislead Plaintiffs and the Maine Class.

5 1691. Volkswagen knew or should have known that its conduct violated the Maine
6 UTPA.

7 1692. Defendants owed Plaintiffs a duty to disclose the illegality and public health and
8 safety risks of the Class Vehicles because they:

- 9 a. possessed exclusive knowledge that they were
10 manufacturing, selling, and distributing vehicles throughout
11 the United States that did not comply with EPA regulations;
12 b. intentionally concealed the foregoing from regulators,
13 Plaintiffs, Class members; and/or
14 c. made incomplete representations about the environmental
15 cleanliness and efficiency of the Class Vehicles generally,
16 and the use of the defeat device in particular, while
17 purposefully withholding material facts from Plaintiffs that
18 contradicted these representations.

19 1693. Defendants concealed the illegal defeat device and the true emissions, efficiency,
20 and performance of the “clean” diesel system, resulting in a raft of negative publicity once the
21 defects finally began to be disclosed. The value of the Class Vehicles has therefore greatly
22 diminished. In light of the stigma attached to those vehicles by Volkswagen’s conduct, they are
23 now worth significantly less than they otherwise would be worth.

24 1694. Defendants’ supply and use of the illegal defeat device and concealment of the true
25 characteristics of the “clean” diesel engine system were material to Plaintiffs and the Maine
26 Class.

27 1695. Defendants’ unfair or deceptive acts or practices were likely to and did in fact
28 deceive regulators and reasonable consumers, including Plaintiffs, about the true environmental
cleanliness and efficiency of Volkswagen-branded vehicles, the quality of the Volkswagen brand,
the devaluing of environmental cleanliness and integrity at Volkswagen, and the true value of the
Class Vehicles.

1 1696. Plaintiffs and the Maine Class suffered ascertainable loss and actual damages as a
2 direct and proximate result of Defendants' misrepresentations and its concealment of and failure
3 to disclose material information. Plaintiffs and the Maine Class members who purchased or
4 leased the Class Vehicles would not have purchased or leased them at all and/or—if the Vehicles'
5 true nature had been disclosed and mitigated, and the Vehicles rendered legal to sell—would have
6 paid significantly less for them. Plaintiffs also suffered diminished value of their vehicles, as well
7 as lost or diminished use.

8 1697. Defendants had an ongoing duty to all Volkswagen customers to refrain from
9 unfair and deceptive practices under the Maine UTPA. All owners of Class Vehicles suffered
10 ascertainable loss in the form of the diminished value of their vehicles as a result of
11 Volkswagen's deceptive and unfair acts and practices made in the course of Volkswagen's
12 business.

13 1698. Defendants' violations present a continuing risk to Plaintiffs as well as to the
14 general public. Defendants' unlawful acts and practices complained of herein affect the public
15 interest.

16 1699. As a direct and proximate result of Defendants' violations of the Maine UTPA,
17 Plaintiffs and the Maine Class have suffered injury-in-fact and/or actual damage.

18 1700. Pursuant to Me. Rev. Stat. Ann. Tit. 5 § 213, Plaintiffs and the Maine Class seek
19 an order enjoining Volkswagen's unfair and/or deceptive acts or practices, damages, punitive
20 damages, and attorneys' fees, costs, and any other just and proper relief available under the Maine
21 UTPA.

22 1701. On November 18, 2015, certain Plaintiffs sent a letter complying with Me. Rev.
23 Stat. Ann. Tit. 5, § 213(1-A). Because Volkswagen failed to remedy its unlawful conduct within
24 the requisite time period, Plaintiffs seek all damages and relief to which Plaintiffs and the Maine
25 Class are entitled.

**MAINE COUNT II:
BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY
(Me. Rev. Stat. Tit. 11 §§ 2-314 and 2-1212)**

1702. Plaintiffs reallege and incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

1703. Plaintiffs bring this Count on behalf of the Maine Class, against VW AG, VW America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the “VW Entity Defendants”).

1704. The VW Entity Defendants are and were at all relevant times “merchants” with respect to motor vehicles under Me. Rev. Stat. Ann. Tit. 11, §§ 2-104(1), and 2-1103(3), and is a “seller” of motor vehicles under § 2-103(1)(d).

1705. With respect to leases, the VW Entity Defendants are and were at all relevant times “lessors” of motor vehicles under Me. Rev. Stat. Ann. Tit. 11, § 2-1103(1)(p).

1706. The Class Vehicles are and were at all relevant times “goods” within the meaning of Me. Rev. Stat. Ann. Tit. 11, §§ 2-105(1), and 2-1103(1)(h).

1707. A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law pursuant to Me. Rev. Stat. Ann. Tit. 11, §§ 2-314, and 2-1212.

1708. These Class Vehicles, when sold or leased 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 Class Vehicles are inherently defective in that they do not comply with federal and state emissions standards, rendering certain emissions functions inoperative; and the “clean” diesel engine system was not adequately designed, manufactured, and tested.

1709. Volkswagen was provided notice of these issues by the investigations of the EPA and individual state regulators, numerous complaints filed against it including the instant Complaint, and by numerous individual letters and communications sent by Plaintiffs and others within a reasonable amount of time after the allegations of Class Vehicle defects became public.

1 1710. As a direct and proximate result of the VW Entity Defendants’ breach of the
2 implied warranty of merchantability, Plaintiffs and the other Maine Class members have been
3 damaged in an amount to be proven at trial.

4 **MAINE COUNT III:**
5 **BREACH OF EXPRESS WARRANTY**
6 **(Me. Rev. Stat. Tit. 11 §§ 2-313 and 2-1210)**

7 1711. Plaintiffs reallege and incorporate by reference all preceding allegations as though
8 fully set forth herein.

9 1712. Plaintiffs bring this Count on behalf of the Maine Class, against VW AG, VW
10 America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the “VW
11 Entity Defendants”).

12 1713. The VW Entity Defendants are and were at all relevant times “merchants” with
13 respect to motor vehicles under Me. Rev. Stat. Ann. Tit. 11, §§ 2-104(1) and 2-1103(3), and
14 “sellers” of motor vehicles under § 2-103(1)(d).

15 1714. With respect to leases, the VW Entity Defendants are and were at all relevant
16 times “lessors” of motor vehicles under Me. Rev. Stat. Ann. Tit. 11, § 2-1103(1)(p).

17 1715. The Class Vehicles are and were at all relevant times “goods” within the meaning
18 of Me. Rev. Stat. Ann. Tit. 11, §§ 2-105(1), and 2-1103(1)(h).

19 1716. In connection with the purchase or lease of each one of its new vehicles, the VW
20 Entity Defendants provide an express New Vehicle Limited Warranty (“NVLW”) for a period of
21 three years or 36,000 miles, whichever occurs first. This NVLW exists to cover “any repair to
22 correct a manufacturers defect in materials or workmanship.”

23 1717. The Clean Air Act requires manufacturers of light-duty vehicles to provide two
24 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
25 Warranty.”

26 1718. The EPA requires vehicle manufacturers to provide a Performance Warranty with
27 respect to the vehicles’ emission systems. Thus, Volkswagen also provides an express warranty
28 for its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
required by the EPA applies to repairs that are required during the first two years or 24,000 miles,

1 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
2 emission control components are covered for the first eight years or 80,000 miles, whichever
3 comes first. These major emission control components subject to the longer warranty include the
4 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
5 device or computer.

6 1719. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
7 with respect to their vehicles' emission systems. Thus, the VW Entity Defendants also provide an
8 express warranty for their vehicles through a Federal Emission Control System Defect Warranty.
9 The Design and Defect Warranty required by the EPA covers repair of emission control or
10 emission related parts which fail to function or function improperly because of a defect in
11 materials or workmanship. This warranty provides protection for two years or 24,000 miles,
12 whichever comes first, or, for the major emission control components, for eight years or 80,000
13 miles, whichever comes first.

14 1720. As manufacturers of light-duty vehicles, the VW Entity Defendants were required
15 to provide these warranties to purchasers or lessees of their "clean" diesel vehicles.

16 1721. The VW Entity Defendants' warranties formed a basis of the bargain that was
17 reached when Plaintiffs and other Maine Class members purchased or leased their Class Vehicles
18 equipped with the non-compliant "clean" diesel engine and emission systems.

19 1722. Plaintiffs and the Maine Class members experienced defects within the warranty
20 period. Despite the existence of warranties, the VW Entity Defendants failed to inform Plaintiffs
21 and Maine Class members that the Class Vehicles were intentionally designed and manufactured
22 to be out of compliance with applicable state and federal emissions laws, and failed to fix the
23 defective emission components free of charge.

24 1723. The VW Entity Defendants breached the express warranty promising to repair and
25 correct a manufacturing defect or materials or workmanship of any parts they supplied. The VW
26 Entity Defendants have not repaired or adjusted, and have been unable to repair or adjust, the
27 Class Vehicles' materials and workmanship defects.
28

1 1724. Affording the VW Entity Defendants a reasonable opportunity to cure their breach
2 of written warranties would be unnecessary and futile here. For example, the Frequently Asked
3 Questions (“FAQ”) section of VW’s informational website states:

4 **How soon will the remedy be available, and how am I going to**
5 **be compensated for this?**

6 We cannot offer a firm date now because we need to work on a
7 remedy and review it with the government. We are proceeding as
quickly as possible.

8 1725. In his Congressional testimony on October 8, 2015, Michael Horn stated that
9 Volkswagen intends to make Class Vehicles compliant with emission standards through software
10 fixes and the installation of auxiliary hardware, but that fix will take “1 to 2 years, minimum.”
11 When questioned on remedies for consumers, he stated that Volkswagen may pay customers for a
12 loss in resale values because of the scandal. He said that Volkswagen is not considering
13 providing loaner vehicles because the U.S. government says the vehicles are safe to drive.

14 1726. Michael Horn’s testimony serves as an admission that the limited warranty
15 promising to repair and/or correct a manufacturing defect fails in its essential purpose because the
16 VW Entity Defendants cannot meet that promise within a reasonable time.

17 1727. Furthermore, the limited warranty promising to repair and/or correct a
18 manufacturing defect fails in its essential purpose because the contractual remedy is insufficient
19 to make Plaintiffs and the other Maine Class members whole and because the VW Entity
20 Defendants have failed and/or have refused to adequately provide the promised remedies within a
21 reasonable time.

22 1728. Accordingly, recovery by Plaintiffs and the other Maine Class members is not
23 restricted to the limited warranty promising to repair and/or correct a manufacturing defect, and
24 Plaintiffs, individually and on behalf of the other Maine Class members, seek all remedies as
25 allowed by law.

26 1729. Also, as alleged in more detail herein, at the time the VW Entity Defendants
27 warranted and sold or leased the Class Vehicles, they knew that the Class Vehicles were
28 inherently defective and did not conform to their warranties; further, the VW Entity Defendants

1 had wrongfully and fraudulently concealed material facts regarding the Class Vehicles. Plaintiffs
2 and the other Maine Class members were therefore induced to purchase or lease the Class
3 Vehicles under false and/or fraudulent pretenses.

4 1730. Moreover, many of the injuries flowing from the Class Vehicles cannot be
5 resolved through the limited remedy of “replacements or adjustments,” as many incidental and
6 consequential damages have already been suffered because of Volkswagen’s fraudulent conduct
7 as alleged herein, and because of its failure and/or continued failure to provide such limited
8 remedy within a reasonable time, and any limitation on Plaintiffs’ and the other Maine Class
9 members’ remedies would be insufficient to make Plaintiffs and the other Maine Class members
10 whole.

11 1731. Finally, because of the VW Entity Defendants’ breach of warranty as set forth
12 herein, Plaintiffs and the other Maine Class members assert, as additional and/or alternative
13 remedies, the revocation of acceptance of the goods and the return to Plaintiffs and the other
14 Maine Class members of the purchase or lease price of all Class Vehicles currently owned or
15 leased, and for such other incidental and consequential damages as allowed.

16 1732. The VW Entity Defendants were provided notice of these issues by numerous
17 complaints filed against them, including the instant Complaint, within a reasonable amount of
18 time after Volkswagen publicly admitted to using a defeat device in the Class Vehicles to evade
19 clean air standards.

20 1733. As a direct and proximate result of the VW Entity Defendants’ breach of express
21 warranties, Plaintiff and the other Maine Class members have been damaged in an amount to be
22 determined at trial.

23 **MARYLAND**

24 **MARYLAND COUNT I:**
25 **VIOLATIONS OF THE MARYLAND CONSUMER PROTECTION ACT**
26 **(Md. Code Com. Law § 13-101, *et seq.*)**

27 1734. Plaintiffs incorporate by reference each preceding paragraph as though fully set
28 forth herein.

1 1735. Plaintiffs Cure, DeFiesta, Hoffman, Rovner, and Walsh (for the purpose of this
2 section, “Plaintiffs”) bring this action on behalf of themselves and the Maryland Class against all
3 Defendants.

4 1736. Defendants, Plaintiffs, and the Maryland Class are “persons” within the meaning
5 of Md. Code Com. Law § 13-101(h).

6 1737. The Maryland Consumer Protection Act (“Maryland CPA”) provides that a person
7 may not engage in any unfair or deceptive trade practice in the sale of any consumer good. Md.
8 Code Com. Law § 13-303. Volkswagen participated in misleading, false, or deceptive acts that
9 violated the Maryland CPA.

10 1738. In the course of their business, Defendants concealed and suppressed material facts
11 concerning the Class Vehicles. Defendants accomplished this by installing illegal defeat device
12 software in the Class Vehicles that caused the vehicles to operate in a low emission test mode
13 only during emissions testing. During normal operations, the Class Vehicles would emit grossly
14 larger quantities of noxious contaminants, sometimes 40 times over applicable standards. The
15 result was what Volkswagen intended—the Class Vehicles passed emissions testing by way of
16 deliberately induced false readings. Plaintiffs and Maryland Class members had no way of
17 discerning that Volkswagen’s representations were false and misleading because Volkswagen’s
18 defeat device software was extremely sophisticated technology. Plaintiffs and Maryland Class
19 members did not and could not unravel Volkswagen’s deception on their own. In fact, it took
20 years before the academic engineering community—specifically a research team at WVU’s
21 Center for Alternative Fuels, Engines & Emissions—detected Volkswagen’s cheat using
22 sophisticated, expensive equipment and applying decades of combined experience.

23 1739. Defendants thus violated the Act by, at minimum marketing its vehicles as safe,
24 reliable, environmentally clean, efficient, and of high quality, and by presenting itself as a
25 reputable manufacturer that valued safety, environmental cleanliness, and efficiency, and stood
26 behind its vehicles after they were sold.

27 1740. Volkswagen’s actions as set forth above occurred in the conduct of trade or
28 commerce.

1 1741. Bosch played a critical role in facilitating, and itself contributed to, Volkswagen’s
2 unfair and deceptive conduct, as alleged herein. Bosch knew or should have known that
3 Volkswagen would use and had used the Bosch technology as an emission defeat device, and in
4 fact helped it do so. Without Bosch’s complicity and silence, Volkswagen could not have
5 perpetrated the fraudulent, deceptive, and unfair practices alleged herein, and Bosch’s actions
6 themselves constitute fraudulent, deceptive, and unfair practices.

7 1742. Defendants engaged in misleading, false, unfair or deceptive acts or practices that
8 violated the Maryland CPA by installing, failing to disclose and actively concealing the illegal
9 defeat device and the true cleanliness and performance of the “clean” diesel engine system, by
10 marketing its vehicles as legal, reliable, environmentally clean, efficient, and of high quality, and
11 by presenting itself as a reputable manufacturer that valued environmental cleanliness and
12 efficiency, and that stood behind its vehicles after they were sold.

13 1743. The Clean Air Act and EPA regulations require that automobiles limit their
14 emissions output to specified levels. These laws are intended for the protection of public health
15 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the
16 Clean Air Act and its regulations. See 42 U.S.C. § 7522(a)(3)(B); 40 CFR § 86.1809. By
17 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available
18 for purchase, Volkswagen violated federal law and therefore engaged in conduct that violates the
19 Maryland CPA.

20 1744. Defendants knew the true nature of its “clean” diesel engine system for at least six
21 years, but concealed all of that information until recently. Volkswagen was also aware that it
22 valued profits over environmental cleanliness, efficiency, and compliance with the law, and that it
23 was manufacturing, selling, and distributing vehicles throughout the United States that did not
24 comply with EPA regulations. Volkswagen concealed this information as well.

25 1745. Volkswagen intentionally and knowingly misrepresented material facts regarding
26 the Class Vehicles with intent to mislead Plaintiffs and the Maryland Class.

27 1746. Volkswagen knew or should have known that its conduct violated the Maryland
28 CPA.

1 1747. Defendants owed Plaintiffs a duty to disclose the illegality and public health and
2 safety risks of the Class Vehicles because they:

- 3 a. possessed exclusive knowledge that they were
4 manufacturing, selling, and distributing vehicles throughout
5 the United States that did not comply with EPA regulations;
6 b. intentionally concealed the foregoing from regulators,
7 Plaintiffs, Class members; and/or
8 c. made incomplete representations about the environmental
9 cleanliness and efficiency of the Class Vehicles generally,
10 and the use of the defeat device in particular, while
11 purposefully withholding material facts from Plaintiffs that
12 contradicted these representations.

9 1748. Defendants concealed the illegal defeat device and the true emissions, efficiency,
10 and performance of the “clean” diesel system, resulting in a raft of negative publicity once the
11 defects finally began to be disclosed. The value of the Class Vehicles has greatly diminished. In
12 light of the stigma attached to those vehicles by Volkswagen’s conduct, they are now worth
13 significantly less than they otherwise would be worth.

14 1749. Defendants’ supply and use of the illegal defeat device and concealment of the true
15 characteristics of the “clean” diesel engine system were material to Plaintiffs and the Maryland
16 Class.

17 1750. Defendants’ unfair or deceptive acts or practices were likely to and did in fact
18 deceive regulators and reasonable consumers, including Plaintiffs, about the true environmental
19 cleanliness and efficiency of Volkswagen-branded vehicles, the quality of the Volkswagen brand,
20 the devaluing of environmental cleanliness and integrity at Volkswagen, and the true value of the
21 Class Vehicles.

22 1751. Plaintiffs and the Maryland Class suffered ascertainable loss and actual damages
23 as a direct and proximate result of Defendants’ misrepresentations and its concealment of and
24 failure to disclose material information. Plaintiffs and the Maryland Class members who
25 purchased or leased the Class Vehicles would not have purchased or leased them at all and/or—if
26 the Vehicles’ true nature had been disclosed and mitigated, and the Vehicles rendered legal to
27 sell—would have paid significantly less for them. Plaintiffs also suffered diminished value of
28 their vehicles, as well as lost or diminished use.

1 1752. Defendants had an ongoing duty to all Volkswagen customers to refrain from
2 unfair and deceptive practices under the Maryland CPA. All owners of Class Vehicles suffered
3 ascertainable loss in the form of the diminished value of their vehicles as a result of
4 Volkswagen’s deceptive and unfair acts and practices made in the course of Volkswagen’s
5 business.

6 1753. Defendants’ violations present a continuing risk to Plaintiffs as well as to the
7 general public. Defendants’ unlawful acts and practices complained of herein affect the public
8 interest.

9 1754. As a direct and proximate result of Defendants’ violations of the Maryland CPA,
10 Plaintiffs and the Maryland Class have suffered injury-in-fact and/or actual damage.

11 1755. Pursuant to Md. Code Com. Law § 13-408, Plaintiffs and the Maryland Class seek
12 actual damages, attorneys’ fees, and any other just and proper relief available under the Maryland
13 CPA.

14 **MARYLAND COUNT II:**
15 **MARYLAND LEMON LAW**
(Md. Code. Com. Law § 14-1501, *et seq.*)

16 1756. Plaintiff and the Class own or lease “motor vehicles” within the meaning of Md.
17 Code, Com. Law § 14-1501(f), because these vehicles were registered in the state and fall within
18 the categories of vehicles manufactured, assembled, or distributed by Volkswagen. These
19 vehicles are not auto homes.

20 1757. The VW Entity Defendants are “manufacturer[s]” of the Class Vehicles within the
21 meaning of Md. Code, Com. Law § 14-1501(d).

22 1758. Plaintiff and the Class are “consumers” within the meaning of Md. Code, Com.
23 Law § 14-1501(b) because they: purchased the Class Vehicles, were transferred the Class
24 Vehicles during the warranty period, or are otherwise entitled to the attendant terms of warranty.

25 1759. The Class Vehicles did not conform to their “warranties” under Md. Code, Com.
26 Law § 14-1501(g) during the warranty period because they were not cleaner vehicles and
27 contained a “defeat device” designed to circumvent state and federal emissions standards. These
28

1 devices did in fact circumvent emissions standards and substantially impaired the use and market
2 value of their motor vehicles.

3 1760. Volkswagen had actual knowledge of the conformities during the “warranty
4 period” within the meaning of Md. Code, Com. Law § 14-1501(e). But the nonconformities
5 continued to exist throughout this term, as they have not been fixed. Plaintiffs and class members
6 are excused from notifying Volkswagen of the nonconformities because it was already fully
7 aware of the problem—as it intentionally created it—and any repair attempt is futile.

8 1761. Volkswagen has had a reasonable opportunity to cure the nonconformities during
9 the warranty period because of its actual knowledge of, creation of, and attempt to conceal the
10 nonconformities, but has not done so as required under Md. Code, Com. Law § 14-1502.

11 1762. Plaintiff and the Class demand a full refund of the purchase price, including all
12 license fees, registration fees, and any similar governmental charges. Md. Code, Com. Law § 14-
13 1502(c). Once payment has been tendered, class members will return their vehicles.

14 **MARYLAND COUNT III:**
15 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
16 **(Md. Code Com. Law §§ 2-314 and 2A-212)**

17 1763. Plaintiffs reallege and incorporate by reference all allegations of the preceding
18 paragraphs as though fully set forth herein.

19 1764. Plaintiffs bring this Count on behalf of the Maryland Class, against VW AG, VW
20 America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the “VW
21 Entity Defendants”).

22 1765. The VW Entity Defendants are and were at all relevant times “merchants” with
23 respect to motor vehicles under Md. Code Com. Law § 2-104(1) and “sellers” of motor vehicles
24 under § 2-103(1)(d).

25 1766. With respect to leases, the VW Entity Defendants are and were at all relevant
26 times “lessors” of motor vehicles under Md. Code Com. Law § 2A-103(1)(p).

27 1767. The Class Vehicles are and were at all relevant times “goods” within the meaning
28 of Md. Code Com. Law §§ 2-105(1) and 2a-103(1)(h).

1 1768. A warranty that the Class Vehicles were in merchantable condition and fit for the
2 ordinary purpose for which vehicles are used is implied by law pursuant to Md. Code Com. Law
3 §§ 2-314, and 2a-212.

4 1769. These Class Vehicles, when sold or leased and at all times thereafter, were not in
5 merchantable condition and are not fit for the ordinary purpose for which vehicles are used.
6 Specifically, the Class Vehicles are inherently defective in that they do not comply with federal
7 and state emissions standards, rendering certain emissions functions inoperative; and the “clean”
8 diesel engine system was not adequately designed, manufactured, and tested.

9 1770. Volkswagen was provided notice of these issues by the investigations of the EPA
10 and individual state regulators, numerous complaints filed against it including the instant
11 Complaint, and by numerous individual letters and communications sent by Plaintiffs and others
12 within a reasonable amount of time after the allegations of Class Vehicle defects became public.

13 1771. As a direct and proximate result of the VW Entity Defendants’ breach of the
14 implied warranty of merchantability, Plaintiffs and the other Maryland Class members have been
15 damaged in an amount to be proven at trial.

16 **MARYLAND COUNT IV:**
17 **BREACH OF EXPRESS WARRANTY**
18 **(Md. Code Com. Law §§ 2-313 and 2a-210)**

19 1772. Plaintiffs reallege and incorporate by reference all preceding allegations as though
20 fully set forth herein.

21 1773. Plaintiffs bring this Count on behalf of the Maryland Class, against VW AG, VW
22 America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the “VW
23 Entity Defendants”).

24 1774. The VW Entity Defendants are and were at all relevant times “merchants” with
25 respect to motor vehicles under Md. Code Com. Law § 2-104(1) and “sellers” of motor vehicles
26 under § 2-103(1)(d).

27 1775. With respect to leases, the VW Entity Defendants are and were at all relevant
28 times “lessors” of motor vehicles under Md. Code Com. Law § 2A-103(1)(p).

1 1776. The Class Vehicles are and were at all relevant times “goods” within the meaning
2 of Md. Code Com. Law §§ 2-105(1) and 2a-103(1)(h).

3 1777. In connection with the purchase or lease of each one of its new vehicles, the VW
4 Entity Defendants provide an express New Vehicle Limited Warranty (“NVLW”) for a period of
5 three years or 36,000 miles, whichever occurs first. This NVLW exists to cover “any repair to
6 correct a manufacturers defect in materials or workmanship.”

7 1778. The Clean Air Act requires manufacturers of light-duty vehicles to provide two
8 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
9 Warranty.”

10 1779. The EPA requires vehicle manufacturers to provide a Performance Warranty with
11 respect to the vehicles’ emission systems. Thus, Volkswagen also provides an express warranty
12 for its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
13 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
14 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
15 emission control components are covered for the first eight years or 80,000 miles, whichever
16 comes first. These major emission control components subject to the longer warranty include the
17 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
18 device or computer.

19 1780. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
20 with respect to their vehicles’ emission systems. Thus, the VW Entity Defendants also provide an
21 express warranty for their vehicles through a Federal Emission Control System Defect Warranty.
22 The Design and Defect Warranty required by the EPA covers repair of emission control or
23 emission related parts which fail to function or function improperly because of a defect in
24 materials or workmanship. This warranty provides protection for two years or 24,000 miles,
25 whichever comes first, or, for the major emission control components, for eight years or 80,000
26 miles, whichever comes first.

27 1781. As manufacturers of light-duty vehicles, the VW Entity Defendants were required
28 to provide these warranties to purchasers or lessees of their “clean” diesel vehicles.

1 1782. The VW Entity Defendants’ warranties formed a basis of the bargain that was
2 reached when Plaintiffs and other Maryland Class members purchased or leased their Class
3 Vehicles equipped with the non-compliant “clean” diesel engine and emission systems.

4 1783. Plaintiffs and the Maryland Class members experienced defects within the
5 warranty period. Despite the existence of warranties, the VW Entity Defendants failed to inform
6 Plaintiffs and Maryland Class members that the Class Vehicles were intentionally designed and
7 manufactured to be out of compliance with applicable state and federal emissions laws, and failed
8 to fix the defective emission components free of charge.

9 1784. The VW Entity Defendants breached the express warranty promising to repair and
10 correct a manufacturing defect or materials or workmanship of any parts they supplied. The VW
11 Entity Defendants have not repaired or adjusted, and have been unable to repair or adjust, the
12 Class Vehicles’ materials and workmanship defects.

13 1785. Affording the VW Entity Defendants a reasonable opportunity to cure their breach
14 of written warranties would be unnecessary and futile here. For example, the Frequently Asked
15 Questions (“FAQ”) section of VW’s informational website states:

16 **How soon will the remedy be available, and how am I going to**
17 **be compensated for this?**

18 We cannot offer a firm date now because we need to work on a
19 remedy and review it with the government. We are proceeding as
quickly as possible.

20 1786. In his Congressional testimony on October 8, 2015, Michael Horn stated that
21 Volkswagen intends to make Class Vehicles compliant with emission standards through software
22 fixes and the installation of auxiliary hardware, but that fix will take “1 to 2 years, minimum.”
23 When questioned on remedies for consumers, he stated that Volkswagen may pay customers for a
24 loss in resale values because of the scandal. He said that Volkswagen is not considering
25 providing loaner vehicles because the U.S. government says the vehicles are safe to drive.

26 1787. Michael Horn’s testimony serves as an admission that the limited warranty
27 promising to repair and/or correct a manufacturing defect fails in its essential purpose because the
28 VW Entity Defendants cannot meet that promise within a reasonable time.

1 1788. Furthermore, the limited warranty promising to repair and/or correct a
2 manufacturing defect fails in its essential purpose because the contractual remedy is insufficient
3 to make Plaintiffs and the other Maryland Class members whole and because the VW Entity
4 Defendants have failed and/or have refused to adequately provide the promised remedies within a
5 reasonable time.

6 1789. Accordingly, recovery by Plaintiffs and the other Maryland Class members is not
7 restricted to the limited warranty promising to repair and/or correct a manufacturing defect, and
8 Plaintiffs, individually and on behalf of the other Maryland Class members, seek all remedies as
9 allowed by law.

10 1790. Also, as alleged in more detail herein, at the time the VW Entity Defendants
11 warranted and sold or leased the Class Vehicles, they knew that the Class Vehicles were
12 inherently defective and did not conform to their warranties; further, the VW Entity Defendants
13 had wrongfully and fraudulently concealed material facts regarding the Class Vehicles. Plaintiffs
14 and the other Maryland Class members were therefore induced to purchase or lease the Class
15 Vehicles under false and/or fraudulent pretenses.

16 1791. Moreover, many of the injuries flowing from the Class Vehicles cannot be
17 resolved through the limited remedy of “replacements or adjustments,” as many incidental and
18 consequential damages have already been suffered because of Volkswagen’s fraudulent conduct
19 as alleged herein, and because of its failure and/or continued failure to provide such limited
20 remedy within a reasonable time, and any limitation on Plaintiffs’ and the other Maryland Class
21 members’ remedies would be insufficient to make Plaintiffs and the other Maryland Class
22 members whole.

23 1792. Finally, because of the VW Entity Defendants’ breach of warranty as set forth
24 herein, Plaintiffs and the other Maryland Class members assert, as additional and/or alternative
25 remedies, the revocation of acceptance of the goods and the return to Plaintiffs and the other
26 Maryland Class members of the purchase or lease price of all Class Vehicles currently owned or
27 leased, and for such other incidental and consequential damages as allowed.
28

1 1793. The VW Entity Defendants were provided notice of these issues by numerous
2 complaints filed against them, including the instant Complaint, within a reasonable amount of
3 time after Volkswagen publicly admitted to using a defeat device in the Class Vehicles to evade
4 clean air standards.

5 1794. As a direct and proximate result of the VW Entity Defendants' breach of express
6 warranties, Plaintiff and the other Maryland Class members have been damaged in an amount to
7 be determined at trial.

8 **MASSACHUSETTS**

9 **MASSACHUSETTS COUNT I:**
10 **DECEPTIVE ACTS OR PRACTICES PROHIBITED BY MASSACHUSETTS LAW**
11 **(Mass. Gen. Laws Ch. 93a, § 1, *et seq.*)**

12 1795. Plaintiffs incorporate by reference each preceding paragraph as though fully set
13 forth herein.

14 1796. Plaintiffs Broadbent, Cunningham, Garcia, Matthews, Steudel, Scolnick, and Gotta
15 (for the purpose of this section, "Plaintiffs") bring this action on behalf of themselves and the
16 Massachusetts Class against all Defendants.

17 1797. Defendants, Plaintiffs, and the Massachusetts Class are "persons" within the
18 meaning of Mass. Gen. Laws ch. 93A, § 1(a).

19 1798. Volkswagen engaged in "trade" or "commerce" within the meaning of Mass. Gen.
20 Laws ch. 93A, § 1(b).

21 1799. Massachusetts law (the "Massachusetts Act") prohibits "unfair or deceptive acts or
22 practices in the conduct of any trade or commerce." Mass. Gen. Laws ch. 93A, § 2. Volkswagen
23 participated in misleading, false, or deceptive acts that violated the Massachusetts Act.

24 1800. In the course of their business, Defendants concealed and suppressed material facts
25 concerning the Class Vehicles. Defendants accomplished this by installing illegal defeat device
26 software in the Class Vehicles that caused the vehicles to operate in a low emission test mode
27 only during emissions testing. During normal operations, the Class Vehicles would emit grossly
28 larger quantities of noxious contaminants, sometimes 40 times over applicable standards. The
result was what Volkswagen intended—the Class Vehicles passed emissions testing by way of

1 deliberately induced false readings. Plaintiffs and Massachusetts Class members had no way of
2 discerning that Volkswagen’s representations were false and misleading because Volkswagen’s
3 defeat device software was extremely sophisticated technology. Plaintiffs and Massachusetts
4 Class members did not and could not unravel Volkswagen’s deception on their own. In fact, it
5 took years before the academic engineering community—specifically a research team at WVU’s
6 Center for Alternative Fuels, Engines & Emissions—detected Volkswagen’s cheat using
7 sophisticated, expensive equipment and applying decades of combined experience.

8 1801. Defendants thus violated the Act by, at minimum employing deception, deceptive
9 acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any
10 material fact with intent that others rely upon such concealment, suppression or omission, in
11 connection with the sale of Class Vehicles.

12 1802. Bosch played a critical role in facilitating, and itself contributed to, Volkswagen’s
13 unfair and deceptive conduct, as alleged herein. Bosch knew or should have known that
14 Volkswagen would use and had used the Bosch technology as an emission defeat device, and in
15 fact helped it do so. Without Bosch’s complicity and silence, Volkswagen could not have
16 perpetrated the fraudulent, deceptive, and unfair practices alleged herein, and Bosch’s actions
17 themselves constitute fraudulent, deceptive, and unfair practices.

18 1803. Defendants engaged in misleading, false, unfair or deceptive acts or practices that
19 violated the Massachusetts Act by installing, failing to disclose and actively concealing the illegal
20 defeat device and the true cleanliness and performance of the “clean” diesel engine system, by
21 marketing its vehicles as legal, reliable, environmentally clean, efficient, and of high quality, and
22 by presenting itself as a reputable manufacturer that valued environmental cleanliness and
23 efficiency, and that stood behind its vehicles after they were sold.

24 1804. The Clean Air Act and EPA regulations require that automobiles limit their
25 emissions output to specified levels. These laws are intended for the protection of public health
26 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the
27 Clean Air Act and its regulations. See 42 U.S.C. § 7522(a)(3)(B); 40 CFR § 86.1809. By
28 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available

1 for purchase, Volkswagen violated federal law and therefore engaged in conduct that violates the
2 Massachusetts Act.

3 1805. Defendants knew the true nature of its “clean” diesel engine system for at least six
4 years, but concealed all of that information until recently. Volkswagen was also aware that it
5 valued profits over environmental cleanliness, efficiency, and compliance with the law, and that it
6 was manufacturing, selling, and distributing vehicles throughout the United States that did not
7 comply with EPA regulations. Volkswagen concealed this information as well.

8 1806. Volkswagen intentionally and knowingly misrepresented material facts regarding
9 the Class Vehicles with intent to mislead Plaintiffs and the Massachusetts Class.

10 1807. Volkswagen knew or should have known that its conduct violated the
11 Massachusetts Act.

12 1808. Defendants owed Plaintiffs a duty to disclose the illegality and public health and
13 safety risks of the Class Vehicles because they:

- 14 a. possessed exclusive knowledge that they were
15 manufacturing, selling, and distributing vehicles throughout
16 the United States that did not comply with EPA regulations;
- 17 b. intentionally concealed the foregoing from regulators,
18 Plaintiffs, Class members; and/or
- 19 c. made incomplete representations about the environmental
20 cleanliness and efficiency of the Class Vehicles generally,
and the use of the defeat device in particular, while
purposefully withholding material facts from Plaintiffs that
contradicted these representations.

21 1809. Defendants concealed the illegal defeat device and the true emissions, efficiency,
22 and performance of the “clean” diesel system, resulting in a raft of negative publicity once the
23 defects finally began to be disclosed. The value of the Class Vehicles has greatly diminished. In
24 light of the stigma attached to those vehicles by Volkswagen’s conduct, they are now worth
25 significantly less than they otherwise would be worth.

26 1810. Defendants’ supply and use of the illegal defeat device and concealment of the true
27 characteristics of the “clean” diesel engine system were material to Plaintiffs and the
28 Massachusetts Class.

1 1811. Defendants' unfair or deceptive acts or practices were likely to and did in fact
2 deceive regulators and reasonable consumers, including Plaintiffs, about the true environmental
3 cleanliness and efficiency of Volkswagen-branded vehicles, the quality of the Volkswagen brand,
4 the devaluing of environmental cleanliness and integrity at Volkswagen, and the true value of the
5 Class Vehicles.

6 1812. Class suffered ascertainable loss and actual damages as a direct and proximate
7 result of Defendants' misrepresentations and its concealment of and failure to disclose material
8 information. Plaintiffs and the Massachusetts Class members who purchased or leased the Class
9 Vehicles would not have purchased or leased them at all and/or—if the Vehicles' true nature had
10 been disclosed and mitigated, and the Vehicles rendered legal to sell—would have paid
11 significantly less for them. Plaintiffs also suffered diminished value of their vehicles, as well as
12 lost or diminished use.

13 1813. Defendants had an ongoing duty to all Volkswagen customers to refrain from
14 unfair and deceptive practices under the Massachusetts Act. All owners of Class Vehicles
15 suffered ascertainable loss in the form of the diminished value of their vehicles as a result of
16 Volkswagen's deceptive and unfair acts and practices made in the course of Volkswagen's
17 business.

18 1814. Defendants' violations present a continuing risk to Plaintiffs as well as to the
19 general public. Defendants' unlawful acts and practices complained of herein affect the public
20 interest.

21 1815. As a direct and proximate result of Defendants' violations of the Massachusetts
22 Act, Plaintiffs and the Massachusetts Class have suffered injury-in-fact and/or actual damage.

23 1816. Pursuant to Mass. Gen. Laws ch. 93A, § 9, Plaintiffs and the Massachusetts Class
24 seek monetary relief against Defendants measured as the greater of (a) actual damages in an
25 amount to be determined at trial and (b) statutory damages in the amount of \$25 for each Plaintiff
26 and each Massachusetts Class member. Because Volkswagen's conduct was committed willfully
27 and knowingly, Plaintiffs are entitled to recover, for each Plaintiff and each Massachusetts Class
28 member, up to three times actual damages, but no less than two times actual damages.

1 1817. Plaintiffs also seek an order enjoining Volkswagen’s unfair and/or deceptive acts
2 or practices, punitive damages, and attorneys’ fees, costs, and any other just and proper relief
3 available under the Massachusetts Act.

4 1818. On October 2, 2015, certain Plaintiffs sent a letter complying with Mass. Gen.
5 Laws ch. 93A, § 9(3). Because Volkswagen failed to remedy its unlawful conduct within the
6 requisite time period, Plaintiffs seek all damages and relief to which Plaintiffs and the
7 Massachusetts Class are entitled.

8 1819. As a result of Volkswagen’s conduct, the amount of its unjust enrichment should
9 be disgorged, in an amount according to proof.

10 **MASSACHUSETTS COUNT II:**
11 **MASSACHUSETTS LEMON LAW**
12 **(Mass. Gen. Laws Ch. 90, § 7N1/2(1))**

13 1820. Plaintiff and the Class own or lease “motor vehicles” within the meaning of Mass.
14 Gen. Laws Ch. 90, § 7N1/2(1), because these vehicles were constructed or designed for
15 propulsion by power and were sold, leased, or replaced by Volkswagen. These vehicles are not:
16 (1) auto homes, (2) vehicles built primarily for off-road use, and (3) used primarily for business
17 purposes.

18 1821. The VW Entity Defendants are “manufacturer[s]” of the Class Vehicles within the
19 meaning of Mass. Gen. Laws Ch. 90, § 7N1/2(1).

20 1822. Plaintiff and the Class are “consumers” within the meaning of Mass. Gen. Laws
21 Ch. 90, § 7N1/2(1) because they bought or leased the Class Vehicles or are otherwise entitled to
22 the attendant terms of warranty.

23 1823. The Class Vehicles did not conform to their express and implied warranties
24 because they were not cleaner vehicles and contained a “defeat device” designed to circumvent
25 state and federal emissions standards. These devices did in fact circumvent emissions standards
26 and substantially impaired the use, market value, and safety of their motor vehicles.

27 1824. Volkswagen had actual knowledge of the conformities during the “term of
28 protection” within the meaning of Mass. Gen. Laws Ch. 90, §§ 7N1/2(1)–7N1/2(2). But the
nonconformities continued to exist throughout this term, as they have not been fixed. Plaintiffs

1 and class members are excused from notifying Volkswagen of the nonconformities because it was
2 already fully aware of the problem—as it intentionally created it—and any repair attempt is futile.

3 1825. Volkswagen has had a reasonable opportunity to cure the nonconformities because
4 of its actual knowledge of, creation of, and attempt to conceal the nonconformities, but has not
5 done so as required under Mass. Gen. Laws Ch. 90, § 7N1/2(3).

6 1826. For vehicles purchased, Plaintiff and the Class demand a full refund of the contract
7 price. For vehicles leased, Plaintiff and the Class demand a full refund of all payments made
8 under the lease agreement. Plaintiff and the Class exercise their “unqualified right” to reject an
9 offer of replacement and will retain their vehicles until payment is tendered under Mass. Gen.
10 Laws Ch. 90, § 7N1/2(3).

11 **MASSACHUSETTS COUNT III:**
12 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
13 **(Mass. Gen. Laws c. 106 §§ 2-314 and 2A-212)**

14 1827. Plaintiffs reallege and incorporate by reference all allegations of the preceding
15 paragraphs as though fully set forth herein.

16 1828. Plaintiffs bring this Count on behalf of the Massachusetts Class, against VW AG,
17 VW America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the
18 “VW Entity Defendants”).

19 1829. The VW Entity Defendants are and were at all relevant times “merchants” with
20 respect to motor vehicles under M.G.L. c. 106 § 2-104(1) and is a “seller” of motor vehicles
21 under § 2-103(1) (d).

22 1830. With respect to leases, the VW Entity Defendants are and were at all relevant
23 times “lessors” of motor vehicles under M.G.L. c. 106 § 2A-103(1)(p).

24 1831. The Class Vehicles are and were at all relevant times “goods” within the meaning
25 of M.G.L. c. 106 §§ 2-105(1) and 2A-103(1)(h).

26 1832. A warranty that the Class Vehicles were in merchantable condition and fit for the
27 ordinary purpose for which vehicles are used is implied by law pursuant to M.G.L. c. 106 §§ 2-
28 314 and 2A-212.

1 1833. These Class Vehicles, when sold or leased and at all times thereafter, were not in
2 merchantable condition and are not fit for the ordinary purpose for which vehicles are used.
3 Specifically, the Class Vehicles are inherently defective in that they do not comply with federal
4 and state emissions standards, rendering certain emissions functions inoperative; and the “clean”
5 diesel engine system was not adequately designed, manufactured, and tested.

6 1834. Volkswagen was provided notice of these issues by the investigations of the EPA
7 and individual state regulators, numerous complaints filed against it including the instant
8 Complaint, and by numerous individual letters and communications sent by Plaintiffs and others
9 within a reasonable amount of time after the allegations of Class Vehicle defects became public.

10 1835. As a direct and proximate result of the VW Entity Defendants’ breach of the
11 implied warranty of merchantability, Plaintiffs and the other Massachusetts Class members have
12 been damaged in an amount to be proven at trial.

13 **MASSACHUSETTS COUNT IV:**
14 **BREACH OF EXPRESS WARRANTY**
15 **(Mass. Gen. Laws c. 106 §§ 2-313 and 2A-210)**

16 1836. Plaintiffs reallege and incorporate by reference all preceding allegations as though
17 fully set forth herein.

18 1837. Plaintiffs bring this Count on behalf of the Massachusetts Class, against VW AG,
19 VW America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the
20 “VW Entity Defendants”).

21 1838. The VW Entity Defendants are and were at all relevant times “merchants” with
22 respect to motor vehicles under M.G.L. c. 106 § 2-104(1) and “sellers” of motor vehicles under
23 § 2-103(1)(d).

24 1839. With respect to leases, the VW Entity Defendants are and were at all relevant
25 times “lessors” of motor vehicles under M.G.L. c. 106 § 2A-103(1)(p).

26 1840. The Class Vehicles are and were at all relevant times “goods” within the meaning
27 of M.G.L. c. 106 §§ 2-105(1) and 2A-103(1)(h).

28 1841. In connection with the purchase or lease of each one of its new vehicles, the VW
Entity Defendants provide an express New Vehicle Limited Warranty (“NVLW”) for a period of

1 three years or 36,000 miles, whichever occurs first. This NVLW exists to cover “any repair to
2 correct a manufacturers defect in materials or workmanship.”

3 1842. The Clean Air Act requires manufacturers of light-duty vehicles to provide two
4 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
5 Warranty.”

6 1843. The EPA requires vehicle manufacturers to provide a Performance Warranty with
7 respect to the vehicles’ emission systems. Thus, Volkswagen also provides an express warranty
8 for its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
9 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
10 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
11 emission control components are covered for the first eight years or 80,000 miles, whichever
12 comes first. These major emission control components subject to the longer warranty include the
13 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
14 device or computer.

15 1844. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
16 with respect to their vehicles’ emission systems. Thus, the VW Entity Defendants also provide an
17 express warranty for their vehicles through a Federal Emission Control System Defect Warranty.
18 The Design and Defect Warranty required by the EPA covers repair of emission control or
19 emission related parts which fail to function or function improperly because of a defect in
20 materials or workmanship. This warranty provides protection for two years or 24,000 miles,
21 whichever comes first, or, for the major emission control components, for eight years or 80,000
22 miles, whichever comes first.

23 1845. As manufacturers of light-duty vehicles, the VW Entity Defendants were required
24 to provide these warranties to purchasers or lessees of their “clean” diesel vehicles.

25 1846. The VW Entity Defendants’ warranties formed a basis of the bargain that was
26 reached when Plaintiffs and other Massachusetts Class members purchased or leased their Class
27 Vehicles equipped with the non-compliant “clean” diesel engine and emission systems.
28

1 1847. Plaintiffs and the Massachusetts Class members experienced defects within the
2 warranty period. Despite the existence of warranties, the VW Entity Defendants failed to inform
3 Plaintiffs and Massachusetts Class members that the Class Vehicles were intentionally designed
4 and manufactured to be out of compliance with applicable state and federal emissions laws, and
5 failed to fix the defective emission components free of charge.

6 1848. The VW Entity Defendants breached the express warranty promising to repair and
7 correct a manufacturing defect or materials or workmanship of any parts they supplied. The VW
8 Entity Defendants have not repaired or adjusted, and have been unable to repair or adjust, the
9 Class Vehicles' materials and workmanship defects.

10 1849. Affording the VW Entity Defendants a reasonable opportunity to cure their breach
11 of written warranties would be unnecessary and futile here. For example, the Frequently Asked
12 Questions ("FAQ") section of VW's informational website states:

13 **How soon will the remedy be available, and how am I going to**
14 **be compensated for this?**

15 We cannot offer a firm date now because we need to work on a
16 remedy and review it with the government. We are proceeding as
quickly as possible.

17 1850. In his Congressional testimony on October 8, 2015, Michael Horn stated that
18 Volkswagen intends to make Class Vehicles compliant with emission standards through software
19 fixes and the installation of auxiliary hardware, but that fix will take "1 to 2 years, minimum."
20 When questioned on remedies for consumers, he stated that Volkswagen may pay customers for a
21 loss in resale values because of the scandal. He said that Volkswagen is not considering
22 providing loaner vehicles because the U.S. government says the vehicles are safe to drive.

23 1851. Michael Horn's testimony serves as an admission that the limited warranty
24 promising to repair and/or correct a manufacturing defect fails in its essential purpose because the
25 VW Entity Defendants cannot meet that promise within a reasonable time.

26 1852. Furthermore, the limited warranty promising to repair and/or correct a
27 manufacturing defect fails in its essential purpose because the contractual remedy is insufficient
28 to make Plaintiffs and the other Massachusetts Class members whole and because the VW Entity

1 Defendants have failed and/or have refused to adequately provide the promised remedies within a
2 reasonable time.

3 1853. Accordingly, recovery by Plaintiffs and the other Massachusetts Class members is
4 not restricted to the limited warranty promising to repair and/or correct a manufacturing defect,
5 and Plaintiffs, individually and on behalf of the other Massachusetts Class members, seek all
6 remedies as allowed by law.

7 1854. Also, as alleged in more detail herein, at the time the VW Entity Defendants
8 warranted and sold or leased the Class Vehicles, they knew that the Class Vehicles were
9 inherently defective and did not conform to their warranties; further, the VW Entity Defendants
10 had wrongfully and fraudulently concealed material facts regarding the Class Vehicles. Plaintiffs
11 and the other Massachusetts Class members were therefore induced to purchase or lease the Class
12 Vehicles under false and/or fraudulent pretenses.

13 1855. Moreover, many of the injuries flowing from the Class Vehicles cannot be
14 resolved through the limited remedy of “replacements or adjustments,” as many incidental and
15 consequential damages have already been suffered because of Volkswagen’s fraudulent conduct
16 as alleged herein, and because of its failure and/or continued failure to provide such limited
17 remedy within a reasonable time, and any limitation on Plaintiffs’ and the other Massachusetts
18 Class members’ remedies would be insufficient to make Plaintiffs and the other Massachusetts
19 Class members whole.

20 1856. Finally, because of the VW Entity Defendants’ breach of warranty as set forth
21 herein, Plaintiffs and the other Massachusetts Class members assert, as additional and/or
22 alternative remedies, the revocation of acceptance of the goods and the return to Plaintiffs and the
23 other Massachusetts Class members of the purchase or lease price of all Class Vehicles currently
24 owned or leased, and for such other incidental and consequential damages as allowed.

25 1857. The VW Entity Defendants were provided notice of these issues by numerous
26 complaints filed against them, including the instant Complaint, within a reasonable amount of
27 time after Volkswagen publicly admitted to using a defeat device in the Class Vehicles to evade
28 clean air standards.

1 1858. As a direct and proximate result of the VW Entity Defendants’ breach of express
2 warranties, Plaintiff and the other Massachusetts Class members have been damaged in an
3 amount to be determined at trial.

4 **MICHIGAN**

5 **MICHIGAN COUNT I:**
6 **VIOLATIONS OF THE MICHIGAN CONSUMER PROTECTION ACT**
7 **(Mich. Comp. Laws § 445.903, *et seq.*)**

8 1859. Plaintiffs incorporate by reference each preceding paragraph as though fully set
9 forth herein.

10 1860. Plaintiffs Heilmann, Kingman, and Matthews (for the purpose of this section,
11 “Plaintiffs”) bring this action on behalf of themselves and the Michigan Class against all
12 Defendants.

13 1861. Plaintiffs and the Michigan Class members were “person[s]” within the meaning
14 of the Mich. Comp. Laws § 445.902(1)(d).

15 1862. At all relevant times, Volkswagen was a “person” engaged in “trade or commerce”
16 within the meaning of the Mich. Comp. Laws § 445.902(1)(d) and (g).

17 1863. The Michigan Consumer Protection Act (“Michigan CPA”) prohibits “[u]nfair,
18 unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce”
19 Mich. Comp. Laws § 445.903(1). Volkswagen engaged in unfair, unconscionable, or deceptive
20 methods, acts or practices prohibited by the Michigan CPA, including: “(c) Representing that
21 goods or services have ... characteristics ... that they do not have;” “(e) Representing that
22 goods or services are of a particular standard ... if they are of another;” “(i) Making false or
23 misleading statements of fact concerning the reasons for, existence of, or amounts of price
24 reductions;” “(s) Failing to reveal a material fact, the omission of which tends to mislead or
25 deceive the consumer, and which fact could not reasonably be known by the consumer;”
26 “(bb) Making a representation of fact or statement of fact material to the transaction such that a
27 person reasonably believes the represented or suggested state of affairs to be other than it actually
28 is;” and “(cc) Failing to reveal facts that are material to the transaction in light of representations
of fact made in a positive manner.” Mich. Comp. Laws § 445.903(1).

1 1864. In the course of their business, Defendants concealed and suppressed material facts
2 concerning the Class Vehicles. Defendants accomplished this by installing illegal defeat device
3 software in the Class Vehicles that caused the vehicles to operate in a low emission test mode
4 only during emissions testing. During normal operations, the Class Vehicles would emit grossly
5 larger quantities of noxious contaminants, sometimes 40 times over applicable standards. The
6 result was what Volkswagen intended—the Class Vehicles passed emissions testing by way of
7 deliberately induced false readings. Plaintiffs and Michigan Class members had no way of
8 discerning that Volkswagen’s representations were false and misleading because Volkswagen’s
9 defeat device software was extremely sophisticated technology. Plaintiffs and Michigan Class
10 members did not and could not unravel Volkswagen’s deception on their own. In fact, it took
11 years before the academic engineering community—specifically a research team at WVU’s
12 Center for Alternative Fuels, Engines & Emissions—detected Volkswagen’s cheat using
13 sophisticated, expensive equipment and applying decades of combined experience.

14 1865. Defendants thus violated the Act by, at minimum employing deception, deceptive
15 acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any
16 material fact with intent that others rely upon such concealment, suppression or omission, in
17 connection with the sale of Class Vehicles.

18 1866. Bosch played a critical role in facilitating, and itself contributed to, Volkswagen’s
19 unfair and deceptive conduct, as alleged herein. Bosch knew or should have known that
20 Volkswagen would use and had used the Bosch technology as an emission defeat device, and in
21 fact helped it do so. Without Bosch’s complicity and silence, Volkswagen could not have
22 perpetrated the fraudulent, deceptive, and unfair practices alleged herein, and Bosch’s actions
23 themselves constitute fraudulent, deceptive, and unfair practices.

24 1867. Defendants knew the true nature of its “clean” diesel engine system for at least six
25 years, but concealed all of that information until recently. Volkswagen was also aware that it
26 valued profits over environmental cleanliness, efficiency, and compliance with the law, and that it
27 was manufacturing, selling, and distributing vehicles throughout the United States that did not
28 comply with EPA regulations. Volkswagen concealed this information as well.

1 1868. Defendants engaged in misleading, false, unfair or deceptive acts or practices that
2 violated the Michigan CPA by installing, failing to disclose and actively concealing the illegal
3 defeat device and the true cleanliness and performance of the “clean” diesel engine system, by
4 marketing its vehicles as legal, reliable, environmentally clean, efficient, and of high quality, and
5 by presenting itself as a reputable manufacturer that valued environmental cleanliness and
6 efficiency, and that stood behind its vehicles after they were sold.

7 1869. The Clean Air Act and EPA regulations require that automobiles limit their
8 emissions output to specified levels. These laws are intended for the protection of public health
9 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the
10 Clean Air Act and its regulations. See 42 U.S.C. § 7522(a)(3)(B); 40 CFR § 86.1809. By
11 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available
12 for purchase, Volkswagen violated federal law and therefore engaged in conduct that violates the
13 Michigan CPA.

14 1870. Volkswagen intentionally and knowingly misrepresented material facts regarding
15 the Class Vehicles with intent to mislead Plaintiffs and the Michigan Class.

16 1871. Volkswagen knew or should have known that its conduct violated the Michigan
17 CPA.

18 1872. Defendants owed Plaintiffs a duty to disclose the illegality and public health and
19 safety risks of the Class Vehicles because they:

- 20 a. possessed exclusive knowledge that they were
21 manufacturing, selling, and distributing vehicles throughout
22 the United States that did not comply with EPA regulations;
- 23 b. intentionally concealed the foregoing from regulators,
24 Plaintiffs, Class members; and/or
- 25 c. made incomplete representations about the environmental
26 cleanliness and efficiency of the Class Vehicles generally,
27 and the use of the defeat device in particular, while
28 purposefully withholding material facts from Plaintiffs that
contradicted these representations.

1 1873. Defendants concealed the illegal defeat device and the true emissions, efficiency,
2 and performance of the “clean” diesel system, resulting in a raft of negative publicity once the
3 defects finally began to be disclosed. The value of the Class Vehicles has therefore greatly
4 diminished. In light of the stigma attached to those vehicles by Volkswagen’s conduct, they are
5 now worth significantly less than they otherwise would be worth.

6 1874. Defendants’ supply and use of the illegal defeat device and concealment of the true
7 characteristics of the “clean” diesel engine system were material to Plaintiffs and the Michigan
8 Class.

9 1875. Defendants’ unfair or deceptive acts or practices were likely to and did in fact
10 deceive regulators and reasonable consumers, including Plaintiffs, about the true environmental
11 cleanliness and efficiency of Volkswagen-branded vehicles, the quality of the Volkswagen brand,
12 the devaluing of environmental cleanliness and integrity at Volkswagen, and the true value of the
13 Class Vehicles.

14 1876. Plaintiffs and the Michigan Class suffered ascertainable loss and actual damages as
15 a direct and proximate result of Volkswagen’s misrepresentations and its concealment of and
16 failure to disclose material information. Plaintiffs and the Michigan Class members who
17 purchased or leased the Class Vehicles would not have purchased or leased them at all and/or—if
18 the Vehicles’ true nature had been disclosed and mitigated, and the Vehicles rendered legal to
19 sell—would have paid significantly less for them. Plaintiffs also suffered diminished value of
20 their vehicles, as well as lost or diminished use.

21 1877. Defendants had an ongoing duty to all Volkswagen customers to refrain from
22 unfair and deceptive practices under the Michigan CPA. All owners of Class Vehicles suffered
23 ascertainable loss in the form of the diminished value of their vehicles as a result of
24 Volkswagen’s deceptive and unfair acts and practices made in the course of Volkswagen’s
25 business.

26 1878. Defendants’ violations present a continuing risk to Plaintiffs as well as to the
27 general public. Defendants’ unlawful acts and practices complained of herein affect the public
28 interest.

1 1879. As a direct and proximate result of Defendants’ violations of the Michigan CPA,
2 Plaintiffs and the Michigan Class have suffered injury-in-fact and/or actual damage.

3 1880. Plaintiffs seek injunctive relief to enjoin Volkswagen from continuing its unfair
4 and deceptive acts; monetary relief against Defendants measured as the greater of (a) actual
5 damages in an amount to be determined at trial and (b) statutory damages in the amount of \$250
6 for Plaintiffs and each Michigan Class member; reasonable attorneys’ fees; and any other just and
7 proper relief available under Mich. Comp. Laws § 445.911.

8 1881. Plaintiffs also seek punitive damages against Volkswagen because it carried out
9 despicable conduct with willful and conscious disregard of the rights and safety of others.
10 Volkswagen intentionally and willfully misrepresented the safety and reliability of the Class
11 Vehicles, concealed material facts that only they knew, and repeatedly promised Plaintiffs and
12 Michigan Class members that all vehicles were safe—all to avoid the expense and public
13 relations nightmare of correcting a noxious flaw in the Class Vehicles. Volkswagen’s unlawful
14 conduct constitutes malice, oppression, and fraud warranting punitive damages.

15 **MICHIGAN COUNT II:**
16 **BREACH OF EXPRESS WARRANTY**
17 **(Mich. Comp. Laws §§ 440.2313 and 440.2860)**

18 1882. Plaintiffs reallege and incorporate by reference all preceding allegations as though
19 fully set forth herein.

20 1883. Plaintiffs bring this Count on behalf of the Michigan Class, against VW AG, VW
21 America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the “VW
22 Entity Defendants”).

23 1884. The VW Entity Defendants are and were at all relevant times “merchants” with
24 respect to motor vehicles under MICH. COMP. LAWS § 440.2104(1) and “sellers” of motor
25 vehicles under § 440.2103(1)(c).

26 1885. With respect to leases, the VW Entity Defendants are and were at all relevant
27 times “lessors” of motor vehicles under MICH. COMP. LAWS § 440.2803(1)(p).

28 1886. The Class Vehicles are and were at all relevant times “goods” within the meaning
of MICH. COMP. LAWS §§ 440.2105(1) and 440.2803(1)(h).

1 1887. In connection with the purchase or lease of each one of its new vehicles, the VW
2 Entity Defendants provide an express New Vehicle Limited Warranty (“NVLW”) for a period of
3 three years or 36,000 miles, whichever occurs first. This NVLW exists to cover “any repair to
4 correct a manufacturers defect in materials or workmanship.”

5 1888. The Clean Air Act requires manufacturers of light-duty vehicles to provide two
6 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
7 Warranty.”

8 1889. The EPA requires vehicle manufacturers to provide a Performance Warranty with
9 respect to the vehicles’ emission systems. Thus, Volkswagen also provides an express warranty
10 for its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
11 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
12 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
13 emission control components are covered for the first eight years or 80,000 miles, whichever
14 comes first. These major emission control components subject to the longer warranty include the
15 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
16 device or computer.

17 1890. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
18 with respect to their vehicles’ emission systems. Thus, the VW Entity Defendants also provide an
19 express warranty for their vehicles through a Federal Emission Control System Defect Warranty.
20 The Design and Defect Warranty required by the EPA covers repair of emission control or
21 emission related parts which fail to function or function improperly because of a defect in
22 materials or workmanship. This warranty provides protection for two years or 24,000 miles,
23 whichever comes first, or, for the major emission control components, for eight years or 80,000
24 miles, whichever comes first.

25 1891. As manufacturers of light-duty vehicles, the VW Entity Defendants were required
26 to provide these warranties to purchasers or lessees of their “clean” diesel vehicles.

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1 1892. The VW Entity Defendants' warranties formed a basis of the bargain that was
2 reached when Plaintiffs and other Michigan Class members purchased or leased their Class
3 Vehicles equipped with the non-compliant "clean" diesel engine and emission systems.

4 1893. Plaintiffs and the Michigan Class members experienced defects within the
5 warranty period. Despite the existence of warranties, the VW Entity Defendants failed to inform
6 Plaintiffs and Michigan Class members that the Class Vehicles were intentionally designed and
7 manufactured to be out of compliance with applicable state and federal emissions laws, and failed
8 to fix the defective emission components free of charge.

9 1894. The VW Entity Defendants breached the express warranty promising to repair and
10 correct a manufacturing defect or materials or workmanship of any parts they supplied. The VW
11 Entity Defendants have not repaired or adjusted, and have been unable to repair or adjust, the
12 Class Vehicles' materials and workmanship defects.

13 1895. Affording the VW Entity Defendants a reasonable opportunity to cure their breach
14 of written warranties would be unnecessary and futile here. For example, the Frequently Asked
15 Questions ("FAQ") section of VW's informational website states:

16 **How soon will the remedy be available, and how am I going to**
17 **be compensated for this?**

18 We cannot offer a firm date now because we need to work on a
19 remedy and review it with the government. We are proceeding as
quickly as possible.

20 1896. In his Congressional testimony on October 8, 2015, Michael Horn stated that
21 Volkswagen intends to make Class Vehicles compliant with emission standards through software
22 fixes and the installation of auxiliary hardware, but that fix will take "1 to 2 years, minimum."
23 When questioned on remedies for consumers, he stated that Volkswagen may pay customers for a
24 loss in resale values because of the scandal. He said that Volkswagen is not considering
25 providing loaner vehicles because the U.S. government says the vehicles are safe to drive.

26 1897. Michael Horn's testimony serves as an admission that the limited warranty
27 promising to repair and/or correct a manufacturing defect fails in its essential purpose because the
28 VW Entity Defendants cannot meet that promise within a reasonable time.

1 1898. Furthermore, the limited warranty promising to repair and/or correct a
2 manufacturing defect fails in its essential purpose because the contractual remedy is insufficient
3 to make Plaintiffs and the other Michigan Class members whole and because the VW Entity
4 Defendants have failed and/or have refused to adequately provide the promised remedies within a
5 reasonable time.

6 1899. Accordingly, recovery by Plaintiffs and the other Michigan Class members is not
7 restricted to the limited warranty promising to repair and/or correct a manufacturing defect, and
8 Plaintiffs, individually and on behalf of the other Michigan Class members, seek all remedies as
9 allowed by law.

10 1900. Also, as alleged in more detail herein, at the time the VW Entity Defendants
11 warranted and sold or leased the Class Vehicles, they knew that the Class Vehicles were
12 inherently defective and did not conform to their warranties; further, the VW Entity Defendants
13 had wrongfully and fraudulently concealed material facts regarding the Class Vehicles. Plaintiffs
14 and the other Michigan Class members were therefore induced to purchase or lease the Class
15 Vehicles under false and/or fraudulent pretenses.

16 1901. Moreover, many of the injuries flowing from the Class Vehicles cannot be
17 resolved through the limited remedy of “replacements or adjustments,” as many incidental and
18 consequential damages have already been suffered because of Volkswagen’s fraudulent conduct
19 as alleged herein, and because of its failure and/or continued failure to provide such limited
20 remedy within a reasonable time, and any limitation on Plaintiffs’ and the other Michigan Class
21 members’ remedies would be insufficient to make Plaintiffs and the other Michigan Class
22 members whole.

23 1902. Finally, because of the VW Entity Defendants’ breach of warranty as set forth
24 herein, Plaintiffs and the other Michigan Class members assert, as additional and/or alternative
25 remedies, the revocation of acceptance of the goods and the return to Plaintiffs and the other
26 Michigan Class members of the purchase or lease price of all Class Vehicles currently owned or
27 leased, and for such other incidental and consequential damages as allowed.
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1 1903. The VW Entity Defendants were provided notice of these issues by numerous
2 complaints filed against them, including the instant Complaint, within a reasonable amount of
3 time after Volkswagen publicly admitted to using a defeat device in the Class Vehicles to evade
4 clean air standards.

5 1904. As a direct and proximate result of the VW Entity Defendants' breach of express
6 warranties, Plaintiff and the other Michigan Class members have been damaged in an amount to
7 be determined at trial.

8 **MICHIGAN COUNT III:**
9 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
10 **(Mich. Comp. Laws §§ 440.2314 and 440.2860)**

11 1905. Plaintiffs reallege and incorporate by reference all allegations of the preceding
12 paragraphs as though fully set forth herein.

13 1906. Plaintiffs bring this Count on behalf of the Michigan Class, against VW AG, VW
14 America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the "VW
15 Entity Defendants").

16 1907. The VW Entity Defendants are and were at all relevant times "merchants" with
17 respect to motor vehicles under MICH. COMP. LAWS § 440.2104(1) and "sellers" of motor
18 vehicles under § 440.2103(1)(d).

19 1908. With respect to leases, the VW Entity Defendants are and were at all relevant
20 times "lessors" of motor vehicles under MICH. COMP. LAWS § 440.2803(1)(p).

21 1909. The Class Vehicles are and were at all relevant times "goods" within the meaning
22 of MICH. COMP. LAWS §§ 440.2105(1) and 440.2803(1)(h).

23 1910. A warranty that the Class Vehicles were in merchantable condition and fit for the
24 ordinary purpose for which vehicles are used is implied by law pursuant to MICH. COMP.
25 LAWS §§ 440.2314 and 440.2862.

26 1911. These Class Vehicles, when sold or leased and at all times thereafter, were not in
27 merchantable condition and are not fit for the ordinary purpose for which vehicles are used.
28 Specifically, the Class Vehicles are inherently defective in that they do not comply with federal

1 and state emissions standards, rendering certain emissions functions inoperative; and the “clean”
2 diesel engine system was not adequately designed, manufactured, and tested.

3 1912. Volkswagen was provided notice of these issues by the investigations of the EPA
4 and individual state regulators, numerous complaints filed against it including the instant
5 Complaint, and by numerous individual letters and communications sent by Plaintiffs and others
6 within a reasonable amount of time after the allegations of Class Vehicle defects became public.

7 1913. As a direct and proximate result of the VW Entity Defendants’ breach of the
8 implied warranty of merchantability, Plaintiffs and the other Michigan Class members have been
9 damaged in an amount to be proven at trial.

10 **MINNESOTA**

11 **MINNESOTA COUNT I:**
12 **VIOLATIONS OF MINNESOTA PREVENTION**
13 **OF CONSUMER FRAUD ACT**
14 **(Minn. Stat. § 325f.68, *et seq.*)**

15 1914. Plaintiffs incorporate by reference each preceding paragraph as though fully set
16 forth herein.

17 1915. Plaintiffs Cyrankowski, Johnson, Mahle, McCarthy, Moen, Page, and Schuette
18 (for the purpose of this section, “Plaintiffs”) bring this action on behalf of themselves and the
19 Minnesota Class against all Defendants.

20 1916. The Class Vehicles constitute “merchandise” within the meaning of Minn. Stat.
21 § 325F.68(2).

22 1917. The Minnesota Prevention of Consumer Fraud Act (“Minnesota CFA”) prohibits
23 “[t]he act, use, or employment by any person of any fraud, false pretense, false promise,
24 misrepresentation, misleading statement or deceptive practice, with the intent that others rely
25 thereon in connection with the sale of any merchandise, whether or not any person has in fact
26 been misled, deceived, or damaged thereby” Minn. Stat. § 325F.69(1). Volkswagen
27 participated in misleading, false, or deceptive acts that violated the Minnesota CFA.

28 1918. In the course of their business, Defendants concealed and suppressed material facts
concerning the Class Vehicles. Defendants accomplished this by installing illegal defeat device

1 software in the Class Vehicles that caused the vehicles to operate in a low emission test mode
2 only during emissions testing. During normal operations, the Class Vehicles would emit grossly
3 larger quantities of noxious contaminants, sometimes 40 times over applicable standards. The
4 result was what Volkswagen intended—the Class Vehicles passed emissions testing by way of
5 deliberately induced false readings. Plaintiffs and Minnesota Class members had no way of
6 discerning that Volkswagen’s representations were false and misleading because Volkswagen’s
7 defeat device software was extremely sophisticated technology. Plaintiffs and Minnesota Class
8 members did not and could not unravel Volkswagen’s deception on their own. In fact, it took
9 years before the academic engineering community—specifically a research team at WVU’s
10 Center for Alternative Fuels, Engines & Emissions—detected Volkswagen’s cheat using
11 sophisticated, expensive equipment and applying decades of combined experience.

12 1919. Defendants thus violated the Act by, at minimum employing deception, deceptive
13 acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any
14 material fact with intent that others rely upon such concealment, suppression or omission, in
15 connection with the sale of Class Vehicles.

16 1920. Volkswagen’s actions as set forth above occurred in the conduct of trade or
17 commerce.

18 1921. Bosch played a critical role in facilitating, and itself contributed to, Volkswagen’s
19 unfair and deceptive conduct, as alleged herein. Bosch knew or should have known that
20 Volkswagen would use and had used the Bosch technology as an emission defeat device, and in
21 fact helped it do so. Without Bosch’s complicity and silence, Volkswagen could not have
22 perpetrated the fraudulent, deceptive, and unfair practices alleged herein, and Bosch’s actions
23 themselves constitute fraudulent, deceptive, and unfair practices.

24 1922. Defendants engaged in misleading, false, unfair or deceptive acts or practices that
25 violated the Minnesota CFA by installing, failing to disclose and actively concealing the illegal
26 defeat device and the true cleanliness and performance of the “clean” diesel engine system, by
27 marketing its vehicles as legal, reliable, environmentally clean, efficient, and of high quality, and
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1 by presenting itself as a reputable manufacturer that valued environmental cleanliness and
2 efficiency, and that stood behind its vehicles after they were sold.

3 1923. The Clean Air Act and EPA regulations require that automobiles limit their
4 emissions output to specified levels. These laws are intended for the protection of public health
5 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the
6 Clean Air Act and its regulations. See 42 U.S.C. § 7522(a)(3)(B); 40 CFR § 86.1809. By
7 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available
8 for purchase, Volkswagen violated federal law and therefore engaged in conduct that violates the
9 Minnesota CFA.

10 1924. Defendants knew the true nature of its “clean” diesel engine system for at least six
11 years, but concealed all of that information until recently. Volkswagen was also aware that it
12 valued profits over environmental cleanliness, efficiency, and compliance with the law, and that it
13 was manufacturing, selling, and distributing vehicles throughout the United States that did not
14 comply with EPA regulations. Volkswagen concealed this information as well.

15 1925. Volkswagen intentionally and knowingly misrepresented material facts regarding
16 the Class Vehicles with intent to mislead Plaintiffs and the Minnesota Class.

17 1926. Volkswagen knew or should have known that its conduct violated the Minnesota
18 CFA.

19 1927. Defendants owed Plaintiffs a duty to disclose the illegality and public health and
20 safety risks of the Class Vehicles because they:

- 21 a. possessed exclusive knowledge that they were
22 manufacturing, selling, and distributing vehicles throughout
23 the United States that did not comply with EPA regulations;
- 24 b. intentionally concealed the foregoing from regulators,
25 Plaintiffs, Class members; and/or
- 26 c. made incomplete representations about the environmental
27 cleanliness and efficiency of the Class Vehicles generally,
28 and the use of the defeat device in particular, while
purposefully withholding material facts from Plaintiffs that
contradicted these representations.

1 1928. Defendants concealed the illegal defeat device and the true emissions, efficiency,
2 and performance of the “clean” diesel system, resulting in a raft of negative publicity once the
3 defects finally began to be disclosed. The value of the Class Vehicles has therefore greatly
4 diminished. In light of the stigma attached to those vehicles by Volkswagen’s conduct, they are
5 now worth significantly less than they otherwise would be worth.

6 1929. Defendants’ supply and use of the illegal defeat device and concealment of the true
7 characteristics of the “clean” diesel engine system were material to Plaintiffs and the Minnesota
8 Class.

9 1930. Defendants’ unfair or deceptive acts or practices were likely to and did in fact
10 deceive regulators and reasonable consumers, including Plaintiffs, about the true environmental
11 cleanliness and efficiency of Volkswagen-branded vehicles, the quality of the Volkswagen brand,
12 the devaluing of environmental cleanliness and integrity at Volkswagen, and the true value of the
13 Class Vehicles.

14 1931. Plaintiffs and the Minnesota Class suffered ascertainable loss and actual damages
15 as a direct and proximate result of Defendants’ misrepresentations and its concealment of and
16 failure to disclose material information. Plaintiffs and the Minnesota Class members who
17 purchased or leased the Class Vehicles would not have purchased or leased them at all and/or—if
18 the Vehicles’ true nature had been disclosed and mitigated, and the Vehicles rendered legal to
19 sell—would have paid significantly less for them. Plaintiffs also suffered diminished value of
20 their vehicles, as well as lost or diminished use.

21 1932. Volkswagen had an ongoing duty to all Volkswagen and Audi customers to refrain
22 from unfair and deceptive practices under the Minnesota CFA. All owners of Class Vehicles
23 suffered ascertainable loss in the form of the diminished value of their vehicles as a result of
24 Volkswagen’s deceptive and unfair acts and practices made in the course of Volkswagen’s
25 business.

26 1933. Defendants’ violations present a continuing risk to Plaintiffs as well as to the
27 general public. Defendants’ unlawful acts and practices complained of herein affect the public
28 interest.

1 1934. As a direct and proximate result of Defendants’ violations of the Minnesota CFA,
2 Plaintiffs and the Minnesota Class have suffered injury-in-fact and/or actual damage.

3 1935. Pursuant to Minn. Stat. § 8.31(3a), Plaintiffs and the Minnesota Class seek actual
4 damages, attorneys’ fees, and any other just and proper relief available under the Minnesota CFA.

5 1936. Plaintiffs also seek punitive damages under Minn. Stat. § 549.20(1)(a) given the
6 clear and convincing evidence that Volkswagen’s acts show deliberate disregard for the rights or
7 safety of others.

8 **MINNESOTA COUNT II:**
9 **VIOLATIONS OF MINNESOTA UNIFORM**
10 **DECEPTIVE TRADE PRACTICES ACT**
(Minn. Stat. § 325d.43-48, *et seq.*)

11 1937. Plaintiffs incorporate by reference each preceding paragraph as though fully set
12 forth herein.

13 1938. This claim is brought on behalf of the Minnesota Class against all Defendants.

14 1939. The Minnesota Deceptive Trade Practices Act (“Minnesota DTPA”) prohibits
15 deceptive trade practices, which occur when a person “(5) represents that goods or services have
16 sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not
17 have or that a person has a sponsorship, approval, status, affiliation, or connection that the person
18 does not have;” “(7) represents that goods or services are of a particular standard, quality, or
19 grade, or that goods are of a particular style or model, if they are of another;” and “(9) advertises
20 goods or services with intent not to sell them as advertised.” Minn. Stat. § 325D.44. In the
21 course of the Volkswagen’s business, it engaged in deceptive practices by representing that Class
22 Vehicles have sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities that
23 they do not have; representing that Class Vehicles are of a particular standard, quality, or grade,
24 or that goods are of a particular style or model, if they are of another; and advertising Class
25 Vehicles with intent not to sell them as advertised. Volkswagen participated in misleading, false,
26 or deceptive acts that violated the Minnesota DTPA.

27 By failing to disclose and by actively concealing the “defeat device” and the true
28 cleanliness and performance of the “clean” diesel engine system, by marketing its vehicles as

1 safe, reliable, environmentally clean, efficient, and of high quality, and by presenting itself as a
2 reputable manufacturer that valued safety, environmental cleanliness, and efficiency, and stood
3 behind its vehicles after they were sold, Volkswagen engaged in deceptive business practices
4 prohibited by the Minnesota DTPA.

5 1940. Volkswagen's actions as set forth above occurred in the conduct of trade or
6 commerce.

7 1941. In the course of its business, Volkswagen willfully failed to disclose and actively
8 concealed the illegal defeat device and the true cleanliness and performance of the "clean" diesel
9 engine system discussed herein and otherwise engaged in activities with a tendency or capacity to
10 deceive. Volkswagen also engaged in unlawful trade practices by employing deception,
11 deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of
12 any material fact with intent that others rely upon such concealment, suppression or omission, in
13 connection with the sale of Class Vehicles.

14 1942. Volkswagen's actions as set forth above occurred in the conduct of trade or
15 commerce.

16 1943. Defendants engaged in misleading, false, unfair or deceptive acts or practices that
17 violated the Minnesota DTPA by installing, failing to disclose and actively concealing the illegal
18 defeat device and the true cleanliness and performance of the "clean" diesel engine system, by
19 marketing its vehicles as legal, reliable, environmentally clean, efficient, and of high quality, and
20 by presenting itself as a reputable manufacturer that valued environmental cleanliness and
21 efficiency, and that stood behind its vehicles after they were sold.

22 1944. The Clean Air Act and EPA regulations require that automobiles limit their
23 emissions output to specified levels. These laws are intended for the protection of public health
24 and welfare. "Defeat devices" like those in the Class Vehicles are defined and prohibited by the
25 Clean Air Act and its regulations. See 42 U.S.C. § 7522(a)(3)(B); 40 CFR § 86.1809. By
26 installing illegal "defeat devices" in the Class Vehicles and by making those vehicles available
27 for purchase, Volkswagen violated federal law and therefore engaged in conduct that violates the
28 Minnesota DTPA.

1 1945. Defendants knew the true nature of its “clean” diesel engine system for at least six
2 years, but concealed all of that information until recently. Volkswagen was also aware that it
3 valued profits over environmental cleanliness, efficiency, and compliance with the law, and that it
4 was manufacturing, selling, and distributing vehicles throughout the United States that did not
5 comply with EPA regulations. Volkswagen concealed this information as well.

6 1946. Volkswagen intentionally and knowingly misrepresented material facts regarding
7 the Class Vehicles with intent to mislead Plaintiffs and the Minnesota Class.

8 1947. Volkswagen knew or should have known that its conduct violated the Minnesota
9 DTPA.

10 1948. Defendants owed Plaintiffs a duty to disclose the illegality and public health and
11 safety risks of the Class Vehicles because they:

- 12 a. possessed exclusive knowledge that they were
13 manufacturing, selling, and distributing vehicles throughout
14 the United States that did not comply with EPA regulations;
- 15 b. intentionally concealed the foregoing from regulators,
16 Plaintiffs, Class members; and/or
- 17 c. made incomplete representations about the environmental
18 cleanliness and efficiency of the Class Vehicles generally,
19 and the use of the defeat device in particular, while
20 purposefully withholding material facts from Plaintiffs that
21 contradicted these representations.

22 1949. Defendants concealed the illegal defeat device and the true emissions, efficiency,
23 and performance of the “clean” diesel system, resulting in a raft of negative publicity once the
24 defects finally began to be disclosed. The value of the Class Vehicles has therefore greatly
25 diminished. In light of the stigma attached to those vehicles by Volkswagen’s conduct, they are
26 now worth significantly less than they otherwise would be worth.

27 1950. Defendants’ supply and use of the illegal defeat device and concealment of the true
28 characteristics of the “clean” diesel engine system were material to Plaintiffs and the Minnesota
Class.

1 1951. Defendants’ unfair or deceptive acts or practices were likely to and did in fact
2 deceive regulators and reasonable consumers, including Plaintiffs, about the true environmental
3 cleanliness and efficiency of Volkswagen-branded vehicles, the quality of the Volkswagen brand,
4 the devaluing of environmental cleanliness and integrity at Volkswagen, and the true value of the
5 Class Vehicles.

6 1952. Plaintiffs and the Minnesota Class suffered ascertainable loss and actual damages
7 as a direct and proximate result of Defendants’ misrepresentations and its concealment of and
8 failure to disclose material information. Plaintiffs and the Minnesota Class members who
9 purchased or leased the Class Vehicles would not have purchased or leased them at all and/or—if
10 the Vehicles’ true nature had been disclosed and mitigated, and the Vehicles rendered legal to
11 sell—would have paid significantly less for them. Plaintiffs also suffered diminished value of
12 their vehicles, as well as lost or diminished use. Plaintiffs did not receive the benefit of their
13 bargain as a result of Volkswagen’s misconduct.

14 1953. Defendants had an ongoing duty to all Volkswagen customers to refrain from
15 unfair and deceptive practices under the Minnesota DTPA. All owners of Class Vehicles suffered
16 ascertainable loss in the form of the diminished value of their vehicles as a result of
17 Volkswagen’s deceptive and unfair acts and practices made in the course of Volkswagen’s
18 business.

19 1954. Defendants’ violations present a continuing risk to Plaintiffs as well as to the
20 general public. Defendants’ unlawful acts and practices complained of herein affect the public
21 interest.

22 1955. As a direct and proximate result of Defendants’ violations of the Minnesota
23 DTPA, Plaintiffs and the Minnesota Class have suffered injury-in-fact and/or actual damage.

24 1956. Pursuant to Minn. Stat. § 8.31(3a) and 325D.45, Plaintiffs and the Minnesota Class
25 seek actual damages, attorneys’ fees, and any other just and proper relief available under the
26 Minnesota DTPA.

1 1957. Plaintiffs also seek punitive damages under Minn. Stat. § 549.20(1)(a) give the
2 clear and convincing evidence that Volkswagen’s acts show deliberate disregard for the rights or
3 safety of others.

4 **MINNESOTA COUNT III:**
5 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
6 **(Minn. Stat. §§ 336.2-314 and 336.2A-212)**

7 1958. Plaintiffs reallege and incorporate by reference all allegations of the preceding
8 paragraphs as though fully set forth herein.

9 1959. Plaintiffs bring this Count on behalf of the Minnesota Class, against VW AG, VW
10 America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the “VW
11 Entity Defendants”).

12 1960. The VW Entity Defendants are and were at all relevant times “merchants” with
13 respect to motor vehicles under Minn. Stat. § 336.2-104(1) and “sellers” of motor vehicles under
14 § 336.2-103(1)(d).

15 1961. With respect to leases, the VW Entity Defendants are and were at all relevant
16 times “lessors” of motor vehicles under Minn. Stat. § 336.2A-103(1)(p).

17 1962. The Class Vehicles are and were at all relevant times “goods” within the meaning
18 of Minn. Stat. § 336.2-105(1) and 336.2A-103(1)(h).

19 1963. A warranty that the Class Vehicles were in merchantable condition and fit for the
20 ordinary purpose for which vehicles are used is implied by law pursuant to Minn. Stat. §§ 336.2-
21 314 and 336.2A-212.

22 1964. These Class Vehicles, when sold or leased and at all times thereafter, were not in
23 merchantable condition and are not fit for the ordinary purpose for which vehicles are used.
24 Specifically, the Class Vehicles are inherently defective in that they do not comply with federal
25 and state emissions standards, rendering certain emissions functions inoperative; and the “clean”
26 diesel engine system was not adequately designed, manufactured, and tested.

27 1965. Volkswagen was provided notice of these issues by the investigations of the EPA
28 and individual state regulators, numerous complaints filed against it including the instant

1 Complaint, and by numerous individual letters and communications sent by Plaintiffs and others
2 within a reasonable amount of time after the allegations of Class Vehicle defects became public.

3 1966. As a direct and proximate result of the VW Entity Defendants' breach of the
4 implied warranty of merchantability, Plaintiffs and the other Minnesota Class members have been
5 damaged in an amount to be proven at trial.

6 **MINNESOTA COUNT IV:**
7 **BREACH OF EXPRESS WARRANTY**
8 **(Minn. Stat. §§ 336.2-313 and 336.2A-210)**

9 1967. Plaintiffs reallege and incorporate by reference all preceding allegations as though
10 fully set forth herein.

11 1968. Plaintiffs bring this Count on behalf of the Minnesota Class, against VW AG, VW
12 America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the "VW
13 Entity Defendants").

14 1969. The VW Entity Defendants are and were at all relevant times "merchants" with
15 respect to motor vehicles under Minn. Stat. § 336.2-104(1) and "sellers" of motor vehicles under
16 § 336.2-103(1)(d).

17 1970. With respect to leases, the VW Entity Defendants are and were at all relevant
18 times "lessors" of motor vehicles under Minn. Stat. § 336.2A-103(1)(p).

19 1971. The Class Vehicles are and were at all relevant times "goods" within the meaning
20 of Minn. Stat. §§ 336.2-105(1) and 336.2A-103(1)(h).

21 1972. In connection with the purchase or lease of each one of its new vehicles, the VW
22 Entity Defendants provide an express New Vehicle Limited Warranty ("NVLW") for a period of
23 three years or 36,000 miles, whichever occurs first. This NVLW exists to cover "any repair to
24 correct a manufacturers defect in materials or workmanship."

25 1973. The Clean Air Act requires manufacturers of light-duty vehicles to provide two
26 federal emission control warranties: a "Performance Warranty" and a "Design and Defect
27 Warranty."

28 1974. The EPA requires vehicle manufacturers to provide a Performance Warranty with
respect to the vehicles' emission systems. Thus, Volkswagen also provides an express warranty

1 for its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
2 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
3 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
4 emission control components are covered for the first eight years or 80,000 miles, whichever
5 comes first. These major emission control components subject to the longer warranty include the
6 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
7 device or computer.

8 1975. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
9 with respect to their vehicles' emission systems. Thus, the VW Entity Defendants also provide an
10 express warranty for their vehicles through a Federal Emission Control System Defect Warranty.
11 The Design and Defect Warranty required by the EPA covers repair of emission control or
12 emission related parts which fail to function or function improperly because of a defect in
13 materials or workmanship. This warranty provides protection for two years or 24,000 miles,
14 whichever comes first, or, for the major emission control components, for eight years or 80,000
15 miles, whichever comes first.

16 1976. As manufacturers of light-duty vehicles, the VW Entity Defendants were required
17 to provide these warranties to purchasers or lessees of their "clean" diesel vehicles.

18 1977. The VW Entity Defendants' warranties formed a basis of the bargain that was
19 reached when Plaintiffs and other Minnesota Class members purchased or leased their Class
20 Vehicles equipped with the non-compliant "clean" diesel engine and emission systems.

21 1978. Plaintiffs and the Minnesota Class members experienced defects within the
22 warranty period. Despite the existence of warranties, the VW Entity Defendants failed to inform
23 Plaintiffs and Minnesota Class members that the Class Vehicles were intentionally designed and
24 manufactured to be out of compliance with applicable state and federal emissions laws, and failed
25 to fix the defective emission components free of charge.

26 1979. The VW Entity Defendants breached the express warranty promising to repair and
27 correct a manufacturing defect or materials or workmanship of any parts they supplied. The VW
28

1 Entity Defendants have not repaired or adjusted, and have been unable to repair or adjust, the
2 Class Vehicles' materials and workmanship defects.

3 1980. Affording the VW Entity Defendants a reasonable opportunity to cure their breach
4 of written warranties would be unnecessary and futile here. For example, the Frequently Asked
5 Questions ("FAQ") section of VW's informational website states:

6 **How soon will the remedy be available, and how am I going to**
7 **be compensated for this?**

8 We cannot offer a firm date now because we need to work on a
9 remedy and review it with the government. We are proceeding as
quickly as possible.

10 1981. In his Congressional testimony on October 8, 2015, Michael Horn stated that
11 Volkswagen intends to make Class Vehicles compliant with emission standards through software
12 fixes and the installation of auxiliary hardware, but that fix will take "1 to 2 years, minimum."
13 When questioned on remedies for consumers, he stated that Volkswagen may pay customers for a
14 loss in resale values because of the scandal. He said that Volkswagen is not considering
15 providing loaner vehicles because the U.S. government says the vehicles are safe to drive.

16 1982. Michael Horn's testimony serves as an admission that the limited warranty
17 promising to repair and/or correct a manufacturing defect fails in its essential purpose because the
18 VW Entity Defendants cannot meet that promise within a reasonable time.

19 1983. Furthermore, the limited warranty promising to repair and/or correct a
20 manufacturing defect fails in its essential purpose because the contractual remedy is insufficient
21 to make Plaintiffs and the other Minnesota Class members whole and because the VW Entity
22 Defendants have failed and/or have refused to adequately provide the promised remedies within a
23 reasonable time.

24 1984. Accordingly, recovery by Plaintiffs and the other Minnesota Class members is not
25 restricted to the limited warranty promising to repair and/or correct a manufacturing defect, and
26 Plaintiffs, individually and on behalf of the other Minnesota Class members, seek all remedies as
27 allowed by law.
28

1 1985. Also, as alleged in more detail herein, at the time the VW Entity Defendants
2 warranted and sold or leased the Class Vehicles, they knew that the Class Vehicles were
3 inherently defective and did not conform to their warranties; further, the VW Entity Defendants
4 had wrongfully and fraudulently concealed material facts regarding the Class Vehicles. Plaintiffs
5 and the other Minnesota Class members were therefore induced to purchase or lease the Class
6 Vehicles under false and/or fraudulent pretenses.

7 1986. Moreover, many of the injuries flowing from the Class Vehicles cannot be
8 resolved through the limited remedy of “replacements or adjustments,” as many incidental and
9 consequential damages have already been suffered because of Volkswagen’s fraudulent conduct
10 as alleged herein, and because of its failure and/or continued failure to provide such limited
11 remedy within a reasonable time, and any limitation on Plaintiffs’ and the other Minnesota Class
12 members’ remedies would be insufficient to make Plaintiffs and the other Minnesota Class
13 members whole.

14 1987. Finally, because of the VW Entity Defendants’ breach of warranty as set forth
15 herein, Plaintiffs and the other Minnesota Class members assert, as additional and/or alternative
16 remedies, the revocation of acceptance of the goods and the return to Plaintiffs and the other
17 Minnesota Class members of the purchase or lease price of all Class Vehicles currently owned or
18 leased, and for such other incidental and consequential damages as allowed.

19 1988. The VW Entity Defendants were provided notice of these issues by numerous
20 complaints filed against them, including the instant Complaint, within a reasonable amount of
21 time after Volkswagen publicly admitted to using a defeat device in the Class Vehicles to evade
22 clean air standards.

23 1989. As a direct and proximate result of the VW Entity Defendants’ breach of express
24 warranties, Plaintiff and the other Minnesota Class members have been damaged in an amount to
25 be determined at trial.

MISSISSIPPI

**MISSISSIPPI COUNT I:
VIOLATIONS OF MISSISSIPPI CONSUMER PROTECTION ACT
(Miss. Code. Ann. § 75-24-1, *et seq.*)**

1990. Plaintiffs incorporate by reference each preceding paragraph as though fully set forth herein.

1991. Plaintiffs Haxton and Katz (for the purpose of this section, “Plaintiffs”) bring this action on behalf of themselves and the Mississippi Class against all Defendants.

1992. The Mississippi Consumer Protection Act (“Mississippi CPA”) prohibits “unfair or deceptive trade practices in or affecting commerce.” Miss. Code. Ann. § 75-24-5(1). Unfair or deceptive practices include, but are not limited to, “(e) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that he does not have;” “(g) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;” and “(i) Advertising goods or services with intent not to sell them as advertised.” Miss. Code. Ann. § 75-24-5. Volkswagen participated in deceptive trade practices that violated the Mississippi CPA as described herein, including representing that Class Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Class Vehicles are of a particular standard and quality when they are not; and advertising Class Vehicles with the intent not to sell them as advertised.

1993. In the course of their business, Defendants concealed and suppressed material facts concerning the Class Vehicles. Defendants accomplished this by installing illegal defeat device software in the Class Vehicles that caused the vehicles to operate in a low emission test mode only during emissions testing. During normal operations, the Class Vehicles would emit grossly larger quantities of noxious contaminants, sometimes 40 times over applicable standards. The result was what Volkswagen intended—the Class Vehicles passed emissions testing by way of deliberately induced false readings. Plaintiffs and Mississippi Class members had no way of discerning that Volkswagen’s representations were false and misleading because Volkswagen’s defeat device software was extremely sophisticated technology. Plaintiffs and Mississippi Class

1 members did not and could not unravel Volkswagen’s deception on their own. In fact, it took
2 years before the academic engineering community—specifically a research team at WVU’s
3 Center for Alternative Fuels, Engines & Emissions—detected Volkswagen’s cheat using
4 sophisticated, expensive equipment and applying decades of combined experience.

5 1994. Defendants thus violated the Act by, at minimum employing deception, deceptive
6 acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any
7 material fact with intent that others rely upon such concealment, suppression or omission, in
8 connection with the sale of Class Vehicles.

9 1995. Bosch played a critical role in facilitating, and itself contributed to, Volkswagen’s
10 unfair and deceptive conduct, as alleged herein. Bosch knew or should have known that
11 Volkswagen would use and had used the Bosch technology as an emission defeat device, and in
12 fact helped it do so. Without Bosch’s complicity and silence, Volkswagen could not have
13 perpetrated the fraudulent, deceptive, and unfair practices alleged herein, and Bosch’s actions
14 themselves constitute fraudulent, deceptive, and unfair practices.

15 1996. Defendants engaged in misleading, false, unfair or deceptive acts or practices that
16 violated the Mississippi CPA by installing, failing to disclose and actively concealing the illegal
17 defeat device and the true cleanliness and performance of the “clean” diesel engine system, by
18 marketing its vehicles as legal, reliable, environmentally clean, efficient, and of high quality, and
19 by presenting itself as a reputable manufacturer that valued environmental cleanliness and
20 efficiency, and that stood behind its vehicles after they were sold.

21 1997. The Clean Air Act and EPA regulations require that automobiles limit their
22 emissions output to specified levels. These laws are intended for the protection of public health
23 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the
24 Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 CFR § 86.1809. By
25 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available
26 for purchase, Volkswagen violated federal law and therefore engaged in conduct that violates the
27 Mississippi CPA.

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1 1998. Defendants knew the true nature of its “clean” diesel engine system for at least six
2 years, but concealed all of that information until recently. Volkswagen was also aware that it
3 valued profits over environmental cleanliness, efficiency, and compliance with the law, and that it
4 was manufacturing, selling, and distributing vehicles throughout the United States that did not
5 comply with EPA regulations. Volkswagen concealed this information as well.

6 1999. Volkswagen intentionally and knowingly misrepresented material facts regarding
7 the Class Vehicles with intent to mislead Plaintiffs and the Mississippi Class.

8 2000. Volkswagen knew or should have known that its conduct violated the Mississippi
9 CPA.

10 2001. Defendants owed Plaintiffs a duty to disclose the illegality and public health and
11 safety risks of the Class Vehicles because they:

- 12 a. possessed exclusive knowledge that they were
13 manufacturing, selling, and distributing vehicles throughout
14 the United States that did not comply with EPA regulations;
- 15 b. intentionally concealed the foregoing from regulators,
16 Plaintiffs, Class members; and/or
- 17 c. made incomplete representations about the environmental
18 cleanliness and efficiency of the Class Vehicles generally,
19 and the use of the defeat device in particular, while
20 purposefully withholding material facts from Plaintiffs that
21 contradicted these representations.

22 2002. Defendants concealed the illegal defeat device and the true emissions, efficiency,
23 and performance of the “clean” diesel system, resulting in a raft of negative publicity once the
24 defects finally began to be disclosed. The value of the Class Vehicles has therefore greatly
25 diminished. In light of the stigma attached to those vehicles by Volkswagen’s conduct, they are
26 now worth significantly less than they otherwise would be worth.

27 2003. Defendants’ supply and use of the illegal defeat device and concealment of the true
28 characteristics of the “clean” diesel engine system were material to Plaintiffs and the Mississippi
Class.

2004. Defendants’ unfair or deceptive acts or practices were likely to and did in fact
deceive regulators and reasonable consumers, including Plaintiffs, about the true environmental

1 cleanliness and efficiency of Volkswagen-branded vehicles, the quality of the Volkswagen brand,
2 the devaluing of environmental cleanliness and integrity at Volkswagen, and the true value of the
3 Class Vehicles.

4 2005. Plaintiffs and the Mississippi Class suffered ascertainable loss and actual damages
5 as a direct and proximate result of Defendants' misrepresentations and its concealment of and
6 failure to disclose material information. Plaintiffs and the Mississippi Class members who
7 purchased or leased the Class Vehicles would not have purchased or leased them at all and/or—if
8 the Vehicles' true nature had been disclosed and mitigated, and the Vehicles rendered legal to
9 sell—would have paid significantly less for them. Plaintiffs also suffered diminished value of
10 their vehicles, as well as lost or diminished use.

11 2006. Defendants had an ongoing duty to all Volkswagen customers to refrain from
12 unfair and deceptive practices under the Mississippi CPA. All owners of Class Vehicles suffered
13 ascertainable loss in the form of the diminished value of their vehicles as a result of
14 Volkswagen's deceptive and unfair acts and practices made in the course of Volkswagen's
15 business.

16 2007. Defendants' violations present a continuing risk to Plaintiffs as well as to the
17 general public. Defendants' unlawful acts and practices complained of herein affect the public
18 interest.

19 2008. As a direct and proximate result of Defendants' violations of the Mississippi CPA,
20 Plaintiffs and the Mississippi Class have suffered injury-in-fact and/or actual damage.

21 2009. Plaintiffs' seek actual damages in an amount to be determined at trial any other
22 just and proper relief available under the Mississippi CPA.

23 **MISSISSIPPI COUNT II:**
24 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
25 **(Miss. Code §§ 75-2-314 and 75-2A-212)**

26 2010. Plaintiffs reallege and incorporate by reference all allegations of the preceding
27 paragraphs as though fully set forth herein.
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1 2011. Plaintiffs bring this Count on behalf of the Mississippi Class, against VW AG,
2 VW America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the
3 “VW Entity Defendants”).

4 2012. The VW Entity Defendants are and were at all relevant times “merchants” with
5 respect to motor vehicles under Miss. Code § 75-2-104(1) and “sellers” of motor vehicles under
6 § 75-2-103(1)(d).

7 2013. With respect to leases, the VW Entity Defendants are and were at all relevant
8 times “lessors” of motor vehicles under Miss. Code § 75-2A-103(1)(p).

9 2014. The Class Vehicles are and were at all relevant times “goods” within the meaning
10 of Miss. Code §§ 75-2-105(1) and 75-2A-103(1)(h).

11 2015. A warranty that the Class Vehicles were in merchantable condition and fit for the
12 ordinary purpose for which vehicles are used is implied by law pursuant to Miss. Code §§ 75-2-
13 314 and 75-2A-212.

14 2016. These Class Vehicles, when sold or leased and at all times thereafter, were not in
15 merchantable condition and are not fit for the ordinary purpose for which vehicles are used.
16 Specifically, the Class Vehicles are inherently defective in that they do not comply with federal
17 and state emissions standards, rendering certain emissions functions inoperative; and the “clean”
18 diesel engine system was not adequately designed, manufactured, and tested.

19 2017. Volkswagen was provided notice of these issues by the investigations of the EPA
20 and individual state regulators, numerous complaints filed against it including the instant
21 Complaint, and by numerous individual letters and communications sent by Plaintiffs and others
22 within a reasonable amount of time after the allegations of Class Vehicle defects became public.

23 2018. As a direct and proximate result of the VW Entity Defendants’ breach of the
24 implied warranty of merchantability, Plaintiffs and the other Mississippi Class members have
25 been damaged in an amount to be proven at trial.
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**MISSISSIPPI COUNT III:
BREACH OF EXPRESS WARRANTY
(Miss. Code §§ 75-2-313 and 75-2A-210)**

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3 2019. Plaintiffs reallege and incorporate by reference all preceding allegations as though
4 fully set forth herein.

5 2020. Plaintiffs bring this Count on behalf of the Mississippi Class, against VW AG,
6 VW America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the
7 “VW Entity Defendants”).

8 2021. The VW Entity Defendants are and were at all relevant times “merchants” with
9 respect to motor vehicles under Miss. Code § 75-2-104(1) and “sellers” of motor vehicles under
10 § 75-2-103(1)(d).

11 2022. With respect to leases, the VW Entity Defendants are and were at all relevant
12 times “lessors” of motor vehicles under Miss. Code § 75-2A-103(1)(p).

13 2023. The Class Vehicles are and were at all relevant times “goods” within the meaning
14 of Miss. Code §§ 75-2-105(1) and 75-2A-103(1)(h).

15 2024. In connection with the purchase or lease of each one of its new vehicles, the VW
16 Entity Defendants provide an express New Vehicle Limited Warranty (“NVLW”) for a period of
17 three years or 36,000 miles, whichever occurs first. This NVLW exists to cover “any repair to
18 correct a manufacturers defect in materials or workmanship.”

19 2025. The Clean Air Act requires manufacturers of light-duty vehicles to provide two
20 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
21 Warranty.”

22 2026. The EPA requires vehicle manufacturers to provide a Performance Warranty with
23 respect to the vehicles’ emission systems. Thus, Volkswagen also provides an express warranty
24 for its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
25 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
26 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
27 emission control components are covered for the first eight years or 80,000 miles, whichever
28 comes first. These major emission control components subject to the longer warranty include the

1 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
2 device or computer.

3 2027. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
4 with respect to their vehicles' emission systems. Thus, the VW Entity Defendants also provide an
5 express warranty for their vehicles through a Federal Emission Control System Defect Warranty.
6 The Design and Defect Warranty required by the EPA covers repair of emission control or
7 emission related parts which fail to function or function improperly because of a defect in
8 materials or workmanship. This warranty provides protection for two years or 24,000 miles,
9 whichever comes first, or, for the major emission control components, for eight years or 80,000
10 miles, whichever comes first.

11 2028. As manufacturers of light-duty vehicles, the VW Entity Defendants were required
12 to provide these warranties to purchasers or lessees of their "clean" diesel vehicles.

13 2029. The VW Entity Defendants' warranties formed a basis of the bargain that was
14 reached when Plaintiffs and other Mississippi Class members purchased or leased their Class
15 Vehicles equipped with the non-compliant "clean" diesel engine and emission systems.

16 2030. Plaintiffs and the Mississippi Class members experienced defects within the
17 warranty period. Despite the existence of warranties, the VW Entity Defendants failed to inform
18 Plaintiffs and Mississippi Class members that the Class Vehicles were intentionally designed and
19 manufactured to be out of compliance with applicable state and federal emissions laws, and failed
20 to fix the defective emission components free of charge.

21 2031. The VW Entity Defendants breached the express warranty promising to repair and
22 correct a manufacturing defect or materials or workmanship of any parts they supplied. The VW
23 Entity Defendants have not repaired or adjusted, and have been unable to repair or adjust, the
24 Class Vehicles' materials and workmanship defects.

25 2032. Affording the VW Entity Defendants a reasonable opportunity to cure their breach
26 of written warranties would be unnecessary and futile here. For example, the Frequently Asked
27 Questions ("FAQ") section of VW's informational website states:
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How soon will the remedy be available, and how am I going to be compensated for this?

We cannot offer a firm date now because we need to work on a remedy and review it with the government. We are proceeding as quickly as possible.

2033. In his Congressional testimony on October 8, 2015, Michael Horn stated that Volkswagen intends to make Class Vehicles compliant with emission standards through software fixes and the installation of auxiliary hardware, but that fix will take “1 to 2 years, minimum.” When questioned on remedies for consumers, he stated that Volkswagen may pay customers for a loss in resale values because of the scandal. He said that Volkswagen is not considering providing loaner vehicles because the U.S. government says the vehicles are safe to drive.

2034. Michael Horn’s testimony serves as an admission that the limited warranty promising to repair and/or correct a manufacturing defect fails in its essential purpose because the VW Entity Defendants cannot meet that promise within a reasonable time.

2035. Furthermore, the limited warranty promising to repair and/or correct a manufacturing defect fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and the other Mississippi Class members whole and because the VW Entity Defendants have failed and/or have refused to adequately provide the promised remedies within a reasonable time.

2036. Accordingly, recovery by Plaintiffs and the other Mississippi Class members is not restricted to the limited warranty promising to repair and/or correct a manufacturing defect, and Plaintiffs, individually and on behalf of the other Mississippi Class members, seek all remedies as allowed by law.

2037. Also, as alleged in more detail herein, at the time the VW Entity Defendants warranted and sold or leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did not conform to their warranties; further, the VW Entity Defendants had wrongfully and fraudulently concealed material facts regarding the Class Vehicles. Plaintiffs and the other Mississippi Class members were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

1 2038. Moreover, many of the injuries flowing from the Class Vehicles cannot be
2 resolved through the limited remedy of “replacements or adjustments,” as many incidental and
3 consequential damages have already been suffered because of Volkswagen’s fraudulent conduct
4 as alleged herein, and because of its failure and/or continued failure to provide such limited
5 remedy within a reasonable time, and any limitation on Plaintiffs’ and the other Mississippi Class
6 members’ remedies would be insufficient to make Plaintiffs and the other Mississippi Class
7 members whole.

8 2039. Finally, because of the VW Entity Defendants’ breach of warranty as set forth
9 herein, Plaintiffs and the other Mississippi Class members assert, as additional and/or alternative
10 remedies, the revocation of acceptance of the goods and the return to Plaintiffs and the other
11 Mississippi Class members of the purchase or lease price of all Class Vehicles currently owned or
12 leased, and for such other incidental and consequential damages as allowed.

13 2040. The VW Entity Defendants were provided notice of these issues by numerous
14 complaints filed against them, including the instant Complaint, within a reasonable amount of
15 time after Volkswagen publicly admitted to using a defeat device in the Class Vehicles to evade
16 clean air standards.

17 2041. As a direct and proximate result of the VW Entity Defendants’ breach of express
18 warranties, Plaintiff and the other Mississippi Class members have been damaged in an amount to
19 be determined at trial.

20 MISSOURI
21 **MISSOURI COUNT I:**
22 **VIOLATIONS OF MISSOURI MERCHANDISING PRACTICES ACT**
(Mo. Rev. Stat. § 407.010, *et seq.*)

23 2042. Plaintiffs incorporate by reference each preceding paragraph as though fully set
24 forth herein.

25 2043. Plaintiffs Walawender, Morrey, and Zucker (for the purpose of this section,
26 “Plaintiffs”) bring this action on behalf of themselves and the Missouri Class against all
27 Defendants.
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1 2044. Volkswagen, Plaintiffs and the Missouri Class are “persons” within the meaning of
2 MO. REV. STAT. § 407.010(5).

3 2045. Volkswagen engaged in “trade” or “commerce” in the State of Missouri within the
4 meaning of Mo. Rev. Stat. § 407.010(7).

5 2046. The Missouri Merchandising Practices Act (“Missouri MPA”) makes unlawful the
6 “act, use or employment by any person of any deception, fraud, false pretense, misrepresentation,
7 unfair practice, or the concealment, suppression, or omission of any material fact in connection
8 with the sale or advertisement of any merchandise Mo. Rev. Stat. § 407.020.

9 2047. In the course of their business, Defendants concealed and suppressed material facts
10 concerning the Class Vehicles. Defendants accomplished this by installing illegal defeat device
11 software in the Class Vehicles that caused the vehicles to operate in a low emission test mode
12 only during emissions testing. During normal operations, the Class Vehicles would emit grossly
13 larger quantities of noxious contaminants, sometimes 40 times over applicable standards. The
14 result was what Volkswagen intended—the Class Vehicles passed emissions testing by way of
15 deliberately induced false readings. Plaintiffs and Missouri Class members had no way of
16 discerning that Volkswagen’s representations were false and misleading because Volkswagen’s
17 defeat device software was extremely sophisticated technology. Plaintiffs and Missouri Class
18 members did not and could not unravel Volkswagen’s deception on their own. In fact, it took
19 years before the academic engineering community—specifically a research team at WVU’s
20 Center for Alternative Fuels, Engines & Emissions—detected Volkswagen’s cheat using
21 sophisticated, expensive equipment and applying decades of combined experience.

22 2048. By failing to disclose these defects or facts about the defects described herein
23 known to it or that were available to Volkswagen upon reasonable inquiry, Volkswagen deprived
24 consumers of all material facts about the safety and functionality of their vehicles. By failing to
25 release material facts about the defect, Volkswagen curtailed or reduced the ability of consumers
26 to take notice of material facts about their vehicle, and/or it affirmatively operated to hide or keep
27 those facts from consumers. 15 Mo. Code of State Reg. § 60-9.110. Moreover, Volkswagen has
28 otherwise engaged in activities with a tendency or capacity to deceive. Volkswagen also engaged

1 in unlawful trade practices by employing deception, deceptive acts or practices, fraud,
2 misrepresentations, unfair practices, and/or concealment, suppression or omission of any material
3 fact with intent that others rely upon such concealment, suppression or omission, in connection
4 with the sale of Class Vehicles.

5 2049. In the course of Volkswagen's business, Volkswagen engaged in misleading, false,
6 unfair or deceptive acts or practices that violated Missouri law by installing, failing to disclose
7 and actively concealing the illegal defeat device and the true cleanliness and performance of the
8 "clean" diesel engine system, by marketing its vehicles as legal, reliable, environmentally clean,
9 efficient, and of high quality, and by presenting itself as a reputable manufacturer that valued
10 environmental cleanliness and efficiency, and that stood behind its vehicles after they were sold.

11 2050. The Clean Air Act and EPA regulations require that automobiles limit their
12 emissions output to specified levels. These laws are intended for the protection of public health
13 and welfare. "Defeat devices" like those in the Class Vehicles are defined and prohibited by the
14 Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 CFR § 86.1809. By
15 installing illegal "defeat devices" in the Class Vehicles and by making those vehicles available
16 for purchase, Volkswagen violated federal law and therefore engaged in conduct that violates
17 Missouri law.

18 2051. Defendants knew the true nature of its "clean" diesel engine system for at least six
19 years, but concealed all of that information until recently. Volkswagen was also aware that it
20 valued profits over environmental cleanliness, efficiency, and compliance with the law, and that it
21 was manufacturing, selling, and distributing vehicles throughout the United States that did not
22 comply with EPA regulations. Volkswagen concealed this information as well.

23 2052. Volkswagen intentionally and knowingly misrepresented material facts regarding
24 the Class Vehicles with intent to mislead Plaintiffs and the Missouri Class, including without
25 limitation by failing to disclose the defects in light of circumstances under which the omitted facts
26 were necessary in order to correct the assumptions, inferences or representations being made by
27 Volkswagen about the environmental cleanliness and efficiency of its vehicles. Consequently,
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1 the failure to disclose such facts amounts to misleading statements pursuant to 15 Mo. Code of
2 State Reg. § 60-9.090.

3 2053. Because Volkswagen knew or believed that its statements regarding environmental
4 cleanliness and efficiency of its vehicles were not in accord with the facts and/or had no
5 reasonable basis for such statements in light of its knowledge of these defects, Volkswagen
6 engaged in fraudulent misrepresentations pursuant to 15 Mo. Code of State Reg. 60-9.100.

7 2054. Volkswagen's conduct as described herein is unethical, oppressive, or
8 unscrupulous and/or it presented a risk of substantial injury to consumers. Such acts are unfair
9 practices in violation of 15 Mo. Code of State Reg. 60-8.020.

10 2055. Volkswagen knew or should have known that its conduct violated the Missouri
11 MPA.

12 2056. Defendants owed Plaintiffs a duty to disclose the illegality and public health and
13 safety risks of the Class Vehicles because they:

- 14 a. possessed exclusive knowledge that they were
15 manufacturing, selling, and distributing vehicles throughout
16 the United States that did not comply with EPA regulations;
- 17 b. intentionally concealed the foregoing from regulators,
18 Plaintiffs, Class members; and/or
- 19 c. made incomplete representations about the environmental
20 cleanliness and efficiency of the Class Vehicles generally,
21 and the use of the defeat device in particular, while
22 purposefully withholding material facts from Plaintiffs that
23 contradicted these representations.

24 2057. Defendants concealed the illegal defeat device and the true emissions, efficiency,
25 and performance of the "clean" diesel system, resulting in a raft of negative publicity once the
26 defects finally began to be disclosed. The value of the Class Vehicles has therefore greatly
27 diminished. In light of the stigma attached to those vehicles by Volkswagen's conduct, they are
28 now worth significantly less than they otherwise would be worth.

1 2058. Defendants’ supply and use of the illegal defeat device and concealment of the true
2 characteristics of the “clean” diesel engine system were material to Plaintiffs and the Missouri
3 Class.

4 2059. Defendants’ unfair or deceptive acts or practices were likely to and did in fact
5 deceive regulators and reasonable consumers, including Plaintiffs, about the true environmental
6 cleanliness and efficiency of Volkswagen-branded vehicles, the quality of the Volkswagen brand,
7 the devaluing of environmental cleanliness and integrity at Volkswagen, and the true value of the
8 Class Vehicles.

9 2060. Plaintiffs and the Missouri Class suffered ascertainable loss and actual damages as
10 a direct and proximate result of Defendants’ misrepresentations and its concealment of and failure
11 to disclose material information. Plaintiffs and the Missouri Class members who purchased or
12 leased the Class Vehicles would not have purchased or leased them at all and/or—if the Vehicles’
13 true nature had been disclosed and mitigated, and the Vehicles rendered legal to sell—would have
14 paid significantly less for them. Plaintiffs also suffered diminished value of their vehicles, as well
15 as lost or diminished use.

16 2061. Volkswagen had an ongoing duty to all Volkswagen customers to refrain from
17 unfair and deceptive practices under the Missouri MPA. All owners of Class Vehicles suffered
18 ascertainable loss in the form of the diminished value of their vehicles as a result of
19 Volkswagen’s deceptive and unfair acts and practices made in the course of Volkswagen’s
20 business.

21 2062. Defendants’ violations present a continuing risk to Plaintiffs as well as to the
22 general public. Defendants’ unlawful acts and practices complained of herein affect the public
23 interest.

24 2063. As a direct and proximate result of Defendants’ violations of the Missouri MPA,
25 Plaintiffs and the Missouri Class have suffered injury-in-fact and/or actual damage.

26 2064. Volkswagen is liable to Plaintiffs and the Missouri Class for damages in amounts
27 to be proven at trial, including attorneys’ fees, costs, and punitive damages, as well as injunctive
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1 relief enjoining Volkswagen’s unfair and deceptive practices, and any other just and proper relief
2 under Mo. Rev. Stat. § 407.025.

3 **MISSOURI COUNT II:**
4 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
5 **(Mo. Stat. §§ 400.2-314 and 400.2A-212)**

6 2065. Plaintiffs reallege and incorporate by reference all allegations of the preceding
7 paragraphs as though fully set forth herein.

8 2066. Plaintiffs bring this Count on behalf of the Missouri Class, against VW AG, VW
9 America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the “VW
10 Entity Defendants”).

11 2067. The VW Entity Defendants are and were at all relevant times “merchants” with
12 respect to motor vehicles under Mo. Stat. § 400.2-104(1) and “sellers” of motor vehicles under
13 § 400.2-103(1)(d).

14 2068. With respect to leases, the VW Entity Defendants are and were at all relevant
15 times “lessors” of motor vehicles under Mo. Stat. § 400.2A-103(1)(p).

16 2069. The Class Vehicles are and were at all relevant times “goods” within the meaning
17 of Mo. Stat. § 400.2-105(1) and Mo. Stat. § 400.2A-103(1)(h).5. A warranty that the Class
18 Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are
19 used is implied by law pursuant to Mo. Stat. § 400.2-314 and Mo. Stat. § 400.2A-212.

20 2070. These Class Vehicles, when sold or leased and at all times thereafter, were not in
21 merchantable condition and are not fit for the ordinary purpose for which vehicles are used.
22 Specifically, the Class Vehicles are inherently defective in that they do not comply with federal
23 and state emissions standards, rendering certain emissions functions inoperative; and the “clean”
24 diesel engine system was not adequately designed, manufactured, and tested.

25 2071. Volkswagen was provided notice of these issues by the investigations of the EPA
26 and individual state regulators, numerous complaints filed against it including the instant
27 Complaint, and by numerous individual letters and communications sent by Plaintiffs and others
28 within a reasonable amount of time after the allegations of Class Vehicle defects became public.

1 2072. As a direct and proximate result of the VW Entity Defendants’ breach of the
2 implied warranty of merchantability, Plaintiffs and the other Missouri Class members have been
3 damaged in an amount to be proven at trial.

4 **MISSOURI COUNT III:**
5 **BREACH OF EXPRESS WARRANTY**
6 **(Mo. Stat. §§ 400.2-313 and 400.2A-210)**

7 2073. Plaintiffs reallege and incorporate by reference all preceding allegations as though
8 fully set forth herein.

9 2074. Plaintiffs bring this Count on behalf of the Missouri Class, against VW AG, VW
10 America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the “VW
11 Entity Defendants”).

12 2075. The VW Entity Defendants are and were at all relevant times “merchants” with
13 respect to motor vehicles under Mo. Stat. § 400.2-104(1) and “sellers” of motor vehicles under
14 § 400.2-103(1)(d).

15 2076. With respect to leases, the VW Entity Defendants are and were at all relevant
16 times “lessors” of motor vehicles under Mo. Stat. § 400.2A-103(1)(p).

17 2077. The Class Vehicles are and were at all relevant times “goods” within the meaning
18 of Mo. Stat. § 400.2-105(1) and Mo. Stat. § 400.2A-103(1)(h).

19 2078. In connection with the purchase or lease of each one of its new vehicles, the VW
20 Entity Defendants provide an express New Vehicle Limited Warranty (“NVLW”) for a period of
21 three years or 36,000 miles, whichever occurs first. This NVLW exists to cover “any repair to
22 correct a manufacturers defect in materials or workmanship.”

23 2079. The Clean Air Act requires manufacturers of light-duty vehicles to provide two
24 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
25 Warranty.”

26 2080. The EPA requires vehicle manufacturers to provide a Performance Warranty with
27 respect to the vehicles’ emission systems. Thus, Volkswagen also provides an express warranty
28 for its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
required by the EPA applies to repairs that are required during the first two years or 24,000 miles,

1 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
2 emission control components are covered for the first eight years or 80,000 miles, whichever
3 comes first. These major emission control components subject to the longer warranty include the
4 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
5 device or computer.

6 2081. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
7 with respect to their vehicles' emission systems. Thus, the VW Entity Defendants also provide an
8 express warranty for their vehicles through a Federal Emission Control System Defect Warranty.
9 The Design and Defect Warranty required by the EPA covers repair of emission control or
10 emission related parts which fail to function or function improperly because of a defect in
11 materials or workmanship. This warranty provides protection for two years or 24,000 miles,
12 whichever comes first, or, for the major emission control components, for eight years or 80,000
13 miles, whichever comes first.

14 2082. As manufacturers of light-duty vehicles, the VW Entity Defendants were required
15 to provide these warranties to purchasers or lessees of their "clean" diesel vehicles.

16 2083. The VW Entity Defendants' warranties formed a basis of the bargain that was
17 reached when Plaintiffs and other Missouri Class members purchased or leased their Class
18 Vehicles equipped with the non-compliant "clean" diesel engine and emission systems.

19 2084. Plaintiffs and the Missouri Class members experienced defects within the warranty
20 period. Despite the existence of warranties, the VW Entity Defendants failed to inform Plaintiffs
21 and Missouri Class members that the Class Vehicles were intentionally designed and
22 manufactured to be out of compliance with applicable state and federal emissions laws, and failed
23 to fix the defective emission components free of charge.

24 2085. The VW Entity Defendants breached the express warranty promising to repair and
25 correct a manufacturing defect or materials or workmanship of any parts they supplied. The VW
26 Entity Defendants have not repaired or adjusted, and have been unable to repair or adjust, the
27 Class Vehicles' materials and workmanship defects.
28

1 2086. Affording the VW Entity Defendants a reasonable opportunity to cure their breach
2 of written warranties would be unnecessary and futile here. For example, the Frequently Asked
3 Questions (“FAQ”) section of VW’s informational website states:

4 **How soon will the remedy be available, and how am I going to**
5 **be compensated for this?**

6 We cannot offer a firm date now because we need to work on a
7 remedy and review it with the government. We are proceeding as
8 quickly as possible.

8 2087. In his Congressional testimony on October 8, 2015, Michael Horn stated that
9 Volkswagen intends to make Class Vehicles compliant with emission standards through software
10 fixes and the installation of auxiliary hardware, but that fix will take “1 to 2 years, minimum.”
11 When questioned on remedies for consumers, he stated that Volkswagen may pay customers for a
12 loss in resale values because of the scandal. He said that Volkswagen is not considering
13 providing loaner vehicles because the U.S. government says the vehicles are safe to drive.

14 2088. Michael Horn’s testimony serves as an admission that the limited warranty
15 promising to repair and/or correct a manufacturing defect fails in its essential purpose because the
16 VW Entity Defendants cannot meet that promise within a reasonable time.

17 2089. Furthermore, the limited warranty promising to repair and/or correct a
18 manufacturing defect fails in its essential purpose because the contractual remedy is insufficient
19 to make Plaintiffs and the other Missouri Class members whole and because the VW Entity
20 Defendants have failed and/or have refused to adequately provide the promised remedies within a
21 reasonable time.

22 2090. Accordingly, recovery by Plaintiffs and the other Missouri Class members is not
23 restricted to the limited warranty promising to repair and/or correct a manufacturing defect, and
24 Plaintiffs, individually and on behalf of the other Missouri Class members, seek all remedies as
25 allowed by law.

26 2091. Also, as alleged in more detail herein, at the time the VW Entity Defendants
27 warranted and sold or leased the Class Vehicles, they knew that the Class Vehicles were
28 inherently defective and did not conform to their warranties; further, the VW Entity Defendants

1 had wrongfully and fraudulently concealed material facts regarding the Class Vehicles. Plaintiffs
2 and the other Missouri Class members were therefore induced to purchase or lease the Class
3 Vehicles under false and/or fraudulent pretenses.

4 2092. Moreover, many of the injuries flowing from the Class Vehicles cannot be
5 resolved through the limited remedy of “replacements or adjustments,” as many incidental and
6 consequential damages have already been suffered because of Volkswagen’s fraudulent conduct
7 as alleged herein, and because of its failure and/or continued failure to provide such limited
8 remedy within a reasonable time, and any limitation on Plaintiffs’ and the other Missouri Class
9 members’ remedies would be insufficient to make Plaintiffs and the other Missouri Class
10 members whole.

11 2093. Finally, because of the VW Entity Defendants’ breach of warranty as set forth
12 herein, Plaintiffs and the other Missouri Class members assert, as additional and/or alternative
13 remedies, the revocation of acceptance of the goods and the return to Plaintiffs and the other
14 Missouri Class members of the purchase or lease price of all Class Vehicles currently owned or
15 leased, and for such other incidental and consequential damages as allowed.

16 2094. The VW Entity Defendants were provided notice of these issues by numerous
17 complaints filed against them, including the instant Complaint, within a reasonable amount of
18 time after Volkswagen publicly admitted to using a defeat device in the Class Vehicles to evade
19 clean air standards.

20 2095. As a direct and proximate result of the VW Entity Defendants’ breach of express
21 warranties, Plaintiff and the other Missouri Class members have been damaged in an amount to
22 be determined at trial.

23 **MONTANA**

24 **MONTANA COUNT I:**
25 **VIOLATIONS OF MONTANA UNFAIR TRADE PRACTICES AND CONSUMER**
26 **PROTECTION ACT OF 1973**
(Mont. Code Ann. § 30-14-101, et seq.)

27 2096. Plaintiffs incorporate by reference each preceding paragraph as though fully set
28 forth herein.

1 2097. Plaintiffs Di Mauro and Lorenz (for the purpose of this section, “Plaintiffs”) bring
2 this action on behalf of themselves and the Montana Class against all Defendants.

3 2098. Defendants, Plaintiffs and the Montana Class are “persons” within the meaning of
4 Mont. Code Ann. § 30-14-102(6).

5 2099. Montana Class members are “consumer[s]” under MONT. CODE ANN. § 30-14-
6 102(1).

7 2100. The sale or lease of the Class Vehicles to Montana Class members occurred within
8 “trade and commerce” within the meaning of Mont. Code Ann. § 30-14-102(8), and Volkswagen
9 committed deceptive and unfair acts in the conduct of “trade and commerce” as defined in that
10 statutory section.

11 2101. The Montana Unfair Trade Practices and Consumer Protection Act (“Montana
12 CPA”) makes unlawful any “unfair methods of competition and unfair or deceptive acts or
13 practices in the conduct of any trade or commerce.” Mont. Code Ann. § 30-14-103.

14 2102. In the course of their business, Defendants concealed and suppressed material facts
15 concerning the Class Vehicles. Defendants accomplished this by installing illegal defeat device
16 software in the Class Vehicles that caused the vehicles to operate in a low emission test mode
17 only during emissions testing. During normal operations, the Class Vehicles would emit grossly
18 larger quantities of noxious contaminants, sometimes 40 times over applicable standards. The
19 result was what Volkswagen intended—the Class Vehicles passed emissions testing by way of
20 deliberately induced false readings. Plaintiffs and Montana Class members had no way of
21 discerning that Volkswagen’s representations were false and misleading because Volkswagen’s
22 defeat device software was extremely sophisticated technology. Plaintiffs and Montana Class
23 members did not and could not unravel Volkswagen’s deception on their own. In fact, it took
24 years before the academic engineering community—specifically a research team at WVU’s
25 Center for Alternative Fuels, Engines & Emissions—detected Volkswagen’s cheat using
26 sophisticated, expensive equipment and applying decades of combined experience.

27 2103. Defendants thus violated the Act by, at minimum: employing deception, deceptive
28 acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any

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

3 2104. Bosch played a critical role in facilitating, and itself contributed to, Volkswagen's
4 unfair and deceptive conduct, as alleged herein. Bosch knew or should have known that
5 Volkswagen would use and had used the Bosch technology as an emission defeat device, and in
6 fact helped it do so. Without Bosch's complicity and silence, Volkswagen could not have
7 perpetrated the fraudulent, deceptive, and unfair practices alleged herein, and Bosch's actions
8 themselves constitute fraudulent, deceptive, and unfair practices.

9 2105. Defendants engaged in misleading, false, unfair or deceptive acts or practices that
10 violated the Montana CPA by installing, failing to disclose and actively concealing the illegal
11 defeat device and the true cleanliness and performance of the "clean" diesel engine system, by
12 marketing its vehicles as legal, reliable, environmentally clean, efficient, and of high quality, and
13 by presenting itself as a reputable manufacturer that valued environmental cleanliness and
14 efficiency, and that stood behind its vehicles after they were sold.

15 2106. The Clean Air Act and EPA regulations require that automobiles limit their
16 emissions output to specified levels. These laws are intended for the protection of public health
17 and welfare. "Defeat devices" like those in the Class Vehicles are defined and prohibited by the
18 Clean Air Act and its regulations. See 42 U.S.C. § 7522(a)(3)(B); 40 CFR § 86.1809. By
19 installing illegal "defeat devices" in the Class Vehicles and by making those vehicles available
20 for purchase, Volkswagen violated federal law and therefore engaged in conduct that violates the
21 Montana CPA.

22 2107. Defendants knew the true nature of its "clean" diesel engine system for at least six
23 years, but concealed all of that information until recently. Volkswagen was also aware that it
24 valued profits over environmental cleanliness, efficiency, and compliance with the law, and that it
25 was manufacturing, selling, and distributing vehicles throughout the United States that did not
26 comply with EPA regulations. Volkswagen concealed this information as well.

27 2108. Volkswagen intentionally and knowingly misrepresented material facts regarding
28 the Class Vehicles with intent to mislead Plaintiffs and the Montana Class.

1 2109. Volkswagen knew or should have known that its conduct violated the Montana
2 CPA.

3 2110. Defendants owed Plaintiffs a duty to disclose the illegality and public health and
4 safety risks of the Class Vehicles because they:

- 5 a. possessed exclusive knowledge that they were
6 manufacturing, selling, and distributing vehicles throughout
7 the United States that did not comply with EPA regulations;
- 8 b. intentionally concealed the foregoing from regulators,
9 Plaintiffs, Class members; and/or
- 10 c. made incomplete representations about the environmental
11 cleanliness and efficiency of the Class Vehicles generally,
12 and the use of the defeat device in particular, while
13 purposefully withholding material facts from Plaintiffs that
14 contradicted these representations.

15 2111. Defendants concealed the illegal defeat device and the true emissions, efficiency,
16 and performance of the “clean” diesel system, resulting in a raft of negative publicity once the
17 defects finally began to be disclosed. The value of the Class Vehicles has therefore greatly
18 diminished. In light of the stigma attached to those vehicles by Volkswagen’s conduct, they are
19 now worth significantly less than they otherwise would be worth.

20 2112. Defendants’ supply and use of the illegal defeat device and concealment of the true
21 characteristics of the “clean” diesel engine system were material to Plaintiffs and the Montana
22 Class.

23 2113. Defendants’ unfair or deceptive acts or practices were likely to and did in fact
24 deceive regulators and reasonable consumers, including Plaintiffs, about the true environmental
25 cleanliness and efficiency of Volkswagen-branded vehicles, the quality of the Volkswagen brand,
26 the devaluing of environmental cleanliness and integrity at Volkswagen, and the true value of the
27 Class Vehicles.

28 2114. Plaintiffs and the Montana Class ascertainable loss and actual damages as a direct
and proximate result of Volkswagen’s misrepresentations and its concealment of and failure to
disclose material information. Plaintiffs and the Montana Class members who purchased or

1 leased the Class Vehicles would not have purchased or leased them at all and/or—if the Vehicles’
2 true nature had been disclosed and mitigated, and the Vehicles rendered legal to sell—would have
3 paid significantly less for them. Plaintiffs also suffered diminished value of their vehicles, as well
4 as lost or diminished use.

5 2115. Defendants had an ongoing duty to all Volkswagen customers to refrain from
6 unfair and deceptive practices under the Montana CPA. All owners of Class Vehicles suffered
7 ascertainable loss in the form of the diminished value of their vehicles as a result of
8 Volkswagen’s deceptive and unfair acts and practices made in the course of Volkswagen’s
9 business.

10 2116. Defendants’ violations present a continuing risk to Plaintiffs as well as to the
11 general public. Defendants’ unlawful acts and practices complained of herein affect the public
12 interest.

13 2117. As a direct and proximate result of Defendants’ violations of the Montana CPA,
14 Plaintiffs and the Montana Class have suffered injury-in-fact and/or actual damage.

15 2118. Because Volkswagen’s unlawful methods, acts, and practices have caused
16 Montana Class members to suffer an ascertainable loss of money and property, the Montana Class
17 seeks from Volkswagen actual damages or \$500, whichever is greater, discretionary treble
18 damages, reasonable attorneys’ fees, an order enjoining Volkswagen’s unfair, unlawful, and/or
19 deceptive practices, and any other relief the Court considers necessary or proper, under Mont.
20 Code Ann. § 30-14-133.

21 **MONTANA COUNT II:**
22 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
23 **(Mont. Code §§ 30-2-314 and 30-2A-212)**

24 2119. Plaintiffs reallege and incorporate by reference all allegations of the preceding
25 paragraphs as though fully set forth herein.

26 2120. Plaintiffs bring this Count on behalf of the Montana Class, against VW AG, VW
27 America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the “VW
28 Entity Defendants”).

1 2121. The VW Entity Defendants are and were at all relevant times “merchants” with
2 respect to motor vehicles under Mont. Code § 30-2-104(1) and “sellers” of motor vehicles under
3 § 30-2-103(1)(d).

4 2122. With respect to leases, the VW Entity Defendants are and were at all relevant
5 times “lessors” of motor vehicles under Mont. Code § 30-2A-103(1)(p).

6 2123. The Class Vehicles are and were at all relevant times “goods” within the meaning
7 of Mont. Code §§ 30-2-105(1) and 30-2A-103(1)(h).5. A warranty that the Class Vehicles
8 were in merchantable condition and fit for the ordinary purpose for which vehicles are used is
9 implied by law pursuant to Mont. Code §§ 30-2-314 and 30-2A-212.

10 2124. These Class Vehicles, when sold or leased and at all times thereafter, were not in
11 merchantable condition and are not fit for the ordinary purpose for which vehicles are used.
12 Specifically, the Class Vehicles are inherently defective in that they do not comply with federal
13 and state emissions standards, rendering certain emissions functions inoperative; and the “clean”
14 diesel engine system was not adequately designed, manufactured, and tested.

15 2125. Volkswagen was provided notice of these issues by the investigations of the EPA
16 and individual state regulators, numerous complaints filed against it including the instant
17 Complaint, and by numerous individual letters and communications sent by Plaintiffs and others
18 within a reasonable amount of time after the allegations of Class Vehicle defects became public.

19 2126. As a direct and proximate result of the VW Entity Defendants’ breach of the
20 implied warranty of merchantability, Plaintiffs and the other Montana Class members have been
21 damaged in an amount to be proven at trial.

22 **MONTANA COUNT III:
23 BREACH OF EXPRESS WARRANTY
24 (Mont. Code §§ 30-2-313 and 30-2A-210)**

25 2127. Plaintiffs reallege and incorporate by reference all preceding allegations as though
26 fully set forth herein.

27 2128. Plaintiffs bring this Count on behalf of the Montana Class, against VW AG, VW
28 America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the “VW
Entity Defendants”).

1 2129. The VW Entity Defendants are and were at all relevant times “merchants” with
2 respect to motor vehicles under Mont. Code § 30-2-104(1) and “sellers” of motor vehicles under
3 § 30-2-103(1)(d).

4 2130. With respect to leases, the VW Entity Defendants are and were at all relevant
5 times “lessors” of motor vehicles under Mont. Code § 30-2A-103(1)(p).

6 2131. The Class Vehicles are and were at all relevant times “goods” within the meaning
7 of Mont. Code §§ 30-2-105(1) and 30-2A-103(1)(h).

8 2132. In connection with the purchase or lease of each one of its new vehicles, the VW
9 Entity Defendants provide an express New Vehicle Limited Warranty (“NVLW”) for a period of
10 three years or 36,000 miles, whichever occurs first. This NVLW exists to cover “any repair to
11 correct a manufacturers defect in materials or workmanship.”

12 2133. The Clean Air Act requires manufacturers of light-duty vehicles to provide two
13 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
14 Warranty.”

15 2134. The EPA requires vehicle manufacturers to provide a Performance Warranty with
16 respect to the vehicles’ emission systems. Thus, Volkswagen also provides an express warranty
17 for its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
18 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
19 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
20 emission control components are covered for the first eight years or 80,000 miles, whichever
21 comes first. These major emission control components subject to the longer warranty include the
22 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
23 device or computer.

24 2135. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
25 with respect to their vehicles’ emission systems. Thus, the VW Entity Defendants also provide an
26 express warranty for their vehicles through a Federal Emission Control System Defect Warranty.
27 The Design and Defect Warranty required by the EPA covers repair of emission control or
28 emission related parts which fail to function or function improperly because of a defect in

1 materials or workmanship. This warranty provides protection for two years or 24,000 miles,
2 whichever comes first, or, for the major emission control components, for eight years or 80,000
3 miles, whichever comes first.

4 2136. As manufacturers of light-duty vehicles, the VW Entity Defendants were required
5 to provide these warranties to purchasers or lessees of their “clean” diesel vehicles.

6 2137. The VW Entity Defendants’ warranties formed a basis of the bargain that was
7 reached when Plaintiffs and other Montana Class members purchased or leased their Class
8 Vehicles equipped with the non-compliant “clean” diesel engine and emission systems.

9 2138. Plaintiffs and the Montana Class members experienced defects within the warranty
10 period. Despite the existence of warranties, the VW Entity Defendants failed to inform Plaintiffs
11 and Montana Class members that the Class Vehicles were intentionally designed and
12 manufactured to be out of compliance with applicable state and federal emissions laws, and failed
13 to fix the defective emission components free of charge.

14 2139. The VW Entity Defendants breached the express warranty promising to repair and
15 correct a manufacturing defect or materials or workmanship of any parts they supplied. The VW
16 Entity Defendants have not repaired or adjusted, and have been unable to repair or adjust, the
17 Class Vehicles’ materials and workmanship defects.

18 2140. Affording the VW Entity Defendants a reasonable opportunity to cure their breach
19 of written warranties would be unnecessary and futile here. For example, the Frequently Asked
20 Questions (“FAQ”) section of VW’s informational website states:

21 **How soon will the remedy be available, and how am I going to**
22 **be compensated for this?**

23 We cannot offer a firm date now because we need to work on a
24 remedy and review it with the government. We are proceeding as
quickly as possible.

25 2141. In his Congressional testimony on October 8, 2015, Michael Horn stated that
26 Volkswagen intends to make Class Vehicles compliant with emission standards through software
27 fixes and the installation of auxiliary hardware, but that fix will take “1 to 2 years, minimum.”
28 When questioned on remedies for consumers, he stated that Volkswagen may pay customers for a

1 loss in resale values because of the scandal. He said that Volkswagen is not considering
2 providing loaner vehicles because the U.S. government says the vehicles are safe to drive.

3 2142. Michael Horn's testimony serves as an admission that the limited warranty
4 promising to repair and/or correct a manufacturing defect fails in its essential purpose because the
5 VW Entity Defendants cannot meet that promise within a reasonable time.

6 2143. Furthermore, the limited warranty promising to repair and/or correct a
7 manufacturing defect fails in its essential purpose because the contractual remedy is insufficient
8 to make Plaintiffs and the other Montana Class members whole and because the VW Entity
9 Defendants have failed and/or have refused to adequately provide the promised remedies within a
10 reasonable time.

11 2144. Accordingly, recovery by Plaintiffs and the other Montana Class members is not
12 restricted to the limited warranty promising to repair and/or correct a manufacturing defect, and
13 Plaintiffs, individually and on behalf of the other Montana Class members, seek all remedies as
14 allowed by law.

15 2145. Also, as alleged in more detail herein, at the time the VW Entity Defendants
16 warranted and sold or leased the Class Vehicles, they knew that the Class Vehicles were
17 inherently defective and did not conform to their warranties; further, the VW Entity Defendants
18 had wrongfully and fraudulently concealed material facts regarding the Class Vehicles. Plaintiffs
19 and the other Montana Class members were therefore induced to purchase or lease the Class
20 Vehicles under false and/or fraudulent pretenses.

21 2146. Moreover, many of the injuries flowing from the Class Vehicles cannot be
22 resolved through the limited remedy of "replacements or adjustments," as many incidental and
23 consequential damages have already been suffered because of Volkswagen's fraudulent conduct
24 as alleged herein, and because of its failure and/or continued failure to provide such limited
25 remedy within a reasonable time, and any limitation on Plaintiffs' and the other Montana Class
26 members' remedies would be insufficient to make Plaintiffs and the other Montana Class
27 members whole.

28

1 2147. Finally, because of the VW Entity Defendants’ breach of warranty as set forth
2 herein, Plaintiffs and the other Montana Class members assert, as additional and/or alternative
3 remedies, the revocation of acceptance of the goods and the return to Plaintiffs and the other
4 Montana Class members of the purchase or lease price of all Class Vehicles currently owned or
5 leased, and for such other incidental and consequential damages as allowed.

6 2148. The VW Entity Defendants were provided notice of these issues by numerous
7 complaints filed against them, including the instant Complaint, within a reasonable amount of
8 time after Volkswagen publicly admitted to using a defeat device in the Class Vehicles to evade
9 clean air standards.

10 2149. As a direct and proximate result of the VW Entity Defendants’ breach of express
11 warranties, Plaintiff and the other Montana Class members have been damaged in an amount to
12 be determined at trial.

13 **NEBRASKA**

14 **NEBRASKA COUNT I:**
15 **VIOLATIONS OF THE NEBRASKA CONSUMER PROTECTION ACT**
16 **(Neb. Rev. Stat. § 59-1601, *et seq.*)**

17 2150. Plaintiffs incorporate by reference each preceding paragraph as though fully set
18 forth herein.

19 2151. Plaintiffs Schram and Stirek (for the purpose of this section, “Plaintiffs”) bring this
20 action on behalf of themselves and the Nebraska Class against all Defendants.

21 2152. Volkswagen, Plaintiffs and Nebraska Class members are “person[s]” under the
22 Nebraska Consumer Protection Act (“Nebraska CPA”), Neb. Rev. Stat. § 59-1601(1).

23 2153. Volkswagen’s actions as set forth herein occurred in the conduct of trade or
24 commerce as defined under Neb. Rev. Stat. § 59-1601(2).

25 2154. The Nebraska CPA prohibits “unfair or deceptive acts or practices in the conduct
26 of any trade or commerce.” Neb. Rev. Stat. § 59-1602. The conduct Volkswagen as set forth
27 herein constitutes unfair or deceptive acts or practices.

28 2155. In the course of their business, Defendants concealed and suppressed material facts
concerning the Class Vehicles. Defendants accomplished this by installing illegal defeat device

1 software in the Class Vehicles that caused the vehicles to operate in a low emission test mode
2 only during emissions testing. During normal operations, the Class Vehicles would emit grossly
3 larger quantities of noxious contaminants, sometimes 40 times over applicable standards. The
4 result was what Volkswagen intended—the Class Vehicles passed emissions testing by way of
5 deliberately induced false readings. Plaintiffs and Nebraska Class members had no way of
6 discerning that Volkswagen’s representations were false and misleading because Volkswagen’s
7 defeat device software was extremely sophisticated technology. Plaintiffs and Nebraska Class
8 members did not and could not unravel Volkswagen’s deception on their own. In fact, it took
9 years before the academic engineering community—specifically a research team at WVU’s
10 Center for Alternative Fuels, Engines & Emissions—detected Volkswagen’s cheat using
11 sophisticated, expensive equipment and applying decades of combined experience.

12 2156. Defendants thus violated the Act by, at minimum employing deception, deceptive
13 acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any
14 material fact with intent that others rely upon such concealment, suppression or omission, in
15 connection with the sale of Class Vehicles.

16 2157. Bosch played a critical role in facilitating, and itself contributed to, Volkswagen’s
17 unfair and deceptive conduct, as alleged herein. Bosch knew or should have known that
18 Volkswagen would use and had used the Bosch technology as an emission defeat device, and in
19 fact helped it do so. Without Bosch’s complicity and silence, Volkswagen could not have
20 perpetrated the fraudulent, deceptive, and unfair practices alleged herein, and Bosch’s actions
21 themselves constitute fraudulent, deceptive, and unfair practices.

22 2158. Defendants engaged in misleading, false, unfair or deceptive acts or practices that
23 violated the Nebraska CPA by installing, failing to disclose and actively concealing the illegal
24 defeat device and the true cleanliness and performance of the “clean” diesel engine system, by
25 marketing its vehicles as legal, reliable, environmentally clean, efficient, and of high quality, and
26 by presenting itself as a reputable manufacturer that valued environmental cleanliness and
27 efficiency, and that stood behind its vehicles after they were sold.
28

1 2159. The Clean Air Act and EPA regulations require that automobiles limit their
2 emissions output to specified levels. These laws are intended for the protection of public health
3 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the
4 Clean Air Act and its regulations. See 42 U.S.C. § 7522(a)(3)(B); 40 CFR § 86.1809. By
5 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available
6 for purchase, Volkswagen violated federal law and therefore engaged in conduct that violates the
7 Nebraska CPA.

8 2160. Volkswagen has known of its use of the “defeat device” and the true nature of its
9 “clean” diesel engine system for at least six years, but concealed all of that information until
10 recently. Volkswagen was also aware that it valued profits over environmental cleanliness,
11 efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles
12 throughout the United States that did not comply with EPA regulations. Volkswagen concealed
13 this information as well.

14 2161. Volkswagen intentionally and knowingly misrepresented material facts regarding
15 the Class Vehicles with intent to mislead Plaintiff and the Nebraska Class.

16 2162. Volkswagen knew or should have known that its conduct violated the Nebraska
17 CPA.

18 2163. Defendants owed Plaintiffs a duty to disclose the illegality and public health and
19 safety risks of the Class Vehicles and the devaluing of environmental cleanliness and integrity at
20 Volkswagen, because Volkswagen:

- 21 a. possessed exclusive knowledge that it valued profits over
22 environmental cleanliness, efficiency, and lawfulness, and
23 that it was manufacturing, selling and distributing vehicles
24 throughout the United States that did not comply with EPA
25 regulations;
- 26 b. intentionally concealed the foregoing from regulators,
27 Plaintiffs, Class members; and/or
- 28 c. made incomplete representations about the safety,
cleanliness, efficiency and reliability of the Class Vehicles
generally, and the use of the “defeat device” and true nature
of the “clean” diesel engine system in particular, while

1 purposefully withholding material facts from Plaintiffs that
2 contradicted these representations.

3 2164. Defendants concealed the illegal defeat device and the true emissions and
4 performance of the “clean” diesel engine system, resulting in a raft of negative publicity once the
5 use of the “defeat device” and true characteristics of the “clean” diesel engine system finally
6 began to be disclosed. The value of the Class Vehicles has therefore greatly diminished. In light
7 of the stigma attached to those vehicles by Volkswagen’s conduct, they are now worth
8 significantly less than they otherwise would be worth.

9 2165. Volkswagen’s fraudulent use of the “defeat device” and its concealment of the true
10 characteristics of the “clean” diesel engine system were material to Plaintiff and the Nebraska
11 Class. A vehicle made by a reputable manufacturer of environmentally friendly vehicles is worth
12 more than an otherwise comparable vehicle made by a disreputable and dishonest manufacturer of
13 polluting vehicles that conceals the amount its cars pollutes rather than make environmentally
14 friendly vehicles.

15 2166. Defendants’ unfair or deceptive acts or practices were likely to and did in fact
16 deceive regulators and reasonable consumers, including Plaintiffs, about the true environmental
17 cleanliness and efficiency of Volkswagen-branded vehicles, the quality of the Volkswagen brand,
18 the devaluing of environmental cleanliness and integrity at Volkswagen, and the true value of the
19 Class Vehicles.

20 2167. Plaintiff and the Nebraska Class suffered ascertainable loss and actual damages as
21 a direct and proximate result of Defendants’ misrepresentations and its concealment of and failure
22 to disclose material information. Plaintiffs and the Nebraska Class members who purchased or
23 leased the Class Vehicles would not have purchased or leased them at all and/or—if the Vehicles’
24 true nature had been disclosed and mitigated, and the Vehicles rendered legal to sell—would have
25 paid significantly less for them. Plaintiffs also suffered diminished value of their vehicles, as well
26 as lost or diminished use.

27 2168. Defendants had an ongoing duty to all Volkswagen customers to refrain from
28 unfair and deceptive acts or practices under the Nebraska CPA. All owners of Class Vehicles

1 suffered ascertainable loss in the form of the diminished value of their vehicles as a result of
2 Volkswagen's deceptive and unfair acts and practices made in the course of Volkswagen's
3 business.

4 2169. Defendants' violations present a continuing risk to Plaintiffs as well as to the
5 general public. Defendants' unlawful acts and practices complained of herein affect the public
6 interest.

7 2170. As a direct and proximate result of Defendants' violations of the Nebraska CPA,
8 Plaintiff and the Nebraska Class have suffered injury-in-fact and/or actual damage.

9 2171. Because Volkswagen's conduct caused injury to Nebraska Class members'
10 property through violations of the Nebraska CPA, the Nebraska Class seeks recovery of actual
11 damages, as well as enhanced damages up to \$1,000, an order enjoining Volkswagen's unfair or
12 deceptive acts and practices, costs of Court, reasonable attorneys' fees, and any other just and
13 proper relief available under Neb. Rev. Stat. § 59-1609.

14 **NEBRASKA COUNT II:**
15 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
16 **(Neb. Rev. St. U.C.C. §§ 2-314 and 2A-212)**

17 2172. Plaintiffs reallege and incorporate by reference all allegations of the preceding
18 paragraphs as though fully set forth herein.

19 2173. Plaintiffs bring this Count on behalf of the Nebraska Class, against VW AG, VW
20 America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the "VW
21 Entity Defendants").

22 2174. The VW Entity Defendants are and were at all relevant times "merchants" with
23 respect to motor vehicles under Neb. Rev. St. U.C.C. § 2-104(1) and "sellers" of motor vehicles
24 under § 2-103(1)(d).

25 2175. With respect to leases, the VW Entity Defendants are and were at all relevant
26 times "lessors" of motor vehicles under Neb. Rev. St. U.C.C. § 2A-103(1)(p).

27 2176. The Class Vehicles are and were at all relevant times "goods" within the meaning
28 of Neb. Rev. St. U.C.C. §§ 2-105(1) and 2A-103(1)(h).

1 2177. A warranty that the Class Vehicles were in merchantable condition and fit for the
2 ordinary purpose for which vehicles are used is implied by law pursuant to Neb. Rev. St.
3 U.C.C. §§ 2-314 and 2A-212.

4 2178. These Class Vehicles, when sold or leased and at all times thereafter, were not in
5 merchantable condition and are not fit for the ordinary purpose for which vehicles are used.
6 Specifically, the Class Vehicles are inherently defective in that they do not comply with federal
7 and state emissions standards, rendering certain emissions functions inoperative; and the “clean”
8 diesel engine system was not adequately designed, manufactured, and tested.

9 2179. Volkswagen was provided notice of these issues by the investigations of the EPA
10 and individual state regulators, numerous complaints filed against it including the instant
11 Complaint, and by numerous individual letters and communications sent by Plaintiffs and others
12 within a reasonable amount of time after the allegations of Class Vehicle defects became public.

13 2180. As a direct and proximate result of the VW Entity Defendants’ breach of the
14 implied warranty of merchantability, Plaintiffs and the other Nebraska Class members have been
15 damaged in an amount to be proven at trial.

16 **NEBRASKA COUNT III:**
17 **BREACH OF EXPRESS WARRANTY**
(Neb.Rev.St. U.C.C. §§ 2-313 and 2A-210)

18 2181. Plaintiffs reallege and incorporate by reference all preceding allegations as though
19 fully set forth herein.

20 2182. Plaintiffs bring this Count on behalf of the Nebraska Class, against VW AG, VW
21 America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the “VW
22 Entity Defendants”).

23 2183. The VW Entity Defendants are and were at all relevant times “merchants” with
24 respect to motor vehicles under Neb.Rev.St. U.C.C. § 2-104(1) and “sellers” of motor vehicles
25 under § 2-103(1)(d).

26 2184. With respect to leases, the VW Entity Defendants are and were at all relevant
27 times “lessors” of motor vehicles under Neb.Rev.St. U.C.C. § 2A-103(1)(p).
28

1 2185. The Class Vehicles are and were at all relevant times “goods” within the meaning
2 of Neb.Rev.St. U.C.C. §§ 2-105(1) and 2A-103(1)(h).

3 2186. In connection with the purchase or lease of each one of its new vehicles, the VW
4 Entity Defendants provide an express New Vehicle Limited Warranty (“NVLW”) for a period of
5 three years or 36,000 miles, whichever occurs first. This NVLW exists to cover “any repair to
6 correct a manufacturers defect in materials or workmanship.”

7 2187. The Clean Air Act requires manufacturers of light-duty vehicles to provide two
8 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
9 Warranty.”

10 2188. The EPA requires vehicle manufacturers to provide a Performance Warranty with
11 respect to the vehicles’ emission systems. Thus, Volkswagen also provides an express warranty
12 for its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
13 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
14 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
15 emission control components are covered for the first eight years or 80,000 miles, whichever
16 comes first. These major emission control components subject to the longer warranty include the
17 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
18 device or computer.

19 2189. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
20 with respect to their vehicles’ emission systems. Thus, the VW Entity Defendants also provide an
21 express warranty for their vehicles through a Federal Emission Control System Defect Warranty.
22 The Design and Defect Warranty required by the EPA covers repair of emission control or
23 emission related parts which fail to function or function improperly because of a defect in
24 materials or workmanship. This warranty provides protection for two years or 24,000 miles,
25 whichever comes first, or, for the major emission control components, for eight years or 80,000
26 miles, whichever comes first.

27 2190. As manufacturers of light-duty vehicles, the VW Entity Defendants were required
28 to provide these warranties to purchasers or lessees of their “clean” diesel vehicles.

1 2191. The VW Entity Defendants’ warranties formed a basis of the bargain that was
2 reached when Plaintiffs and other Nebraska Class members purchased or leased their Class
3 Vehicles equipped with the non-compliant “clean” diesel engine and emission systems.

4 2192. Plaintiffs and the Nebraska Class members experienced defects within the
5 warranty period. Despite the existence of warranties, the VW Entity Defendants failed to inform
6 Plaintiffs and Nebraska Class members that the Class Vehicles were intentionally designed and
7 manufactured to be out of compliance with applicable state and federal emissions laws, and failed
8 to fix the defective emission components free of charge.

9 2193. The VW Entity Defendants breached the express warranty promising to repair and
10 correct a manufacturing defect or materials or workmanship of any parts they supplied. The VW
11 Entity Defendants have not repaired or adjusted, and have been unable to repair or adjust, the
12 Class Vehicles’ materials and workmanship defects.

13 2194. Affording the VW Entity Defendants a reasonable opportunity to cure their breach
14 of written warranties would be unnecessary and futile here. For example, the Frequently Asked
15 Questions (“FAQ”) section of VW’s informational website states:

16 **How soon will the remedy be available, and how am I going to**
17 **be compensated for this?**

18 We cannot offer a firm date now because we need to work on a
19 remedy and review it with the government. We are proceeding as
 quickly as possible.

20 2195. In his Congressional testimony on October 8, 2015, Michael Horn stated that
21 Volkswagen intends to make Class Vehicles compliant with emission standards through software
22 fixes and the installation of auxiliary hardware, but that fix will take “1 to 2 years, minimum.”
23 When questioned on remedies for consumers, he stated that Volkswagen may pay customers for a
24 loss in resale values because of the scandal. He said that Volkswagen is not considering
25 providing loaner vehicles because the U.S. government says the vehicles are safe to drive.

26 2196. Michael Horn’s testimony serves as an admission that the limited warranty
27 promising to repair and/or correct a manufacturing defect fails in its essential purpose because the
28 VW Entity Defendants cannot meet that promise within a reasonable time.

1 2197. Furthermore, the limited warranty promising to repair and/or correct a
2 manufacturing defect fails in its essential purpose because the contractual remedy is insufficient
3 to make Plaintiffs and the other Nebraska Class members whole and because the VW Entity
4 Defendants have failed and/or have refused to adequately provide the promised remedies within a
5 reasonable time.

6 2198. Accordingly, recovery by Plaintiffs and the other Nebraska Class members is not
7 restricted to the limited warranty promising to repair and/or correct a manufacturing defect, and
8 Plaintiffs, individually and on behalf of the other Nebraska Class members, seek all remedies as
9 allowed by law.

10 2199. Also, as alleged in more detail herein, at the time the VW Entity Defendants
11 warranted and sold or leased the Class Vehicles, they knew that the Class Vehicles were
12 inherently defective and did not conform to their warranties; further, the VW Entity Defendants
13 had wrongfully and fraudulently concealed material facts regarding the Class Vehicles. Plaintiffs
14 and the other Nebraska Class members were therefore induced to purchase or lease the Class
15 Vehicles under false and/or fraudulent pretenses.

16 2200. Moreover, many of the injuries flowing from the Class Vehicles cannot be
17 resolved through the limited remedy of “replacements or adjustments,” as many incidental and
18 consequential damages have already been suffered because of Volkswagen’s fraudulent conduct
19 as alleged herein, and because of its failure and/or continued failure to provide such limited
20 remedy within a reasonable time, and any limitation on Plaintiffs’ and the other Nebraska Class
21 members’ remedies would be insufficient to make Plaintiffs and the other Nebraska Class
22 members whole.

23 2201. Finally, because of the VW Entity Defendants’ breach of warranty as set forth
24 herein, Plaintiffs and the other Nebraska Class members assert, as additional and/or alternative
25 remedies, the revocation of acceptance of the goods and the return to Plaintiffs and the other
26 Nebraska Class members of the purchase or lease price of all Class Vehicles currently owned or
27 leased, and for such other incidental and consequential damages as allowed.
28

1 2202. The VW Entity Defendants were provided notice of these issues by numerous
2 complaints filed against them, including the instant Complaint, within a reasonable amount of
3 time after Volkswagen publicly admitted to using a defeat device in the Class Vehicles to evade
4 clean air standards.

5 2203. As a direct and proximate result of the VW Entity Defendants’ breach of express
6 warranties, Plaintiff and the other Nebraska Class members have been damaged in an amount to
7 be determined at trial.

8 **NEVADA**

9 **NEVADA COUNT I:**
10 **VIOLATIONS OF THE NEVADA DECEPTIVE TRADE PRACTICES ACT**
(Nev. Rev. Stat. § 598.0903, et seq.)

11 2204. Plaintiffs incorporate by reference each preceding paragraph as though fully set
12 forth herein.

13 2205. Plaintiffs Berman, Perlmutter, and Peterson (for the purpose of this section,
14 “Plaintiffs”) bring this action on behalf of themselves and the Nevada Class against all
15 Defendants.

16 2206. The Nevada Deceptive Trade Practices Act (“Nevada DTPA”), NEV. REV.
17 STAT. § 598.0903, *et seq.* prohibits deceptive trade practices. NEV. REV. STAT. § 598.0915
18 provides that a person engages in a “deceptive trade practice” if, in the course of business or
19 occupation, the person: “5. Knowingly makes a false representation as to the characteristics,
20 ingredients, uses, benefits, alterations or quantities of goods or services for sale or lease or a false
21 representation as to the sponsorship, approval, status, affiliation or connection of a person
22 therewith”; “7. Represents that goods or services for sale or lease are of a particular standard,
23 quality or grade, or that such goods are of a particular style or model, if he or she knows or should
24 know that they are of another standard, quality, grade, style or model”; “9. Advertises goods or
25 services with intent not to sell or lease them as advertised”; or “15. Knowingly makes any other
26 false representation in a transaction.”

27 2207. In the course of their business, Defendants concealed and suppressed material facts
28 concerning the Class Vehicles. Defendants accomplished this by installing illegal defeat device

1 software in the Class Vehicles that caused the vehicles to operate in a low emission test mode
2 only during emissions testing. During normal operations, the Class Vehicles would emit grossly
3 larger quantities of noxious contaminants, sometimes 40 times over applicable standards. The
4 result was what Volkswagen intended—the Class Vehicles passed emissions testing by way of
5 deliberately induced false readings. Plaintiffs and Nevada Class members had no way of
6 discerning that Volkswagen’s representations were false and misleading because Volkswagen’s
7 defeat device software was extremely sophisticated technology. Plaintiffs and Nevada Class
8 members did not and could not unravel Volkswagen’s deception on their own. In fact, it took
9 years before the academic engineering community—specifically a research team at WVU’s
10 Center for Alternative Fuels, Engines & Emissions—detected Volkswagen’s cheat using
11 sophisticated, expensive equipment and applying decades of combined experience.

12 2208. Defendants thus violated the Act by, at minimum: knowingly representing that
13 Class Vehicles have uses and benefits which they do not have; representing that Class Vehicles
14 are of a particular standard, quality, and grade when they are not; advertising Class Vehicles with
15 the intent not to sell or lease them as advertised; and representing that the subject of a transaction
16 involving Class Vehicles has been supplied in accordance with a previous representation when it
17 has not; and knowingly making other false representations in a transaction.

18 2209. Volkswagen’s actions as set forth above occurred in the conduct of trade or
19 commerce.

20 2210. Bosch played a critical role in facilitating, and itself contributed to, Volkswagen’s
21 unfair and deceptive conduct, as alleged herein. Bosch knew or should have known that
22 Volkswagen would use and had used the Bosch technology as an emission defeat device, and in
23 fact helped it do so. Without Bosch’s complicity and silence, Volkswagen could not have
24 perpetrated the fraudulent, deceptive, and unfair practices alleged herein, and Bosch’s actions
25 themselves constitute fraudulent, deceptive, and unfair practices.

26 2211. Defendants engaged in misleading, false, unfair or deceptive acts or practices that
27 violated the Nevada DTPA by installing, failing to disclose and actively concealing the illegal
28 defeat device and the true cleanliness and performance of the “clean” diesel engine system, by

1 marketing its vehicles as legal, reliable, environmentally clean, efficient, and of high quality, and
2 by presenting itself as a reputable manufacturer that valued environmental cleanliness and
3 efficiency, and that stood behind its vehicles after they were sold.

4 2212. The Clean Air Act and EPA regulations require that automobiles limit their
5 emissions output to specified levels. These laws are intended for the protection of public health
6 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the
7 Clean Air Act and its regulations. See 42 U.S.C. § 7522(a)(3)(B); 40 CFR § 86.1809. By
8 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available
9 for purchase, Volkswagen violated federal law and therefore engaged in conduct that violates the
10 Nevada DTPA.

11 2213. Volkswagen has known of its use of the “defeat device” and the true nature of its
12 “clean” diesel engine system for at least six years, but concealed all of that information until
13 recently. Volkswagen was also aware that it valued profits over environmental cleanliness,
14 efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles
15 throughout the United States that did not comply with EPA regulations. Volkswagen concealed
16 this information as well.

17 2214. Volkswagen intentionally and knowingly misrepresented material facts regarding
18 the Class Vehicles with intent to mislead Plaintiff and the Nevada Class.

19 2215. Volkswagen knew or should have known that its conduct violated the Nevada
20 DTPA.

21 2216. Defendants owed Plaintiffs a duty to disclose the illegality and public health and
22 safety risks of the Class Vehicles and the devaluing of environmental cleanliness and integrity at
23 Volkswagen, because Volkswagen:

- 24 a. possessed exclusive knowledge that it valued profits over
25 environmental cleanliness, efficiency, and lawfulness, and
26 that it was manufacturing, selling and distributing vehicles
27 throughout the United States that did not comply with EPA
28 regulations;
- b. intentionally concealed the foregoing from regulators,
Plaintiffs, Class members; and/or

1 c. made incomplete representations about the safety,
2 cleanliness, efficiency and reliability of the Class Vehicles
3 generally, and the use of the “defeat device” and true nature
4 of the “clean” diesel engine system in particular, while
5 purposefully withholding material facts from Plaintiffs that
6 contradicted these representations.

7 2217. Because Defendants concealed the illegal defeat device and the true emissions and
8 performance of the “clean” diesel engine system, resulting in a raft of negative publicity once the
9 use of the “defeat device” and true characteristics of the “clean” diesel engine system finally
10 began to be disclosed, the value of the Class Vehicles has greatly diminished. In light of the
11 stigma attached to those vehicles by Volkswagen’s conduct, they are now worth significantly less
12 than they otherwise would be worth.

13 2218. Defendants’ supply and use of the illegal defeat device and concealment of the true
14 characteristics of the “clean” diesel engine system were material to Plaintiffs and the Nevada
15 Class. A vehicle made by a reputable manufacturer of environmentally friendly vehicles is worth
16 more than an otherwise comparable vehicle made by a disreputable and dishonest manufacturer of
17 polluting vehicles that conceals the amount its cars pollutes rather than make environmentally
18 friendly vehicles.

19 2219. Defendants’ unfair or deceptive acts or practices were likely to and did in fact
20 deceive regulators and reasonable consumers, including Plaintiffs, about the true environmental
21 cleanliness and efficiency of Volkswagen-branded vehicles, the quality of the Volkswagen brand,
22 the devaluing of environmental cleanliness and integrity at Volkswagen, and the true value of the
23 Class Vehicles.

24 2220. Plaintiffs and the Nevada Class suffered ascertainable loss and actual damages as a
25 direct and proximate result of Defendants’ misrepresentations and its concealment of and failure
26 to disclose material information. Plaintiffs and the Nevada Class members who purchased or
27 leased the Class Vehicles would not have purchased or leased them at all and/or—if the Vehicles’
28 true nature had been disclosed and mitigated, and the Vehicles rendered legal to sell—would have
29 paid significantly less for them. Plaintiffs also suffered diminished value of their vehicles, as well
30 as lost or diminished use.

1 2221. Defendants had an ongoing duty to all Volkswagen customers to refrain from
2 unfair and deceptive acts or practices under the Nevada DTPA. All owners of Class Vehicles
3 suffered ascertainable loss in the form of the diminished value of their vehicles as a result of
4 Volkswagen’s deceptive and unfair acts and practices that occurred in the course of
5 Volkswagen’s business.

6 2222. Defendants’ violations present a continuing risk to Plaintiffs as well as to the
7 general public. Defendants’ unlawful acts and practices complained of herein affect the public
8 interest.

9 2223. As a direct and proximate result of Defendants’ violations of the Nevada DTPA,
10 Plaintiffs and the Nevada Class have suffered injury-in-fact and/or actual damage.

11 2224. Accordingly, Plaintiffs and the Nevada Class seek their actual damages, punitive
12 damages, an order enjoining Volkswagen’s deceptive acts or practices, costs of Court, attorney’s
13 fees, and all other appropriate and available remedies under the Nevada Deceptive Trade
14 Practices Act. NEV. REV. STAT. § 41.600.

15 **NEVADA COUNT II:**
16 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
17 **(N.R.S. §§ 104.2314 and 104A.2212)**

18 2225. Plaintiffs reallege and incorporate by reference all allegations of the preceding
19 paragraphs as though fully set forth herein.

20 2226. Plaintiffs bring this Count on behalf of the Nevada Class, against VW AG, VW
21 America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the “VW
22 Entity Defendants”).

23 2227. The VW Entity Defendants are and were at all relevant times “merchants” with
24 respect to motor vehicles under N.R.S. § 104.2104(1) and “sellers” of motor vehicles under
25 § 104.2103(1)(c).

26 2228. With respect to leases, the VW Entity Defendants are and were at all relevant
27 times “lessors” of motor vehicles under N.R.S. § 104A.2103(1)(p).

28 2229. The Class Vehicles are and were at all relevant times “goods” within the meaning
of N.R.S. §§ 104.2105(1) and 104A.2103(1)(h).

1 2230. A warranty that the Class Vehicles were in merchantable condition and fit for the
2 ordinary purpose for which vehicles are used is implied by law pursuant to N.R.S. §§ 104.2314
3 and 104A.2212.

4 2231. These Class Vehicles, when sold or leased and at all times thereafter, were not in
5 merchantable condition and are not fit for the ordinary purpose for which vehicles are used.
6 Specifically, the Class Vehicles are inherently defective in that they do not comply with federal
7 and state emissions standards, rendering certain emissions functions inoperative; and the “clean”
8 diesel engine system was not adequately designed, manufactured, and tested.

9 2232. Volkswagen was provided notice of these issues by the investigations of the EPA
10 and individual state regulators, numerous complaints filed against it including the instant
11 Complaint, and by numerous individual letters and communications sent by Plaintiffs and others
12 within a reasonable amount of time after the allegations of Class Vehicle defects became public.

13 2233. As a direct and proximate result of the VW Entity Defendants’ breach of the
14 implied warranty of merchantability, Plaintiffs and the other Nevada Class members have been
15 damaged in an amount to be proven at trial.

16 **NEVADA COUNT III:**
17 **BREACH OF EXPRESS WARRANTY**
18 **(N.R.S. §§ 104.2313 and 104A.2210)**

19 2234. Plaintiffs reallege and incorporate by reference all preceding allegations as though
20 fully set forth herein.

21 2235. Plaintiffs bring this Count on behalf of the Nevada Class, against VW AG, VW
22 America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the “VW
23 Entity Defendants”).

24 2236. The VW Entity Defendants are and were at all relevant times “merchants” with
25 respect to motor vehicles under N.R.S. § 104.2104(1) and “sellers” of motor vehicles under
26 § 104.2103(1)(c).

27 2237. With respect to leases, the VW Entity Defendants are and were at all relevant
28 times “lessors” of motor vehicles under N.R.S. § 104A.2103(1)(p).

1 2238. The Class Vehicles are and were at all relevant times “goods” within the meaning
2 of N.R.S. §§ 104.2105(1) and 104A.2103(1)(h).

3 2239. In connection with the purchase or lease of each one of its new vehicles, the VW
4 Entity Defendants provide an express New Vehicle Limited Warranty (“NVLW”) for a period of
5 three years or 36,000 miles, whichever occurs first. This NVLW exists to cover “any repair to
6 correct a manufacturers defect in materials or workmanship.”

7 2240. The Clean Air Act requires manufacturers of light-duty vehicles to provide two
8 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
9 Warranty.”

10 2241. The EPA requires vehicle manufacturers to provide a Performance Warranty with
11 respect to the vehicles’ emission systems. Thus, Volkswagen also provides an express warranty
12 for its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
13 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
14 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
15 emission control components are covered for the first eight years or 80,000 miles, whichever
16 comes first. These major emission control components subject to the longer warranty include the
17 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
18 device or computer.

19 2242. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
20 with respect to their vehicles’ emission systems. Thus, the VW Entity Defendants also provide an
21 express warranty for their vehicles through a Federal Emission Control System Defect Warranty.
22 The Design and Defect Warranty required by the EPA covers repair of emission control or
23 emission related parts which fail to function or function improperly because of a defect in
24 materials or workmanship. This warranty provides protection for two years or 24,000 miles,
25 whichever comes first, or, for the major emission control components, for eight years or 80,000
26 miles, whichever comes first.

27 2243. As manufacturers of light-duty vehicles, the VW Entity Defendants were required
28 to provide these warranties to purchasers or lessees of their “clean” diesel vehicles.

1 2244. The VW Entity Defendants’ warranties formed a basis of the bargain that was
2 reached when Plaintiffs and other Nevada Class members purchased or leased their Class
3 Vehicles equipped with the non-compliant “clean” diesel engine and emission systems.

4 2245. Plaintiffs and the Nevada Class members experienced defects within the warranty
5 period. Despite the existence of warranties, the VW Entity Defendants failed to inform Plaintiffs
6 and Nevada Class members that the Class Vehicles were intentionally designed and manufactured
7 to be out of compliance with applicable state and federal emissions laws, and failed to fix the
8 defective emission components free of charge.

9 2246. The VW Entity Defendants breached the express warranty promising to repair and
10 correct a manufacturing defect or materials or workmanship of any parts they supplied. The VW
11 Entity Defendants have not repaired or adjusted, and have been unable to repair or adjust, the
12 Class Vehicles’ materials and workmanship defects.

13 2247. Affording the VW Entity Defendants a reasonable opportunity to cure their breach
14 of written warranties would be unnecessary and futile here. For example, the Frequently Asked
15 Questions (“FAQ”) section of VW’s informational website states:

16 **How soon will the remedy be available, and how am I going to**
17 **be compensated for this?**

18 We cannot offer a firm date now because we need to work on a
19 remedy and review it with the government. We are proceeding as
 quickly as possible.

20 2248. In his Congressional testimony on October 8, 2015, Michael Horn stated that
21 Volkswagen intends to make Class Vehicles compliant with emission standards through software
22 fixes and the installation of auxiliary hardware, but that fix will take “1 to 2 years, minimum.”
23 When questioned on remedies for consumers, he stated that Volkswagen may pay customers for a
24 loss in resale values because of the scandal. He said that Volkswagen is not considering
25 providing loaner vehicles because the U.S. government says the vehicles are safe to drive.

26 2249. Michael Horn’s testimony serves as an admission that the limited warranty
27 promising to repair and/or correct a manufacturing defect fails in its essential purpose because the
28 VW Entity Defendants cannot meet that promise within a reasonable time.

1 2250. Furthermore, the limited warranty promising to repair and/or correct a
2 manufacturing defect fails in its essential purpose because the contractual remedy is insufficient
3 to make Plaintiffs and the other Nevada Class members whole and because the VW Entity
4 Defendants have failed and/or have refused to adequately provide the promised remedies within a
5 reasonable time.

6 2251. Accordingly, recovery by Plaintiffs and the other Nevada Class members is not
7 restricted to the limited warranty promising to repair and/or correct a manufacturing defect, and
8 Plaintiffs, individually and on behalf of the other Nevada Class members, seek all remedies as
9 allowed by law.

10 2252. Also, as alleged in more detail herein, at the time the VW Entity Defendants
11 warranted and sold or leased the Class Vehicles, they knew that the Class Vehicles were
12 inherently defective and did not conform to their warranties; further, the VW Entity Defendants
13 had wrongfully and fraudulently concealed material facts regarding the Class Vehicles. Plaintiffs
14 and the other Nevada Class members were therefore induced to purchase or lease the Class
15 Vehicles under false and/or fraudulent pretenses.

16 2253. Moreover, many of the injuries flowing from the Class Vehicles cannot be
17 resolved through the limited remedy of “replacements or adjustments,” as many incidental and
18 consequential damages have already been suffered because of Volkswagen’s fraudulent conduct
19 as alleged herein, and because of its failure and/or continued failure to provide such limited
20 remedy within a reasonable time, and any limitation on Plaintiffs’ and the other Nevada Class
21 members’ remedies would be insufficient to make Plaintiffs and the other Nevada Class members
22 whole.

23 2254. Finally, because of the VW Entity Defendants’ breach of warranty as set forth
24 herein, Plaintiffs and the other Nevada Class members assert, as additional and/or alternative
25 remedies, the revocation of acceptance of the goods and the return to Plaintiffs and the other
26 Nevada Class members of the purchase or lease price of all Class Vehicles currently owned or
27 leased, and for such other incidental and consequential damages as allowed.
28

1 2255. The VW Entity Defendants were provided notice of these issues by numerous
2 complaints filed against them, including the instant Complaint, within a reasonable amount of
3 time after Volkswagen publicly admitted to using a defeat device in the Class Vehicles to evade
4 clean air standards.

5 2256. As a direct and proximate result of the VW Entity Defendants’ breach of express
6 warranties, Plaintiff and the other Nevada Class members have been damaged in an amount to be
7 determined at trial.

8 **NEW HAMPSHIRE**

9 **NEW HAMPSHIRE COUNT I:**
10 **VIOLATIONS OF N.H. CONSUMER PROTECTION ACT**
11 **(N.H. Rev. Stat. Ann. § 358-a:1, *et seq.*)**

12 2257. Plaintiffs incorporate by reference all preceding allegations as though fully set
13 forth herein.

14 2258. Plaintiffs Minott, Grogan, and Gotta (for the purpose of this section, “Plaintiffs”) bring this action on behalf of themselves and the New Hampshire Class against all Defendants.

15 2259. Plaintiffs, the New Hampshire Class, and Defendants are “persons” under the New
16 Hampshire Consumer Protection Act (“New Hampshire CPA”), N.H. Rev. Stat. § 358-A:1.

17 2260. Volkswagen’s actions as set forth herein occurred in the conduct of trade or
18 commerce as defined under N.H. Rev. Stat. § 358-A:1.

19 2261. The New Hampshire CPA prohibits a person, in the conduct of any trade or
20 commerce, from using “any unfair or deceptive act or practice,” including “but ... not limited to,
21 the following: ... (V) Representing that goods or services have ... characteristics, ... uses,
22 benefits, or quantities that they do not have;” “(VII) Representing that goods or services are of a
23 particular standard, quality, or grade, ... if they are of another;” and “(IX) Advertising goods or
24 services with intent not to sell them as advertised.” N.H. Rev. Stat. § 358-A:2.

25 2262. In the course of their business, Defendants concealed and suppressed material facts
26 concerning the Class Vehicles. Defendants accomplished this by installing illegal defeat device
27 software in the Class Vehicles that caused the vehicles to operate in a low emission test mode
28 only during emissions testing. During normal operations, the Class Vehicles would emit grossly

1 larger quantities of noxious contaminants, sometimes 40 times over applicable standards. The
2 result was what Volkswagen intended—the Class Vehicles passed emissions testing by way of
3 deliberately induced false readings. Plaintiffs and New Hampshire Class members had no way of
4 discerning that Volkswagen’s representations were false and misleading because Volkswagen’s
5 defeat device software was extremely sophisticated technology. Plaintiffs and New Hampshire
6 Class members did not and could not unravel Volkswagen’s deception on their own. In fact, it
7 took years before the academic engineering community—specifically a research team at WVU’s
8 Center for Alternative Fuels, Engines & Emissions—detected Volkswagen’s cheat using
9 sophisticated, expensive equipment and applying decades of combined experience.

10 2263. Defendants thus violated the Act by, at minimum: employing deception, deceptive
11 acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any
12 material fact with intent that others rely upon such concealment, suppression or omission, in
13 connection with the sale of Class Vehicles.

14 2264. Bosch played a critical role in facilitating, and itself contributed to, Volkswagen’s
15 unfair and deceptive conduct, as alleged herein. Bosch knew or should have known that
16 Volkswagen would use and had used the Bosch technology as an emission defeat device, and in
17 fact helped it do so. Without Bosch’s complicity and silence, Volkswagen could not have
18 perpetrated the fraudulent, deceptive, and unfair practices alleged herein, and Bosch’s actions
19 themselves constitute fraudulent, deceptive, and unfair practices.

20 2265. Defendants engaged in misleading, false, unfair or deceptive acts or practices that
21 violated the New Hampshire CPA by installing, failing to disclose and actively concealing the
22 illegal defeat device and the true cleanliness and performance of the “clean” diesel engine system,
23 by marketing its vehicles as legal, reliable, environmentally clean, efficient, and of high quality,
24 and by presenting itself as a reputable manufacturer that valued environmental cleanliness and
25 efficiency, and that stood behind its vehicles after they were sold.

26 2266. The Clean Air Act and EPA regulations require that automobiles limit their
27 emissions output to specified levels. These laws are intended for the protection of public health
28 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the

1 Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 CFR § 86.1809. By
2 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available
3 for purchase, Volkswagen violated federal law and therefore engaged in conduct that violates the
4 New Hampshire CPA.

5 2267. Volkswagen has known of its use of the “defeat device” and the true nature of its
6 “clean” diesel engine system for at least six years, but concealed all of that information until
7 recently. Volkswagen was also aware that it valued profits over environmental cleanliness,
8 efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles
9 throughout the United States that did not comply with EPA regulations. Volkswagen concealed
10 this information as well.

11 2268. Volkswagen intentionally and knowingly misrepresented material facts regarding
12 the Class Vehicles with intent to mislead Plaintiff and the New Hampshire Class.

13 2269. Volkswagen knew or should have known that its conduct violated the New
14 Hampshire CPA.

15 2270. Defendants owed Plaintiffs a duty to disclose the illegality and public health and
16 safety risks of the Class Vehicles and the devaluing of environmental cleanliness and integrity at
17 Volkswagen, because Volkswagen:

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

26 2271. Defendants concealed the illegal defeat device and the true emissions and
27 performance of the “clean” diesel engine system, resulting in a raft of negative publicity once the
28 use of the “defeat device” and true characteristics of the “clean” diesel engine system finally

1 began to be disclosed. The value of the Class Vehicles has greatly diminished. In light of the
2 stigma attached to those vehicles by Volkswagen’s conduct, they are now worth significantly less
3 than they otherwise would be worth.

4 2272. Defendants’ supply and use of the illegal defeat device and concealment of the true
5 characteristics of the “clean” diesel engine system were material to Plaintiffs and the New
6 Hampshire Class. A vehicle made by a reputable manufacturer of environmentally friendly
7 vehicles is worth more than an otherwise comparable vehicle made by a disreputable and
8 dishonest manufacturer of polluting vehicles that conceals the amount its cars pollutes rather than
9 make environmentally friendly vehicles.

10 2273. Defendants’ unfair or deceptive acts or practices were likely to and did in fact
11 deceive regulators and reasonable consumers, including Plaintiffs, about the true environmental
12 cleanliness and efficiency of Volkswagen-branded vehicles, the quality of the Volkswagen brand,
13 the devaluing of environmental cleanliness and integrity at Volkswagen, and the true value of the
14 Class Vehicles.

15 2274. Plaintiffs and the New Hampshire Class suffered ascertainable loss and actual
16 damages as a direct and proximate result of Defendants’ misrepresentations and its concealment
17 of and failure to disclose material information. Plaintiffs and the New Hampshire Class members
18 who purchased or leased the Class Vehicles would not have purchased or leased them at all
19 and/or—if the Vehicles’ true nature had been disclosed and mitigated, and the Vehicles rendered
20 legal to sell—would have paid significantly less for them. Plaintiffs also suffered diminished
21 value of their vehicles, as well as lost or diminished use.

22 2275. Defendants had an ongoing duty to all Volkswagen customers to refrain from
23 unfair and deceptive acts or practices under the New Hampshire CPA. All owners of Class
24 Vehicles suffered ascertainable loss in the form of the diminished value of their vehicles as a
25 result of Volkswagen’s deceptive and unfair acts and practices that occurred in the course of
26 Volkswagen’s business.

1 2276. Defendants' violations present a continuing risk to Plaintiffs as well as to the
2 general public. Defendants' unlawful acts and practices complained of herein affect the public
3 interest.

4 2277. As a direct and proximate result of Defendants' violations of the New Hampshire
5 CPA, Plaintiffs and the New Hampshire Class have suffered injury-in-fact and/or actual damage.

6 2278. Because Volkswagen's willful conduct caused injury to New Hampshire Class
7 members' property through violations of the New Hampshire CPA, the New Hampshire Class
8 seeks recovery of actual damages or \$1,000, whichever is greater, treble damages, costs and
9 reasonable attorneys' fees, an order enjoining Volkswagen's unfair and/or deceptive acts and
10 practices, and any other just and proper relief under N.H. REV. STAT. § 358-A:10.

11 **NEW HAMPSHIRE COUNT II:**
12 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
13 **(N.H. Rev. Stat. §§ 382-A:2-314 and 382-A:2A-212)**

14 2279. Plaintiffs reallege and incorporate by reference all allegations of the preceding
15 paragraphs as though fully set forth herein.

16 2280. Plaintiffs bring this Count on behalf of the New Hampshire Class, against VW
17 AG, VW America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the
18 "VW Entity Defendants").

19 2281. The VW Entity Defendants are and were at all relevant times "merchants" with
20 respect to motor vehicles under N.H. Rev. Stat. § 382-A:2-104(1) and "sellers" of motor vehicles
21 under § 382-A:2-103(1)(d).

22 2282. With respect to leases, the VW Entity Defendants are and were at all relevant
23 times "lessors" of motor vehicles under N.H. Rev. Stat. § 382-A:2A-103(1)(p).

24 2283. The Class Vehicles are and were at all relevant times "goods" within the meaning
25 of N.H. Rev. Stat. §§ 382-A:2-105(1) and 382-A:2A-103(1)(h).

26 2284. A warranty that the Class Vehicles were in merchantable condition and fit for the
27 ordinary purpose for which vehicles are used is implied by law pursuant to N.H. Rev. Stat.
28 §§ 382-A:2-314 and 382-A:2A-212.

1 2285. These Class Vehicles, when sold or leased and at all times thereafter, were not in
2 merchantable condition and are not fit for the ordinary purpose for which vehicles are used.
3 Specifically, the Class Vehicles are inherently defective in that they do not comply with federal
4 and state emissions standards, rendering certain emissions functions inoperative; and the “clean”
5 diesel engine system was not adequately designed, manufactured, and tested.

6 2286. Volkswagen was provided notice of these issues by the investigations of the EPA
7 and individual state regulators, numerous complaints filed against it including the instant
8 Complaint, and by numerous individual letters and communications sent by Plaintiffs and others
9 within a reasonable amount of time after the allegations of Class Vehicle defects became public.

10 2287. As a direct and proximate result of the VW Entity Defendants’ breach of the
11 implied warranty of merchantability, Plaintiffs and the other New Hampshire Class members
12 have been damaged in an amount to be proven at trial.

13 **NEW HAMPSHIRE COUNT III:**
14 **BREACH OF EXPRESS WARRANTY**
 (N.H. Rev. Stat. §§ 382-A:2-313 and 382-A:2A-210)

15 2288. Plaintiffs reallege and incorporate by reference all preceding allegations as though
16 fully set forth herein.

17 2289. Plaintiffs bring this Count on behalf of the New Hampshire Class, against VW
18 AG, VW America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the
19 “VW Entity Defendants”).

20 2290. The VW Entity Defendants are and were at all relevant times “merchants” with
21 respect to motor vehicles under N.H. Rev. Stat. § 382-A:2-104(1) and “sellers” of motor vehicles
22 under § 382-A:2-103(1)(d).

23 2291. With respect to leases, the VW Entity Defendants are and were at all relevant
24 times “lessors” of motor vehicles under N.H. Rev. Stat. § 382-A:2A-103(1)(p).

25 2292. The Class Vehicles are and were at all relevant times “goods” within the meaning
26 of N.H. Rev. Stat. §§ 382-A:2-105(1) and 2A-103(1)(h).

27 2293. In connection with the purchase or lease of each one of its new vehicles, the VW
28 Entity Defendants provide an express New Vehicle Limited Warranty (“NVLW”) for a period of

1 three years or 36,000 miles, whichever occurs first. This NVLW exists to cover “any repair to
2 correct a manufacturers defect in materials or workmanship.”

3 2294. The Clean Air Act requires manufacturers of light-duty vehicles to provide two
4 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
5 Warranty.”

6 2295. The EPA requires vehicle manufacturers to provide a Performance Warranty with
7 respect to the vehicles’ emission systems. Thus, Volkswagen also provides an express warranty
8 for its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
9 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
10 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
11 emission control components are covered for the first eight years or 80,000 miles, whichever
12 comes first. These major emission control components subject to the longer warranty include the
13 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
14 device or computer.

15 2296. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
16 with respect to their vehicles’ emission systems. Thus, the VW Entity Defendants also provide an
17 express warranty for their vehicles through a Federal Emission Control System Defect Warranty.
18 The Design and Defect Warranty required by the EPA covers repair of emission control or
19 emission related parts which fail to function or function improperly because of a defect in
20 materials or workmanship. This warranty provides protection for two years or 24,000 miles,
21 whichever comes first, or, for the major emission control components, for eight years or 80,000
22 miles, whichever comes first.

23 2297. As manufacturers of light-duty vehicles, the VW Entity Defendants were required
24 to provide these warranties to purchasers or lessees of their “clean” diesel vehicles.

25 2298. The VW Entity Defendants’ warranties formed a basis of the bargain that was
26 reached when Plaintiffs and other New Hampshire Class members purchased or leased their Class
27 Vehicles equipped with the non-compliant “clean” diesel engine and emission systems.
28

1 2299. Plaintiffs and the New Hampshire Class members experienced defects within the
2 warranty period. Despite the existence of warranties, the VW Entity Defendants failed to inform
3 Plaintiffs and New Hampshire Class members that the Class Vehicles were intentionally designed
4 and manufactured to be out of compliance with applicable state and federal emissions laws, and
5 failed to fix the defective emission components free of charge.

6 2300. The VW Entity Defendants breached the express warranty promising to repair and
7 correct a manufacturing defect or materials or workmanship of any parts they supplied. The VW
8 Entity Defendants have not repaired or adjusted, and have been unable to repair or adjust, the
9 Class Vehicles' materials and workmanship defects.

10 2301. Affording the VW Entity Defendants a reasonable opportunity to cure their breach
11 of written warranties would be unnecessary and futile here. For example, the Frequently Asked
12 Questions ("FAQ") section of VW's informational website states:

13 **How soon will the remedy be available, and how am I going to**
14 **be compensated for this?**

15 We cannot offer a firm date now because we need to work on a
16 remedy and review it with the government. We are proceeding as
 quickly as possible.

17 2302. In his Congressional testimony on October 8, 2015, Michael Horn stated that
18 Volkswagen intends to make Class Vehicles compliant with emission standards through software
19 fixes and the installation of auxiliary hardware, but that fix will take "1 to 2 years, minimum."
20 When questioned on remedies for consumers, he stated that Volkswagen may pay customers for a
21 loss in resale values because of the scandal. He said that Volkswagen is not considering
22 providing loaner vehicles because the U.S. government says the vehicles are safe to drive.

23 2303. Michael Horn's testimony serves as an admission that the limited warranty
24 promising to repair and/or correct a manufacturing defect fails in its essential purpose because the
25 VW Entity Defendants cannot meet that promise within a reasonable time.

26 2304. Furthermore, the limited warranty promising to repair and/or correct a
27 manufacturing defect fails in its essential purpose because the contractual remedy is insufficient
28 to make Plaintiffs and the other New Hampshire Class members whole and because the VW

1 Entity Defendants have failed and/or have refused to adequately provide the promised remedies
2 within a reasonable time.

3 2305. Accordingly, recovery by Plaintiffs and the other New Hampshire Class members
4 is not restricted to the limited warranty promising to repair and/or correct a manufacturing defect,
5 and Plaintiffs, individually and on behalf of the other New Hampshire Class members, seek all
6 remedies as allowed by law.

7 2306. Also, as alleged in more detail herein, at the time the VW Entity Defendants
8 warranted and sold or leased the Class Vehicles, they knew that the Class Vehicles were
9 inherently defective and did not conform to their warranties; further, the VW Entity Defendants
10 had wrongfully and fraudulently concealed material facts regarding the Class Vehicles. Plaintiffs
11 and the other New Hampshire Class members were therefore induced to purchase or lease the
12 Class Vehicles under false and/or fraudulent pretenses.

13 2307. Moreover, many of the injuries flowing from the Class Vehicles cannot be
14 resolved through the limited remedy of “replacements or adjustments,” as many incidental and
15 consequential damages have already been suffered because of Volkswagen’s fraudulent conduct
16 as alleged herein, and because of its failure and/or continued failure to provide such limited
17 remedy within a reasonable time, and any limitation on Plaintiffs’ and the other New Hampshire
18 Class members’ remedies would be insufficient to make Plaintiffs and the other New Hampshire
19 Class members whole.

20 2308. Finally, because of the VW Entity Defendants’ breach of warranty as set forth
21 herein, Plaintiffs and the other New Hampshire Class members assert, as additional and/or
22 alternative remedies, the revocation of acceptance of the goods and the return to Plaintiffs and the
23 other New Hampshire Class members of the purchase or lease price of all Class Vehicles
24 currently owned or leased, and for such other incidental and consequential damages as allowed.

25 2309. The VW Entity Defendants were provided notice of these issues by numerous
26 complaints filed against them, including the instant Complaint, within a reasonable amount of
27 time after Volkswagen publicly admitted to using a defeat device in the Class Vehicles to evade
28 clean air standards.

1 2310. As a direct and proximate result of the VW Entity Defendants’ breach of express
2 warranties, Plaintiff and the other New Hampshire Class members have been damaged in an
3 amount to be determined at trial.

4 **NEW JERSEY**

5 **NEW JERSEY COUNT I:**
6 **VIOLATIONS OF THE NEW JERSEY CONSUMER FRAUD ACT**
7 **(N.J. Stat. Ann. §§ 56:8-1, *et seq.*)**

8 2311. Plaintiffs incorporate by reference each preceding paragraph as though fully set
9 forth herein.

10 2312. Plaintiffs Bandics, Christiana, Greczylo, Laspina, and Forbes (for the purpose of
11 this section, “Plaintiffs”) bring this action on behalf of themselves and the New Jersey Class
12 against all Defendants.

13 2313. Plaintiffs, the New Jersey Class members and Defendants are persons under the
14 New Jersey Consumer Fraud Act, N.J. Stat. § 56:8-1(d).

15 2314. Volkswagen engaged in “sales” of “merchandise” within the meaning of N.J. Stat.
16 § 56:8-1(c), (e). Volkswagen’s actions as set forth herein occurred in the conduct of trade or
17 commerce.

18 2315. The New Jersey Consumer Fraud Act (“New Jersey CFA”) makes unlawful “[t]he
19 act, use or employment by any person of any unconscionable commercial practice, deception,
20 fraud, false pretense, false promise, misrepresentation, or the knowing concealment, suppression,
21 or omission of any material fact with the intent that others rely upon such concealment,
22 suppression or omission, in connection with the sale or advertisement of any merchandise or real
23 estate, or with the subsequent performance of such person as aforesaid, whether or not any person
24 has in fact been misled, deceived or damaged thereby...” N.J. Stat. § 56:8-2.

25 2316. In the course of Volkswagen’s business, Volkswagen intentionally or negligently
26 concealed and suppressed material facts concerning the true emissions produced by the misnamed
27 CleanDiesel engines in the Class Vehicles. Defendants accomplished this by installing illegal
28 defeat device software in the Class Vehicles that caused the vehicles to operate in a low emission
test mode only during emissions testing. During normal operations, the Class Vehicles would

1 emit grossly larger quantities of noxious contaminants, sometimes 40 times over applicable
2 standards. The result was what Volkswagen intended—the Class Vehicles passed emissions
3 testing by way of deliberately induced false readings. Plaintiffs and New Jersey Class members
4 had no way of discerning that Volkswagen’s representations were false and misleading because
5 Volkswagen’s defeat device software was extremely sophisticated technology. Plaintiffs and
6 New Jersey Class members did not and could not unravel Volkswagen’s deception on their own.
7 In fact, it took years before the academic engineering community—specifically a research team at
8 WVU’s Center for Alternative Fuels, Engines & Emissions—detected Volkswagen’s cheat using
9 sophisticated, expensive equipment and applying decades of combined experience.

10 2317. Volkswagen thus violated the provisions of the New Jersey CFA, at a minimum
11 by: (1) representing that the Class Vehicles have characteristics, uses, benefits, and qualities
12 which they do not have; (2) representing that the Class Vehicles are of a particular standard,
13 quality, and grade when they are not; (3) advertising the Class Vehicles with the intent not to sell
14 them as advertised; (4) failing to disclose information concerning the Class Vehicles with the
15 intent to induce consumers to purchase or lease the Class Vehicles; and (5) otherwise engaging in
16 conduct likely to deceive.

17 2318. Bosch played a critical role in facilitating, and itself contributed to, Volkswagen’s
18 unfair and deceptive conduct, as alleged herein. Bosch knew or should have known that
19 Volkswagen would use and had used the Bosch technology as an emission defeat device, and in
20 fact helped it do so. Without Bosch’s complicity and silence, Volkswagen could not have
21 perpetrated the fraudulent, deceptive, and unfair practices alleged herein, and Bosch’s actions
22 themselves constitute fraudulent, deceptive, and unfair practices.

23 2319. Defendants engaged in misleading, false, unfair or deceptive acts or practices that
24 violated the New Jersey CFA by installing, failing to disclose and/or actively concealing the
25 defeat device and the true cleanliness and performance of the “clean” diesel engine system, by
26 marketing its vehicles as legal, reliable, environmentally clean, efficient, and of high quality, and
27 by presenting itself as a reputable manufacturer that valued environmental cleanliness and
28 efficiency, and that stood behind its vehicles after they were sold.

1 2320. Volkswagen compounded the deception by repeatedly asserting that the Class
2 Vehicles were safe, reliable, environmentally clean, efficient, and of high quality, and by
3 claiming to be a reputable manufacturer that valued safety, environmental cleanliness, and
4 efficiency, and stood behind its vehicles after they were sold.

5 2321. The Clean Air Act and EPA regulations require that automobiles limit their
6 emissions output to specified levels. These laws are intended for the protection of public health
7 and welfare. Defeat devices like those in the Class Vehicles are defined and prohibited by the
8 Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 CFR § 86.1809. By
9 installing illegal defeat devices in the Class Vehicles and by making those vehicles available for
10 purchase, Volkswagen violated federal law and therefore engaged in conduct that violates the
11 New Jersey CFA.

12 2322. Volkswagen knew it had installed the defeat device in the Class Vehicles, and
13 knew the true nature of its “clean” diesel engine system for at least six years, but concealed all of
14 that information until recently. Volkswagen also knew that it valued profits over environmental
15 cleanliness, efficiency, and compliance with the law, and that it was manufacturing, selling, and
16 distributing vehicles throughout the United States that did not comply with EPA regulations, but
17 it concealed this information as well.

18 2323. Volkswagen intentionally and knowingly misrepresented material facts regarding
19 the Class Vehicles with intent to mislead Plaintiffs and the New Jersey Class.

20 2324. Volkswagen knew or should have known that its conduct violated the New Jersey
21 CPA.

22 2325. Defendants owed Plaintiffs and New Jersey Class members a duty to disclose,
23 truthfully, all the facts concerning the cleanliness, efficiency and reliability of the Class Vehicles
24 because they:

- 25 a. possessed exclusive knowledge that they were
26 manufacturing, selling, and distributing vehicles throughout
27 the United States that did not comply with EPA regulations;
28 b. intentionally concealed the foregoing from regulators,
 Plaintiffs, Class members; and/or

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c. Made incomplete or negligent representations about the environmental cleanliness and efficiency of the Class Vehicles generally, and the use of the defeat device in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

2326. Volkswagen fraudulently concealed the defeat device and the true cleanliness, efficiency and performance of the Class Vehicles, resulting in a raft of negative publicity once Volkswagen’s fraud was exposed. The value of the Class Vehicles has therefore plummeted. In light of the stigma Volkswagen’s misconduct attached to the Class Vehicles, the Class Vehicles are now worth less than they otherwise would be worth.

2327. Volkswagen’s fraudulent use of the defeat device and its concealment of the true characteristics of the “clean” diesel engine system were material to Plaintiffs and the New Jersey Class. A vehicle made by a reputable manufacturer of environmentally friendly vehicles is worth more than an otherwise comparable vehicle made by a disreputable manufacturer of environmentally dirty vehicles that conceals its polluting engines rather than promptly remedying them.

2328. Defendants’ unfair or deceptive acts or practices were likely to and did in fact deceive regulators and reasonable consumers, including Plaintiffs and New Jersey Class members, about the true environmental cleanliness and efficiency of Volkswagen-branded vehicles, the quality of the Volkswagen brand, the devaluing of environmental cleanliness and integrity at Volkswagen, and the true value of the Class Vehicles.

2329. Plaintiffs and New Jersey Class members suffered ascertainable loss and actual damages as a direct and proximate result of Volkswagen’s misrepresentations and its concealment of and failure to disclose material information. Plaintiffs and the New Jersey Class members who purchased or leased the Class Vehicles would not have purchased or leased them at all and/or—if the Vehicles’ true nature had been disclosed and mitigated, and the Vehicles rendered legal to sell—would have paid significantly less for them. Plaintiffs also suffered diminished value of their vehicles, as well as lost or diminished use.

1 2330. Defendants had an ongoing duty to all Volkswagen customers to refrain from
2 unfair and deceptive practices under the New Jersey CPA in the course of its business.

3 2331. Defendants' violations present a continuing risk to Plaintiffs as well as to the
4 general public. Defendants' unlawful acts and practices complained of herein affect the public
5 interest.

6 2332. As a result of the foregoing wrongful conduct of Defendants, Plaintiffs and the
7 New Jersey Class have been damaged in an amount to be proven at trial, and seek all just and
8 proper remedies, including, but not limited to, actual and statutory damages, treble damages, an
9 order enjoining Defendants' deceptive and unfair conduct, costs and reasonable attorneys' fees
10 under N.J. Stat. § 56:8-19, and all other just and appropriate relief.

11 **NEW JERSEY COUNT II:**
12 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
13 **(N.J.S. 12A:2-314 and 2A-212)**

14 2333. Plaintiffs reallege and incorporate by reference all allegations of the preceding
15 paragraphs as though fully set forth herein.

16 2334. Plaintiffs bring this Count on behalf of the New Jersey Class, against VW AG,
17 VW America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the
18 "VW Entity Defendants").

19 2335. The VW Entity Defendants are and were at all relevant times "merchants" with
20 respect to motor vehicles under N.J.S. 12A:2-104(1) and "sellers" of motor vehicles under 2-
21 103(1)(d).

22 2336. With respect to leases, the VW Entity Defendants are and were at all relevant
23 times "lessors" of motor vehicles under N.J.S. 12A:2A-103(1)(p).

24 2337. The Class Vehicles are and were at all relevant times "goods" within the meaning
25 of N.J.S. 12A:2-105(1) and 2A-103(1)(h).

26 2338. A warranty that the Class Vehicles were in merchantable condition and fit for the
27 ordinary purpose for which vehicles are used is implied by law pursuant to N.J.S. 12A:2-314 and
28 2A-212.

1 2339. These Class Vehicles, when sold or leased and at all times thereafter, were not in
2 merchantable condition and are not fit for the ordinary purpose for which vehicles are used.
3 Specifically, the Class Vehicles are inherently defective in that they do not comply with federal
4 and state emissions standards, rendering certain emissions functions inoperative; and the “clean”
5 diesel engine system was not adequately designed, manufactured, and tested.

6 2340. Volkswagen was provided notice of these issues by the investigations of the EPA
7 and individual state regulators, numerous complaints filed against it including the instant
8 Complaint, and by numerous individual letters and communications sent by Plaintiffs and others
9 within a reasonable amount of time after the allegations of Class Vehicle defects became public.

10 2341. As a direct and proximate result of the VW Entity Defendants’ breach of the
11 implied warranty of merchantability, Plaintiffs and the other New Jersey Class members have
12 been damaged in an amount to be proven at trial.

13 **NEW JERSEY COUNT III:**
14 **BREACH OF EXPRESS WARRANTY**
15 **(N.J.S. 12A:2-313 and 2A-210)**

16 2342. Plaintiffs reallege and incorporate by reference all preceding allegations as though
17 fully set forth herein.

18 2343. Plaintiffs bring this Count on behalf of the New Jersey Class, against VW AG,
19 VW America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the
20 “VW Entity Defendants”).

21 2344. The VW Entity Defendants are and were at all relevant times “merchants” with
22 respect to motor vehicles under N.J.S. 12A:2-104(1) and “sellers” of motor vehicles under 2-
23 103(1)(d).

24 2345. With respect to leases, the VW Entity Defendants are and were at all relevant
25 times “lessors” of motor vehicles under N.J.S. 12A:2A-103(1)(p).

26 2346. The Class Vehicles are and were at all relevant times “goods” within the meaning
27 of N.J.S. 12A:2-105(1) and 2A-103(1)(h).

28 2347. In connection with the purchase or lease of each one of its new vehicles, the VW
Entity Defendants provide an express New Vehicle Limited Warranty (“NVLW”) for a period of

1 three years or 36,000 miles, whichever occurs first. This NVLW exists to cover “any repair to
2 correct a manufacturers defect in materials or workmanship.”

3 2348. The Clean Air Act requires manufacturers of light-duty vehicles to provide two
4 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
5 Warranty.”

6 2349. The EPA requires vehicle manufacturers to provide a Performance Warranty with
7 respect to the vehicles’ emission systems. Thus, Volkswagen also provides an express warranty
8 for its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
9 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
10 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
11 emission control components are covered for the first eight years or 80,000 miles, whichever
12 comes first. These major emission control components subject to the longer warranty include the
13 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
14 device or computer.

15 2350. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
16 with respect to their vehicles’ emission systems. Thus, the VW Entity Defendants also provide an
17 express warranty for their vehicles through a Federal Emission Control System Defect Warranty.
18 The Design and Defect Warranty required by the EPA covers repair of emission control or
19 emission related parts which fail to function or function improperly because of a defect in
20 materials or workmanship. This warranty provides protection for two years or 24,000 miles,
21 whichever comes first, or, for the major emission control components, for eight years or 80,000
22 miles, whichever comes first.

23 2351. As manufacturers of light-duty vehicles, the VW Entity Defendants were required
24 to provide these warranties to purchasers or lessees of their “clean” diesel vehicles.

25 2352. The VW Entity Defendants’ warranties formed a basis of the bargain that was
26 reached when Plaintiffs and other New Jersey Class members purchased or leased their Class
27 Vehicles equipped with the non-compliant “clean” diesel engine and emission systems.
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1 2353. Plaintiffs and the New Jersey Class members experienced defects within the
2 warranty period. Despite the existence of warranties, the VW Entity Defendants failed to inform
3 Plaintiffs and New Jersey Class members that the Class Vehicles were intentionally designed and
4 manufactured to be out of compliance with applicable state and federal emissions laws, and failed
5 to fix the defective emission components free of charge.

6 2354. The VW Entity Defendants breached the express warranty promising to repair and
7 correct a manufacturing defect or materials or workmanship of any parts they supplied. The VW
8 Entity Defendants have not repaired or adjusted, and have been unable to repair or adjust, the
9 Class Vehicles' materials and workmanship defects.

10 2355. Affording the VW Entity Defendants a reasonable opportunity to cure their breach
11 of written warranties would be unnecessary and futile here. For example, the Frequently Asked
12 Questions ("FAQ") section of VW's informational website states:

13 **How soon will the remedy be available, and how am I going to**
14 **be compensated for this?**

15 We cannot offer a firm date now because we need to work on a
16 remedy and review it with the government. We are proceeding as
 quickly as possible.

17 2356. In his Congressional testimony on October 8, 2015, Michael Horn stated that
18 Volkswagen intends to make Class Vehicles compliant with emission standards through software
19 fixes and the installation of auxiliary hardware, but that fix will take "1 to 2 years, minimum."
20 When questioned on remedies for consumers, he stated that Volkswagen may pay customers for a
21 loss in resale values because of the scandal. He said that Volkswagen is not considering
22 providing loaner vehicles because the U.S. government says the vehicles are safe to drive.

23 2357. Michael Horn's testimony serves as an admission that the limited warranty
24 promising to repair and/or correct a manufacturing defect fails in its essential purpose because the
25 VW Entity Defendants cannot meet that promise within a reasonable time.

26 2358. Furthermore, the limited warranty promising to repair and/or correct a
27 manufacturing defect fails in its essential purpose because the contractual remedy is insufficient
28 to make Plaintiffs and the other New Jersey Class members whole and because the VW Entity

1 Defendants have failed and/or have refused to adequately provide the promised remedies within a
2 reasonable time.

3 2359. Accordingly, recovery by Plaintiffs and the other New Jersey Class members is not
4 restricted to the limited warranty promising to repair and/or correct a manufacturing defect, and
5 Plaintiffs, individually and on behalf of the other New Jersey Class members, seek all remedies as
6 allowed by law.

7 2360. Also, as alleged in more detail herein, at the time the VW Entity Defendants
8 warranted and sold or leased the Class Vehicles, they knew that the Class Vehicles were
9 inherently defective and did not conform to their warranties; further, the VW Entity Defendants
10 had wrongfully and fraudulently concealed material facts regarding the Class Vehicles. Plaintiffs
11 and the other New Jersey Class members were therefore induced to purchase or lease the Class
12 Vehicles under false and/or fraudulent pretenses.

13 2361. Moreover, many of the injuries flowing from the Class Vehicles cannot be
14 resolved through the limited remedy of “replacements or adjustments,” as many incidental and
15 consequential damages have already been suffered because of Volkswagen’s fraudulent conduct
16 as alleged herein, and because of its failure and/or continued failure to provide such limited
17 remedy within a reasonable time, and any limitation on Plaintiffs’ and the other New Jersey Class
18 members’ remedies would be insufficient to make Plaintiffs and the other New Jersey Class
19 members whole.

20 2362. Finally, because of the VW Entity Defendants’ breach of warranty as set forth
21 herein, Plaintiffs and the other New Jersey Class members assert, as additional and/or alternative
22 remedies, the revocation of acceptance of the goods and the return to Plaintiffs and the other New
23 Jersey Class members of the purchase or lease price of all Class Vehicles currently owned or
24 leased, and for such other incidental and consequential damages as allowed.

25 2363. The VW Entity Defendants were provided notice of these issues by numerous
26 complaints filed against them, including the instant Complaint, within a reasonable amount of
27 time after Volkswagen publicly admitted to using a defeat device in the Class Vehicles to evade
28 clean air standards.

1 2364. As a direct and proximate result of the VW Entity Defendants' breach of express
2 warranties, Plaintiff and the other New Jersey Class members have been damaged in an amount to
3 be determined at trial.

4 **NEW MEXICO**

5 **NEW MEXICO COUNT I:**
6 **VIOLATIONS OF THE NEW MEXICO UNFAIR TRADE PRACTICES ACT**
7 **(N.M. Stat. Ann. §§ 57-12-1, *et seq.*)**

8 2365. Plaintiffs incorporate by reference each preceding paragraph as though fully set
9 forth herein.

10 2366. Plaintiffs Converse, Farmer, Hart Hoxeng, and Root and Root (for the purpose of
11 this section, "Plaintiffs") bring this action on behalf of themselves and the New Mexico Class
12 against all Defendants.

13 2367. Volkswagen, Plaintiff and New Mexico Class members are or were "person[s]"
14 under the New Mexico Unfair Trade Practices Act ("New Mexico UTPA"), N.M. STAT. ANN.
15 § 57-12-2.

16 2368. Volkswagen's actions as set forth herein occurred in the conduct of trade or
17 commerce as defined under N.M. STAT. ANN. § 57-12-2.

18 2369. The New Mexico UTPA makes unlawful "a false or misleading oral or written
19 statement, visual description or other representation of any kind knowingly made in connection
20 with the sale, lease, rental or loan of goods or services ... by a person in the regular course of the
21 person's trade or commerce, that may, tends to or does deceive or mislead any person," including
22 but not limited to "failing to state a material fact if doing so deceives or tends to deceive." N.M.
23 STAT. ANN. § 57-12-2(D). Volkswagen's acts and omissions described herein constitute unfair
24 or deceptive acts or practices under N.M. STAT. ANN. § 57-12-2(D). In addition, Volkswagen's
25 actions constitute unconscionable actions under N.M. STAT. ANN. § 57-12-2(E), since they took
26 advantage of the lack of knowledge, ability, experience, and capacity of the New Mexico Class
27 members to a grossly unfair degree.

28 2370. In the course of their business, Defendants concealed and suppressed material facts
concerning the Class Vehicles. Defendants accomplished this by installing illegal defeat device

1 software in the Class Vehicles that caused the vehicles to operate in a low emission test mode
2 only during emissions testing. During normal operations, the Class Vehicles would emit grossly
3 larger quantities of noxious contaminants, sometimes 40 times over applicable standards. The
4 result was what Volkswagen intended—the Class Vehicles passed emissions testing by way of
5 deliberately induced false readings. Plaintiffs and New Mexico Class members had no way of
6 discerning that Volkswagen’s representations were false and misleading because Volkswagen’s
7 defeat device software was extremely sophisticated technology. Plaintiffs and New Mexico Class
8 members did not and could not unravel Volkswagen’s deception on their own. In fact, it took
9 years before the academic engineering community—specifically a research team at WVU’s
10 Center for Alternative Fuels, Engines & Emissions—detected Volkswagen’s cheat using
11 sophisticated, expensive equipment and applying decades of combined experience.

12 2371. Defendants thus violated the Act by, at minimum employing deception, deceptive
13 acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any
14 material fact with intent that others rely upon such concealment, suppression or omission, in
15 connection with the sale of Class Vehicles.

16 2372. Bosch played a critical role in facilitating, and itself contributed to, Volkswagen’s
17 unfair and deceptive conduct, as alleged herein. Bosch knew or should have known that
18 Volkswagen would use and had used the Bosch technology as an emission defeat device, and in
19 fact helped it do so. Without Bosch’s complicity and silence, Volkswagen could not have
20 perpetrated the fraudulent, deceptive, and unfair practices alleged herein, and Bosch’s actions
21 themselves constitute fraudulent, deceptive, and unfair practices.

22 2373. Defendants engaged in misleading, false, unfair or deceptive acts or practices that
23 violated the New Mexico UTPA by installing, failing to disclose and actively concealing the
24 illegal defeat device and the true cleanliness and performance of the “clean” diesel engine system,
25 by marketing its vehicles as legal, reliable, environmentally clean, efficient, and of high quality,
26 and by presenting itself as a reputable manufacturer that valued environmental cleanliness and
27 efficiency, and that stood behind its vehicles after they were sold.
28

1 2374. The Clean Air Act and EPA regulations require that automobiles limit their
2 emissions output to specified levels. These laws are intended for the protection of public health
3 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the
4 Clean Air Act and its regulations. See 42 U.S.C. § 7522(a)(3)(B); 40 CFR § 86.1809. By
5 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available
6 for purchase, Volkswagen violated federal law and therefore engaged in conduct that violates the
7 New Mexico UTPA

8 2375. Volkswagen has known of its use of the “defeat device” and the true nature of its
9 “clean” diesel engine system for at least six years, but concealed all of that information until
10 recently. Volkswagen was also aware that it valued profits over environmental cleanliness,
11 efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles
12 throughout the United States that did not comply with EPA regulations. Volkswagen concealed
13 this information as well.

14 2376. Volkswagen intentionally and knowingly misrepresented material facts regarding
15 the Class Vehicles with intent to mislead Plaintiff and the New Mexico Class.

16 2377. Volkswagen knew or should have known that its conduct violated the New Mexico
17 UTPA.

18 2378. Defendants owed Plaintiffs a duty to disclose the illegality and public health and
19 safety risks of the Class Vehicles and the devaluing of environmental cleanliness and integrity at
20 Volkswagen, because Volkswagen:

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

1 2379. Defendants concealed the illegal defeat device and the true emissions and
2 performance of the “clean” diesel engine system, resulting in a raft of negative publicity once the
3 use of the “defeat device” and true characteristics of the “clean” diesel engine system finally
4 began to be disclosed. The value of the Class Vehicles has therefore greatly diminished. In light
5 of the stigma attached to those vehicles by Volkswagen’s conduct, they are now worth
6 significantly less than they otherwise would be worth.

7 2380. Defendants’ supply and use of the illegal defeat device and concealment of the true
8 characteristics of the “clean” diesel engine system were material to Plaintiffs and the New
9 Mexico Class. A vehicle made by a reputable manufacturer of environmentally friendly vehicles
10 is worth more than an otherwise comparable vehicle made by a disreputable and dishonest
11 manufacturer of polluting vehicles that conceals the amount its cars pollutes rather than make
12 environmentally friendly vehicles.

13 2381. Defendants’ unfair or deceptive acts or practices were likely to and did in fact
14 deceive regulators and reasonable consumers, including Plaintiffs, about the true environmental
15 cleanliness and efficiency of Volkswagen-branded vehicles, the quality of the Volkswagen brand,
16 the devaluing of environmental cleanliness and integrity at Volkswagen, and the true value of the
17 Class Vehicles.

18 2382. Plaintiffs and the New Mexico Class suffered ascertainable loss and actual
19 damages as a direct and proximate result of Defendants’ misrepresentations and its concealment
20 of and failure to disclose material information. Plaintiffs and the New Mexico Class members
21 who purchased or leased the Class Vehicles would not have purchased or leased them at all
22 and/or—if the Vehicles’ true nature had been disclosed and mitigated, and the Vehicles rendered
23 legal to sell—would have paid significantly less for them. Plaintiffs also suffered diminished
24 value of their vehicles, as well as lost or diminished use.

25 2383. Defendants had an ongoing duty to all Volkswagen customers to refrain from
26 unfair and deceptive acts or practices under the New Mexico UTPA. All owners of Class
27 Vehicles suffered ascertainable loss in the form of the diminished value of their vehicles as a
28

1 result of Volkswagen’s deceptive and unfair acts and practices that occurred in the course of
2 Volkswagen’s business.

3 2384. Defendants’ violations present a continuing risk to Plaintiffs as well as to the
4 general public. Defendants’ unlawful acts and practices complained of herein affect the public
5 interest.

6 2385. As a direct and proximate result of Defendants’ violations of the New Mexico
7 UTPA, Plaintiff and the New Mexico Class have suffered injury-in-fact and/or actual damage.

8 2386. New Mexico Class members seek punitive damages against Volkswagen because
9 Volkswagen’s conduct was malicious, willful, reckless, wanton, fraudulent and in bad faith.
10 Because Volkswagen’s conduct was malicious, willful, reckless, wanton, fraudulent and in bad
11 faith, it warrants punitive damages.

12 2387. Because Volkswagen’s unconscionable, willful conduct caused actual harm to
13 New Mexico Class members, the New Mexico Class seeks recovery of actual damages or \$100,
14 whichever is greater, discretionary treble damages, punitive damages, and reasonable attorneys’
15 fees and costs, as well as all other proper and just relief available under N.M. STAT. ANN. § 57-
16 12-10.

17 **NEW MEXICO COUNT II:**
18 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
19 **(N.M. Stat. §§ 55-2-314 and 55-2A-212)**

20 2388. Plaintiffs reallege and incorporate by reference all allegations of the preceding
21 paragraphs as though fully set forth herein.

22 2389. Plaintiffs bring this Count on behalf of the New Mexico Class, against VW AG,
23 VW America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the
24 “VW Entity Defendants”).

25 2390. The VW Entity Defendants are and were at all relevant times “merchants” with
26 respect to motor vehicles under N.M. Stat. § 55-2-104(1) and “sellers” of motor vehicles under
27 § 55-2-103(1)(d).

28 2391. With respect to leases, the VW Entity Defendants are and were at all relevant
times “lessors” of motor vehicles under N.M. Stat. § 55-2A-103(1)(p).

1 2400. With respect to leases, the VW Entity Defendants are and were at all relevant
2 times “lessors” of motor vehicles under N.M. Stat. § 55-2A-103(1)(p).

3 2401. The Class Vehicles are and were at all relevant times “goods” within the meaning
4 of N.M. Stat. §§ 55-2-105(1) and 55-2A-103(1)(h).

5 2402. In connection with the purchase or lease of each one of its new vehicles, the VW
6 Entity Defendants provide an express New Vehicle Limited Warranty (“NVLW”) for a period of
7 three years or 36,000 miles, whichever occurs first. This NVLW exists to cover “any repair to
8 correct a manufacturers defect in materials or workmanship.”

9 2403. The Clean Air Act requires manufacturers of light-duty vehicles to provide two
10 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
11 Warranty.”

12 2404. The EPA requires vehicle manufacturers to provide a Performance Warranty with
13 respect to the vehicles’ emission systems. Thus, Volkswagen also provides an express warranty
14 for its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
15 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
16 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
17 emission control components are covered for the first eight years or 80,000 miles, whichever
18 comes first. These major emission control components subject to the longer warranty include the
19 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
20 device or computer.

21 2405. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
22 with respect to their vehicles’ emission systems. Thus, the VW Entity Defendants also provide an
23 express warranty for their vehicles through a Federal Emission Control System Defect Warranty.
24 The Design and Defect Warranty required by the EPA covers repair of emission control or
25 emission related parts which fail to function or function improperly because of a defect in
26 materials or workmanship. This warranty provides protection for two years or 24,000 miles,
27 whichever comes first, or, for the major emission control components, for eight years or 80,000
28 miles, whichever comes first.

1 2406. As manufacturers of light-duty vehicles, the VW Entity Defendants were required
2 to provide these warranties to purchasers or lessees of their “clean” diesel vehicles.

3 2407. The VW Entity Defendants’ warranties formed a basis of the bargain that was
4 reached when Plaintiffs and other New Mexico Class members purchased or leased their Class
5 Vehicles equipped with the non-compliant “clean” diesel engine and emission systems.

6 2408. Plaintiffs and the New Mexico Class members experienced defects within the
7 warranty period. Despite the existence of warranties, the VW Entity Defendants failed to inform
8 Plaintiffs and New Mexico Class members that the Class Vehicles were intentionally designed
9 and manufactured to be out of compliance with applicable state and federal emissions laws, and
10 failed to fix the defective emission components free of charge.

11 2409. The VW Entity Defendants breached the express warranty promising to repair and
12 correct a manufacturing defect or materials or workmanship of any parts they supplied. The VW
13 Entity Defendants have not repaired or adjusted, and have been unable to repair or adjust, the
14 Class Vehicles’ materials and workmanship defects.

15 2410. Affording the VW Entity Defendants a reasonable opportunity to cure their breach
16 of written warranties would be unnecessary and futile here. For example, the Frequently Asked
17 Questions (“FAQ”) section of VW’s informational website states:

18 **How soon will the remedy be available, and how am I going to**
19 **be compensated for this?**

20 We cannot offer a firm date now because we need to work on a
21 remedy and review it with the government. We are proceeding as
22 quickly as possible.

22 2411. In his Congressional testimony on October 8, 2015, Michael Horn stated that
23 Volkswagen intends to make Class Vehicles compliant with emission standards through software
24 fixes and the installation of auxiliary hardware, but that fix will take “1 to 2 years, minimum.”
25 When questioned on remedies for consumers, he stated that Volkswagen may pay customers for a
26 loss in resale values because of the scandal. He said that Volkswagen is not considering
27 providing loaner vehicles because the U.S. government says the vehicles are safe to drive.
28

1 2412. Michael Horn’s testimony serves as an admission that the limited warranty
2 promising to repair and/or correct a manufacturing defect fails in its essential purpose because the
3 VW Entity Defendants cannot meet that promise within a reasonable time.

4 2413. Furthermore, the limited warranty promising to repair and/or correct a
5 manufacturing defect fails in its essential purpose because the contractual remedy is insufficient
6 to make Plaintiffs and the other New Mexico Class members whole and because the VW Entity
7 Defendants have failed and/or have refused to adequately provide the promised remedies within a
8 reasonable time.

9 2414. Accordingly, recovery by Plaintiffs and the other New Mexico Class members is
10 not restricted to the limited warranty promising to repair and/or correct a manufacturing defect,
11 and Plaintiffs, individually and on behalf of the other New Mexico Class members, seek all
12 remedies as allowed by law.

13 2415. Also, as alleged in more detail herein, at the time the VW Entity Defendants
14 warranted and sold or leased the Class Vehicles, they knew that the Class Vehicles were
15 inherently defective and did not conform to their warranties; further, the VW Entity Defendants
16 had wrongfully and fraudulently concealed material facts regarding the Class Vehicles. Plaintiffs
17 and the other New Mexico Class members were therefore induced to purchase or lease the Class
18 Vehicles under false and/or fraudulent pretenses.

19 2416. Moreover, many of the injuries flowing from the Class Vehicles cannot be
20 resolved through the limited remedy of “replacements or adjustments,” as many incidental and
21 consequential damages have already been suffered because of Volkswagen’s fraudulent conduct
22 as alleged herein, and because of its failure and/or continued failure to provide such limited
23 remedy within a reasonable time, and any limitation on Plaintiffs’ and the other New Mexico
24 Class members’ remedies would be insufficient to make Plaintiffs and the other New Mexico
25 Class members whole.

26 2417. Finally, because of the VW Entity Defendants’ breach of warranty as set forth
27 herein, Plaintiffs and the other New Mexico Class members assert, as additional and/or alternative
28 remedies, the revocation of acceptance of the goods and the return to Plaintiffs and the other New

1 Mexico Class members of the purchase or lease price of all Class Vehicles currently owned or
2 leased, and for such other incidental and consequential damages as allowed.

3 2418. The VW Entity Defendants were provided notice of these issues by numerous
4 complaints filed against them, including the instant Complaint, within a reasonable amount of
5 time after Volkswagen publicly admitted to using a defeat device in the Class Vehicles to evade
6 clean air standards.

7 2419. As a direct and proximate result of the VW Entity Defendants' breach of express
8 warranties, Plaintiff and the other New Mexico Class members have been damaged in an amount
9 to be determined at trial.

10 **NEW YORK**

11 **NEW YORK COUNT I:**
12 **VIOLATIONS OF NEW YORK GENERAL BUSINESS LAW § 349**
13 **(N.Y. Gen. Bus. Law § 349)**

14 2420. Plaintiffs incorporate by reference each preceding paragraph as though fully set
15 forth herein.

16 2421. Plaintiffs Bedard and Bedard, Eslick, Kirtland, Kolpan, Pagano, and Shaw (for the
17 purpose of this section, "Plaintiffs") bring this action on behalf of themselves and the New York
18 Class against all Defendants.

19 2422. Plaintiffs, the New York Class members and all Defendants are "persons" under
20 N.Y. Gen. Bus. Law § 349(h), the New York Deceptive Acts and Practices Act ("NY DAPA").

21 2423. Defendants' actions as set forth herein occurred in the conduct of trade or
22 commerce under the NY DAPA.

23 2424. The NY DAPA makes unlawful "[d]eceptive acts or practices in the conduct of
24 any business, trade or commerce." N.Y. Gen. Bus. Law § 349. Defendants' conduct, as set forth
25 herein, constitutes deceptive acts or practices under this section.

26 2425. In the course of their business, Defendants intentionally or negligently concealed
27 and suppressed material facts concerning the illegal emissions produced by the misnamed
28 "CleanDiesel" engines in the Class Vehicles. Defendants accomplished this by programming and
installing illegal defeat device software in the Class Vehicles that caused the vehicles to operate

1 in a low emission test mode only during emissions testing. During normal operations, the Class
2 Vehicles would emit grossly larger quantities of noxious contaminants, sometimes 40 times over
3 applicable standards. The result was what Volkswagen intended – the Class Vehicles passed
4 emissions testing by way of deliberately induced false readings. Plaintiffs and New York Class
5 members had no way of discerning that Defendants’ representations were false and misleading
6 because the Defendants’ defeat device software was extremely sophisticated technology.
7 Plaintiffs and New York Class members did not and could not unravel the deception on their own.
8 In fact, it took years before the academic engineering community – specifically a research team at
9 WVU’s Center for Alternative Fuels, Engines & Emissions – detected Volkswagen’s cheat using
10 sophisticated, expensive equipment and applying decades of combined experience.

11 2426. Volkswagen thus violated the provisions of the NY DAPA by, at a minimum: (1)
12 representing that the Class Vehicles have characteristics, uses, benefits, and qualities which they
13 do not have; (2) representing that the Class Vehicles are of a particular standard, quality, and
14 grade when they are not; (3) advertising the Class Vehicles with the intent not to sell them as
15 advertised; (4) failing to disclose information concerning the Class Vehicles with the intent to
16 induce consumers to purchase or lease the Class Vehicles.

17 2427. Bosch played a critical role in facilitating, and itself contributed to, Volkswagen’s
18 unfair and deceptive conduct, as alleged herein. Bosch knew or should have known that
19 Volkswagen would use and had used the Bosch technology as an emission defeat device, and in
20 fact helped it do so. Without Bosch’s complicity and silence, Volkswagen could not have
21 perpetrated the fraudulent, deceptive, and unfair practices alleged herein, and Bosch’s actions
22 themselves constitute fraudulent, deceptive, and unfair practices.

23 2428. Defendants engaged in misleading, false, unfair or deceptive acts or practices that
24 violated the NY DAPA by installing, failing to disclose and/or actively concealing the defeat
25 device and the illegal emissions and performance of the “clean” diesel engine system, by
26 marketing its vehicles as legal, reliable, environmentally-clean, efficient, and of high quality, and
27 by presenting itself as a reputable manufacturer that valued environmental cleanliness and
28 efficiency, and that stood behind its vehicles after they were sold.

1 2429. Volkswagen compounded the deception by repeatedly asserting that the Class
2 Vehicles were compliant, safe, reliable, environmentally clean, efficient, and of high quality, and
3 by claiming to be a reputable manufacturer that valued safety, environmental cleanliness, and
4 efficiency, and stood behind its vehicles after they were sold.

5 2430. The Clean Air Act and EPA regulations require that automobiles limit their
6 emissions output to specified levels. These laws are intended for the protection of public health
7 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the
8 Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 CFR § 86.1809. By
9 installing illegal defeat devices in the Class Vehicles and by making those vehicles available for
10 purchase, Volkswagen violated federal law and therefore engaged in conduct that violates the NY
11 DAPA.

12 2431. Defendants knew the true nature of its “clean” diesel engine system for at least six
13 years, but concealed all of that information until recently. Defendants also knew that they were
14 manufacturing, selling, and distributing vehicles equipped with the defeat devices throughout the
15 United States that did not comply with EPA regulations, but it concealed this information as well.

16 2432. Defendants owed Plaintiffs and New York Class members a duty to disclose,
17 truthfully, all the facts concerning the illegality, emissions, efficiency and reliability of the Class
18 Vehicles because they:

- 19 a. possessed exclusive knowledge that they were manufacturing, selling, and
20 distributing illegal vehicles throughout the United States that did not
21 comply with EPA regulations;
- 22 b. intentionally concealed the foregoing from regulators, Plaintiffs, Class
23 members; and/or
- 24 c. Made incomplete or negligent representations about the legality,
25 environmental cleanliness and efficiency of the Class Vehicles generally,
26 and the use of the defeat device in particular, while purposefully
27 withholding material facts from Plaintiffs that contradicted these
28 representations.

1 2433. Defendants concealed the defeat device and the illegality, emissions, efficiency
2 and performance of the Class Vehicles, resulting in a raft of negative publicity once
3 Volkswagen’s fraud was exposed. The value of the Class Vehicles has therefore plummeted.

4 2434. Defendants’ illegal use of the defeat device and its concealment of the true
5 characteristics of the “clean” diesel engine system were material to Plaintiffs and the New York
6 Class. A vehicle made by a reputable manufacturer of environmentally friendly vehicles is worth
7 more than an otherwise comparable vehicle made by a disreputable manufacturer of
8 environmentally dirty vehicles that conceals its polluting engines rather than promptly remedying
9 them.

10 2435. Defendants’ unfair or deceptive acts or practices were likely to and did in fact
11 deceive regulators and reasonable consumers, including Plaintiffs and New York Class members,
12 about the illegality and true characteristics of Volkswagen CleanDiesel vehicles, the quality of the
13 Volkswagen brand and the value of the Class Vehicles.

14 2436. Plaintiffs and the New York Class members suffered ascertainable loss and actual
15 damages as a direct and proximate result of Volkswagen’s misrepresentations and its concealment
16 of and failure to disclose material information. Plaintiffs and the New York Class members who
17 purchased or leased the Class Vehicles would not have purchased or leased them at all and/or or
18 paid less for them. Plaintiffs also suffered diminished value of their vehicles, as well as lost or
19 diminished use.

20 2437. Volkswagen’s violations of the NY DAPA present a continuing risk to Plaintiffs
21 and to the general public. Volkswagen’s deceptive acts and practices affect the public interest.

22 2438. As a result of the foregoing willful, knowing, and wrongful conduct of Defendants,
23 Plaintiffs and the New York Class have been damaged in an amount to be proven at trial, and
24 seek all just and proper remedies, including but not limited to actual damages or \$50, whichever
25 is greater, treble damages up to \$1,000, punitive damages to the extent available under the law,
26 reasonable attorneys’ fees and costs, an order enjoining Defendants’ deceptive and unfair
27 conduct, and all other just and appropriate relief available under the NY DAPA.
28

1 **NEW YORK COUNT II:**
2 **VIOLATIONS OF NEW YORK GENERAL BUSINESS LAW § 350**
3 **(N.Y. Gen. Bus. Law § 350)**

4 2439. Plaintiffs incorporate by reference each preceding paragraph as though fully set
5 forth herein.

6 2440. Plaintiffs bring this claim only on behalf of the New York Class against
7 Volkswagen.

8 2441. Defendants were engaged in the “conduct of business, trade or commerce,” within
9 the meaning of N.Y. Gen. Bus. Law § 350, the New York False Advertising Act (“NY FAA”)

10 2442. The NY FAA makes unlawful “[f]alse advertising in the conduct of any business,
11 trade or commerce.” N.Y. Gen. Bus. Law § 350. False advertising includes “advertising,
12 including labeling, of a commodity . . . if such advertising is misleading in a material respect,”
13 taking into account “the extent to which the advertising fails to reveal facts material in light of . . .
14 representations [made] with respect to the commodity . . .” N.Y. Gen. Bus. Law § 350-a.

15 2443. Volkswagen caused to be made or disseminated through New York, through
16 advertising, marketing, and other publications, statements and omissions that were untrue or
17 misleading, and that were known by Volkswagen, or that through the exercise of reasonable care
18 should have been known by Volkswagen, to be untrue and misleading to Plaintiffs and the New
19 York class.

20 2444. Volkswagen made numerous material misrepresentations and omissions of fact
21 with intent to mislead and deceive concerning the Class Vehicles, particularly concerning the
22 illegality, efficacy and functioning of the emissions systems on their CleanDiesel vehicles.
23 Specifically, Volkswagen intentionally concealed and suppressed material facts concerning the
24 legality and quality of the Class Vehicles in order to intentionally and grossly defraud and
25 mislead the Plaintiffs and the New York Class members concerning the true emissions produced
26 by the misnamed “CleanDiesel” engines in the Class Vehicles.

27 2445. The misrepresentations and omissions regarding set forth above were material and
28 likely to deceive a reasonable consumer. Specifically, although Volkswagen advertised the Class
Vehicles as clean and environmentally-friendly, they in fact used a sophisticated defeat device

1 that was undetectable to the ordinary consumer that made them non-compliant with EPA
2 emission regulations.

3 2446. Volkswagen intentionally and knowingly misrepresented material facts regarding
4 the Class Vehicles with intent to mislead Plaintiffs and the New York Class.

5 2447. Volkswagen's false advertising was likely to and did in fact deceive regulators and
6 reasonable consumers, including Plaintiffs and New York Class members, about the illegality and
7 true characteristics of Volkswagen CleanDiesel vehicles, the quality of the Volkswagen brand and
8 the true value of the Class Vehicles.

9 2448. Volkswagen's violations of the NY FAA present a continuing risk to Plaintiffs and
10 to the general public. Volkswagen's deceptive acts and practices affect the public interest.

11 2449. The Class Vehicles do not perform as advertised and are not compliant with EPA
12 regulations, making them far less valuable than advertised.

13 2450. Plaintiffs and New York Class members who purchased Class Vehicles either
14 would not have purchased them at all or paid less but for Volkswagen's false advertising in
15 violation of the NY FAA. Plaintiffs and New York Class members who leased Class Vehicles
16 either would not have leased them at all, or at a lower rate but for Volkswagen's false advertising
17 in violation of the NY FAA.

18 2451. The Plaintiffs and the New York Class have suffered injury-in-fact and/or actual
19 damages and ascertainable loss as a direct and proximate result of the Defendant's false
20 advertising in violation of the NY FAA, including but not limited to purchasing or leasing an
21 illegal vehicle, diminished or complete lost value for the Class Vehicles they purchased or leased;
22 lost or diminished use, enjoyment and utility of such vehicles; and annoyance, aggravation and
23 inconvenience resulting from Defendant's violations of the NY FAA.

24 2452. Plaintiffs and the New York Class seek monetary relief against Defendants
25 measured as the greater of (a) actual damages in an amount to be determined at trial, and (b)
26 statutory damages in the amount of \$500 each for New York class members. Because
27 Volkswagen's conduct was committed willingly and knowingly, New York class members are
28 entitled to recover three times actual damages, up to \$10,000.

1 2453. The New York Class also seeks an order enjoining Volkswagen's false
2 advertising, attorneys' fees, and any other just and proper relief under N.Y. Gen. Bus. Law § 350.

3 **NEW YORK COUNT III:**
4 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
5 **(N.Y. U.C.C. Law §§ 2-314 and 2A-212)**

6 2454. Plaintiffs reallege and incorporate by reference all allegations of the preceding
7 paragraphs as though fully set forth herein.

8 2455. Plaintiffs bring this Count on behalf of the New York Class, against VW AG, VW
9 America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the "VW
10 Entity Defendants").

11 2456. The VW Entity Defendants are and were at all relevant times "merchants" with
12 respect to motor vehicles under N.Y. UCC Law § 2-104(1) and "sellers" of motor vehicles under
13 § 2-103(1)(d).

14 2457. With respect to leases, the VW Entity Defendants are and were at all relevant
15 times "lessors" of motor vehicles under N.Y. UCC Law § 2A-103(1)(p).

16 2458. The Class Vehicles are and were at all relevant times "goods" within the meaning
17 of N.Y. UCC Law §§ 2-105(1) and 2A-103(1)(h).

18 2459. A warranty that the Class Vehicles were in merchantable condition and fit for the
19 ordinary purpose for which vehicles are used is implied by law pursuant to N.Y. UCC Law §§ 2-
20 314 and 2A-212.

21 2460. These Class Vehicles, when sold or leased and at all times thereafter, were not in
22 merchantable condition and are not fit for the ordinary purpose for which vehicles are used.
23 Specifically, the Class Vehicles are inherently defective in that they do not comply with federal
24 and state emissions standards, rendering certain emissions functions inoperative; and the "clean"
25 diesel engine system was not adequately designed, manufactured, and tested.

26 2461. Volkswagen was provided notice of these issues by the investigations of the EPA
27 and individual state regulators, numerous complaints filed against it including the instant
28 Complaint, and by numerous individual letters and communications sent by Plaintiffs and others
within a reasonable amount of time after the allegations of Class Vehicle defects became public.

1 2462. As a direct and proximate result of the VW Entity Defendants’ breach of the
2 implied warranty of merchantability, Plaintiffs and the other New York Class members have been
3 damaged in an amount to be proven at trial.

4 **NEW YORK COUNT IV:**
5 **BREACH OF EXPRESS WARRANTY**
6 **(N.Y. U.C.C. Law §§ 2-313 and 2A-210)**

7 2463. Plaintiffs reallege and incorporate by reference all preceding allegations as though
8 fully set forth herein.

9 2464. Plaintiffs bring this Count on behalf of the New York Class, against VW AG, VW
10 America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the “VW
11 Entity Defendants”).

12 2465. The VW Entity Defendants are and were at all relevant times “merchants” with
13 respect to motor vehicles under N.Y. UCC Law § 2-104(1) and “sellers” of motor vehicles under
14 § 2-103(1)(d).

15 2466. With respect to leases, the VW Entity Defendants are and were at all relevant
16 times “lessors” of motor vehicles under N.Y. UCC Law § 2A-103(1)(p).

17 2467. The Class Vehicles are and were at all relevant times “goods” within the meaning
18 of N.Y. UCC Law §§ 2-105(1) and 2A-103(1)(h).

19 2468. In connection with the purchase or lease of each one of its new vehicles, the VW
20 Entity Defendants provide an express New Vehicle Limited Warranty (“NVLW”) for a period of
21 three years or 36,000 miles, whichever occurs first. This NVLW exists to cover “any repair to
22 correct a manufacturers defect in materials or workmanship.”

23 2469. The Clean Air Act requires manufacturers of light-duty vehicles to provide two
24 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
25 Warranty.”

26 2470. The EPA requires vehicle manufacturers to provide a Performance Warranty with
27 respect to the vehicles’ emission systems. Thus, the VW Entity Defendants also provides an
28 express warranty for its vehicles through a Federal Emissions Performance Warranty. The
Performance Warranty required by the EPA applies to repairs that are required during the first

1 two years or 24,000 miles, whichever occurs first, when a vehicle fails an emissions test. Under
2 this warranty, certain major emission control components are covered for the first eight years or
3 80,000 miles, whichever comes first. These major emission control components subject to the
4 longer warranty include the catalytic converters, the electronic emission control unit, and the
5 onboard emission diagnostic device or computer.

6 2471. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
7 with respect to their vehicles' emission systems. Thus, the VW Entity Defendants also provide an
8 express warranty for their vehicles through a Federal Emission Control System Defect Warranty.
9 The Design and Defect Warranty required by the EPA covers repair of emission control or
10 emission related parts which fail to function or function improperly because of a defect in
11 materials or workmanship. This warranty provides protection for two years or 24,000 miles,
12 whichever comes first, or, for the major emission control components, for eight years or 80,000
13 miles, whichever comes first.

14 2472. As manufacturers of light-duty vehicles, the VW Entity Defendants were required
15 to provide these warranties to purchasers or lessees of their "clean" diesel vehicles.

16 2473. The VW Entity Defendants' warranties formed a basis of the bargain that was
17 reached when Plaintiffs and other New York Class members purchased or leased their Class
18 Vehicles equipped with the non-compliant "clean" diesel engine and emission systems.

19 2474. Plaintiffs and the New York Class members experienced defects within the
20 warranty period. Despite the existence of warranties, the VW Entity Defendants failed to inform
21 Plaintiffs and New York Class members that the Class Vehicles were intentionally designed and
22 manufactured to be out of compliance with applicable state and federal emissions laws, and failed
23 to fix the defective emission components free of charge.

24 2475. The VW Entity Defendants breached the express warranty promising to repair and
25 correct a manufacturing defect or materials or workmanship of any parts they supplied. The VW
26 Entity Defendants have not repaired or adjusted, and have been unable to repair or adjust, the
27 Class Vehicles' materials and workmanship defects.
28

1 2476. Affording the VW Entity Defendants a reasonable opportunity to cure their breach
2 of written warranties would be unnecessary and futile here. For example, the Frequently Asked
3 Questions (“FAQ”) section of VW’s informational website states:

4 **How soon will the remedy be available, and how am I going to**
5 **be compensated for this?**

6 We cannot offer a firm date now because we need to work on a
7 remedy and review it with the government. We are proceeding as
8 quickly as possible.

8 2477. In his Congressional testimony on October 8, 2015, Michael Horn stated that
9 Volkswagen intends to make Class Vehicles compliant with emission standards through software
10 fixes and the installation of auxiliary hardware, but that fix will take “1 to 2 years, minimum.”
11 When questioned on remedies for consumers, he stated that Volkswagen may pay customers for a
12 loss in resale values because of the scandal. He said that Volkswagen is not considering
13 providing loaner vehicles because the U.S. government says the vehicles are safe to drive.

14 2478. Michael Horn’s testimony serves as an admission that the limited warranty
15 promising to repair and/or correct a manufacturing defect fails in its essential purpose because the
16 VW Entity Defendants cannot meet that promise within a reasonable time.

17 2479. Furthermore, the limited warranty promising to repair and/or correct a
18 manufacturing defect fails in its essential purpose because the contractual remedy is insufficient
19 to make Plaintiffs and the other New York Class members whole and because the VW Entity
20 Defendants have failed and/or have refused to adequately provide the promised remedies within a
21 reasonable time.

22 2480. Accordingly, recovery by Plaintiffs and the other New York Class members is not
23 restricted to the limited warranty promising to repair and/or correct a manufacturing defect, and
24 Plaintiffs, individually and on behalf of the other New York Class members, seek all remedies as
25 allowed by law.

26 2481. Also, as alleged in more detail herein, at the time the VW Entity Defendants
27 warranted and sold or leased the Class Vehicles, they knew that the Class Vehicles were illegal
28 and inherently defective and did not conform to their warranties; further, the VW Entity

1 Defendants had wrongfully and fraudulently concealed material facts regarding the Class
2 Vehicles. Plaintiffs and the other New York Class members were therefore induced to purchase
3 or lease the Class Vehicles under false and/or fraudulent pretenses.

4 2482. Moreover, many of the injuries flowing from the Class Vehicles cannot be
5 resolved through the limited remedy of “replacements or adjustments,” as many incidental and
6 consequential damages have already been suffered because of Volkswagen’s fraudulent conduct
7 as alleged herein, and because of its failure and/or continued failure to provide such limited
8 remedy within a reasonable time, and any limitation on Plaintiffs’ and the other New York Class
9 members’ remedies would be insufficient to make Plaintiffs and the other New York Class
10 members whole.

11 2483. Finally, because of the VW Entity Defendants’ breach of warranty as set forth
12 herein, Plaintiffs and the other New York Class members assert, as additional and/or alternative
13 remedies, the revocation of acceptance of the goods and the return to Plaintiffs and the other New
14 York Class members of the purchase or lease price of all Class Vehicles currently owned or
15 leased, and for such other incidental and consequential damages as allowed.

16 2484. The VW Entity Defendants were provided notice of these issues by numerous
17 complaints filed against them, including the instant Complaint, within a reasonable amount of
18 time after Volkswagen publicly admitted to using a defeat device in the Class Vehicles to evade
19 clean air standards.

20 2485. As a direct and proximate result of the VW Entity Defendants’ breach of express
21 warranties, Plaintiff and the other New York Class members have been damaged in an amount to
22 be determined at trial.

23 **NORTH CAROLINA**

24 **NORTH CAROLINA COUNT I:**
25 **VIOLATIONS OF THE NORTH CAROLINA UNFAIR**
26 **AND DECEPTIVE TRADE PRACTICES ACT**
(N.C. Gen. Stat. §§ 75-1.1, *et seq.*)

27 2486. Plaintiffs incorporate by reference each preceding paragraph as though fully set
28 forth herein.

1 2487. Plaintiffs Dowd, Krimmelbein, Alexander, and Harlan (for the purpose of this
2 section, “Plaintiffs”) bring this action on behalf of themselves and the North Carolina Class
3 against all Defendants.

4 2488. Plaintiffs and the North Carolina Class members are persons under the North
5 Carolina Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. §§ 75-1.1, *et seq.*
6 (“NCUDTPA”).

7 2489. Volkswagen’s acts and practices complained of herein were performed in the
8 course of Volkswagen’s trade or business and thus occurred in or affected “commerce,” as
9 defined in N.C. Gen. Stat. § 75-1.1(b).

10 2490. The NCUDTPA makes unlawful “[u]nfair methods of competition in or affecting
11 commerce, and unfair or deceptive acts or practices in or affecting commerce[.]” The
12 NCUDTPA provides a private right of action for any person injured “by reason of any act or thing
13 done by any other person, firm or corporation in violation of” the NCUDTPA. N.C. Gen. Stat.
14 § 75-16.

15 2491. In the course of Volkswagen’s business, Volkswagen intentionally or negligently
16 concealed and suppressed material facts concerning the true emissions produced by the misnamed
17 Clean Diesel engines in the Class Vehicles. Defendants accomplished this by installing illegal
18 defeat device software in the Class Vehicles that caused the vehicles to operate in a low emission
19 test mode only during emissions testing. During normal operations, the Class Vehicles would
20 emit grossly larger quantities of noxious contaminants, sometimes 40 times over applicable
21 standards. The result was what Volkswagen intended—the Class Vehicles passed emissions
22 testing by way of deliberately induced false readings. Plaintiffs and North Carolina Class
23 members had no way of discerning that Volkswagen’s representations were false and misleading
24 because Volkswagen’s defeat device software was extremely sophisticated technology. Plaintiffs
25 and North Carolina Class members did not and could not unravel Volkswagen’s deception on
26 their own. In fact, it took years before the academic engineering community—specifically a
27 research team at WVU’s Center for Alternative Fuels, Engines & Emissions—detected
28

1 Volkswagen's cheat using sophisticated, expensive equipment and applying decades of combined
2 experience.

3 2492. Defendants thus violated the provisions of the NCUDDTPA, at a minimum by:
4 (1) representing that the Class Vehicles have characteristics, uses, benefits, and qualities which
5 they do not have; (2) representing that the Class Vehicles are of a particular standard, quality, and
6 grade when they are not; (3) advertising the Class Vehicles with the intent not to sell them as
7 advertised; (4) failing to disclose information concerning the Class Vehicles with the intent to
8 induce consumers to purchase or lease the Class Vehicles; and (5) otherwise engaging in conduct
9 likely to deceive.

10 2493. Bosch played a critical role in facilitating, and itself contributed to, Volkswagen's
11 unfair and deceptive conduct, as alleged herein. Bosch knew or should have known that
12 Volkswagen would use and had used the Bosch technology as an emission defeat device, and in
13 fact helped it do so. Without Bosch's complicity and silence, Volkswagen could not have
14 perpetrated the fraudulent, deceptive, and unfair practices alleged herein, and Bosch's actions
15 themselves constitute fraudulent, deceptive, and unfair practices.

16 2494. Defendants engaged in misleading, false, unfair or deceptive acts or practices that
17 violated the NCUDDTPA by installing, failing to disclose and/or actively concealing the defeat
18 device and the true cleanliness and performance of the "clean" diesel engine system, by
19 marketing its vehicles as legal, reliable, environmentally clean, efficient, and of high quality, and
20 by presenting itself as a reputable manufacturer that valued environmental cleanliness and
21 efficiency, and that stood behind its vehicles after they were sold.

22 2495. Volkswagen compounded the deception by repeatedly asserting that the Class
23 Vehicles were safe, reliable, environmentally clean, efficient, and of high quality, and by
24 claiming to be a reputable manufacturer that valued safety, environmental cleanliness, and
25 efficiency, and stood behind its vehicles after they were sold.

26 2496. The Clean Air Act and EPA regulations require that automobiles limit their
27 emissions output to specified levels. These laws are intended for the protection of public health
28 and welfare. Defeat devices like those in the Class Vehicles are defined and prohibited by the

1 Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 CFR § 86.1809. By
2 installing illegal defeat devices in the Class Vehicles and by making those vehicles available for
3 purchase, Volkswagen violated federal law and therefore engaged in conduct that violates the
4 NCUADTPA.

5 2497. Volkswagen knew it had installed the defeat device in the Class Vehicles, and
6 knew the true nature of its “clean” diesel engine system for at least six years, but concealed all of
7 that information until recently. Volkswagen also knew that it valued profits over environmental
8 cleanliness, efficiency, and compliance with the law, and that it was manufacturing, selling, and
9 distributing vehicles throughout the United States that did not comply with EPA regulations, but
10 it concealed this information as well.

11 2498. Volkswagen intentionally and knowingly misrepresented material facts regarding
12 the Class Vehicles with intent to mislead Plaintiffs and the North Carolina Class.

13 2499. Volkswagen knew or should have known that its conduct violated the North
14 Carolina CPA.

15 2500. Defendants owed Plaintiffs and North Carolina Class members a duty to disclose,
16 truthfully, all the facts concerning the cleanliness, efficiency and reliability of the Class Vehicles
17 because they:

- 18 a. possessed exclusive knowledge that they were
19 manufacturing, selling, and distributing vehicles throughout
20 the United States that did not comply with EPA regulations;
- 21 b. intentionally concealed the foregoing from regulators,
22 Plaintiffs, Class members; and/or
- 23 c. made incomplete or negligent representations about the
24 environmental cleanliness and efficiency of the Class
25 Vehicles generally, and the use of the defeat device in
26 particular, while purposefully withholding material facts
27 from Plaintiffs that contradicted these representations.

28 2501. Volkswagen fraudulently concealed the defeat device and the true cleanliness,
efficiency and performance of the Class Vehicles, resulting in a raft of negative publicity once
Volkswagen’s fraud was exposed. The value of the Class Vehicles has therefore plummeted. In

1 light of the stigma Volkswagen’s misconduct attached to the Class Vehicles, the Class Vehicles
2 are now worth less than they otherwise would be worth.

3 2502. Volkswagen’s fraudulent use of the defeat device and its concealment of the true
4 characteristics of the “clean” diesel engine system were material to Plaintiffs and the North
5 Carolina Class. A vehicle made by a reputable manufacturer of environmentally friendly vehicles
6 is worth more than an otherwise comparable vehicle made by a disreputable manufacturer of
7 environmentally dirty vehicles that conceals its polluting engines rather than promptly remedying
8 them.

9 2503. Defendants’ unfair or deceptive acts or practices were likely to and did in fact
10 deceive regulators and reasonable consumers, including Plaintiffs and North Carolina Class
11 members, about the true environmental cleanliness and efficiency of Volkswagen-branded
12 vehicles, the quality of the Volkswagen brand, the devaluing of environmental cleanliness and
13 integrity at Volkswagen, and the true value of the Class Vehicles.

14 2504. Plaintiffs and North Carolina Class members suffered ascertainable loss and actual
15 damages as a direct and proximate result of Volkswagen’s misrepresentations and its concealment
16 of and failure to disclose material information. Plaintiffs and the North Carolina Class members
17 who purchased or leased the Class Vehicles would not have purchased or leased them at all
18 and/or—if the Vehicles’ true nature had been disclosed and mitigated, and the Vehicles rendered
19 legal to sell—would have paid significantly less for them. Plaintiffs also suffered diminished
20 value of their vehicles, as well as lost or diminished use.

21 2505. Defendants had an ongoing duty to all Volkswagen customers to refrain from
22 unfair and deceptive practices under the North Carolina CPA in the course of its business.

23 2506. Defendants’ violations present a continuing risk to Plaintiffs as well as to the
24 general public. Defendants’ unlawful acts and practices complained of herein affect the public
25 interest.

26 2507. As a result of the foregoing wrongful conduct of Defendants, Plaintiffs and the
27 North Carolina Class have been damaged in an amount to be proven at trial, and seek all just and
28 proper remedies, including but not limited to treble damages, an order enjoining Defendants’

1 deceptive and unfair conduct, court costs and reasonable attorneys' fees, and any other just and
2 proper relief available under N.C. Gen. Stat. § 75-16.

3 **NORTH CAROLINA COUNT II:**
4 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
5 **(N.C.G.S.A. §§ 25-2-314 and 252A-212)**

6 2508. Plaintiffs reallege and incorporate by reference all allegations of the preceding
7 paragraphs as though fully set forth herein.

8 2509. Plaintiffs bring this Count on behalf of the North Carolina Class, against VW AG,
9 VW America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the
10 "VW Entity Defendants").

11 2510. The VW Entity Defendants are and were at all relevant times "merchants" with
12 respect to motor vehicles under N.C.G.S.A. § 25-2-104(1) and "sellers" of motor vehicles under
13 § 25-2-103(1)(d).

14 2511. With respect to leases, the VW Entity Defendants are and were at all relevant
15 times "lessors" of motor vehicles under N.C.G.S.A. § 25-2A-103(1)(p).

16 2512. The Class Vehicles are and were at all relevant times "goods" within the meaning
17 of N.C.G.S.A. § 25-2-105(1) and N.C.G.S.A. § 25-2A-103(1)(h).5. A warranty that the Class
18 Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are
19 used is implied by law pursuant to N.C.G.S.A. § 25-2-314 and N.C.G.S.A. § 25-2A-212.

20 2513. These Class Vehicles, when sold or leased and at all times thereafter, were not in
21 merchantable condition and are not fit for the ordinary purpose for which vehicles are used.
22 Specifically, the Class Vehicles are inherently defective in that they do not comply with federal
23 and state emissions standards, rendering certain emissions functions inoperative; and the "clean"
24 diesel engine system was not adequately designed, manufactured, and tested.

25 2514. Volkswagen was provided notice of these issues by the investigations of the EPA
26 and individual state regulators, numerous complaints filed against it including the instant
27 Complaint, and by numerous individual letters and communications sent by Plaintiffs and others
28 within a reasonable amount of time after the allegations of Class Vehicle defects became public.

1 2515. As a direct and proximate result of the VW Entity Defendants’ breach of the
 2 implied warranty of merchantability, Plaintiffs and the other North Carolina Class members have
 3 been damaged in an amount to be proven at trial.

4 **NORTH CAROLINA COUNT III:
 5 BREACH OF EXPRESS WARRANTY
 6 (N.C.G.S.A. §§ 25-2-313 and 252A-210)**

7 2516. Plaintiffs reallege and incorporate by reference all preceding allegations as though
 8 fully set forth herein.

9 2517. Plaintiffs bring this Count on behalf of the North Carolina Class, against VW AG,
 10 VW America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the
 “VW Entity Defendants”).

11 2518. The VW Entity Defendants are and were at all relevant times “merchants” with
 12 respect to motor vehicles under N.C.G.S.A. § 25-2-104(1) and “sellers” of motor vehicles under
 13 § 25-2-103(1)(d).

14 2519. With respect to leases, the VW Entity Defendants are and were at all relevant
 15 times “lessors” of motor vehicles under N.C.G.S.A. § 25-2A-103(1)(p).

16 2520. The Class Vehicles are and were at all relevant times “goods” within the meaning
 17 of N.C.G.S.A. § 25-2-105(1) and N.C.G.S.A. § 25-2A-103(1)(h).

18 2521. In connection with the purchase or lease of each one of its new vehicles, the VW
 19 Entity Defendants provide an express New Vehicle Limited Warranty (“NVLW”) for a period of
 20 three years or 36,000 miles, whichever occurs first. This NVLW exists to cover “any repair to
 21 correct a manufacturers defect in materials or workmanship.”

22 2522. The Clean Air Act requires manufacturers of light-duty vehicles to provide two
 23 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
 24 Warranty.”

25 2523. The EPA requires vehicle manufacturers to provide a Performance Warranty with
 26 respect to the vehicles’ emission systems. Thus, Volkswagen also provides an express warranty
 27 for its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
 28 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,

1 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
2 emission control components are covered for the first eight years or 80,000 miles, whichever
3 comes first. These major emission control components subject to the longer warranty include the
4 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
5 device or computer.

6 2524. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
7 with respect to their vehicles' emission systems. Thus, the VW Entity Defendants also provide an
8 express warranty for their vehicles through a Federal Emission Control System Defect Warranty.
9 The Design and Defect Warranty required by the EPA covers repair of emission control or
10 emission related parts which fail to function or function improperly because of a defect in
11 materials or workmanship. This warranty provides protection for two years or 24,000 miles,
12 whichever comes first, or, for the major emission control components, for eight years or 80,000
13 miles, whichever comes first.

14 2525. As manufacturers of light-duty vehicles, the VW Entity Defendants were required
15 to provide these warranties to purchasers or lessees of their "clean" diesel vehicles.

16 2526. The VW Entity Defendants' warranties formed a basis of the bargain that was
17 reached when Plaintiffs and other North Carolina Class members purchased or leased their Class
18 Vehicles equipped with the non-compliant "clean" diesel engine and emission systems.

19 2527. Plaintiffs and the North Carolina Class members experienced defects within the
20 warranty period. Despite the existence of warranties, the VW Entity Defendants failed to inform
21 Plaintiffs and North Carolina Class members that the Class Vehicles were intentionally designed
22 and manufactured to be out of compliance with applicable state and federal emissions laws, and
23 failed to fix the defective emission components free of charge.

24 2528. The VW Entity Defendants breached the express warranty promising to repair and
25 correct a manufacturing defect or materials or workmanship of any parts they supplied. The VW
26 Entity Defendants have not repaired or adjusted, and have been unable to repair or adjust, the
27 Class Vehicles' materials and workmanship defects.

28

1 2529. Affording the VW Entity Defendants a reasonable opportunity to cure their breach
2 of written warranties would be unnecessary and futile here. For example, the Frequently Asked
3 Questions (“FAQ”) section of VW’s informational website states:

4 **How soon will the remedy be available, and how am I going to**
5 **be compensated for this?**

6 We cannot offer a firm date now because we need to work on a
7 remedy and review it with the government. We are proceeding as
8 quickly as possible.

8 2530. In his Congressional testimony on October 8, 2015, Michael Horn stated that
9 Volkswagen intends to make Class Vehicles compliant with emission standards through software
10 fixes and the installation of auxiliary hardware, but that fix will take “1 to 2 years, minimum.”
11 When questioned on remedies for consumers, he stated that Volkswagen may pay customers for a
12 loss in resale values because of the scandal. He said that Volkswagen is not considering
13 providing loaner vehicles because the U.S. government says the vehicles are safe to drive.

14 2531. Michael Horn’s testimony serves as an admission that the limited warranty
15 promising to repair and/or correct a manufacturing defect fails in its essential purpose because the
16 VW Entity Defendants cannot meet that promise within a reasonable time.

17 2532. Furthermore, the limited warranty promising to repair and/or correct a
18 manufacturing defect fails in its essential purpose because the contractual remedy is insufficient
19 to make Plaintiffs and the other North Carolina Class members whole and because the VW Entity
20 Defendants have failed and/or have refused to adequately provide the promised remedies within a
21 reasonable time.

22 2533. Accordingly, recovery by Plaintiffs and the other North Carolina Class members is
23 not restricted to the limited warranty promising to repair and/or correct a manufacturing defect,
24 and Plaintiffs, individually and on behalf of the other North Carolina Class members, seek all
25 remedies as allowed by law.

26 2534. Also, as alleged in more detail herein, at the time the VW Entity Defendants
27 warranted and sold or leased the Class Vehicles, they knew that the Class Vehicles were
28 inherently defective and did not conform to their warranties; further, the VW Entity Defendants

1 had wrongfully and fraudulently concealed material facts regarding the Class Vehicles. Plaintiffs
2 and the other North Carolina Class members were therefore induced to purchase or lease the
3 Class Vehicles under false and/or fraudulent pretenses.

4 2535. Moreover, many of the injuries flowing from the Class Vehicles cannot be
5 resolved through the limited remedy of “replacements or adjustments,” as many incidental and
6 consequential damages have already been suffered because of Volkswagen’s fraudulent conduct
7 as alleged herein, and because of its failure and/or continued failure to provide such limited
8 remedy within a reasonable time, and any limitation on Plaintiffs’ and the other North Carolina
9 Class members’ remedies would be insufficient to make Plaintiffs and the other North Carolina
10 Class members whole.

11 2536. Finally, because of the VW Entity Defendants’ breach of warranty as set forth
12 herein, Plaintiffs and the other North Carolina Class members assert, as additional and/or
13 alternative remedies, the revocation of acceptance of the goods and the return to Plaintiffs and the
14 other North Carolina Class members of the purchase or lease price of all Class Vehicles currently
15 owned or leased, and for such other incidental and consequential damages as allowed.

16 2537. The VW Entity Defendants were provided notice of these issues by numerous
17 complaints filed against them, including the instant Complaint, within a reasonable amount of
18 time after Volkswagen publicly admitted to using a defeat device in the Class Vehicles to evade
19 clean air standards.

20 2538. As a direct and proximate result of the VW Entity Defendants’ breach of express
21 warranties, Plaintiff and the other North Carolina Class members have been damaged in an
22 amount to be determined at trial.

23 **NORTH DAKOTA**

24 **NORTH DAKOTA COUNT I:**
25 **VIOLATIONS OF THE NORTH DAKOTA CONSUMER FRAUD ACT**
26 **(N.D. Cent. Code § 51-15-02)**

27 2539. Plaintiffs incorporate by reference each preceding paragraph as though fully set
28 forth herein.

1 2540. Plaintiff Gramling (for the purpose of this section, “Plaintiffs”) bring this action on
2 behalf of themselves and the North Dakota Class against all Defendants.

3 2541. Plaintiff, the North Dakota Class members, and Defendants are “persons” within
4 the meaning of N.D. Cent. Code § 51-15-02(4).

5 2542. Volkswagen engaged in the “sale” of “merchandise” within the meaning of N.D.
6 Cent Code § 51-15-02(3), (5).

7 2543. The North Dakota Consumer Fraud Act (“North Dakota CFA”) makes unlawful
8 “[t]he act, use, or employment by any person of any deceptive act or practice, fraud, false
9 pretense, false promise, or misrepresentation, with the intent that others rely thereon in
10 connection with the sale or advertisement of any merchandise....” N.D. Cent. Code § 51-15-02.
11 As set forth above and below, Volkswagen committed deceptive acts or practices, with the intent
12 that North Dakota Class members rely thereon in connection with their purchase or lease of the
13 Class Vehicles.

14 2544. In the course of their business, Defendants concealed and suppressed material facts
15 concerning the Class Vehicles. Defendants accomplished this by installing illegal defeat device
16 software in the Class Vehicles that caused the vehicles to operate in a low emission test mode
17 only during emissions testing. During normal operations, the Class Vehicles would emit grossly
18 larger quantities of noxious contaminants, sometimes 40 times over applicable standards. The
19 result was what Volkswagen intended—the Class Vehicles passed emissions testing by way of
20 deliberately induced false readings. Plaintiffs and North Dakota Class members had no way of
21 discerning that Volkswagen’s representations were false and misleading because Volkswagen’s
22 defeat device software was extremely sophisticated technology. Plaintiffs and North Dakota
23 Class members did not and could not unravel Volkswagen’s deception on their own. In fact, it
24 took years before the academic engineering community—specifically a research team at WVU’s
25 Center for Alternative Fuels, Engines & Emissions—detected Volkswagen’s cheat using
26 sophisticated, expensive equipment and applying decades of combined experience.

27 2545. Defendants thus violated the Act by, at minimum employing deception, deceptive
28 acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any

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

3 2546. Bosch played a critical role in facilitating, and itself contributed to, Volkswagen's
4 unfair and deceptive conduct, as alleged herein. Bosch knew or should have known that
5 Volkswagen would use and had used the Bosch technology as an emission defeat device, and in
6 fact helped it do so. Without Bosch's complicity and silence, Volkswagen could not have
7 perpetrated the fraudulent, deceptive, and unfair practices alleged herein, and Bosch's actions
8 themselves constitute fraudulent, deceptive, and unfair practices.

9 2547. Defendants engaged in misleading, false, unfair or deceptive acts or practices that
10 violated the North Dakota CFA by installing, failing to disclose and actively concealing the
11 illegal defeat device and the true cleanliness and performance of the "clean" diesel engine system,
12 by marketing its vehicles as legal, reliable, environmentally clean, efficient, and of high quality,
13 and by presenting itself as a reputable manufacturer that valued environmental cleanliness and
14 efficiency, and that stood behind its vehicles after they were sold.

15 2548. The Clean Air Act and EPA regulations require that automobiles limit their
16 emissions output to specified levels. These laws are intended for the protection of public health
17 and welfare. "Defeat devices" like those in the Class Vehicles are defined and prohibited by the
18 Clean Air Act and its regulations. See 42 U.S.C. § 7522(a)(3)(B); 40 CFR § 86.1809. By
19 installing illegal "defeat devices" in the Class Vehicles and by making those vehicles available
20 for purchase, Volkswagen violated federal law and therefore engaged in conduct that violates the
21 North Dakota CFA.

22 2549. Volkswagen has known of its use of the "defeat device" and the true nature of its
23 "clean" diesel engine system for at least six years, but concealed all of that information until
24 recently. Volkswagen was also aware that it valued profits over environmental cleanliness,
25 efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles
26 throughout the United States that did not comply with EPA regulations. Volkswagen concealed
27 this information as well.
28

1 2550. Volkswagen intentionally and knowingly misrepresented material facts regarding
2 the Class Vehicles with intent to mislead Plaintiff and the North Dakota Class.

3 2551. Volkswagen knew or should have known that its conduct violated the North
4 Dakota CFA.

5 2552. Defendants owed Plaintiffs a duty to disclose the illegality and public health and
6 safety risks of the Class Vehicles and the devaluing of environmental cleanliness and integrity at
7 Volkswagen, because Volkswagen:

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

21 2553. Defendants concealed the illegal defeat device and the true emissions and
22 performance of the “clean” diesel engine system, resulting in a raft of negative publicity once the
23 use of the “defeat device” and true characteristics of the “clean” diesel engine system finally
24 began to be disclosed. The value of the Class Vehicles has therefore greatly diminished. In light
25 of the stigma attached to those vehicles by Volkswagen’s conduct, they are now worth
26 significantly less than they otherwise would be worth.

27 2554. Volkswagen’s fraudulent use of the “defeat device” and its concealment of the true
28 characteristics of the “clean” diesel engine system were material to Plaintiff and the North Dakota
Class. A vehicle made by a reputable manufacturer of environmentally friendly vehicles is worth
more than an otherwise comparable vehicle made by a disreputable and dishonest manufacturer of
polluting vehicles that conceals the amount its cars pollutes rather than make environmentally
friendly vehicles.

1 2555. Defendants’ unfair or deceptive acts or practices were likely to and did in fact
2 deceive regulators and reasonable consumers, including Plaintiffs, about the true environmental
3 cleanliness and efficiency of Volkswagen-branded vehicles, the quality of the Volkswagen brand,
4 the devaluing of environmental cleanliness and integrity at Volkswagen, and the true value of the
5 Class Vehicles.

6 2556. Plaintiff and the North Dakota Class suffered ascertainable loss and actual
7 damages as a direct and proximate result of Defendants’ misrepresentations and its concealment
8 of and failure to disclose material information. Plaintiffs and the North Dakota Class members
9 who purchased or leased the Class Vehicles would not have purchased or leased them at all
10 and/or—if the Vehicles’ true nature had been disclosed and mitigated, and the Vehicles rendered
11 legal to sell—would have paid significantly less for them. Plaintiffs also suffered diminished
12 value of their vehicles, as well as lost or diminished use.

13 2557. Defendants had an ongoing duty to all Volkswagen customers to refrain from
14 unfair and deceptive acts or practices under the North Dakota CFA. And, in any event, they
15 suffered ascertainable loss in the form of the diminished value of their vehicles as a result of
16 Volkswagen’s deceptive and unfair acts and practices that occurred in the course of
17 Volkswagen’s business.

18 2558. Defendants’ violations present a continuing risk to Plaintiffs as well as to the
19 general public. Defendants’ unlawful acts and practices complained of herein affect the public
20 interest.

21 2559. As a direct and proximate result of Defendants’ violations of the North Dakota
22 CFA, Plaintiff and the North Dakota Class have suffered injury-in-fact and/or actual damage.

23 2560. North Dakota Class members seek punitive damages against Volkswagen because
24 Volkswagen’s conduct was egregious. Volkswagen’s egregious conduct warrants punitive
25 damages.

26 2561. Further, Volkswagen knowingly committed the conduct described above, and thus,
27 under N.D. CENT. CODE § 51-15-09, Volkswagen is liable to Plaintiffs and the North Dakota
28 Class for treble damages in amounts to be proven at trial, as well as attorneys’ fees, costs, and

1 disbursements. Plaintiffs further seek an order enjoining Volkswagen’s unfair and/or deceptive
2 acts or practices, and other just and proper available relief under the North Dakota CFA.

3 **NORTH DAKOTA COUNT II:**
4 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
5 **(N.D. Cent. Code §§ 41-02-31 and 41-02.1-21)**

6 2562. Plaintiffs reallege and incorporate by reference all allegations of the preceding
7 paragraphs as though fully set forth herein.

8 2563. Plaintiffs bring this Count on behalf of the North Dakota Class, against VW AG,
9 VW America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the
10 “VW Entity Defendants”).

11 2564. The VW Entity Defendants are and were at all relevant times “merchants” with
12 respect to motor vehicles under N.D. Cent. Code § 41-02.04(3) and “sellers” of motor vehicles
13 under § 41-02-03(1)(d).

14 2565. With respect to leases, the VW Entity Defendants are and were at all relevant
15 times “lessors” of motor vehicles under N.D. Cent. Code § 41-02.1-03(1)(p).

16 2566. The Class Vehicles are and were at all relevant times “goods” within the meaning
17 of N.D. Cent. Code § 41-02-05(2) and N.D. Cent. Code § 41-02.1-03(1)(h).5. A warranty that the
18 Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles
19 are used is implied by law pursuant to N.D. Cent. Code § 41-02-31 and N.D. Cent. Code § 41-

20 2567. These Class Vehicles, when sold or leased and at all times thereafter, were not in
21 merchantable condition and are not fit for the ordinary purpose for which vehicles are used.
22 Specifically, the Class Vehicles are inherently defective in that they do not comply with federal
23 and state emissions standards, rendering certain emissions functions inoperative; and the “clean”
24 diesel engine system was not adequately designed, manufactured, and tested.

25 2568. Volkswagen was provided notice of these issues by the investigations of the EPA
26 and individual state regulators, numerous complaints filed against it including the instant
27 Complaint, and by numerous individual letters and communications sent by Plaintiffs and others
28 within a reasonable amount of time after the allegations of Class Vehicle defects became public.

1 2569. As a direct and proximate result of the VW Entity Defendants’ breach of the
2 implied warranty of merchantability, Plaintiffs and the other North Dakota Class members have
3 been damaged in an amount to be proven at trial.

4 **NORTH DAKOTA COUNT III:**
5 **BREACH OF EXPRESS WARRANTY**
6 **(N.D. Cent. Code §§ 41-02-30 and 41-02.1-19)**

7 2570. Plaintiffs reallege and incorporate by reference all preceding allegations as though
8 fully set forth herein.

9 2571. Plaintiffs bring this Count on behalf of the North Dakota Class, against VW AG,
10 VW America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the
11 “VW Entity Defendants”).

12 2572. The VW Entity Defendants are and were at all relevant times “merchants” with
13 respect to motor vehicles under N.D. Cent. Code § 41-02.04(3) and “sellers” of motor vehicles
14 under § 41-02-03(1)(d).

15 2573. With respect to leases, the VW Entity Defendants are and were at all relevant
16 times “lessors” of motor vehicles under N.D. Cent. Code § 41-02.1-03(1)(p).

17 2574. The Class Vehicles are and were at all relevant times “goods” within the meaning
18 of N.D. Cent. Code § 41-02-05(2) and N.D. Cent. Code § 41-02.1-03(1)(h).

19 2575. In connection with the purchase or lease of each one of its new vehicles, the VW
20 Entity Defendants provide an express New Vehicle Limited Warranty (“NVLW”) for a period of
21 three years or 36,000 miles, whichever occurs first. This NVLW exists to cover “any repair to
22 correct a manufacturers defect in materials or workmanship.”

23 2576. The Clean Air Act requires manufacturers of light-duty vehicles to provide two
24 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
25 Warranty.”

26 2577. The EPA requires vehicle manufacturers to provide a Performance Warranty with
27 respect to the vehicles’ emission systems. Thus, Volkswagen also provides an express warranty
28 for its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
required by the EPA applies to repairs that are required during the first two years or 24,000 miles,

1 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
2 emission control components are covered for the first eight years or 80,000 miles, whichever
3 comes first. These major emission control components subject to the longer warranty include the
4 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
5 device or computer.

6 2578. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
7 with respect to their vehicles' emission systems. Thus, the VW Entity Defendants also provide an
8 express warranty for their vehicles through a Federal Emission Control System Defect Warranty.
9 The Design and Defect Warranty required by the EPA covers repair of emission control or
10 emission related parts which fail to function or function improperly because of a defect in
11 materials or workmanship. This warranty provides protection for two years or 24,000 miles,
12 whichever comes first, or, for the major emission control components, for eight years or 80,000
13 miles, whichever comes first.

14 2579. As manufacturers of light-duty vehicles, the VW Entity Defendants were required
15 to provide these warranties to purchasers or lessees of their "clean" diesel vehicles.

16 2580. The VW Entity Defendants' warranties formed a basis of the bargain that was
17 reached when Plaintiffs and other North Dakota Class members purchased or leased their Class
18 Vehicles equipped with the non-compliant "clean" diesel engine and emission systems.

19 2581. Plaintiffs and the North Dakota Class members experienced defects within the
20 warranty period. Despite the existence of warranties, the VW Entity Defendants failed to inform
21 Plaintiffs and North Dakota Class members that the Class Vehicles were intentionally designed
22 and manufactured to be out of compliance with applicable state and federal emissions laws, and
23 failed to fix the defective emission components free of charge.

24 2582. The VW Entity Defendants breached the express warranty promising to repair and
25 correct a manufacturing defect or materials or workmanship of any parts they supplied. The VW
26 Entity Defendants have not repaired or adjusted, and have been unable to repair or adjust, the
27 Class Vehicles' materials and workmanship defects.
28

1 2583. Affording the VW Entity Defendants a reasonable opportunity to cure their breach
2 of written warranties would be unnecessary and futile here. For example, the Frequently Asked
3 Questions (“FAQ”) section of VW’s informational website states:

4 **How soon will the remedy be available, and how am I going to**
5 **be compensated for this?**

6 We cannot offer a firm date now because we need to work on a
7 remedy and review it with the government. We are proceeding as
8 quickly as possible.

8 2584. In his Congressional testimony on October 8, 2015, Michael Horn stated that
9 Volkswagen intends to make Class Vehicles compliant with emission standards through software
10 fixes and the installation of auxiliary hardware, but that fix will take “1 to 2 years, minimum.”
11 When questioned on remedies for consumers, he stated that Volkswagen may pay customers for a
12 loss in resale values because of the scandal. He said that Volkswagen is not considering
13 providing loaner vehicles because the U.S. government says the vehicles are safe to drive.

14 2585. Michael Horn’s testimony serves as an admission that the limited warranty
15 promising to repair and/or correct a manufacturing defect fails in its essential purpose because the
16 VW Entity Defendants cannot meet that promise within a reasonable time.

17 2586. Furthermore, the limited warranty promising to repair and/or correct a
18 manufacturing defect fails in its essential purpose because the contractual remedy is insufficient
19 to make Plaintiffs and the other North Dakota Class members whole and because the VW Entity
20 Defendants have failed and/or have refused to adequately provide the promised remedies within a
21 reasonable time.

22 2587. Accordingly, recovery by Plaintiffs and the other North Dakota Class members is
23 not restricted to the limited warranty promising to repair and/or correct a manufacturing defect,
24 and Plaintiffs, individually and on behalf of the other North Dakota Class members, seek all
25 remedies as allowed by law.

26 2588. Also, as alleged in more detail herein, at the time the VW Entity Defendants
27 warranted and sold or leased the Class Vehicles, they knew that the Class Vehicles were
28 inherently defective and did not conform to their warranties; further, the VW Entity Defendants

1 had wrongfully and fraudulently concealed material facts regarding the Class Vehicles. Plaintiffs
2 and the other North Dakota Class members were therefore induced to purchase or lease the Class
3 Vehicles under false and/or fraudulent pretenses.

4 2589. Moreover, many of the injuries flowing from the Class Vehicles cannot be
5 resolved through the limited remedy of “replacements or adjustments,” as many incidental and
6 consequential damages have already been suffered because of Volkswagen’s fraudulent conduct
7 as alleged herein, and because of its failure and/or continued failure to provide such limited
8 remedy within a reasonable time, and any limitation on Plaintiffs’ and the other North Dakota
9 Class members’ remedies would be insufficient to make Plaintiffs and the other North Dakota
10 Class members whole.

11 2590. Finally, because of the VW Entity Defendants’ breach of warranty as set forth
12 herein, Plaintiffs and the other North Dakota Class members assert, as additional and/or
13 alternative remedies, the revocation of acceptance of the goods and the return to Plaintiffs and the
14 other North Dakota Class members of the purchase or lease price of all Class Vehicles currently
15 owned or leased, and for such other incidental and consequential damages as allowed.

16 2591. The VW Entity Defendants were provided notice of these issues by numerous
17 complaints filed against them, including the instant Complaint, within a reasonable amount of
18 time after Volkswagen publicly admitted to using a defeat device in the Class Vehicles to evade
19 clean air standards.

20 2592. As a direct and proximate result of the VW Entity Defendants’ breach of express
21 warranties, Plaintiff and the other North Dakota Class members have been damaged in an amount
22 to be determined at trial.

23 **OHIO**

24 **OHIO COUNT I:**
25 **VIOLATIONS OF THE OHIO CONSUMER SALES PRACTICES ACT**
26 **(Ohio Rev. Code §§ 1345.01, *et seq.*)**

27 2593. Plaintiffs incorporate by reference each preceding paragraph as though fully set
28 forth herein.

1 2594. Plaintiffs Greitzer, Stewart, and Vigran (for the purpose of this section,
2 “Plaintiffs”) bring this action on behalf of themselves and the Ohio Class against all Defendants.

3 2595. Volkswagen, Plaintiffs and the Ohio Class are “persons” within the meaning of
4 Ohio Rev. Code § 1345.01(B). Volkswagen is a “supplier” as defined by Ohio Rev. Code
5 § 1345.01(C).

6 2596. Plaintiffs and the Ohio Class are “consumers” as that term is defined in Ohio Rev.
7 Code § 1345.01(D), and their purchase and leases of the Class Vehicles with the Defect Devices
8 installed in them are “consumer transactions” within the meaning of Ohio Rev. Code
9 § 1345.01(A).

10 2597. Ohio Rev. Code § 1345.02, prohibits unfair or deceptive acts or practices in
11 connection with a consumer transaction. Ohio CSPA prohibits a supplier from (i) representing
12 that goods have characteristics, uses or benefits which the goods do not have; (ii) representing
13 that their goods are of a particular quality or grade that the product is not; and (iii) representing
14 that the subject of a consumer transaction has been supplied in accordance with a previous
15 representation, if it has not.

16 2598. In the course of Volkswagen’s business, Volkswagen intentionally or negligently
17 concealed and suppressed material facts concerning the true emissions produced by the misnamed
18 “CleanDiesel” engines in the Class Vehicles. Defendants accomplished this by installing illegal
19 defeat device software in the Class Vehicles that caused the vehicles to operate in a low emission
20 test mode only during emissions testing. During normal operations, the Class Vehicles would
21 emit grossly larger quantities of noxious contaminants, sometimes 40 times over applicable
22 standards. The result was what Volkswagen intended—the Class Vehicles passed emissions
23 testing by way of deliberately induced false readings. Plaintiffs and Ohio Class members had no
24 way of discerning that Volkswagen’s representations were false and misleading because
25 Volkswagen’s defeat device software was extremely sophisticated technology. Plaintiffs and
26 Ohio Class members did not and could not unravel Volkswagen’s deception on their own. In fact,
27 it took years before the academic engineering community—specifically a research team at
28

1 WVU's Center for Alternative Fuels, Engines & Emissions—detected Volkswagen's cheat using
2 sophisticated, expensive equipment and applying decades of combined experience.

3 2599. Volkswagen thus violated the provisions of the Ohio CSPA, at a minimum by: (1)
4 representing that the Class Vehicles have characteristics, uses, benefits, and qualities which they
5 do not have; (2) representing that the Class Vehicles are of a particular standard, quality, and
6 grade when they are not; (3) advertising the Class Vehicles with the intent not to sell them as
7 advertised; (4) failing to disclose information concerning the Class Vehicles with the intent to
8 induce consumers to purchase or lease the Class Vehicles.

9 2600. Defendants engaged in misleading, false, unfair or deceptive acts or practices that
10 violated the Ohio CSPA by installing, failing to disclose and/or actively concealing the “defeat
11 device” and the true cleanliness and performance of the “clean” diesel engine system, by
12 marketing its vehicles as legal, reliable, environmentally clean, efficient, and of high quality, and
13 by presenting itself as a reputable manufacturer that valued environmental cleanliness and
14 efficiency, and that stood behind its vehicles after they were sold.

15 2601. Volkswagen compounded the deception by repeatedly asserting that the Class
16 Vehicles were safe, reliable, environmentally clean, efficient, and of high quality, and by
17 claiming to be a reputable manufacturer that valued safety, environmental cleanliness, and
18 efficiency, and stood behind its vehicles after they were sold.

19 2602. The Clean Air Act and EPA regulations require that automobiles limit their
20 emissions output to specified levels. These laws are intended for the protection of public health
21 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the
22 Clean Air Act and its regulations. See 42 U.S.C. § 7522(a)(3)(B); 40 CFR § 86.1809. By
23 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available
24 for purchase, Volkswagen violated federal law and therefore engaged in conduct that violates the
25 Ohio CSPA.

26 2603. Volkswagen knew it had installed the “defeat device” in the Class Vehicles, and
27 knew the true nature of its “clean” diesel engine system for at least six years, but concealed all of
28 that information until recently. Volkswagen also knew that it valued profits over environmental

1 cleanliness, efficiency, and compliance with the law, and that it was manufacturing, selling, and
2 distributing vehicles throughout the United States that did not comply with EPA regulations, but
3 it concealed this information as well

4 2604. Volkswagen intentionally and knowingly misrepresented material facts regarding
5 the Class Vehicles with intent to mislead Plaintiffs and the Ohio Class.

6 2605. Volkswagen knew or should have known that its conduct violated the Ohio CSPA.

7 2606. The Ohio Attorney General has made available for public inspection prior state
8 court decisions which have held that the acts and omissions of Volkswagen in this Complaint,
9 including, but not limited to, the failure to honor both implied warranties and express warranties,
10 the making and distribution of false, deceptive, and/or misleading representations, and the
11 concealment and/or non-disclosure of a substantial defect, constitute deceptive sales practices in
12 violation of the CSPA. These cases include, but are not limited to, the following:

- 13 a. *Mason v. Mercedes Benz USA, LLC* (OPIF #10002382);
- 14 b. *State ex rel. Betty D. Montgomery v. Ford Motor Co.* (OPIF
15 #10002123);
- 16 c. *State ex rel. Betty D. Montgomery v. Bridgestone/Firestone,
17 Inc.* (OPIF #10002025);
- 18 d. *Bellinger v. Hewlett-Packard Co.*, No. 20744, 2002 Ohio
19 App. LEXIS 1573 (Ohio Ct. App. Apr. 10, 2002) (OPIF
20 #10002077);
- 21 e. *Borrer v. MarineMax of Ohio*, No. OT-06-010, 2007 Ohio
22 App. LEXIS 525 (Ohio Ct. App. Feb. 9, 2007) (OPIF
23 #10002388);
- 24 f. *State ex rel. Jim Petro v. Craftmatic Organization, Inc.*
25 (OPIF #10002347);
- 26 g. *Cranford v. Joseph Airport Toyota, Inc.* (OPIF #10001586);
- 27 h. *Brown v. Spears* (OPIF #10000403);
- 28 i. *Brinkman v. Mazda Motor of America, Inc.* (OPIF
#10001427);
- j. *Mosley v. Performance Mitsubishi aka Automanage* (OPIF
#10001326); and
- k. *Walls v. Harry Williams dba Butch's Auto Sales* (OPIF
#10001524).

1 2607. Defendants owed Plaintiffs and Ohio Class members a duty to disclose, truthfully,
2 all the facts concerning the cleanliness, efficiency and reliability of the Class Vehicles because
3 they:

- 4 a. possessed exclusive knowledge that they were
5 manufacturing, selling, and distributing vehicles throughout
6 the United States that did not comply with EPA regulations;
- 7 b. intentionally concealed the foregoing from regulators,
8 Plaintiffs, Class members; and/or
- 9 c. Made incomplete or negligent representations about the
10 environmental cleanliness and efficiency of the Class
11 Vehicles generally, and the use of the defeat device in
12 particular, while purposefully withholding material facts
13 from Plaintiffs that contradicted these representations.

11 2608. Defendants concealed the illegal defeat device and the true emissions, efficiency
12 and performance of the Class Vehicles, resulting in a raft of negative publicity once
13 Volkswagen’s fraud was exposed. The value of the Class Vehicles has therefore plummeted. In
14 light of the stigma Volkswagen’s misconduct attached to the Class Vehicles, the Class Vehicles
15 are now worth less than they otherwise would be worth.

16 2609. Defendants’ supply and use of the illegal defeat device and concealment of the true
17 characteristics of the “clean” diesel engine system were material to Plaintiffs and the Ohio Class.
18 A vehicle made by a reputable manufacturer of environmentally friendly vehicles is worth more
19 than an otherwise comparable vehicle made by a disreputable manufacturer of environmentally
20 dirty vehicles that conceals its polluting engines rather than promptly remedying them.

21 2610. Defendants’ unfair or deceptive acts or practices were likely to and did in fact
22 deceive regulators and reasonable consumers, including Plaintiffs and Ohio Class members, about
23 the true environmental cleanliness and efficiency of Volkswagen-branded vehicles, the quality of
24 the Volkswagen brand, the devaluing of environmental cleanliness and integrity at Volkswagen,
25 and the true value of the Class Vehicles.

26 2611. Plaintiffs and Ohio Class members suffered ascertainable loss and actual damages
27 as a direct and proximate result of Volkswagen’s misrepresentations and its concealment of and
28 failure to disclose material information. Plaintiffs and the Ohio Class members who purchased or

1 leased the Class Vehicles would not have purchased or leased them at all and/or—if the Vehicles’
2 true nature had been disclosed and mitigated, and the Vehicles rendered legal to sell—would have
3 paid significantly less for them. Plaintiffs also suffered diminished value of their vehicles, as well
4 as lost or diminished use.

5 2612. Defendants had an ongoing duty to all Volkswagen customers to refrain from
6 unfair and deceptive practices under the Ohio CSPA in the course of its business.

7 2613. Defendants’ violations present a continuing risk to Plaintiffs as well as to the
8 general public. Defendants’ unlawful acts and practices complained of herein affect the public
9 interest.

10 2614. Pursuant to Ohio Rev. Code § 1345.09, Plaintiffs and the Ohio Class seek an order
11 enjoining Volkswagen’s unfair and/or deceptive acts or practices, actual damages - trebled, and
12 attorneys’ fees, costs, and any other just and proper relief, to the extend available under the Ohio
13 CSPA.

14 **OHIO COUNT II:**
15 **VIOLATIONS OF THE OHIO DECEPTIVE TRADE PRACTICES ACT**
16 **(Ohio Rev. Code § 4165.01, *et seq.*)**

17 2615. Plaintiffs incorporate by reference each preceding paragraph as though fully set
18 forth herein.

19 2616. This claim is brought on behalf of the Ohio Class against all Defendants.

20 2617. Volkswagen, Plaintiffs and the Ohio Class are “persons” within the meaning of
21 Ohio Rev. Code § 4165.01(D).

22 2618. Volkswagen engaged in “the course of [its] business” within the meaning of Ohio
23 Rev. Code § 4165.02(A) with respect to the acts alleged herein.

24 2619. The Ohio Deceptive Trade Practices Act, Ohio Rev. Code § 4165.02(A) (“Ohio
25 DTPA”) provides that a “person engages in a deceptive trade practice when, in the course of the
26 person’s business, vocation, or occupation,” the person does any of the following: “(2) Causes
27 likelihood of confusion or misunderstanding as to the source, sponsorship, approval, or
28 certification of goods or services; ... (7) Represents that goods or services have sponsorship,
approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a

1 person has a sponsorship, approval, status, affiliation, or connection that the person does not
2 have; ... (9) Represents that goods or services are of a particular standard, quality, or grade, or
3 that goods are of a particular style or model, if they are of another; ... [or] (11) Advertises goods
4 or services with intent not to sell them as advertised.”

5 2620. In the course of Volkswagen’s business, Volkswagen intentionally or negligently
6 concealed and suppressed material facts concerning the true emissions produced by the misnamed
7 “CleanDiesel” engines in the Class Vehicles. Defendants accomplished this by installing illegal
8 defeat device software in the Class Vehicles that caused the vehicles to operate in a low emission
9 test mode only during emissions testing. During normal operations, the Class Vehicles would
10 emit grossly larger quantities of noxious contaminants, sometimes 40 times over applicable
11 standards. The result was what Volkswagen intended—the Class Vehicles passed emissions
12 testing by way of deliberately induced false readings. Plaintiffs and Ohio Class members had no
13 way of discerning that Volkswagen’s representations were false and misleading because
14 Volkswagen’s defeat device software was extremely sophisticated technology. Plaintiffs and
15 Ohio Class members did not and could not unravel Volkswagen’s deception on their own. In fact,
16 it took years before the academic engineering community—specifically a research team at
17 WVU’s Center for Alternative Fuels, Engines & Emissions—detected Volkswagen’s cheat using
18 sophisticated, expensive equipment and applying decades of combined experience.

19 2621. Volkswagen thus violated the provisions of the Ohio DTPA, at a minimum by: (1)
20 representing that the Class Vehicles have characteristics, uses, benefits, and qualities which they
21 do not have; (2) representing that the Class Vehicles are of a particular standard, quality, and
22 grade when they are not; (3) advertising the Class Vehicles with the intent not to sell them as
23 advertised; (4) failing to disclose information concerning the Class Vehicles with the intent to
24 induce consumers to purchase or lease the Class Vehicles.

25 2622. Defendants engaged in misleading, false, unfair or deceptive acts or practices that
26 violated the Ohio DTPA by installing, failing to disclose and/or actively concealing the “defeat
27 device” and the true cleanliness and performance of the “clean” diesel engine system, by
28 marketing its vehicles as legal, reliable, environmentally clean, efficient, and of high quality, and

1 by presenting itself as a reputable manufacturer that valued environmental cleanliness and
2 efficiency, and that stood behind its vehicles after they were sold.

3 2623. Volkswagen compounded the deception by repeatedly asserting that the Class
4 Vehicles were safe, reliable, environmentally clean, efficient, and of high quality, and by
5 claiming to be a reputable manufacturer that valued safety, environmental cleanliness, and
6 efficiency, and stood behind its vehicles after they were sold.

7 2624. The Clean Air Act and EPA regulations require that automobiles limit their
8 emissions output to specified levels. These laws are intended for the protection of public health
9 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the
10 Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 CFR § 86.1809. By
11 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available
12 for purchase, Volkswagen violated federal law and therefore engaged in conduct that violates the
13 Ohio DTPA.

14 2625. Volkswagen knew it had installed the “defeat device” in the Class Vehicles, and
15 knew the true nature of its “clean” diesel engine system for at least six years, but concealed all of
16 that information until recently. Volkswagen also knew that it valued profits over environmental
17 cleanliness, efficiency, and compliance with the law, and that it was manufacturing, selling, and
18 distributing vehicles throughout the United States that did not comply with EPA regulations, but
19 it concealed this information as well.

20 2626. Volkswagen intentionally and knowingly misrepresented material facts regarding
21 the Class Vehicles with intent to mislead Plaintiffs and the Ohio Class.

22 2627. Volkswagen knew or should have known that its conduct violated the Ohio DTPA.

23 2628. Defendants owed Plaintiffs and Ohio Class members a duty to disclose, truthfully,
24 all the facts concerning the cleanliness, efficiency and reliability of the Class Vehicles because
25 they:

- 26 a. possessed exclusive knowledge that they were
27 manufacturing, selling, and distributing vehicles throughout
28 the United States that did not comply with EPA regulations;

- 1 b. intentionally concealed the foregoing from regulators,
2 Plaintiffs, Class members; and/or
- 3 c. Made incomplete or negligent representations about the
4 environmental cleanliness and efficiency of the Class
5 Vehicles generally, and the use of the defeat device in
6 particular, while purposefully withholding material facts
7 from Plaintiffs that contradicted these representations.

8 2629. Defendants concealed the illegal defeat device and the true emissions, efficiency
9 and performance of the Class Vehicles, resulting in a raft of negative publicity once
10 Volkswagen’s fraud was exposed. The value of the Class Vehicles has therefore plummeted. In
11 light of the stigma Volkswagen’s misconduct attached to the Class Vehicles, the Class Vehicles
12 are now worth less than they otherwise would be worth.

13 2630. Defendants’ supply and use of the illegal defeat device and concealment of the true
14 characteristics of the “clean” diesel engine system were material to Plaintiffs and the Ohio Class.
15 A vehicle made by a reputable manufacturer of environmentally friendly vehicles is worth more
16 than an otherwise comparable vehicle made by a disreputable manufacturer of environmentally
17 dirty vehicles that conceals its polluting engines rather than promptly remedying them.

18 2631. Defendants’ unfair or deceptive acts or practices were likely to and did in fact
19 deceive regulators and reasonable consumers, including Plaintiffs and Ohio Class members, about
20 the true environmental cleanliness and efficiency of Volkswagen-branded vehicles, the quality of
21 the Volkswagen brand, the devaluing of environmental cleanliness and integrity at Volkswagen,
22 and the true value of the Class Vehicles.

23 2632. Plaintiffs and Ohio Class members suffered ascertainable loss and actual damages
24 as a direct and proximate result of Volkswagen’s misrepresentations and its concealment of and
25 failure to disclose material information. Plaintiffs and the Ohio Class members who purchased or
26 leased the Class Vehicles would not have purchased or leased them at all and/or—if the Vehicles’
27 true nature had been disclosed and mitigated, and the Vehicles rendered legal to sell—would have
28 paid significantly less for them. Plaintiffs also suffered diminished value of their vehicles, as well
29 as lost or diminished use.

1 2633. Defendants had an ongoing duty to all Volkswagen customers to refrain from
2 unfair and deceptive practices under the Ohio DTPA in the course of its business.

3 2634. Defendants’ violations present a continuing risk to Plaintiffs as well as to the
4 general public. Defendants’ unlawful acts and practices complained of herein affect the public
5 interest.

6 2635. Pursuant to Ohio Rev. Code § 4165.03, Plaintiffs and the Ohio Class seek an order
7 enjoining Volkswagen’s unfair and/or deceptive acts or practices, damages, punitive damages,
8 and attorneys’ fees, costs, and any other just and proper relief available under the Ohio DTPA.

9 **OHIO COUNT III:**
10 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
 (Ohio Rev. Code Ann. §§ 1302.27 and 1310.19)

11 2636. Plaintiffs reallege and incorporate by reference all allegations of the preceding
12 paragraphs as though fully set forth herein.

13 2637. Plaintiffs bring this Count on behalf of the Ohio Class.

14 2638. The VW Entity Defendants are and were at all relevant times “merchants” with
15 respect to motor vehicles under Ohio Rev. Code §§ 1302.01(5) and 1310.01(A)(20), and “sellers”
16 of motor vehicles under § 1302.01(4).

17 2639. With respect to leases, the VW Entity Defendants are and were at all relevant
18 times “lessors” of motor vehicles under Ohio Rev. Code § 1310.01(A)(20).

19 2640. The Class Vehicles are and were at all relevant times “goods” within the meaning
20 of Ohio Rev. Code §§ 1302.01(8) and 1310.01(A)(8).

21 2641. A warranty that the Class Vehicles were in merchantable condition and fit for the
22 ordinary purpose for which vehicles are used is implied by law pursuant to Ohio Rev. Code
23 §§ 1302.27 and 1310.19.

24 2642. These Class Vehicles, when sold or leased and at all times thereafter, were not in
25 merchantable condition and are not fit for the ordinary purpose for which vehicles are used.
26 Specifically, the Class Vehicles are inherently defective in that they do not comply with federal
27 and state emissions standards, rendering certain emissions functions inoperative; and the “clean”
28 diesel engine system was not adequately designed, manufactured, and tested.

1 2643. Volkswagen was provided notice of these issues by the investigations of the EPA
2 and individual state regulators, numerous complaints filed against it including the instant
3 Complaint, and by numerous individual letters and communications sent by Plaintiffs and others
4 within a reasonable amount of time after the allegations of Class Vehicle defects became public.

5 2644. As a direct and proximate result of the VW Entity Defendants' breach of the
6 implied warranty of merchantability, Plaintiffs and the other Ohio Class members have been
7 damaged in an amount to be proven at trial.

8 **OHIO COUNT IV:**
9 **BREACH OF EXPRESS WARRANTY**
10 **(Ohio Rev. Code § 1302.26, *et seq.*) (U.C.C. § 2-313)**

11 2645. Plaintiffs reallege and incorporate by reference all preceding allegations as though
12 fully set forth herein.

13 2646. Plaintiffs bring this Count on behalf of the Ohio Class.

14 2647. The VW Entity Defendants are and were at all relevant times "merchants" with
15 respect to motor vehicles under Ohio Rev. Code §§ 1302.01(5) and 1310.01(A)(20), and "sellers"
16 of motor vehicles under § 1302.01(4).

17 2648. With respect to leases, the VW Entity Defendants are and were at all relevant
18 times "lessors" of motor vehicles under Ohio Rev. Code § 1310.01(A)(20).

19 2649. The Class Vehicles are and were at all relevant times "goods" within the meaning
20 of Ohio Rev. Code §§ 1302.01(8), and 1310.01(A)(8).

21 2650. In connection with the purchase or lease of each one of its new vehicles, the VW
22 Entity Defendants provide an express New Vehicle Limited Warranty ("NVLW") for a period of
23 three years or 36,000 miles, whichever occurs first. This NVLW exists to cover "any repair to
24 correct a manufacturer's defect in materials or workmanship."

25 2651. The Clean Air Act requires manufacturers of light-duty vehicles to provide two
26 federal emission control warranties: a "Performance Warranty" and a "Design and Defect
27 Warranty."

28 2652. The EPA requires vehicle manufacturers to provide a Performance Warranty with
respect to the vehicles' emission systems. Thus, Volkswagen also provides an express warranty

1 for its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
2 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
3 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
4 emission control components are covered for the first eight years or 80,000 miles, whichever
5 comes first. These major emission control components subject to the longer warranty include the
6 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
7 device or computer.

8 2653. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
9 with respect to their vehicles' emission systems. Thus, the VW Entity Defendants also provide an
10 express warranty for their vehicles through a Federal Emission Control System Defect Warranty.
11 The Design and Defect Warranty required by the EPA covers repair of emission control or
12 emission related parts which fail to function or function improperly because of a defect in
13 materials or workmanship. This warranty provides protection for two years or 24,000 miles,
14 whichever comes first, or, for the major emission control components, for eight years or 80,000
15 miles, whichever comes first.

16 2654. As manufacturers of light-duty vehicles, the VW Entity Defendants were required
17 to provide these warranties to purchasers or lessees of their "clean" diesel vehicles.

18 2655. The VW Entity Defendants' warranties formed a basis of the bargain that was
19 reached when Plaintiffs and other Ohio Class members purchased or leased their Class Vehicles
20 equipped with the non-compliant "clean" diesel engine and emission systems.

21 2656. Plaintiffs and the Ohio Class members experienced defects within the warranty
22 period. Despite the existence of warranties, the VW Entity Defendants failed to inform Plaintiffs
23 and Ohio Class members that the Class Vehicles were intentionally designed and manufactured to
24 be out of compliance with applicable state and federal emissions laws, and failed to fix the
25 defective emission components free of charge.

26 2657. The VW Entity Defendants breached the express warranty promising to repair and
27 correct a manufacturing defect or materials or workmanship of any parts they supplied. The VW
28

1 Entity Defendants have not repaired or adjusted, and have been unable to repair or adjust, the
2 Class Vehicles' materials and workmanship defects.

3 2658. Affording the VW Entity Defendants a reasonable opportunity to cure their breach
4 of written warranties would be unnecessary and futile here. For example, the Frequently Asked
5 Questions ("FAQ") section of VW's informational website states:

6 **How soon will the remedy be available, and how am I going to**
7 **be compensated for this?**

8 We cannot offer a firm date now because we need to work on a
9 remedy and review it with the government. We are proceeding as
quickly as possible.

10 2659. In his Congressional testimony on October 8, 2015, Michael Horn stated that
11 Volkswagen intends to make Class Vehicles compliant with emission standards through software
12 fixes and the installation of auxiliary hardware, but that fix will take "1 to 2 years, minimum."
13 When questioned on remedies for consumers, he stated that Volkswagen may pay customers for a
14 loss in resale values because of the scandal. He said that Volkswagen is not considering
15 providing loaner vehicles because the U.S. government says the vehicles are safe to drive.

16 2660. Michael Horn's testimony serves as an admission that the limited warranty
17 promising to repair and/or correct a manufacturing defect fails in its essential purpose because the
18 VW Entity Defendants cannot meet that promise within a reasonable time.

19 2661. Furthermore, the limited warranty promising to repair and/or correct a
20 manufacturing defect fails in its essential purpose because the contractual remedy is insufficient
21 to make Plaintiffs and the other Ohio Class members whole and because the VW Entity
22 Defendants have failed and/or have refused to adequately provide the promised remedies within a
23 reasonable time.

24 2662. Accordingly, recovery by Plaintiffs and the other Ohio Class members is not
25 restricted to the limited warranty promising to repair and/or correct a manufacturing defect, and
26 Plaintiffs, individually and on behalf of the other Ohio Class members, seek all remedies as
27 allowed by law.
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1 2663. Also, as alleged in more detail herein, at the time the VW Entity Defendants
2 warranted and sold or leased the Class Vehicles, they knew that the Class Vehicles were
3 inherently defective and did not conform to their warranties; further, the VW Entity Defendants
4 had wrongfully and fraudulently concealed material facts regarding the Class Vehicles. Plaintiffs
5 and the other Ohio Class members were therefore induced to purchase or lease the Class Vehicles
6 under false and/or fraudulent pretenses.

7 2664. Moreover, many of the injuries flowing from the Class Vehicles cannot be
8 resolved through the limited remedy of “replacements or adjustments,” as many incidental and
9 consequential damages have already been suffered because of Volkswagen’s fraudulent conduct
10 as alleged herein, and because of its failure and/or continued failure to provide such limited
11 remedy within a reasonable time, and any limitation on Plaintiffs’ and the other Ohio Class
12 members’ remedies would be insufficient to make Plaintiffs and the other Ohio Class members
13 whole.

14 2665. Finally, because of the VW Entity Defendants’ breach of warranty as set forth
15 herein, Plaintiffs and the other Ohio Class members assert, as additional and/or alternative
16 remedies, the revocation of acceptance of the goods and the return to Plaintiffs and the other Ohio
17 Class members of the purchase or lease price of all Class Vehicles currently owned or leased, and
18 for such other incidental and consequential damages as allowed.

19 2666. The VW Entity Defendants were provided notice of these issues by numerous
20 complaints filed against them, including the instant Complaint, within a reasonable amount of
21 time after Volkswagen publicly admitted to using a defeat device in the Class Vehicles to evade
22 clean air standards.

23 2667. As a direct and proximate result of the VW Entity Defendants’ breach of express
24 warranties, Plaintiff and the other Ohio Class members have been damaged in an amount to be
25 determined at trial.

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OKLAHOMA

**OKLAHOMA COUNT I:
VIOLATIONS OF OKLAHOMA CONSUMER PROTECTION ACT
(Okla. Stat. Tit. 15 § 751, *et seq.*)**

2668. Plaintiffs incorporate by reference each preceding paragraph as though fully set forth herein.

2669. Plaintiff Greenfield (for the purpose of this section, “Plaintiffs”) bring this action on behalf of themselves and the Oklahoma Class against all Defendants.

2670. Volkswagen, Plaintiffs and the Oklahoma Class are “persons” within the meaning of Okla. Stat. Tit. 15 § 752.1.

2671. Volkswagen engaged in “the course of [its] business” within the meaning of Okla. Stat. Tit. 15 § 752.3 with respect to the acts alleged herein. .

2672. The Oklahoma Consumer Protection Act (“Oklahoma CPA”) prohibits, in the course of business: “mak[ing] a false or misleading representation, knowingly or with reason to know, as to the characteristics . . . , uses, [or] benefits, of the subject of a consumer transaction,” or making a false representation, “knowingly or with reason to know, that the subject of a consumer transaction is of a particular standard, style or model, if it is of another or “[a]dvertis[ing], knowingly or with reason to know, the subject of a consumer transaction with intent not to sell it as advertised;” and otherwise committing “an unfair or deceptive trade practice.” Okla. Stat. Tit. 15 § 753.

2673. In the course of Volkswagen’s business, Volkswagen intentionally or negligently concealed and suppressed material facts concerning the true emissions produced by the misnamed “CleanDiesel” engines in the Class Vehicles. Defendants accomplished this by installing illegal defeat device software in the Class Vehicles that caused the vehicles to operate in a low emission test mode only during emissions testing. During normal operations, the Class Vehicles would emit grossly larger quantities of noxious contaminants, sometimes 40 times over applicable standards. The result was what Volkswagen intended—the Class Vehicles passed emissions testing by way of deliberately induced false readings. Plaintiffs and Oklahoma Class members had no way of discerning that Volkswagen’s representations were false and misleading because

1 Volkswagen’s defeat device software was extremely sophisticated technology. Plaintiffs and
2 Oklahoma Class members did not and could not unravel Volkswagen’s deception on their own.
3 In fact, it took years before the academic engineering community—specifically a research team at
4 WVU’s Center for Alternative Fuels, Engines & Emissions—detected Volkswagen’s cheat using
5 sophisticated, expensive equipment and applying decades of combined experience.

6 2674. Volkswagen thus violated the provisions of the Oklahoma CPA, at a minimum by:
7 (1) representing that the Class Vehicles have characteristics, uses, benefits, and qualities which
8 they do not have; (2) representing that the Class Vehicles are of a particular standard, quality, and
9 grade when they are not; (3) advertising the Class Vehicles with the intent not to sell them as
10 advertised; (4) failing to disclose information concerning the Class Vehicles with the intent to
11 induce consumers to purchase or lease the Class Vehicles.

12 2675. Defendants engaged in misleading, false, unfair or deceptive acts or practices that
13 violated the Oklahoma CPA by installing, failing to disclose and/or actively concealing the
14 “defeat device” and the true cleanliness and performance of the “clean” diesel engine system, by
15 marketing its vehicles as legal, reliable, environmentally clean, efficient, and of high quality, and
16 by presenting itself as a reputable manufacturer that valued environmental cleanliness and
17 efficiency, and that stood behind its vehicles after they were sold.

18 2676. Volkswagen compounded the deception by repeatedly asserting that the Class
19 Vehicles were safe, reliable, environmentally clean, efficient, and of high quality, and by
20 claiming to be a reputable manufacturer that valued safety, environmental cleanliness, and
21 efficiency, and stood behind its vehicles after they were sold.

22 2677. The Clean Air Act and EPA regulations require that automobiles limit their
23 emissions output to specified levels. These laws are intended for the protection of public health
24 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the
25 Clean Air Act and its regulations. See 42 U.S.C. § 7522(a)(3)(B); 40 CFR § 86.1809. By
26 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available
27 for purchase, Volkswagen violated federal law and therefore engaged in conduct that violates the
28 Oklahoma CPA.

1 2678. Volkswagen knew it had installed the “defeat device” in the Class Vehicles, and
2 knew the true nature of its “clean” diesel engine system for at least six years, but concealed all of
3 that information until recently. Volkswagen also knew that it valued profits over environmental
4 cleanliness, efficiency, and compliance with the law, and that it was manufacturing, selling, and
5 distributing vehicles throughout the United States that did not comply with EPA regulations, but
6 it concealed this information as well

7 2679. Volkswagen intentionally and knowingly misrepresented material facts regarding
8 the Class Vehicles with intent to mislead Plaintiffs and the Oklahoma Class.

9 2680. Volkswagen knew or should have known that its conduct violated the Oklahoma
10 CPA.

11 2681. Defendants owed Plaintiffs and Oklahoma Class members a duty to disclose,
12 truthfully, all the facts concerning the cleanliness, efficiency and reliability of the Class Vehicles
13 because they:

- 14 a. possessed exclusive knowledge that they were
15 manufacturing, selling, and distributing vehicles throughout
16 the United States that did not comply with EPA regulations;
- 17 b. intentionally concealed the foregoing from regulators,
18 Plaintiffs, Class members; and/or
- 19 c. Made incomplete or negligent representations about the
20 environmental cleanliness and efficiency of the Class
21 Vehicles generally, and the use of the defeat device in
22 particular, while purposefully withholding material facts
23 from Plaintiffs that contradicted these representations.

24 2682. Defendants concealed the illegal defeat device and the true emissions, efficiency
25 and performance of the Class Vehicles, resulting in a raft of negative publicity once
26 Volkswagen’s fraud was exposed. The value of the Class Vehicles has therefore plummeted. In
27 light of the stigma Volkswagen’s misconduct attached to the Class Vehicles, the Class Vehicles
28 are now worth less than they otherwise would be worth.

 2683. Defendants’ supply and use of the illegal defeat device and concealment of the true
characteristics of the “clean” diesel engine system were material to Plaintiffs and the Oklahoma
Class. A vehicle made by a reputable manufacturer of environmentally friendly vehicles is worth

1 more than an otherwise comparable vehicle made by a disreputable manufacturer of
2 environmentally dirty vehicles that conceals its polluting engines rather than promptly remedying
3 them.

4 2684. Defendants' unfair or deceptive acts or practices were likely to and did in fact
5 deceive regulators and reasonable consumers, including Plaintiffs and Oklahoma Class members,
6 about the true environmental cleanliness and efficiency of Volkswagen-branded vehicles, the
7 quality of the Volkswagen brand, the devaluing of environmental cleanliness and integrity at
8 Volkswagen, and the true value of the Class Vehicles.

9 2685. Plaintiffs and Oklahoma Class members suffered ascertainable loss and actual
10 damages as a direct and proximate result of Volkswagen's misrepresentations and its concealment
11 of and failure to disclose material information. Plaintiffs and the Oklahoma Class members who
12 purchased or leased the Class Vehicles would not have purchased or leased them at all and/or—if
13 the Vehicles' true nature had been disclosed and mitigated, and the Vehicles rendered legal to
14 sell—would have paid significantly less for them. Plaintiffs also suffered diminished value of
15 their vehicles, as well as lost or diminished use.

16 2686. Defendants had an ongoing duty to all Volkswagen customers to refrain from
17 unfair and deceptive practices under the Oklahoma CPA in the course of its business.

18 2687. Defendants' violations present a continuing risk to Plaintiffs as well as to the
19 general public. Defendants' unlawful acts and practices complained of herein affect the public
20 interest.

21 2688. Pursuant to Okla. Stat. Tit. 15 § 761.1, Plaintiffs and the Oklahoma Class seek an
22 order enjoining Volkswagen's unfair and/or deceptive acts or practices, damages, punitive
23 damages, and attorneys' fees, costs, and any other just and proper relief available under the
24 Oklahoma CPA.

25 **OKLAHOMA COUNT II:**
26 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
27 **(Okla. Stat. Tit. 12A §§ 2-314 and 2A-212)**

28 2689. Plaintiffs reallege and incorporate by reference all allegations of the preceding
paragraphs as though fully set forth herein.

1 2690. Plaintiffs bring this Count on behalf of the Oklahoma Class, against VW AG, VW
2 America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the “VW
3 Entity Defendants”).

4 2691. The VW Entity Defendants are and were at all relevant times “merchants” with
5 respect to motor vehicles under Okla. Stat. Tit. 12A §§ 2-104(1) and 2-1103(3), and “sellers” of
6 motor vehicles under § 2A-103(1)(t).

7 2692. With respect to leases, the VW Entity Defendants are and were at all relevant
8 times “lessors” of motor vehicles under Okla. Stat. Tit. 12A § 2A-103(1)(p).

9 2693. The Class Vehicles are and were at all relevant times “goods” within the meaning
10 of Okla. Stat. Tit. 12A §§ 2-105(1) and 2A-103(1)(h).

11 2694. A warranty that the Class Vehicles were in merchantable condition and fit for the
12 ordinary purpose for which vehicles are used is implied by law pursuant to Okla. Stat. Tit. 12A
13 §§ 2-314 and 2A-212.

14 2695. These Class Vehicles, when sold or leased and at all times thereafter, were not in
15 merchantable condition and are not fit for the ordinary purpose for which vehicles are used.
16 Specifically, the Class Vehicles are inherently defective in that they do not comply with federal
17 and state emissions standards, rendering certain emissions functions inoperative; and the “clean”
18 diesel engine system was not adequately designed, manufactured, and tested.

19 2696. Volkswagen was provided notice of these issues by the investigations of the EPA
20 and individual state regulators, numerous complaints filed against it including the instant
21 Complaint, and by numerous individual letters and communications sent by Plaintiffs and others
22 within a reasonable amount of time after the allegations of Class Vehicle defects became public.

23 2697. As a direct and proximate result of the VW Entity Defendants’ breach of the
24 implied warranty of merchantability, Plaintiffs and the other Oklahoma members have been
25 damaged in an amount to be proven at trial.

**OKLAHOMA COUNT III:
BREACH OF EXPRESS WARRANTY
(Okla. Stat. Tit. 12A §§ 2-313 and 2A-210)**

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3 2698. Plaintiffs reallege and incorporate by reference all preceding allegations as though
4 fully set forth herein.

5 2699. Plaintiffs bring this Count on behalf of the Oklahoma Class, against VW AG, VW
6 America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the “VW
7 Entity Defendants”).

8 2700. The VW Entity Defendants are and were at all relevant times “merchants” with
9 respect to motor vehicles under Okla. Stat. Tit. 12A §§ 2-104(1) and 2-1103(3), and “sellers” of
10 motor vehicles under § 2A-103(1)(t).

11 2701. With respect to leases, the VW Entity Defendants are and were at all relevant
12 times “lessors” of motor vehicles under Okla. Stat. Tit. 12A § 2A-103(1)(p).

13 2702. The Class Vehicles are and were at all relevant times “goods” within the meaning
14 of Okla. Stat. Tit. 12A §§ 2-105(1), and 2A-103(1)(h).

15 2703. In connection with the purchase or lease of each one of its new vehicles, the VW
16 Entity Defendants provide an express New Vehicle Limited Warranty (“NVLW”) for a period of
17 three years or 36,000 miles, whichever occurs first. This NVLW exists to cover “any repair to
18 correct a manufacturers defect in materials or workmanship.”

19 2704. The Clean Air Act requires manufacturers of light-duty vehicles to provide two
20 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
21 Warranty.”

22 2705. The EPA requires vehicle manufacturers to provide a Performance Warranty with
23 respect to the vehicles’ emission systems. Thus, Volkswagen also provides an express warranty
24 for its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
25 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
26 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
27 emission control components are covered for the first eight years or 80,000 miles, whichever
28 comes first. These major emission control components subject to the longer warranty include the

1 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
2 device or computer.

3 2706. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
4 with respect to their vehicles' emission systems. Thus, the VW Entity Defendants also provide an
5 express warranty for their vehicles through a Federal Emission Control System Defect Warranty.
6 The Design and Defect Warranty required by the EPA covers repair of emission control or
7 emission related parts which fail to function or function improperly because of a defect in
8 materials or workmanship. This warranty provides protection for two years or 24,000 miles,
9 whichever comes first, or, for the major emission control components, for eight years or 80,000
10 miles, whichever comes first.

11 2707. As manufacturers of light-duty vehicles, the VW Entity Defendants were required
12 to provide these warranties to purchasers or lessees of their "clean" diesel vehicles.

13 2708. The VW Entity Defendants' warranties formed a basis of the bargain that was
14 reached when Plaintiffs and other Oklahoma Class members purchased or leased their Class
15 Vehicles equipped with the non-compliant "clean" diesel engine and emission systems.

16 2709. Plaintiffs and the Oklahoma members experienced defects within the warranty
17 period. Despite the existence of warranties, the VW Entity Defendants failed to inform Plaintiffs
18 and Oklahoma members that the Class Vehicles were intentionally designed and manufactured to
19 be out of compliance with applicable state and federal emissions laws, and failed to fix the
20 defective emission components free of charge.

21 2710. The VW Entity Defendants breached the express warranty promising to repair and
22 correct a manufacturing defect or materials or workmanship of any parts they supplied. The VW
23 Entity Defendants have not repaired or adjusted, and have been unable to repair or adjust, the
24 Class Vehicles' materials and workmanship defects.

25 2711. Affording the VW Entity Defendants a reasonable opportunity to cure their breach
26 of written warranties would be unnecessary and futile here. For example, the Frequently Asked
27 Questions ("FAQ") section of VW's informational website states:
28

1 **How soon will the remedy be available, and how am I going to**
2 **be compensated for this?**

3 We cannot offer a firm date now because we need to work on a
4 remedy and review it with the government. We are proceeding as
5 quickly as possible.

6 2712. In his Congressional testimony on October 8, 2015, Michael Horn stated that
7 Volkswagen intends to make Class Vehicles compliant with emission standards through software
8 fixes and the installation of auxiliary hardware, but that fix will take “1 to 2 years, minimum.”
9 When questioned on remedies for consumers, he stated that Volkswagen may pay customers for a
10 loss in resale values because of the scandal. He said that Volkswagen is not considering
11 providing loaner vehicles because the U.S. government says the vehicles are safe to drive.

12 2713. Michael Horn’s testimony serves as an admission that the limited warranty
13 promising to repair and/or correct a manufacturing defect fails in its essential purpose because the
14 VW Entity Defendants cannot meet that promise within a reasonable time.

15 2714. Furthermore, the limited warranty promising to repair and/or correct a
16 manufacturing defect fails in its essential purpose because the contractual remedy is insufficient
17 to make Plaintiffs and the other Oklahoma members whole and because the VW Entity
18 Defendants have failed and/or have refused to adequately provide the promised remedies within a
19 reasonable time.

20 2715. Accordingly, recovery by Plaintiffs and the other Oklahoma members is not
21 restricted to the limited warranty promising to repair and/or correct a manufacturing defect, and
22 Plaintiffs, individually and on behalf of the other Oklahoma members, seek all remedies as
23 allowed by law.

24 2716. Also, as alleged in more detail herein, at the time the VW Entity Defendants
25 warranted and sold or leased the Class Vehicles, they knew that the Class Vehicles were
26 inherently defective and did not conform to their warranties; further, the VW Entity Defendants
27 had wrongfully and fraudulently concealed material facts regarding the Class Vehicles. Plaintiffs
28 and the other Oklahoma members were therefore induced to purchase or lease the Class Vehicles
 under false and/or fraudulent pretenses.

1 2717. Moreover, many of the injuries flowing from the Class Vehicles cannot be
2 resolved through the limited remedy of “replacements or adjustments,” as many incidental and
3 consequential damages have already been suffered because of Volkswagen’s fraudulent conduct
4 as alleged herein, and because of its failure and/or continued failure to provide such limited
5 remedy within a reasonable time, and any limitation on Plaintiffs’ and the other Oklahoma
6 members’ remedies would be insufficient to make Plaintiffs and the other Oklahoma members
7 whole.

8 2718. Finally, because of the VW Entity Defendants’ breach of warranty as set forth
9 herein, Plaintiffs and the other Oklahoma members assert, as additional and/or alternative
10 remedies, the revocation of acceptance of the goods and the return to Plaintiffs and the other
11 Oklahoma members of the purchase or lease price of all Class Vehicles currently owned or leased,
12 and for such other incidental and consequential damages as allowed.

13 2719. The VW Entity Defendants were provided notice of these issues by numerous
14 complaints filed against them, including the instant Complaint, within a reasonable amount of
15 time after Volkswagen publicly admitted to using a defeat device in the Class Vehicles to evade
16 clean air standards.

17 2720. As a direct and proximate result of the VW Entity Defendants’ breach of express
18 warranties, Plaintiff and the other Oklahoma members have been damaged in an amount to be
19 determined at trial.

20 **OREGON**

21 **OREGON COUNT I:**
22 **VIOLATIONS OF THE OREGON UNLAWFUL TRADE PRACTICES ACT**
23 **(Or. Rev. Stat. §§ 646.605, et seq.)**

24 2721. Plaintiffs incorporate by reference each preceding paragraph as though fully set
25 forth herein.

26 2722. Plaintiffs Ayala, Cohen, Jaffee, Yussim, and Bond (for the purpose of this section,
27 “Plaintiffs”) bring this action on behalf of themselves and the Oregon Class against all
28 Defendants.

1 2723. Volkswagen, Plaintiffs and the Oregon Class are “persons” within the meaning of
2 Or. Rev. Stat. § 646.605(4).

3 2724. Volkswagen is engaged in “trade” or “commerce” within the meaning of Or. Rev.
4 Stat. § 646.605(8).

5 2725. The Oregon Unfair Trade Practices Act (“Oregon UTPA”) prohibits “unfair or
6 deceptive acts conduct in trade or commerce” Or. Rev. Stat. § 646.608(1).

7 2726. In the course of Volkswagen’s business, Volkswagen intentionally or negligently
8 concealed and suppressed material facts concerning the true emissions produced by the misnamed
9 “CleanDiesel” engines in the Class Vehicles. Defendants accomplished this by installing illegal
10 defeat device software in the Class Vehicles that caused the vehicles to operate in a low emission
11 test mode only during emissions testing. During normal operations, the Class Vehicles would
12 emit grossly larger quantities of noxious contaminants, sometimes 40 times over applicable
13 standards. The result was what Volkswagen intended—the Class Vehicles passed emissions
14 testing by way of deliberately induced false readings. Plaintiffs and Oregon Class members had
15 no way of discerning that Volkswagen’s representations were false and misleading because
16 Volkswagen’s defeat device software was extremely sophisticated technology. Plaintiffs and
17 Oregon Class members did not and could not unravel Volkswagen’s deception on their own. In
18 fact, it took years before the academic engineering community—specifically a research team at
19 WVU’s Center for Alternative Fuels, Engines & Emissions—detected Volkswagen’s cheat using
20 sophisticated, expensive equipment and applying decades of combined experience.

21 2727. Volkswagen thus violated the provisions of the Oregon UTPA, at a minimum by:
22 (1) representing that the Class Vehicles have characteristics, uses, benefits, and qualities which
23 they do not have; (2) representing that the Class Vehicles are of a particular standard, quality, and
24 grade when they are not; (3) advertising the Class Vehicles with the intent not to sell them as
25 advertised; (4) failing to disclose information concerning the Class Vehicles with the intent to
26 induce consumers to purchase or lease the Class Vehicles.

27 2728. Defendants engaged in misleading, false, unfair or deceptive acts or practices that
28 violated the Oregon UTPA by installing, failing to disclose and/or actively concealing the “defeat

1 device” and the true cleanliness and performance of the “clean” diesel engine system, by
2 marketing its vehicles as legal, reliable, environmentally clean, efficient, and of high quality, and
3 by presenting itself as a reputable manufacturer that valued environmental cleanliness and
4 efficiency, and that stood behind its vehicles after they were sold.

5 2729. Volkswagen compounded the deception by repeatedly asserting that the Class
6 Vehicles were safe, reliable, environmentally clean, efficient, and of high quality, and by
7 claiming to be a reputable manufacturer that valued safety, environmental cleanliness, and
8 efficiency, and stood behind its vehicles after they were sold.

9 2730. The Clean Air Act and EPA regulations require that automobiles limit their
10 emissions output to specified levels. These laws are intended for the protection of public health
11 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the
12 Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 CFR § 86.1809. By
13 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available
14 for purchase, Volkswagen violated federal law and therefore engaged in conduct that violates the
15 Oregon UTPA.

16 2731. Volkswagen knew it had installed the “defeat device” in the Class Vehicles, and
17 knew the true nature of its “clean” diesel engine system for at least six years, but concealed all of
18 that information until recently. Volkswagen also knew that it valued profits over environmental
19 cleanliness, efficiency, and compliance with the law, and that it was manufacturing, selling, and
20 distributing vehicles throughout the United States that did not comply with EPA regulations, but
21 it concealed this information as well

22 2732. Volkswagen intentionally and knowingly misrepresented material facts regarding
23 the Class Vehicles with intent to mislead Plaintiffs and the Oregon Class.

24 2733. Volkswagen knew or should have known that its conduct violated the Oregon
25 UTPA.

26 2734. Defendants owed Plaintiffs and Oregon Class members a duty to disclose,
27 truthfully, all the facts concerning the cleanliness, efficiency and reliability of the Class Vehicles
28 because they:

- 1 a. possessed exclusive knowledge that they were
- 2 manufacturing, selling, and distributing vehicles throughout
- 3 the United States that did not comply with EPA regulations;
- 4 b. intentionally concealed the foregoing from regulators,
- 5 Plaintiffs, Class members; and/or
- 6 c. Made incomplete or negligent representations about the
- 7 environmental cleanliness and efficiency of the Class
- 8 Vehicles generally, and the use of the defeat device in
- 9 particular, while purposefully withholding material facts
- 10 from Plaintiffs that contradicted these representations.

11 2735. Defendants concealed the illegal defeat device and the true emissions, efficiency
12 and performance of the Class Vehicles, resulting in a raft of negative publicity once
13 Volkswagen’s fraud was exposed. The value of the Class Vehicles has therefore plummeted. In
14 light of the stigma Volkswagen’s misconduct attached to the Class Vehicles, the Class Vehicles
15 are now worth less than they otherwise would be worth.

16 2736. Defendants’ supply and use of the illegal defeat device and concealment of the true
17 characteristics of the “clean” diesel engine system were material to Plaintiffs and the Oregon
18 Class. A vehicle made by a reputable manufacturer of environmentally friendly vehicles is worth
19 more than an otherwise comparable vehicle made by a disreputable manufacturer of
20 environmentally dirty vehicles that conceals its polluting engines rather than promptly remedying
21 them.

22 2737. Defendants’ unfair or deceptive acts or practices were likely to and did in fact
23 deceive regulators and reasonable consumers, including Plaintiffs and Oregon Class members,
24 about the true environmental cleanliness and efficiency of Volkswagen-branded vehicles, the
25 quality of the Volkswagen brand, the devaluing of environmental cleanliness and integrity at
26 Volkswagen, and the true value of the Class Vehicles.

27 2738. Plaintiffs and Oregon Class members suffered ascertainable loss and actual
28 damages as a direct and proximate result of Volkswagen’s misrepresentations and its concealment
of and failure to disclose material information. Plaintiffs and the Oregon Class members who
purchased or leased the Class Vehicles would not have purchased or leased them at all and/or—if
the Vehicles’ true nature had been disclosed and mitigated, and the Vehicles rendered legal to

1 sell—would have paid significantly less for them. Plaintiffs also suffered diminished value of
2 their vehicles, as well as lost or diminished use.

3 2739. Defendants had an ongoing duty to all Volkswagen customers to refrain from
4 unfair and deceptive practices under the Oregon UTPA in the course of its business.

5 2740. Defendants’ violations present a continuing risk to Plaintiffs as well as to the
6 general public. Defendants’ unlawful acts and practices complained of herein affect the public
7 interest.

8 2741. Pursuant to Or. Rev. Stat. § 646.638, Plaintiffs and the Oregon Class seek an order
9 enjoining Volkswagen’s unfair and/or deceptive acts or practices, damages, punitive damages,
10 and attorneys’ fees, costs, and any other just and proper relief available under the Oregon UTPA.

11 **OREGON COUNT II:**
12 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
13 **(Or. Rev. Stat. § 72.3140 and 72A.2120)**

14 2742. Plaintiffs reallege and incorporate by reference all allegations of the preceding
15 paragraphs as though fully set forth herein.

16 2743. Plaintiffs bring this Count on behalf of the Oregon Class, against VW AG, VW
17 America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the “VW
18 Entity Defendants”).

19 2744. The VW Entity Defendants are and were at all relevant times “merchants” with
20 respect to motor vehicles under Or. Rev. Stat. §§ 72.1040(1) and 72A.1030(1)(t), and “sellers” of
21 motor vehicles under § 72.1030(1)(d).

22 2745. With respect to leases, the VW Entity Defendants are and were at all relevant
23 times “lessors” of motor vehicles under Or. Rev. Stat. § 72A.1030(1)(p).

24 2746. The Class Vehicles are and were at all relevant times “goods” within the meaning
25 of Or. Rev. Stat. §§ 72.1050(1) and 72A.1030(1)(h).

26 2747. A warranty that the Class Vehicles were in merchantable condition and fit for the
27 ordinary purpose for which vehicles are used is implied by law pursuant to Or. Rev. Stat.
28 §§ 72.3140 and 72A-2120.

1 2748. These Class Vehicles, when sold or leased and at all times thereafter, were not in
2 merchantable condition and are not fit for the ordinary purpose for which vehicles are used.
3 Specifically, the Class Vehicles are inherently defective in that they do not comply with federal
4 and state emissions standards, rendering certain emissions functions inoperative; and the “clean”
5 diesel engine system was not adequately designed, manufactured, and tested.

6 2749. Volkswagen was provided notice of these issues by the investigations of the EPA
7 and individual state regulators, numerous complaints filed against it including the instant
8 Complaint, and by numerous individual letters and communications sent by Plaintiffs and others
9 within a reasonable amount of time after the allegations of Class Vehicle defects became public.

10 2750. As a direct and proximate result of the VW Entity Defendants’ breach of the
11 implied warranty of merchantability, Plaintiffs and the other Oregon Class members have been
12 damaged in an amount to be proven at trial.

13 **OREGON COUNT III:**
14 **BREACH OF EXPRESS WARRANTY**
 (Or. Rev. Stat. §§ 72.3130 and 72A.2100)

15 2751. Plaintiffs reallege and incorporate by reference all preceding allegations as though
16 fully set forth herein.

17 2752. Plaintiffs bring this Count on behalf of the Oregon Class, against VW AG, VW
18 America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the “VW
19 Entity Defendants”).

20 2753. The VW Entity Defendants are and were at all relevant times “merchants” with
21 respect to motor vehicles under Or. Rev. Stat. §§ 72.1040(1) and 72A.1030(1)(t), and “sellers” of
22 motor vehicles under § 72.1030(1)(d).

23 2754. With respect to leases, the VW Entity Defendants are and were at all relevant
24 times “lessors” of motor vehicles under Or. Rev. Stat. § 72A.1030(1)(p).

25 2755. The Class Vehicles are and were at all relevant times “goods” within the meaning
26 of Or. Rev. Stat. §§ 72.1050(1) and 72A.1030(1)(h).

27 2756. In connection with the purchase or lease of each one of its new vehicles, the VW
28 Entity Defendants provide an express New Vehicle Limited Warranty (“NVLW”) for a period of

1 three years or 36,000 miles, whichever occurs first. This NVLW exists to cover “any repair to
2 correct a manufacturers defect in materials or workmanship.”

3 2757. The Clean Air Act requires manufacturers of light-duty vehicles to provide two
4 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
5 Warranty.”

6 2758. The EPA requires vehicle manufacturers to provide a Performance Warranty with
7 respect to the vehicles’ emission systems. Thus, Volkswagen also provides an express warranty
8 for its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
9 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
10 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
11 emission control components are covered for the first eight years or 80,000 miles, whichever
12 comes first. These major emission control components subject to the longer warranty include the
13 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
14 device or computer.

15 2759. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
16 with respect to their vehicles’ emission systems. Thus, the VW Entity Defendants also provide an
17 express warranty for their vehicles through a Federal Emission Control System Defect Warranty.
18 The Design and Defect Warranty required by the EPA covers repair of emission control or
19 emission related parts which fail to function or function improperly because of a defect in
20 materials or workmanship. This warranty provides protection for two years or 24,000 miles,
21 whichever comes first, or, for the major emission control components, for eight years or 80,000
22 miles, whichever comes first.

23 2760. As manufacturers of light-duty vehicles, the VW Entity Defendants were required
24 to provide these warranties to purchasers or lessees of their “clean” diesel vehicles.

25 2761. The VW Entity Defendants’ warranties formed a basis of the bargain that was
26 reached when Plaintiffs and other Oregon Class members purchased or leased their Class
27 Vehicles equipped with the non-compliant “clean” diesel engine and emission systems.
28

1 2762. Plaintiffs and the Oregon Class members experienced defects within the warranty
2 period. Despite the existence of warranties, the VW Entity Defendants failed to inform Plaintiffs
3 and Oregon Class members that the Class Vehicles were intentionally designed and manufactured
4 to be out of compliance with applicable state and federal emissions laws, and failed to fix the
5 defective emission components free of charge.

6 2763. The VW Entity Defendants breached the express warranty promising to repair and
7 correct a manufacturing defect or materials or workmanship of any parts they supplied. The VW
8 Entity Defendants have not repaired or adjusted, and have been unable to repair or adjust, the
9 Class Vehicles' materials and workmanship defects.

10 2764. Affording the VW Entity Defendants a reasonable opportunity to cure their breach
11 of written warranties would be unnecessary and futile here. For example, the Frequently Asked
12 Questions ("FAQ") section of VW's informational website states:

13 **How soon will the remedy be available, and how am I going to**
14 **be compensated for this?**

15 We cannot offer a firm date now because we need to work on a
16 remedy and review it with the government. We are proceeding as
 quickly as possible.

17 2765. In his Congressional testimony on October 8, 2015, Michael Horn stated that
18 Volkswagen intends to make Class Vehicles compliant with emission standards through software
19 fixes and the installation of auxiliary hardware, but that fix will take "1 to 2 years, minimum."
20 When questioned on remedies for consumers, he stated that Volkswagen may pay customers for a
21 loss in resale values because of the scandal. He said that Volkswagen is not considering
22 providing loaner vehicles because the U.S. government says the vehicles are safe to drive.

23 2766. Michael Horn's testimony serves as an admission that the limited warranty
24 promising to repair and/or correct a manufacturing defect fails in its essential purpose because the
25 VW Entity Defendants cannot meet that promise within a reasonable time.

26 2767. Furthermore, the limited warranty promising to repair and/or correct a
27 manufacturing defect fails in its essential purpose because the contractual remedy is insufficient
28 to make Plaintiffs and the other Oregon Class members whole and because the VW Entity

1 Defendants have failed and/or have refused to adequately provide the promised remedies within a
2 reasonable time.

3 2768. Accordingly, recovery by Plaintiffs and the other Oregon Class members is not
4 restricted to the limited warranty promising to repair and/or correct a manufacturing defect, and
5 Plaintiffs, individually and on behalf of the other Oregon Class members, seek all remedies as
6 allowed by law.

7 2769. Also, as alleged in more detail herein, at the time the VW Entity Defendants
8 warranted and sold or leased the Class Vehicles, they knew that the Class Vehicles were
9 inherently defective and did not conform to their warranties; further, the VW Entity Defendants
10 had wrongfully and fraudulently concealed material facts regarding the Class Vehicles. Plaintiffs
11 and the other Oregon Class members were therefore induced to purchase or lease the Class
12 Vehicles under false and/or fraudulent pretenses.

13 2770. Moreover, many of the injuries flowing from the Class Vehicles cannot be
14 resolved through the limited remedy of “replacements or adjustments,” as many incidental and
15 consequential damages have already been suffered because of Volkswagen’s fraudulent conduct
16 as alleged herein, and because of its failure and/or continued failure to provide such limited
17 remedy within a reasonable time, and any limitation on Plaintiffs’ and the other Oregon Class
18 members’ remedies would be insufficient to make Plaintiffs and the other Oregon Class members
19 whole.

20 2771. Finally, because of the VW Entity Defendants’ breach of warranty as set forth
21 herein, Plaintiffs and the other Oregon Class members assert, as additional and/or alternative
22 remedies, the revocation of acceptance of the goods and the return to Plaintiffs and the other
23 Oregon Class members of the purchase or lease price of all Class Vehicles currently owned or
24 leased, and for such other incidental and consequential damages as allowed.

25 2772. The VW Entity Defendants were provided notice of these issues by numerous
26 complaints filed against them, including the instant Complaint, within a reasonable amount of
27 time after Volkswagen publicly admitted to using a defeat device in the Class Vehicles to evade
28 clean air standards.

1 2773. As a direct and proximate result of the VW Entity Defendants’ breach of express
2 warranties, Plaintiff and the other Oregon Class members have been damaged in an amount to be
3 determined at trial.

4 **PENNSYLVANIA**

5 **PENNSYLVANIA COUNT I:**
6 **VIOLATIONS OF THE PENNSYLVANIA UNFAIR TRADE PRACTICES**
7 **AND CONSUMER PROTECTION LAW**
 (73 P.S. § 201-1, et seq.)

8 2774. Plaintiffs incorporate by reference each preceding paragraph as though fully set
9 forth herein.

10 2775. Plaintiffs Bialecki, Labbate, and Pratt III (for the purpose of this section,
11 “Plaintiffs”) bring this action on behalf of themselves and the Pennsylvania Class against all
12 Defendants.

13 2776. Volkswagen, Plaintiffs and the Pennsylvania Class are “persons” within the
14 meaning of 73 P.S. § 201-2.(2).

15 2777. Volkswagen is engaged in “trade” or “commerce” within the meaning of 73 P.S.
16 § 201-2(3).

17 2778. The Pennsylvania Unfair Trade Practices Act (“Pennsylvania UTPA”) prohibits
18 “unfair or deceptive acts or practices in the conduct of any trade or commerce” 73 P.S.
19 § 201-3.

20 2779. In the course of Volkswagen’s business, Volkswagen intentionally or negligently
21 concealed and suppressed material facts concerning the true emissions produced by the misnamed
22 “CleanDiesel” engines in the Class Vehicles. Defendants accomplished this by installing illegal
23 defeat device software in the Class Vehicles that caused the vehicles to operate in a low emission
24 test mode only during emissions testing. During normal operations, the Class Vehicles would
25 emit grossly larger quantities of noxious contaminants, sometimes 40 times over applicable
26 standards. The result was what Volkswagen intended—the Class Vehicles passed emissions
27 testing by way of deliberately induced false readings. Plaintiffs and Pennsylvania Class members
28 had no way of discerning that Volkswagen’s representations were false and misleading because

1 Volkswagen's defeat device software was extremely sophisticated technology. Plaintiffs and
2 Pennsylvania Class members did not and could not unravel Volkswagen's deception on their own.
3 In fact, it took years before the academic engineering community—specifically a research team at
4 WVU's Center for Alternative Fuels, Engines & Emissions—detected Volkswagen's cheat using
5 sophisticated, expensive equipment and applying decades of combined experience.

6 2780. Volkswagen thus violated the provisions of the Pennsylvania UTPA, at a
7 minimum by: (1) representing that the Class Vehicles have characteristics, uses, benefits, and
8 qualities which they do not have; (2) representing that the Class Vehicles are of a particular
9 standard, quality, and grade when they are not; (3) advertising the Class Vehicles with the intent
10 not to sell them as advertised; (4) failing to disclose information concerning the Class Vehicles
11 with the intent to induce consumers to purchase or lease the Class Vehicles.

12 2781. Defendants engaged in misleading, false, unfair or deceptive acts or practices that
13 violated the Pennsylvania UTPA by installing, failing to disclose and/or actively concealing the
14 "defeat device" and the true cleanliness and performance of the "clean" diesel engine system, by
15 marketing its vehicles as legal, reliable, environmentally clean, efficient, and of high quality, and
16 by presenting itself as a reputable manufacturer that valued environmental cleanliness and
17 efficiency, and that stood behind its vehicles after they were sold.

18 2782. Volkswagen compounded the deception by repeatedly asserting that the Class
19 Vehicles were safe, reliable, environmentally clean, efficient, and of high quality, and by
20 claiming to be a reputable manufacturer that valued safety, environmental cleanliness, and
21 efficiency, and stood behind its vehicles after they were sold.

22 2783. The Clean Air Act and EPA regulations require that automobiles limit their
23 emissions output to specified levels. These laws are intended for the protection of public health
24 and welfare. "Defeat devices" like those in the Class Vehicles are defined and prohibited by the
25 Clean Air Act and its regulations. See 42 U.S.C. § 7522(a)(3)(B); 40 CFR § 86.1809. By
26 installing illegal "defeat devices" in the Class Vehicles and by making those vehicles available
27 for purchase, Volkswagen violated federal law and therefore engaged in conduct that violates the
28 Pennsylvania UTPA.

1 2784. Volkswagen knew it had installed the “defeat device” in the Class Vehicles, and
2 knew the true nature of its “clean” diesel engine system for at least six years, but concealed all of
3 that information until recently. Volkswagen also knew that it valued profits over environmental
4 cleanliness, efficiency, and compliance with the law, and that it was manufacturing, selling, and
5 distributing vehicles throughout the United States that did not comply with EPA regulations, but
6 it concealed this information as well

7 2785. Volkswagen intentionally and knowingly misrepresented material facts regarding
8 the Class Vehicles with intent to mislead Plaintiffs and the Pennsylvania Class.

9 2786. Volkswagen knew or should have known that its conduct violated the
10 Pennsylvania UTPA.

11 2787. Defendants owed Plaintiffs and Pennsylvania Class members a duty to disclose,
12 truthfully, all the facts concerning the cleanliness, efficiency and reliability of the Class Vehicles
13 because they:

- 14 a. possessed exclusive knowledge that they were
15 manufacturing, selling, and distributing vehicles throughout
16 the United States that did not comply with EPA regulations;
- 17 b. intentionally concealed the foregoing from regulators,
18 Plaintiffs, Class members; and/or
- 19 c. Made incomplete or negligent representations about the
20 environmental cleanliness and efficiency of the Class
21 Vehicles generally, and the use of the defeat device in
22 particular, while purposefully withholding material facts
23 from Plaintiffs that contradicted these representations.

24 2788. Defendants concealed the illegal defeat device and the true emissions, efficiency
25 and performance of the Class Vehicles, resulting in a raft of negative publicity once
26 Volkswagen’s fraud was exposed. The value of the Class Vehicles has therefore plummeted. In
27 light of the stigma Volkswagen’s misconduct attached to the Class Vehicles, the Class Vehicles
28 are now worth less than they otherwise would be worth.

 2789. Defendants’ supply and use of the illegal defeat device and concealment of the true
characteristics of the “clean” diesel engine system were material to Plaintiffs and the
Pennsylvania Class. A vehicle made by a reputable manufacturer of environmentally friendly

1 vehicles is worth more than an otherwise comparable vehicle made by a disreputable
2 manufacturer of environmentally dirty vehicles that conceals its polluting engines rather than
3 promptly remedying them.

4 2790. Defendants' unfair or deceptive acts or practices were likely to and did in fact
5 deceive regulators and reasonable consumers, including Plaintiffs and Pennsylvania Class
6 members, about the true environmental cleanliness and efficiency of Volkswagen-branded
7 vehicles, the quality of the Volkswagen brand, the devaluing of environmental cleanliness and
8 integrity at Volkswagen, and the true value of the Class Vehicles.

9 2791. Plaintiffs and Pennsylvania Class members suffered ascertainable loss and actual
10 damages as a direct and proximate result of Volkswagen's misrepresentations and its concealment
11 of and failure to disclose material information. Plaintiffs and the Pennsylvania Class members
12 who purchased or leased the Class Vehicles would not have purchased or leased them at all
13 and/or—if the Vehicles' true nature had been disclosed and mitigated, and the Vehicles rendered
14 legal to sell—would have paid significantly less for them. Plaintiffs also suffered diminished
15 value of their vehicles, as well as lost or diminished use.

16 2792. Defendants had an ongoing duty to all Volkswagen customers to refrain from
17 unfair and deceptive practices under the Pennsylvania UTPA in the course of its business.

18 2793. Defendants' violations present a continuing risk to Plaintiffs as well as to the
19 general public. Defendants' unlawful acts and practices complained of herein affect the public
20 interest.

21 2794. Pursuant to 73 P.S. § 201-9.2(a), Plaintiffs and the Pennsylvania Class seek an
22 order enjoining Volkswagen's unfair and/or deceptive acts or practices, damages, punitive
23 damages, and attorneys' fees, costs, and any other just and proper relief available under the
24 Pennsylvania UTPA.

25 **PENNSYLVANIA COUNT II:**
26 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
27 **(13 Pa. Cons. Stat. §§ 2314 and 2A212)**

28 2795. Plaintiffs reallege and incorporate by reference all allegations of the preceding
paragraphs as though fully set forth herein.

1 2796. Plaintiffs bring this Count on behalf of the Pennsylvania Class, against VW AG,
2 VW America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the
3 “VW Entity Defendants”).

4 2797. The VW Entity Defendants are and were at all relevant times “merchants” with
5 respect to motor vehicles under 13 Pa. Cons. Stat. §§ 2104 and 2A103(a), and “sellers” of motor
6 vehicles under § 2103(a).

7 2798. With respect to leases, the VW Entity Defendants are and were at all relevant
8 times “lessors” of motor vehicles under 13 Pa. Cons. Stat. § 2A103(a).

9 2799. The Class Vehicles are and were at all relevant times “goods” within the meaning
10 of 13 Pa. Cons. Stat. §§ 2105(a) and 2A103(a).

11 2800. A warranty that the Class Vehicles were in merchantable condition and fit for the
12 ordinary purpose for which vehicles are used is implied by law pursuant to 13 Pa. Cons. Stat.
13 §§ 2314 and 2A212.

14 2801. These Class Vehicles, when sold or leased and at all times thereafter, were not in
15 merchantable condition and are not fit for the ordinary purpose for which vehicles are used.
16 Specifically, the Class Vehicles are inherently defective in that they do not comply with federal
17 and state emissions standards, rendering certain emissions functions inoperative; and the “clean”
18 diesel engine system was not adequately designed, manufactured, and tested.

19 2802. Volkswagen was provided notice of these issues by the investigations of the EPA
20 and individual state regulators, numerous complaints filed against it including the instant
21 Complaint, and by numerous individual letters and communications sent by Plaintiffs and others
22 within a reasonable amount of time after the allegations of Class Vehicle defects became public.

23 2803. As a direct and proximate result of the VW Entity Defendants’ breach of the
24 implied warranty of merchantability, Plaintiffs and the other Pennsylvania Class members have
25 been damaged in an amount to be proven at trial.

**PENNSYLVANIA COUNT III:
BREACH OF EXPRESS WARRANTY
(13 Pa. Cons. Stat. §§ 2313 and 2A210)**

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3 2804. Plaintiffs reallege and incorporate by reference all preceding allegations as though
4 fully set forth herein.

5 2805. Plaintiffs bring this Count on behalf of the Pennsylvania Class, against VW AG,
6 VW America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the
7 “VW Entity Defendants”).

8 2806. The VW Entity Defendants are and were at all relevant times “merchants” with
9 respect to motor vehicles under 13 Pa. Cons. Stat. § 2104 and 2A103(a), and “sellers” of motor
10 vehicles under § 2103(a).

11 2807. With respect to leases, the VW Entity Defendants are and were at all relevant
12 times “lessors” of motor vehicles under 13 Pa. Cons. Stat. § 2A103(a).

13 2808. The Class Vehicles are and were at all relevant times “goods” within the meaning
14 of 13 Pa. Cons. Stat. § 2105(a), and 2A103(a).

15 2809. In connection with the purchase or lease of each one of its new vehicles, the VW
16 Entity Defendants provide an express New Vehicle Limited Warranty (“NVLW”) for a period of
17 three years or 36,000 miles, whichever occurs first. This NVLW exists to cover “any repair to
18 correct a manufacturers defect in materials or workmanship.”

19 2810. The Clean Air Act requires manufacturers of light-duty vehicles to provide two
20 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
21 Warranty.”

22 2811. The EPA requires vehicle manufacturers to provide a Performance Warranty with
23 respect to the vehicles’ emission systems. Thus, Volkswagen also provides an express warranty
24 for its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
25 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
26 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
27 emission control components are covered for the first eight years or 80,000 miles, whichever
28 comes first. These major emission control components subject to the longer warranty include the

1 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
2 device or computer.

3 2812. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
4 with respect to their vehicles' emission systems. Thus, the VW Entity Defendants also provide an
5 express warranty for their vehicles through a Federal Emission Control System Defect Warranty.
6 The Design and Defect Warranty required by the EPA covers repair of emission control or
7 emission related parts which fail to function or function improperly because of a defect in
8 materials or workmanship. This warranty provides protection for two years or 24,000 miles,
9 whichever comes first, or, for the major emission control components, for eight years or 80,000
10 miles, whichever comes first.

11 2813. As manufacturers of light-duty vehicles, the VW Entity Defendants were required
12 to provide these warranties to purchasers or lessees of their "clean" diesel vehicles.

13 2814. The VW Entity Defendants' warranties formed a basis of the bargain that was
14 reached when Plaintiffs and other Pennsylvania Class members purchased or leased their Class
15 Vehicles equipped with the non-compliant "clean" diesel engine and emission systems.

16 2815. Plaintiffs and the Pennsylvania Class members experienced defects within the
17 warranty period. Despite the existence of warranties, the VW Entity Defendants failed to inform
18 Plaintiffs and Pennsylvania Class members that the Class Vehicles were intentionally designed
19 and manufactured to be out of compliance with applicable state and federal emissions laws, and
20 failed to fix the defective emission components free of charge.

21 2816. The VW Entity Defendants breached the express warranty promising to repair and
22 correct a manufacturing defect or materials or workmanship of any parts they supplied. The VW
23 Entity Defendants have not repaired or adjusted, and have been unable to repair or adjust, the
24 Class Vehicles' materials and workmanship defects.

25 2817. Affording the VW Entity Defendants a reasonable opportunity to cure their breach
26 of written warranties would be unnecessary and futile here. For example, the Frequently Asked
27 Questions ("FAQ") section of VW's informational website states:
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How soon will the remedy be available, and how am I going to be compensated for this?

We cannot offer a firm date now because we need to work on a remedy and review it with the government. We are proceeding as quickly as possible.

2818. In his Congressional testimony on October 8, 2015, Michael Horn stated that Volkswagen intends to make Class Vehicles compliant with emission standards through software fixes and the installation of auxiliary hardware, but that fix will take “1 to 2 years, minimum.” When questioned on remedies for consumers, he stated that Volkswagen may pay customers for a loss in resale values because of the scandal. He said that Volkswagen is not considering providing loaner vehicles because the U.S. government says the vehicles are safe to drive.

2819. Michael Horn’s testimony serves as an admission that the limited warranty promising to repair and/or correct a manufacturing defect fails in its essential purpose because the VW Entity Defendants cannot meet that promise within a reasonable time.

2820. Furthermore, the limited warranty promising to repair and/or correct a manufacturing defect fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and the other Pennsylvania Class members whole and because the VW Entity Defendants have failed and/or have refused to adequately provide the promised remedies within a reasonable time.

2821. Accordingly, recovery by Plaintiffs and the other Pennsylvania Class members is not restricted to the limited warranty promising to repair and/or correct a manufacturing defect, and Plaintiffs, individually and on behalf of the other Pennsylvania Class members, seek all remedies as allowed by law.

2822. Also, as alleged in more detail herein, at the time the VW Entity Defendants warranted and sold or leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did not conform to their warranties; further, the VW Entity Defendants had wrongfully and fraudulently concealed material facts regarding the Class Vehicles. Plaintiffs and the other Pennsylvania Class members were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

1 2823. Moreover, many of the injuries flowing from the Class Vehicles cannot be
2 resolved through the limited remedy of “replacements or adjustments,” as many incidental and
3 consequential damages have already been suffered because of Volkswagen’s fraudulent conduct
4 as alleged herein, and because of its failure and/or continued failure to provide such limited
5 remedy within a reasonable time, and any limitation on Plaintiffs’ and the other Pennsylvania
6 Class members’ remedies would be insufficient to make Plaintiffs and the other Pennsylvania
7 Class members whole.

8 2824. Finally, because of the VW Entity Defendants’ breach of warranty as set forth
9 herein, Plaintiffs and the other Pennsylvania Class members assert, as additional and/or
10 alternative remedies, the revocation of acceptance of the goods and the return to Plaintiffs and the
11 other Pennsylvania Class members of the purchase or lease price of all Class Vehicles currently
12 owned or leased, and for such other incidental and consequential damages as allowed.

13 2825. The VW Entity Defendants were provided notice of these issues by numerous
14 complaints filed against them, including the instant Complaint, within a reasonable amount of
15 time after Volkswagen publicly admitted to using a defeat device in the Class Vehicles to evade
16 clean air standards.

17 2826. As a direct and proximate result of the VW Entity Defendants’ breach of express
18 warranties, Plaintiff and the other Pennsylvania Class members have been damaged in an amount
19 to be determined at trial.

20 **RHODE ISLAND**

21 **RHODE ISLAND COUNT I:**
22 **VIOLATIONS OF THE RHODE ISLAND DECEPTIVE TRADE PRACTICES ACT**
23 **(R.I. Gen. Laws § 6-13.1, *et seq.*)**

24 2827. Plaintiffs incorporate by reference each preceding paragraph as though fully set
25 forth herein.

26 2828. Plaintiffs Urbaniak and Mehls (for the purpose of this section, “Plaintiffs”) bring
27 this action on behalf of themselves and the Rhode Island Class against all Defendants.

28 2829. Volkswagen, Plaintiffs and the Rhode Island Class are “persons” within the
meaning of R.I. Gen. Laws § 6-13.1-1(3).

1 2830. Volkswagen is engaged in “trade” or “commerce” within the meaning of R.I. Gen.
2 Laws § 6-13.1-1(5).

3 2831. The Rhode Island Deceptive Trade Practices Act (“Rhode Island DTPA”)
4 prohibits “unfair or deceptive acts or practices in the conduct of any trade or commerce”
5 including: (v) [r]epresenting that goods or services have sponsorship, approval, characteristics,
6 ingredients, uses, benefits, or quantities that they do not have”; “(vii) [r]epresenting that goods or
7 services are of a particular standard, quality, or grade ..., if they are of another”; (ix) [a]dvertising
8 goods or services with intent not to sell them as advertised”; “(xiii) [u]sing any other methods,
9 acts or practices which mislead or deceive members of the public in a material respect.” R.I. Gen.
10 Laws § 6-13.1-1(6).

11 2832. In the course of Volkswagen’s business, Volkswagen intentionally or negligently
12 concealed and suppressed material facts concerning the true emissions produced by the misnamed
13 “CleanDiesel” engines in the Class Vehicles. Defendants accomplished this by installing illegal
14 defeat device software in the Class Vehicles that caused the vehicles to operate in a low emission
15 test mode only during emissions testing. During normal operations, the Class Vehicles would
16 emit grossly larger quantities of noxious contaminants, sometimes 40 times over applicable
17 standards. The result was what Volkswagen intended—the Class Vehicles passed emissions
18 testing by way of deliberately induced false readings. Plaintiffs and Rhode Island Class members
19 had no way of discerning that Volkswagen’s representations were false and misleading because
20 Volkswagen’s defeat device software was extremely sophisticated technology. Plaintiffs and
21 Rhode Island Class members did not and could not unravel Volkswagen’s deception on their own.
22 In fact, it took years before the academic engineering community—specifically a research team at
23 WVU’s Center for Alternative Fuels, Engines & Emissions—detected Volkswagen’s cheat using
24 sophisticated, expensive equipment and applying decades of combined experience.

25 2833. Volkswagen thus violated the provisions of the Rhode Island DTPA by (1)
26 representing that goods have characteristics, uses, benefits, or qualities that they do not have; (2)
27 representing that goods are of a particular standard or quality if they are of another; (3)
28

1 advertising goods or services with intent not to provide them as advertised; and (4) engaging in
2 any other unfair or deceptive conduct in trade or commerce.

3 2834. Defendants engaged in misleading, false, unfair or deceptive acts or practices that
4 violated the Rhode Island DTPA by installing, failing to disclose and/or actively concealing the
5 “defeat device” and the true cleanliness and performance of the “clean” diesel engine system, by
6 marketing its vehicles as legal, reliable, environmentally clean, efficient, and of high quality, and
7 by presenting itself as a reputable manufacturer that valued environmental cleanliness and
8 efficiency, and that stood behind its vehicles after they were sold.

9 2835. Volkswagen compounded the deception by repeatedly asserting that the Class
10 Vehicles were safe, reliable, environmentally clean, efficient, and of high quality, and by
11 claiming to be a reputable manufacturer that valued safety, environmental cleanliness, and
12 efficiency, and stood behind its vehicles after they were sold.

13 2836. The Clean Air Act and EPA regulations require that automobiles limit their
14 emissions output to specified levels. These laws are intended for the protection of public health
15 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the
16 Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 CFR § 86.1809. By
17 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available
18 for purchase, Volkswagen violated federal law and therefore engaged in conduct that violates the
19 Rhode Island DTPA.

20 2837. Volkswagen knew it had installed the “defeat device” in the Class Vehicles, and
21 knew the true nature of its “clean” diesel engine system for at least six years, but concealed all of
22 that information until recently. Volkswagen also knew that it valued profits over environmental
23 cleanliness, efficiency, and compliance with the law, and that it was manufacturing, selling, and
24 distributing vehicles throughout the United States that did not comply with EPA regulations, but
25 it concealed this information as well.

26 2838. Volkswagen intentionally and knowingly misrepresented material facts regarding
27 the Class Vehicles with intent to mislead Plaintiffs and the Rhode Island Class.
28

1 2839. Volkswagen knew or should have known that its conduct violated the Rhode
2 Island DTPA.

3 2840. Defendants owed Plaintiffs and Rhode Island Class members a duty to disclose,
4 truthfully, all the facts concerning the cleanliness, efficiency and reliability of the Class Vehicles
5 because they:

- 6 a. possessed exclusive knowledge that they were
7 manufacturing, selling, and distributing vehicles throughout
8 the United States that did not comply with EPA regulations;
- 9 b. intentionally concealed the foregoing from regulators,
10 Plaintiffs, Class members; and/or
- 11 c. Made incomplete or negligent representations about the
12 environmental cleanliness and efficiency of the Class
13 Vehicles generally, and the use of the defeat device in
14 particular, while purposefully withholding material facts
15 from Plaintiffs that contradicted these representations.

16 2841. Defendants concealed the illegal defeat device and the true emissions, efficiency
17 and performance of the Class Vehicles, resulting in a raft of negative publicity once
18 Volkswagen's fraud was exposed. The value of the Class Vehicles has therefore plummeted. In
19 light of the stigma Volkswagen's misconduct attached to the Class Vehicles, the Class Vehicles
20 are now worth less than they otherwise would be worth.

21 2842. Defendants' supply and use of the illegal defeat device and concealment of the true
22 characteristics of the "clean" diesel engine system were material to Plaintiffs and the Rhode
23 Island Class. A vehicle made by a reputable manufacturer of environmentally friendly vehicles is
24 worth more than an otherwise comparable vehicle made by a disreputable manufacturer of
25 environmentally dirty vehicles that conceals its polluting engines rather than promptly remedying
26 them.

27 2843. Defendants' unfair or deceptive acts or practices were likely to and did in fact
28 deceive regulators and reasonable consumers, including Plaintiffs and Rhode Island Class
members, about the true environmental cleanliness and efficiency of Volkswagen-branded
vehicles, the quality of the Volkswagen brand, the devaluing of environmental cleanliness and
integrity at Volkswagen, and the true value of the Class Vehicles.

1 2844. Plaintiffs and Rhode Island Class members suffered ascertainable loss and actual
2 damages as a direct and proximate result of Volkswagen’s misrepresentations and its concealment
3 of and failure to disclose material information. Plaintiffs and the Rhode Island Class members
4 who purchased or leased the Class Vehicles would not have purchased or leased them at all
5 and/or—if the Vehicles’ true nature had been disclosed and mitigated, and the Vehicles rendered
6 legal to sell—would have paid significantly less for them. Plaintiffs also suffered diminished
7 value of their vehicles, as well as lost or diminished use.

8 2845. Defendants had an ongoing duty to all Volkswagen customers to refrain from
9 unfair and deceptive practices under the Rhode Island DTPA in the course of its business.

10 2846. Defendants’ violations present a continuing risk to Plaintiffs as well as to the
11 general public. Defendants’ unlawful acts and practices complained of herein affect the public
12 interest.

13 2847. Plaintiffs and the Rhode Island Class are entitled to recover the greater of actual
14 damages or \$200 pursuant to R.I. Gen. Laws § 6-13.1-5.2(a). Plaintiffs and the Rhode Island
15 Class are also entitled to punitive damages because Volkswagen engaged in conduct amounting to
16 a particularly aggravated, deliberate disregard of the rights of others.

17 **RHODE ISLAND COUNT II:**
18 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
19 **(6A R.I. Gen. Laws §§ 6A-2-314 and 6A-2.1-212)**

20 2848. Plaintiffs reallege and incorporate by reference all allegations of the preceding
21 paragraphs as though fully set forth herein.

22 2849. Plaintiffs bring this Count on behalf of the Rhode Island Class, against VW AG,
23 VW America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the
24 “VW Entity Defendants”).

25 2850. The VW Entity Defendants are and were at all relevant times “merchants” with
26 respect to motor vehicles under 6A R.I. Gen. Laws §§ 6A-2-104(1) and 6A-2.1-103(1)(t), and
27 “sellers” of motor vehicles under § 6A-2-103(a)(4).

28 2851. With respect to leases, the VW Entity Defendants are and were at all relevant
times “lessors” of motor vehicles under 6A R.I. Gen. Laws § 6A-2.1-103(1)(p).

1 2860. With respect to leases, the VW Entity Defendants are and were at all relevant
2 times “lessors” of motor vehicles under 6A R.I. Gen. Laws § 6A-2.1-103(1)(p).

3 2861. The Class Vehicles are and were at all relevant times “goods” within the meaning
4 of 6A R.I. Gen. Laws §§ 6A-2-105(1) and 6A-2.1-103(1)(h).

5 2862. In connection with the purchase or lease of each one of its new vehicles, the VW
6 Entity Defendants provide an express New Vehicle Limited Warranty (“NVLW”) for a period of
7 three years or 36,000 miles, whichever occurs first. This NVLW exists to cover “any repair to
8 correct a manufacturers defect in materials or workmanship.”

9 2863. The Clean Air Act requires manufacturers of light-duty vehicles to provide two
10 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
11 Warranty.”

12 2864. The EPA requires vehicle manufacturers to provide a Performance Warranty with
13 respect to the vehicles’ emission systems. Thus, Volkswagen also provides an express warranty
14 for its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
15 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
16 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
17 emission control components are covered for the first eight years or 80,000 miles, whichever
18 comes first. These major emission control components subject to the longer warranty include the
19 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
20 device or computer.

21 2865. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
22 with respect to their vehicles’ emission systems. Thus, the VW Entity Defendants also provide an
23 express warranty for their vehicles through a Federal Emission Control System Defect Warranty.
24 The Design and Defect Warranty required by the EPA covers repair of emission control or
25 emission related parts which fail to function or function improperly because of a defect in
26 materials or workmanship. This warranty provides protection for two years or 24,000 miles,
27 whichever comes first, or, for the major emission control components, for eight years or 80,000
28 miles, whichever comes first.

1 2866. As manufacturers of light-duty vehicles, the VW Entity Defendants were required
2 to provide these warranties to purchasers or lessees of their “clean” diesel vehicles.

3 2867. The VW Entity Defendants’ warranties formed a basis of the bargain that was
4 reached when Plaintiffs and other Rhode Island Class members purchased or leased their Class
5 Vehicles equipped with the non-compliant “clean” diesel engine and emission systems.

6 2868. Plaintiffs and the Rhode Island Class members experienced defects within the
7 warranty period. Despite the existence of warranties, the VW Entity Defendants failed to inform
8 Plaintiffs and Rhode Island Class members that the Class Vehicles were intentionally designed
9 and manufactured to be out of compliance with applicable state and federal emissions laws, and
10 failed to fix the defective emission components free of charge.

11 2869. The VW Entity Defendants breached the express warranty promising to repair and
12 correct a manufacturing defect or materials or workmanship of any parts they supplied. The VW
13 Entity Defendants have not repaired or adjusted, and have been unable to repair or adjust, the
14 Class Vehicles’ materials and workmanship defects.

15 2870. Affording the VW Entity Defendants a reasonable opportunity to cure their breach
16 of written warranties would be unnecessary and futile here. For example, the Frequently Asked
17 Questions (“FAQ”) section of VW’s informational website states:

18 **How soon will the remedy be available, and how am I going to**
19 **be compensated for this?**

20 We cannot offer a firm date now because we need to work on a
21 remedy and review it with the government. We are proceeding as
22 quickly as possible.

22 2871. In his Congressional testimony on October 8, 2015, Michael Horn stated that
23 Volkswagen intends to make Class Vehicles compliant with emission standards through software
24 fixes and the installation of auxiliary hardware, but that fix will take “1 to 2 years, minimum.”
25 When questioned on remedies for consumers, he stated that Volkswagen may pay customers for a
26 loss in resale values because of the scandal. He said that Volkswagen is not considering
27 providing loaner vehicles because the U.S. government says the vehicles are safe to drive.
28

1 2872. Michael Horn’s testimony serves as an admission that the limited warranty
2 promising to repair and/or correct a manufacturing defect fails in its essential purpose because the
3 VW Entity Defendants cannot meet that promise within a reasonable time.

4 2873. Furthermore, the limited warranty promising to repair and/or correct a
5 manufacturing defect fails in its essential purpose because the contractual remedy is insufficient
6 to make Plaintiffs and the other Rhode Island Class members whole and because the VW Entity
7 Defendants have failed and/or have refused to adequately provide the promised remedies within a
8 reasonable time.

9 2874. Accordingly, recovery by Plaintiffs and the other Rhode Island Class members is
10 not restricted to the limited warranty promising to repair and/or correct a manufacturing defect,
11 and Plaintiffs, individually and on behalf of the other Rhode Island Class members, seek all
12 remedies as allowed by law.

13 2875. Also, as alleged in more detail herein, at the time the VW Entity Defendants
14 warranted and sold or leased the Class Vehicles, they knew that the Class Vehicles were
15 inherently defective and did not conform to their warranties; further, the VW Entity Defendants
16 had wrongfully and fraudulently concealed material facts regarding the Class Vehicles. Plaintiffs
17 and the other Rhode Island Class members were therefore induced to purchase or lease the Class
18 Vehicles under false and/or fraudulent pretenses.

19 2876. Moreover, many of the injuries flowing from the Class Vehicles cannot be
20 resolved through the limited remedy of “replacements or adjustments,” as many incidental and
21 consequential damages have already been suffered because of Volkswagen’s fraudulent conduct
22 as alleged herein, and because of its failure and/or continued failure to provide such limited
23 remedy within a reasonable time, and any limitation on Plaintiffs’ and the other Rhode Island
24 Class members’ remedies would be insufficient to make Plaintiffs and the other Rhode Island
25 Class members whole.

26 2877. Finally, because of the VW Entity Defendants’ breach of warranty as set forth
27 herein, Plaintiffs and the other Rhode Island Class members assert, as additional and/or
28 alternative remedies, the revocation of acceptance of the goods and the return to Plaintiffs and the

1 other Rhode Island Class members of the purchase or lease price of all Class Vehicles currently
2 owned or leased, and for such other incidental and consequential damages as allowed.

3 2878. The VW Entity Defendants were provided notice of these issues by numerous
4 complaints filed against them, including the instant Complaint, within a reasonable amount of
5 time after Volkswagen publicly admitted to using a defeat device in the Class Vehicles to evade
6 clean air standards.

7 2879. As a direct and proximate result of the VW Entity Defendants' breach of express
8 warranties, Plaintiff and the other Rhode Island Class members have been damaged in an amount
9 to be determined at trial.

10 **SOUTH CAROLINA**

11 **SOUTH CAROLINA COUNT I:**
12 **VIOLATIONS OF THE SOUTH CAROLINA**
13 **UNFAIR TRADE PRACTICES ACT**
(S.C. Code Ann. § 39-5-10, et seq.)

14 2880. Plaintiffs incorporate by reference each preceding paragraph as though fully set
15 forth herein.

16 2881. Plaintiffs Oxendine and Powers (for the purpose of this section, "Plaintiffs") bring
17 this action on behalf of themselves and the South Carolina Class against all Defendants.

18 2882. Volkswagen, Plaintiffs and the South Carolina Class are "persons" within the
19 meaning of S.C. Code § 39-5-10(a).

20 2883. Volkswagen is engaged in "trade" or "commerce" within the meaning of S.C.
21 Code § 39-5-10(b).

22 2884. The South Carolina Unfair Trade Practices Act ("South Carolina UTPA")
23 prohibits "unfair or deceptive acts or practices in the conduct of any trade or commerce." S.C.
24 Code § 39-5-20(a).

25 2885. In the course of Volkswagen's business, Volkswagen intentionally or negligently
26 concealed and suppressed material facts concerning the true emissions produced by the misnamed
27 "CleanDiesel" engines in the Class Vehicles. Defendants accomplished this by installing illegal
28 defeat device software in the Class Vehicles that caused the vehicles to operate in a low emission

1 test mode only during emissions testing. During normal operations, the Class Vehicles would
2 emit grossly larger quantities of noxious contaminants, sometimes 40 times over applicable
3 standards. The result was what Volkswagen intended—the Class Vehicles passed emissions
4 testing by way of deliberately induced false readings. Plaintiffs and South Carolina Class
5 members had no way of discerning that Volkswagen’s representations were false and misleading
6 because Volkswagen’s defeat device software was extremely sophisticated technology. Plaintiffs
7 and South Carolina Class members did not and could not unravel Volkswagen’s deception on
8 their own. In fact, it took years before the academic engineering community—specifically a
9 research team at WVU’s Center for Alternative Fuels, Engines & Emissions—detected
10 Volkswagen’s cheat using sophisticated, expensive equipment and applying decades of combined
11 experience.

12 2886. Volkswagen thus violated the provisions of the South Carolina UTPA, at a
13 minimum by: (1) representing that the Class Vehicles have characteristics, uses, benefits, and
14 qualities which they do not have; (2) representing that the Class Vehicles are of a particular
15 standard, quality, and grade when they are not; (3) advertising the Class Vehicles with the intent
16 not to sell them as advertised; (4) failing to disclose information concerning the Class Vehicles
17 with the intent to induce consumers to purchase or lease the Class Vehicles.

18 2887. Defendants engaged in misleading, false, unfair or deceptive acts or practices that
19 violated the South Carolina UTPA by installing, failing to disclose and/or actively concealing the
20 “defeat device” and the true cleanliness and performance of the “clean” diesel engine system, by
21 marketing its vehicles as legal, reliable, environmentally clean, efficient, and of high quality, and
22 by presenting itself as a reputable manufacturer that valued environmental cleanliness and
23 efficiency, and that stood behind its vehicles after they were sold.

24 2888. Volkswagen compounded the deception by repeatedly asserting that the Class
25 Vehicles were safe, reliable, environmentally clean, efficient, and of high quality, and by
26 claiming to be a reputable manufacturer that valued safety, environmental cleanliness, and
27 efficiency, and stood behind its vehicles after they were sold.

28

1 2889. The Clean Air Act and EPA regulations require that automobiles limit their
2 emissions output to specified levels. These laws are intended for the protection of public health
3 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the
4 Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 CFR § 86.1809. By
5 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available
6 for purchase, Volkswagen violated federal law and therefore engaged in conduct that violates the
7 South Carolina UTPA.

8 2890. Volkswagen knew it had installed the “defeat device” in the Class Vehicles, and
9 knew the true nature of its “clean” diesel engine system for at least six years, but concealed all of
10 that information until recently. Volkswagen also knew that it valued profits over environmental
11 cleanliness, efficiency, and compliance with the law, and that it was manufacturing, selling, and
12 distributing vehicles throughout the United States that did not comply with EPA regulations, but
13 it concealed this information as well.

14 2891. Volkswagen intentionally and knowingly misrepresented material facts regarding
15 the Class Vehicles with intent to mislead Plaintiffs and the South Carolina Class.

16 2892. Volkswagen knew or should have known that its conduct violated the South
17 Carolina UTPA

18 2893. Defendants owed Plaintiffs and South Carolina Class members a duty to disclose,
19 truthfully, all the facts concerning the cleanliness, efficiency and reliability of the Class Vehicles
20 because they:

- 21 a. possessed exclusive knowledge that they were
22 manufacturing, selling, and distributing vehicles throughout
23 the United States that did not comply with EPA regulations;
- 24 b. intentionally concealed the foregoing from regulators,
25 Plaintiffs, Class members; and/or
- 26 c. Made incomplete or negligent representations about the
27 environmental cleanliness and efficiency of the Class
28 Vehicles generally, and the use of the defeat device in
 particular, while purposefully withholding material facts
 from Plaintiffs that contradicted these representations.

1 2894. Defendants concealed the illegal defeat device and the true emissions, efficiency
2 and performance of the Class Vehicles, resulting in a raft of negative publicity once
3 Volkswagen's fraud was exposed. The value of the Class Vehicles has therefore plummeted. In
4 light of the stigma Volkswagen's misconduct attached to the Class Vehicles, the Class Vehicles
5 are now worth less than they otherwise would be worth.

6 2895. Defendants' supply and use of the illegal defeat device and concealment of the true
7 characteristics of the "clean" diesel engine system were material to Plaintiffs and the South
8 Carolina Class. A vehicle made by a reputable manufacturer of environmentally friendly vehicles
9 is worth more than an otherwise comparable vehicle made by a disreputable manufacturer of
10 environmentally dirty vehicles that conceals its polluting engines rather than promptly remedying
11 them.

12 2896. Defendants' unfair or deceptive acts or practices were likely to and did in fact
13 deceive regulators and reasonable consumers, including Plaintiffs and South Carolina Class
14 members, about the true environmental cleanliness and efficiency of Volkswagen-branded
15 vehicles, the quality of the Volkswagen brand, the devaluing of environmental cleanliness and
16 integrity at Volkswagen, and the true value of the Class Vehicles.

17 2897. Plaintiffs and South Carolina Class members suffered ascertainable loss and actual
18 damages as a direct and proximate result of Volkswagen's misrepresentations and its concealment
19 of and failure to disclose material information. Plaintiffs and the South Carolina Class members
20 who purchased or leased the Class Vehicles would not have purchased or leased them at all
21 and/or—if the Vehicles' true nature had been disclosed and mitigated, and the Vehicles rendered
22 legal to sell—would have paid significantly less for them. Plaintiffs also suffered diminished
23 value of their vehicles, as well as lost or diminished use.

24 2898. Defendants had an ongoing duty to all Volkswagen customers to refrain from
25 unfair and deceptive practices under the South Carolina UTPA in the course of its business.

26 2899. Defendants' violations present a continuing risk to Plaintiffs as well as to the
27 general public. Defendants' unlawful acts and practices complained of herein affect the public
28 interest.

1 of a transaction involving Class Vehicles has been supplied in accordance with a previous
2 representation when it has not.

3 2907. The VW Entity Defendants resorted to and used false and misleading
4 advertisements in connection with its business. As alleged above, the VW Entity Defendants
5 made numerous material statements about the safety, cleanliness, efficiency and reliability of the
6 Class Vehicles that were either false or misleading. Each of these statements contributed to the
7 deceptive context of Volkswagen’s unlawful advertising and representations as a whole.

8 2908. Pursuant to S.C. Code Ann. § 56-15-110(2), Plaintiffs bring this action on behalf
9 of themselves and the South Carolina Class, as the action is one of common or general interest to
10 many persons and the parties are too numerous to bring them all before the court.

11 2909. Plaintiff and the South Carolina Class are entitled to double their actual damages,
12 the cost of the suit, attorney’s fees pursuant to S.C. Code Ann. § 56-15-110. Plaintiff also seeks
13 injunctive relief under S.C. Code Ann. § 56-15-110. Plaintiff also seeks treble damages because
14 the VW Entity Defendants acted maliciously.

15 **SOUTH CAROLINA COUNT III:**
16 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
17 **(S.C. Code §§ 36-2-314 and 36-2A-212)**

18 2910. Plaintiffs reallege and incorporate by reference all allegations of the preceding
19 paragraphs as though fully set forth herein.

20 2911. Plaintiffs bring this Count on behalf of the South Carolina Class, against VW AG,
21 VW America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the
22 “VW Entity Defendants”).

23 2912. The VW Entity Defendants are and were at all relevant times “merchants” with
24 respect to motor vehicles under S.C. Code §§ 36-2-104(1) and 36-2A-103(1)(t), and “sellers” of
25 motor vehicles under § 36-2-103(1)(d).

26 2913. With respect to leases, the VW Entity Defendants are and were at all relevant
27 times “lessors” of motor vehicles under S.C. Code § 36-2A-103(1)(p).

28 2914. The Class Vehicles are and were at all relevant times “goods” within the meaning
of S.C. Code §§ 36-2-105(1) and 36-2A-103(1)(h).

1 2915. A warranty that the Class Vehicles were in merchantable condition and fit for the
2 ordinary purpose for which vehicles are used is implied by law pursuant to S.C. Code §§ 36-2-
3 314 and 36-2A-212.

4 2916. These Class Vehicles, when sold or leased and at all times thereafter, were not in
5 merchantable condition and are not fit for the ordinary purpose for which vehicles are used.
6 Specifically, the Class Vehicles are inherently defective in that they do not comply with federal
7 and state emissions standards, rendering certain emissions functions inoperative; and the “clean”
8 diesel engine system was not adequately designed, manufactured, and tested.

9 2917. Volkswagen was provided notice of these issues by the investigations of the EPA
10 and individual state regulators, numerous complaints filed against it including the instant
11 Complaint, and by numerous individual letters and communications sent by Plaintiffs and others
12 within a reasonable amount of time after the allegations of Class Vehicle defects became public.

13 2918. As a direct and proximate result of the VW Entity Defendants’ breach of the
14 implied warranty of merchantability, Plaintiffs and the other South Carolina Class members have
15 been damaged in an amount to be proven at trial.

16 **SOUTH CAROLINA COUNT IV:**
17 **BREACH OF EXPRESS WARRANTY**
18 **(S.C. Code §§ 36-2-313 and 36-2A-210)**

19 2919. Plaintiffs reallege and incorporate by reference all preceding allegations as though
20 fully set forth herein.

21 2920. Plaintiff Goeman (for the purpose of this section, “Plaintiffs”) bring this action on
22 behalf of themselves and the South Dakota Class against all Defendants.

23 2921. The VW Entity Defendants are and were at all relevant times “merchants” with
24 respect to motor vehicles under S.C. Code §§ 36-2-104(1) and 36-2A-103(1)(t), and “sellers” of
25 motor vehicles under § 36-2-103(1)(d).

26 2922. With respect to leases, the VW Entity Defendants are and were at all relevant
27 times “lessors” of motor vehicles under S.C. Code § 36-2A-103(1)(p).

28 2923. The Class Vehicles are and were at all relevant times “goods” within the meaning
of S.C. Code §§ 36-2-105(1) and 36-2A-103(1)(h).

1 2924. In connection with the purchase or lease of each one of its new vehicles, the VW
2 Entity Defendants provide an express New Vehicle Limited Warranty (“NVLW”) for a period of
3 three years or 36,000 miles, whichever occurs first. This NVLW exists to cover “any repair to
4 correct a manufacturers defect in materials or workmanship.”

5 2925. The Clean Air Act requires manufacturers of light-duty vehicles to provide two
6 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
7 Warranty.”

8 2926. The EPA requires vehicle manufacturers to provide a Performance Warranty with
9 respect to the vehicles’ emission systems. Thus, Volkswagen also provides an express warranty
10 for its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
11 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
12 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
13 emission control components are covered for the first eight years or 80,000 miles, whichever
14 comes first. These major emission control components subject to the longer warranty include the
15 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
16 device or computer.

17 2927. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
18 with respect to their vehicles’ emission systems. Thus, the VW Entity Defendants also provide an
19 express warranty for their vehicles through a Federal Emission Control System Defect Warranty.
20 The Design and Defect Warranty required by the EPA covers repair of emission control or
21 emission related parts which fail to function or function improperly because of a defect in
22 materials or workmanship. This warranty provides protection for two years or 24,000 miles,
23 whichever comes first, or, for the major emission control components, for eight years or 80,000
24 miles, whichever comes first.

25 2928. As manufacturers of light-duty vehicles, the VW Entity Defendants were required
26 to provide these warranties to purchasers or lessees of their “clean” diesel vehicles.

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1 2929. The VW Entity Defendants’ warranties formed a basis of the bargain that was
2 reached when Plaintiffs and other South Carolina Class members purchased or leased their Class
3 Vehicles equipped with the non-compliant “clean” diesel engine and emission systems.

4 2930. Plaintiffs and the South Carolina Class members experienced defects within the
5 warranty period. Despite the existence of warranties, the VW Entity Defendants failed to inform
6 Plaintiffs and South Carolina Class members that the Class Vehicles were intentionally designed
7 and manufactured to be out of compliance with applicable state and federal emissions laws, and
8 failed to fix the defective emission components free of charge.

9 2931. The VW Entity Defendants breached the express warranty promising to repair and
10 correct a manufacturing defect or materials or workmanship of any parts they supplied. The VW
11 Entity Defendants have not repaired or adjusted, and have been unable to repair or adjust, the
12 Class Vehicles’ materials and workmanship defects.

13 2932. Affording the VW Entity Defendants a reasonable opportunity to cure their breach
14 of written warranties would be unnecessary and futile here. For example, the Frequently Asked
15 Questions (“FAQ”) section of VW’s informational website states:

16 **How soon will the remedy be available, and how am I going to**
17 **be compensated for this?**

18 We cannot offer a firm date now because we need to work on a
19 remedy and review it with the government. We are proceeding as
 quickly as possible.

20 2933. In his Congressional testimony on October 8, 2015, Michael Horn stated that
21 Volkswagen intends to make Class Vehicles compliant with emission standards through software
22 fixes and the installation of auxiliary hardware, but that fix will take “1 to 2 years, minimum.”
23 When questioned on remedies for consumers, he stated that Volkswagen may pay customers for a
24 loss in resale values because of the scandal. He said that Volkswagen is not considering
25 providing loaner vehicles because the U.S. government says the vehicles are safe to drive.

26 2934. Michael Horn’s testimony serves as an admission that the limited warranty
27 promising to repair and/or correct a manufacturing defect fails in its essential purpose because the
28 VW Entity Defendants cannot meet that promise within a reasonable time.

1 2935. Furthermore, the limited warranty promising to repair and/or correct a
2 manufacturing defect fails in its essential purpose because the contractual remedy is insufficient
3 to make Plaintiffs and the other South Carolina Class members whole and because the VW Entity
4 Defendants have failed and/or have refused to adequately provide the promised remedies within a
5 reasonable time.

6 2936. Accordingly, recovery by Plaintiffs and the other South Carolina Class members is
7 not restricted to the limited warranty promising to repair and/or correct a manufacturing defect,
8 and Plaintiffs, individually and on behalf of the other South Carolina Class members, seek all
9 remedies as allowed by law.

10 2937. Also, as alleged in more detail herein, at the time the VW Entity Defendants
11 warranted and sold or leased the Class Vehicles, they knew that the Class Vehicles were
12 inherently defective and did not conform to their warranties; further, the VW Entity Defendants
13 had wrongfully and fraudulently concealed material facts regarding the Class Vehicles. Plaintiffs
14 and the other South Carolina Class members were therefore induced to purchase or lease the
15 Class Vehicles under false and/or fraudulent pretenses.

16 2938. Moreover, many of the injuries flowing from the Class Vehicles cannot be
17 resolved through the limited remedy of “replacements or adjustments,” as many incidental and
18 consequential damages have already been suffered because of Volkswagen’s fraudulent conduct
19 as alleged herein, and because of its failure and/or continued failure to provide such limited
20 remedy within a reasonable time, and any limitation on Plaintiffs’ and the other South Carolina
21 Class members’ remedies would be insufficient to make Plaintiffs and the other South Carolina
22 Class members whole.

23 2939. Finally, because of the VW Entity Defendants’ breach of warranty as set forth
24 herein, Plaintiffs and the other South Carolina Class members assert, as additional and/or
25 alternative remedies, the revocation of acceptance of the goods and the return to Plaintiffs and the
26 other South Carolina Class members of the purchase or lease price of all Class Vehicles currently
27 owned or leased, and for such other incidental and consequential damages as allowed.
28

1 2940. The VW Entity Defendants were provided notice of these issues by numerous
2 complaints filed against them, including the instant Complaint, within a reasonable amount of
3 time after Volkswagen publicly admitted to using a defeat device in the Class Vehicles to evade
4 clean air standards.

5 2941. As a direct and proximate result of the VW Entity Defendants' breach of express
6 warranties, Plaintiff and the other South Carolina Class members have been damaged in an
7 amount to be determined at trial.

8 **SOUTH DAKOTA**

9 **SOUTH DAKOTA COUNT I:**
10 **VIOLATIONS OF THE SOUTH DAKOTA**
11 **DECEPTIVE TRADE PRACTICES AND CONSUMER PROTECTION LAW**
(S.D. Codified Laws § 37-24-6)

12 2942. Plaintiffs incorporate by reference each preceding paragraph as though fully set
13 forth herein.

14 2943. Plaintiff Goeman (for the purpose of this section, "Plaintiffs") bring this action on
15 behalf of themselves and the South Dakota Class against all Defendants.

16 2944. Volkswagen, Plaintiffs and the South Dakota Class are "persons" within the
17 meaning of S.D. Codified Laws § 37-24-1(8).

18 2945. Volkswagen is engaged in "trade" or "commerce" within the meaning of S.D.
19 Codified Laws § 37-24-1(13).

20 2946. The South Dakota Deceptive Trade Practices and Consumer Protection ("South
21 Dakota CPA") prohibits "deceptive acts or practices, which are defined to include "[k]nowingly
22 and intentionally act, use, or employ any deceptive act or practice, fraud, false pretense, false
23 promises, or misrepresentation or to conceal, suppress, or omit any material fact in connection
24 with the sale or advertisement of any merchandise, regardless of whether any person has in fact
25 been misled, deceived, or damaged thereby." S.D. Codified Laws § 37-24-6(1).

26 2947. In the course of Volkswagen's business, Volkswagen intentionally or negligently
27 concealed and suppressed material facts concerning the true emissions produced by the misnamed
28 "CleanDiesel" engines in the Class Vehicles. Defendants accomplished this by installing illegal

1 defeat device software in the Class Vehicles that caused the vehicles to operate in a low emission
2 test mode only during emissions testing. During normal operations, the Class Vehicles would
3 emit grossly larger quantities of noxious contaminants, sometimes 40 times over applicable
4 standards. The result was what Volkswagen intended—the Class Vehicles passed emissions
5 testing by way of deliberately induced false readings. Plaintiffs and South Dakota Class members
6 had no way of discerning that Volkswagen’s representations were false and misleading because
7 Volkswagen’s defeat device software was extremely sophisticated technology. Plaintiffs and
8 South Dakota Class members did not and could not unravel Volkswagen’s deception on their own.
9 In fact, it took years before the academic engineering community—specifically a research team at
10 WVU’s Center for Alternative Fuels, Engines & Emissions—detected Volkswagen’s cheat using
11 sophisticated, expensive equipment and applying decades of combined experience.

12 2948. Volkswagen thus violated the provisions of the South Dakota CPA, at a minimum
13 by: (1) representing that the Class Vehicles have characteristics, uses, benefits, and qualities
14 which they do not have; (2) representing that the Class Vehicles are of a particular standard,
15 quality, and grade when they are not; (3) advertising the Class Vehicles with the intent not to sell
16 them as advertised; (4) failing to disclose information concerning the Class Vehicles with the
17 intent to induce consumers to purchase or lease the Class Vehicles.

18 2949. Defendants engaged in misleading, false, unfair or deceptive acts or practices that
19 violated the South Dakota CPA by installing, failing to disclose and/or actively concealing the
20 “defeat device” and the true cleanliness and performance of the “clean” diesel engine system, by
21 marketing its vehicles as legal, reliable, environmentally clean, efficient, and of high quality, and
22 by presenting itself as a reputable manufacturer that valued environmental cleanliness and
23 efficiency, and that stood behind its vehicles after they were sold.

24 2950. Volkswagen compounded the deception by repeatedly asserting that the Class
25 Vehicles were safe, reliable, environmentally clean, efficient, and of high quality, and by
26 claiming to be a reputable manufacturer that valued safety, environmental cleanliness, and
27 efficiency, and stood behind its vehicles after they were sold.
28

1 2951. The Clean Air Act and EPA regulations require that automobiles limit their
2 emissions output to specified levels. These laws are intended for the protection of public health
3 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the
4 Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 CFR § 86.1809. By
5 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available
6 for purchase, Volkswagen violated federal law and therefore engaged in conduct that violates the
7 South Dakota CPA.

8 2952. Volkswagen knew it had installed the “defeat device” in the Class Vehicles, and
9 knew the true nature of its “clean” diesel engine system for at least six years, but concealed all of
10 that information until recently. Volkswagen also knew that it valued profits over environmental
11 cleanliness, efficiency, and compliance with the law, and that it was manufacturing, selling, and
12 distributing vehicles throughout the United States that did not comply with EPA regulations, but
13 it concealed this information as well.

14 2953. Volkswagen intentionally and knowingly misrepresented material facts regarding
15 the Class Vehicles with intent to mislead Plaintiffs and the South Dakota Class.

16 2954. Volkswagen knew or should have known that its conduct violated the South
17 Dakota CPA.

18 2955. Defendants owed Plaintiffs and South Dakota Class members a duty to disclose,
19 truthfully, all the facts concerning the cleanliness, efficiency and reliability of the Class Vehicles
20 because they:

- 21 a. possessed exclusive knowledge that they were
22 manufacturing, selling, and distributing vehicles throughout
23 the United States that did not comply with EPA regulations;
- 24 b. intentionally concealed the foregoing from regulators,
25 Plaintiffs, Class members; and/or
- 26 c. Made incomplete or negligent representations about the
27 environmental cleanliness and efficiency of the Class
28 Vehicles generally, and the use of the defeat device in
 particular, while purposefully withholding material facts
 from Plaintiffs that contradicted these representations.

1 2956. Defendants concealed the illegal defeat device and the true emissions, efficiency
2 and performance of the Class Vehicles, resulting in a raft of negative publicity once
3 Volkswagen’s fraud was exposed. The value of the Class Vehicles has therefore plummeted. In
4 light of the stigma Volkswagen’s misconduct attached to the Class Vehicles, the Class Vehicles
5 are now worth less than they otherwise would be worth.

6 2957. Defendants’ supply and use of the illegal defeat device and concealment of the true
7 characteristics of the “clean” diesel engine system were material to Plaintiffs and the South
8 Dakota Class. A vehicle made by a reputable manufacturer of environmentally friendly vehicles
9 is worth more than an otherwise comparable vehicle made by a disreputable manufacturer of
10 environmentally dirty vehicles that conceals its polluting engines rather than promptly remedying
11 them.

12 2958. Defendants’ unfair or deceptive acts or practices were likely to and did in fact
13 deceive regulators and reasonable consumers, including Plaintiffs and South Dakota Class
14 members, about the true environmental cleanliness and efficiency of Volkswagen-branded
15 vehicles, the quality of the Volkswagen brand, the devaluing of environmental cleanliness and
16 integrity at Volkswagen, and the true value of the Class Vehicles.

17 2959. Plaintiffs and South Dakota Class members were adversely affected and suffered
18 ascertainable loss and actual damages as a direct and proximate result of Volkswagen’s
19 misrepresentations and its concealment of and failure to disclose material information. Plaintiffs
20 and the South Dakota Class members who purchased or leased the Class Vehicles would not have
21 purchased or leased them at all and/or—if the Vehicles’ true nature had been disclosed and
22 mitigated, and the Vehicles rendered legal to sell—would have paid significantly less for them.
23 Plaintiffs also suffered diminished value of their vehicles, as well as lost or diminished use.

24 2960. Defendants had an ongoing duty to all Volkswagen customers to refrain from
25 unfair and deceptive practices under the South Dakota CPA in the course of its business.

26 2961. Defendants’ violations present a continuing risk to Plaintiffs as well as to the
27 general public. Defendants’ unlawful acts and practices complained of herein affect the public
28 interest.

1 Complaint, and by numerous individual letters and communications sent by Plaintiffs and others
2 within a reasonable amount of time after the allegations of Class Vehicle defects became public.

3 2971. As a direct and proximate result of the VW Entity Defendants' breach of the
4 implied warranty of merchantability, Plaintiffs and the other South Dakota Class members have
5 been damaged in an amount to be proven at trial.

6 **SOUTH DAKOTA COUNT III:**
7 **BREACH OF EXPRESS WARRANTY**
8 **(S.D. Codified Laws §§ 57A-2-313 and 57A-2A-210)**

9 2972. Plaintiffs reallege and incorporate by reference all preceding allegations as though
10 fully set forth herein.

11 2973. Plaintiffs bring this Count on behalf of the South Dakota Class, against VW AG,
12 VW America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the
13 "VW Entity Defendants").

14 2974. The VW Entity Defendants are and were at all relevant times "merchants" with
15 respect to motor vehicles under S.D. Codified Laws §§ 57A-104(1) and 57A-2A-103(1)(t), and
16 "sellers" of motor vehicles under § 57A-104(1)(d).

17 2975. With respect to leases, the VW Entity Defendants are and were at all relevant
18 times "lessors" of motor vehicles under S.D. Codified Laws § 57A-2A-103(1)(p).

19 2976. The Class Vehicles are and were at all relevant times "goods" within the meaning
20 of S.D. Codified Laws §§ 57A-2-105(1) and 57A-2A-103(1)(h).

21 2977. In connection with the purchase or lease of each one of its new vehicles, the VW
22 Entity Defendants provide an express New Vehicle Limited Warranty ("NVLW") for a period of
23 three years or 36,000 miles, whichever occurs first. This NVLW exists to cover "any repair to
24 correct a manufacturers defect in materials or workmanship."

25 2978. The Clean Air Act requires manufacturers of light-duty vehicles to provide two
26 federal emission control warranties: a "Performance Warranty" and a "Design and Defect
27 Warranty."

28 2979. The EPA requires vehicle manufacturers to provide a Performance Warranty with
respect to the vehicles' emission systems. Thus, Volkswagen also provides an express warranty

1 for its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
2 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
3 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
4 emission control components are covered for the first eight years or 80,000 miles, whichever
5 comes first. These major emission control components subject to the longer warranty include the
6 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
7 device or computer.

8 2980. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
9 with respect to their vehicles' emission systems. Thus, the VW Entity Defendants also provide an
10 express warranty for their vehicles through a Federal Emission Control System Defect Warranty.
11 The Design and Defect Warranty required by the EPA covers repair of emission control or
12 emission related parts which fail to function or function improperly because of a defect in
13 materials or workmanship. This warranty provides protection for two years or 24,000 miles,
14 whichever comes first, or, for the major emission control components, for eight years or 80,000
15 miles, whichever comes first.

16 2981. As manufacturers of light-duty vehicles, the VW Entity Defendants were required
17 to provide these warranties to purchasers or lessees of their "clean" diesel vehicles.

18 2982. The VW Entity Defendants' warranties formed a basis of the bargain that was
19 reached when Plaintiffs and other South Dakota Class members purchased or leased their Class
20 Vehicles equipped with the non-compliant "clean" diesel engine and emission systems.

21 2983. Plaintiffs and the South Dakota Class members experienced defects within the
22 warranty period. Despite the existence of warranties, the VW Entity Defendants failed to inform
23 Plaintiffs and South Dakota Class members that the Class Vehicles were intentionally designed
24 and manufactured to be out of compliance with applicable state and federal emissions laws, and
25 failed to fix the defective emission components free of charge.

26 2984. The VW Entity Defendants breached the express warranty promising to repair and
27 correct a manufacturing defect or materials or workmanship of any parts they supplied. The VW
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1 Entity Defendants have not repaired or adjusted, and have been unable to repair or adjust, the
2 Class Vehicles' materials and workmanship defects.

3 2985. Affording the VW Entity Defendants a reasonable opportunity to cure their breach
4 of written warranties would be unnecessary and futile here. For example, the Frequently Asked
5 Questions ("FAQ") section of VW's informational website states:

6 **How soon will the remedy be available, and how am I going to**
7 **be compensated for this?**

8 We cannot offer a firm date now because we need to work on a
9 remedy and review it with the government. We are proceeding as
quickly as possible.

10 2986. In his Congressional testimony on October 8, 2015, Michael Horn stated that
11 Volkswagen intends to make Class Vehicles compliant with emission standards through software
12 fixes and the installation of auxiliary hardware, but that fix will take "1 to 2 years, minimum."
13 When questioned on remedies for consumers, he stated that Volkswagen may pay customers for a
14 loss in resale values because of the scandal. He said that Volkswagen is not considering
15 providing loaner vehicles because the U.S. government says the vehicles are safe to drive.

16 2987. Michael Horn's testimony serves as an admission that the limited warranty
17 promising to repair and/or correct a manufacturing defect fails in its essential purpose because the
18 VW Entity Defendants cannot meet that promise within a reasonable time.

19 2988. Furthermore, the limited warranty promising to repair and/or correct a
20 manufacturing defect fails in its essential purpose because the contractual remedy is insufficient
21 to make Plaintiffs and the other South Dakota Class members whole and because the VW Entity
22 Defendants have failed and/or have refused to adequately provide the promised remedies within a
23 reasonable time.

24 2989. Accordingly, recovery by Plaintiffs and the other South Dakota Class members is
25 not restricted to the limited warranty promising to repair and/or correct a manufacturing defect,
26 and Plaintiffs, individually and on behalf of the other South Dakota Class members, seek all
27 remedies as allowed by law.
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1 2990. Also, as alleged in more detail herein, at the time the VW Entity Defendants
2 warranted and sold or leased the Class Vehicles, they knew that the Class Vehicles were
3 inherently defective and did not conform to their warranties; further, the VW Entity Defendants
4 had wrongfully and fraudulently concealed material facts regarding the Class Vehicles. Plaintiffs
5 and the other South Dakota Class members were therefore induced to purchase or lease the Class
6 Vehicles under false and/or fraudulent pretenses.

7 2991. Moreover, many of the injuries flowing from the Class Vehicles cannot be
8 resolved through the limited remedy of “replacements or adjustments,” as many incidental and
9 consequential damages have already been suffered because of Volkswagen’s fraudulent conduct
10 as alleged herein, and because of its failure and/or continued failure to provide such limited
11 remedy within a reasonable time, and any limitation on Plaintiffs’ and the other South Dakota
12 Class members’ remedies would be insufficient to make Plaintiffs and the other South Dakota
13 Class members whole.

14 2992. Finally, because of the VW Entity Defendants’ breach of warranty as set forth
15 herein, Plaintiffs and the other South Dakota Class members assert, as additional and/or
16 alternative remedies, the revocation of acceptance of the goods and the return to Plaintiffs and the
17 other South Dakota Class members of the purchase or lease price of all Class Vehicles currently
18 owned or leased, and for such other incidental and consequential damages as allowed.

19 2993. The VW Entity Defendants were provided notice of these issues by numerous
20 complaints filed against them, including the instant Complaint, within a reasonable amount of
21 time after Volkswagen publicly admitted to using a defeat device in the Class Vehicles to evade
22 clean air standards.

23 2994. As a direct and proximate result of the VW Entity Defendants’ breach of express
24 warranties, Plaintiff and the other South Dakota Class members have been damaged in an amount
25 to be determined at trial.
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TENNESSEE

**TENNESSEE COUNT I:
VIOLATIONS OF TENNESSEE CONSUMER PROTECTION ACT OF 1977
(Tenn. Code Ann. § 47-18-101, *et seq.*)**

2995. Plaintiffs incorporate by reference each preceding paragraph as though fully set forth herein.

2996. Plaintiffs Johnson, Andrews, and Hess (for the purpose of this section, “Plaintiffs”) bring this action on behalf of themselves and the Tennessee Class against all Defendants.

2997. Plaintiffs and the Tennessee Class are “natural persons” and “consumers” within the meaning of Tenn. Code § 47-18-103(2). Defendants are “person[s]” within the meaning of Tenn. Code § 47-18-103(9).

2998. Volkswagen is engaged in “trade” or “commerce” or “consumer transactions” within the meaning Tenn. Code § 47-18-103(9).

2999. The Tennessee Consumer Protection Act (“Tennessee CPA”) prohibits “unfair or deceptive acts or practices affecting the conduct of any trade or commerce.” Tenn. Code § 47-18-104.

3000. In the course of Volkswagen’s business, Volkswagen intentionally or negligently concealed and suppressed material facts concerning the true emissions produced by the misnamed “CleanDiesel” engines in the Class Vehicles. Defendants accomplished this by installing illegal defeat device software in the Class Vehicles that caused the vehicles to operate in a low emission test mode only during emissions testing. During normal operations, the Class Vehicles would emit grossly larger quantities of noxious contaminants, sometimes 40 times over applicable standards. The result was what Volkswagen intended—the Class Vehicles passed emissions testing by way of deliberately induced false readings. Plaintiffs and Tennessee Class members had no way of discerning that Volkswagen’s representations were false and misleading because Volkswagen’s defeat device software was extremely sophisticated technology. Plaintiffs and Tennessee Class members did not and could not unravel Volkswagen’s deception on their own. In fact, it took years before the academic engineering community—specifically a research team at

1 WVU's Center for Alternative Fuels, Engines & Emissions—detected Volkswagen's cheat using
2 sophisticated, expensive equipment and applying decades of combined experience.

3 3001. Volkswagen thus violated the provisions of the Tennessee CPA, at a minimum by:
4 (1) representing that the Class Vehicles have characteristics, uses, benefits, and qualities which
5 they do not have; (2) representing that the Class Vehicles are of a particular standard, quality, and
6 grade when they are not; (3) advertising the Class Vehicles with the intent not to sell them as
7 advertised; (4) failing to disclose information concerning the Class Vehicles with the intent to
8 induce consumers to purchase or lease the Class Vehicles.

9 3002. Defendants engaged in misleading, false, unfair or deceptive acts or practices that
10 violated the Tennessee CPA by installing, failing to disclose and/or actively concealing the
11 “defeat device” and the true cleanliness and performance of the “clean” diesel engine system, by
12 marketing its vehicles as legal, reliable, environmentally clean, efficient, and of high quality, and
13 by presenting itself as a reputable manufacturer that valued environmental cleanliness and
14 efficiency, and that stood behind its vehicles after they were sold.

15 3003. Volkswagen compounded the deception by repeatedly asserting that the Class
16 Vehicles were safe, reliable, environmentally clean, efficient, and of high quality, and by
17 claiming to be a reputable manufacturer that valued safety, environmental cleanliness, and
18 efficiency, and stood behind its vehicles after they were sold.

19 3004. The Clean Air Act and EPA regulations require that automobiles limit their
20 emissions output to specified levels. These laws are intended for the protection of public health
21 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the
22 Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 CFR § 86.1809. By
23 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available
24 for purchase, Volkswagen violated federal law and therefore engaged in conduct that violates the
25 Tennessee CPA.

26 3005. Volkswagen knew it had installed the “defeat device” in the Class Vehicles, and
27 knew the true nature of its “clean” diesel engine system for at least six years, but concealed all of
28 that information until recently. Volkswagen also knew that it valued profits over environmental

1 cleanliness, efficiency, and compliance with the law, and that it was manufacturing, selling, and
2 distributing vehicles throughout the United States that did not comply with EPA regulations, but
3 it concealed this information as well.

4 3006. Volkswagen intentionally and knowingly misrepresented material facts regarding
5 the Class Vehicles with intent to mislead Plaintiffs and the Tennessee Class.

6 3007. Volkswagen knew or should have known that its conduct violated the Tennessee
7 CPA.

8 3008. Defendants owed Plaintiffs and Tennessee Class members a duty to disclose,
9 truthfully, all the facts concerning the cleanliness, efficiency and reliability of the Class Vehicles
10 because they:

- 11 a. possessed exclusive knowledge that they were
12 manufacturing, selling, and distributing vehicles throughout
the United States that did not comply with EPA regulations;
- 13 b. intentionally concealed the foregoing from regulators,
14 Plaintiffs, Class members; and/or
- 15 c. Made incomplete or negligent representations about the
16 environmental cleanliness and efficiency of the Class
Vehicles generally, and the use of the defeat device in
17 particular, while purposefully withholding material facts
from Plaintiffs that contradicted these representations.

18 3009. Defendants concealed the illegal defeat device and the true emissions, efficiency
19 and performance of the Class Vehicles, resulting in a raft of negative publicity once
20 Volkswagen's fraud was exposed. The value of the Class Vehicles has therefore plummeted. In
21 light of the stigma Volkswagen's misconduct attached to the Class Vehicles, the Class Vehicles
22 are now worth less than they otherwise would be worth.

23 3010. Defendants' supply and use of the illegal defeat device and concealment of the true
24 characteristics of the "clean" diesel engine system were material to Plaintiffs and the Tennessee
25 Class. A vehicle made by a reputable manufacturer of environmentally friendly vehicles is worth
26 more than an otherwise comparable vehicle made by a disreputable manufacturer of
27 environmentally dirty vehicles that conceals its polluting engines rather than promptly remedying
28 them.

1 3011. Defendants' unfair or deceptive acts or practices were likely to and did in fact
2 deceive regulators and reasonable consumers, including Plaintiffs and Tennessee Class members,
3 about the true environmental cleanliness and efficiency of Volkswagen-branded vehicles, the
4 quality of the Volkswagen brand, the devaluing of environmental cleanliness and integrity at
5 Volkswagen, and the true value of the Class Vehicles.

6 3012. Plaintiffs and Tennessee Class members suffered ascertainable loss and actual
7 damages as a direct and proximate result of Volkswagen's misrepresentations and its concealment
8 of and failure to disclose material information. Plaintiffs and the Tennessee Class members who
9 purchased or leased the Class Vehicles would not have purchased or leased them at all and/or—if
10 the Vehicles' true nature had been disclosed and mitigated, and the Vehicles rendered legal to
11 sell—would have paid significantly less for them. Plaintiffs also suffered diminished value of
12 their vehicles, as well as lost or diminished use.

13 3013. Defendants had an ongoing duty to all Volkswagen customers to refrain from
14 unfair and deceptive practices under the Tennessee CPA in the course of its business.

15 3014. Defendants' violations present a continuing risk to Plaintiffs as well as to the
16 general public. Defendants' unlawful acts and practices complained of herein affect the public
17 interest.

18 3015. Pursuant to Tenn. Code § 47-18-109, Plaintiffs and the Tennessee Class seek an
19 order enjoining Volkswagen's unfair and/or deceptive acts or practices, damages, treble damages
20 for willful and knowing violations, pursuant to § 47-18-109(a)(3), punitive damages, and
21 attorneys' fees, costs, and any other just and proper relief to the extent available under the
22 Tennessee CPA.

23 **TENNESSEE COUNT II:**
24 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
25 **(Tenn. Code §§ 47-2-314 and 47-2A-212)**

26 3016. Plaintiffs reallege and incorporate by reference all allegations of the preceding
27 paragraphs as though fully set forth herein.
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1 3017. Plaintiffs bring this Count on behalf of the Tennessee Class, against VW AG, VW
2 America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the “VW
3 Entity Defendants”).

4 3018. The VW Entity Defendants are and were at all relevant times “merchants” with
5 respect to motor vehicles under Tenn. Code §§ 47-2-104(1) and 47-2A-103(1)(t), and “sellers” of
6 motor vehicles under § 47-2-103(1)(d).

7 3019. With respect to leases, the VW Entity Defendants are and were at all relevant
8 times “lessors” of motor vehicles under Tenn. Code § 47-2A-103(1)(p).

9 3020. The Class Vehicles are and were at all relevant times “goods” within the meaning
10 of Tenn. Code §§ 47-2-105(1) and 47-2A-103(1)(h).

11 3021. A warranty that the Class Vehicles were in merchantable condition and fit for the
12 ordinary purpose for which vehicles are used is implied by law pursuant to Tenn. Code §§ 47-2-
13 314 and 47-2A-212.

14 3022. These Class Vehicles, when sold or leased and at all times thereafter, were not in
15 merchantable condition and are not fit for the ordinary purpose for which vehicles are used.
16 Specifically, the Class Vehicles are inherently defective in that they do not comply with federal
17 and state emissions standards, rendering certain emissions functions inoperative; and the “clean”
18 diesel engine system was not adequately designed, manufactured, and tested.

19 3023. Volkswagen was provided notice of these issues by the investigations of the EPA
20 and individual state regulators, numerous complaints filed against it including the instant
21 Complaint, and by numerous individual letters and communications sent by Plaintiffs and others
22 within a reasonable amount of time after the allegations of Class Vehicle defects became public.

23 3024. As a direct and proximate result of the VW Entity Defendants’ breach of the
24 implied warranty of merchantability, Plaintiffs and the other Tennessee Class members have been
25 damaged in an amount to be proven at trial.

**TENNESSEE COUNT III:
BREACH OF EXPRESS WARRANTY
(Tenn. Code §§ 47-2-313 and 47-2A-210)**

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3 3025. Plaintiffs reallege and incorporate by reference all preceding allegations as though
4 fully set forth herein.

5 3026. Plaintiffs bring this Count on behalf of the Tennessee Class, against VW AG, VW
6 America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the “VW
7 Entity Defendants”).

8 3027. The VW Entity Defendants are and were at all relevant times “merchants” with
9 respect to motor vehicles under Tenn. Code §§ 47-2-104(1) and 47-2A-103(1)(t), and “sellers” of
10 motor vehicles under § 47-2-103(1)(d).

11 3028. With respect to leases, the VW Entity Defendants are and were at all relevant
12 times “lessors” of motor vehicles under Tenn. Code § 47-2A-103(1)(p).

13 3029. The Class Vehicles are and were at all relevant times “goods” within the meaning
14 of Tenn. Code §§ 47-2-105(1) and 47-2A-103(1)(h).

15 3030. In connection with the purchase or lease of each one of its new vehicles, the VW
16 Entity Defendants provide an express New Vehicle Limited Warranty (“NVLW”) for a period of
17 three years or 36,000 miles, whichever occurs first. This NVLW exists to cover “any repair to
18 correct a manufacturers defect in materials or workmanship.”

19 3031. The Clean Air Act requires manufacturers of light-duty vehicles to provide two
20 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
21 Warranty.”

22 3032. The EPA requires vehicle manufacturers to provide a Performance Warranty with
23 respect to the vehicles’ emissions systems. Thus, Volkswagen also provides an express warranty
24 for its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
25 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
26 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
27 emission control components are covered for the first eight years or 80,000 miles, whichever
28 comes first. These major emission control components subject to the longer warranty include the

1 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
2 device or computer.

3 3033. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
4 with respect to their vehicles' emission systems. Thus, the VW Entity Defendants also provide an
5 express warranty for their vehicles through a Federal Emission Control System Defect Warranty.
6 The Design and Defect Warranty required by the EPA covers repair of emission control or
7 emission related parts which fail to function or function improperly because of a defect in
8 materials or workmanship. This warranty provides protection for two years or 24,000 miles,
9 whichever comes first, or, for the major emission control components, for eight years or 80,000
10 miles, whichever comes first.

11 3034. As manufacturers of light-duty vehicles, the VW Entity Defendants were required
12 to provide these warranties to purchasers or lessees of their "clean" diesel vehicles.

13 3035. The VW Entity Defendants' warranties formed a basis of the bargain that was
14 reached when Plaintiffs and other Tennessee Class members purchased or leased their Class
15 Vehicles equipped with the non-compliant "clean" diesel engine and emission systems.

16 3036. Plaintiffs and the Tennessee Class members experienced defects within the
17 warranty period. Despite the existence of warranties, the VW Entity Defendants failed to inform
18 Plaintiffs and Tennessee Class members that the Class Vehicles were intentionally designed and
19 manufactured to be out of compliance with applicable state and federal emissions laws, and failed
20 to fix the defective emission components free of charge.

21 3037. The VW Entity Defendants breached the express warranty promising to repair and
22 correct a manufacturing defect or materials or workmanship of any parts they supplied. The VW
23 Entity Defendants have not repaired or adjusted, and have been unable to repair or adjust, the
24 Class Vehicles' materials and workmanship defects.

25 3038. Affording the VW Entity Defendants a reasonable opportunity to cure their breach
26 of written warranties would be unnecessary and futile here. For example, the Frequently Asked
27 Questions ("FAQ") section of VW's informational website states:
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How soon will the remedy be available, and how am I going to be compensated for this?

We cannot offer a firm date now because we need to work on a remedy and review it with the government. We are proceeding as quickly as possible.

3039. In his Congressional testimony on October 8, 2015, Michael Horn stated that Volkswagen intends to make Class Vehicles compliant with emission standards through software fixes and the installation of auxiliary hardware, but that fix will take “1 to 2 years, minimum.” When questioned on remedies for consumers, he stated that Volkswagen may pay customers for a loss in resale values because of the scandal. He said that Volkswagen is not considering providing loaner vehicles because the U.S. government says the vehicles are safe to drive.

3040. Michael Horn’s testimony serves as an admission that the limited warranty promising to repair and/or correct a manufacturing defect fails in its essential purpose because the VW Entity Defendants cannot meet that promise within a reasonable time.

3041. Furthermore, the limited warranty promising to repair and/or correct a manufacturing defect fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and the other Tennessee Class members whole and because the VW Entity Defendants have failed and/or have refused to adequately provide the promised remedies within a reasonable time.

3042. Accordingly, recovery by Plaintiffs and the other Tennessee Class members is not restricted to the limited warranty promising to repair and/or correct a manufacturing defect, and Plaintiffs, individually and on behalf of the other Tennessee Class members, seek all remedies as allowed by law.

3043. Also, as alleged in more detail herein, at the time the VW Entity Defendants warranted and sold or leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did not conform to their warranties; further, the VW Entity Defendants had wrongfully and fraudulently concealed material facts regarding the Class Vehicles. Plaintiffs and the other Tennessee Class members were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

1 3050. Plaintiffs and the Texas Class are individuals, partnerships or corporations with
2 assets of less than \$25 million (or are controlled by corporations or entities with less than \$25
3 million in assets), see Tex. Bus. & Com. Code § 17.41, and are therefore “consumers” pursuant to
4 Tex. Bus. & Com. Code § 17.45(4). Defendants are “person[s]” within the meaning of Tex. Bus.
5 & Com. Code § 17.45(3).

6 3051. Volkswagen is engaged in “trade” or “commerce” or “consumer transactions”
7 within the meaning Tex. Bus. & Com. Code § 17.46(a).

8 3052. The Texas Deceptive Trade Practices – Consumer Protection Act (“Texas DTPA”)
9 prohibits “false, misleading, or deceptive acts or practices in the conduct of any trade or
10 commerce,” Tex. Bus. & Com. Code § 17.46(a), and an “unconscionable action or course of
11 action,” which means “an act or practice which, to a consumer’s detriment, takes advantage of the
12 lack of knowledge, ability, experience, or capacity of the consumer to a grossly unfair degree.”
13 Tex. Bus. & Com. Code §§ 17.45(5) and 17.50(a)(3).

14 3053. In the course of Volkswagen’s business, Volkswagen intentionally or negligently
15 concealed and suppressed material facts concerning the true emissions produced by the misnamed
16 “CleanDiesel” engines in the Class Vehicles. Defendants accomplished this by installing illegal
17 defeat device software in the Class Vehicles that caused the vehicles to operate in a low emission
18 test mode only during emissions testing. During normal operations, the Class Vehicles would
19 emit grossly larger quantities of noxious contaminants, sometimes 40 times over applicable
20 standards. The result was what Volkswagen intended—the Class Vehicles passed emissions
21 testing by way of deliberately induced false readings. Plaintiffs and Texas Class members had no
22 way of discerning that Volkswagen’s representations were false and misleading because
23 Volkswagen’s defeat device software was extremely sophisticated technology. Plaintiffs and
24 Texas Class members did not and could not unravel Volkswagen’s deception on their own. In
25 fact, it took years before the academic engineering community—specifically a research team at
26 WVU’s Center for Alternative Fuels, Engines & Emissions—detected Volkswagen’s cheat using
27 sophisticated, expensive equipment and applying decades of combined experience.
28

1 3054. Volkswagen thus violated the provisions of the Texas DTPA, at a minimum by:
2 (1) representing that the Class Vehicles have characteristics, uses, benefits, and qualities which
3 they do not have; (2) representing that the Class Vehicles are of a particular standard, quality, and
4 grade when they are not; (3) advertising the Class Vehicles with the intent not to sell them as
5 advertised; (4) failing to disclose information concerning the Class Vehicles with the intent to
6 induce consumers to purchase or lease the Class Vehicles.

7 3055. Defendants engaged in misleading, false, unfair or deceptive acts or practices that
8 violated the Texas DTPA by installing, failing to disclose and/or actively concealing the “defeat
9 device” and the true cleanliness and performance of the “clean” diesel engine system, by
10 marketing its vehicles as legal, reliable, environmentally clean, efficient, and of high quality, and
11 by presenting itself as a reputable manufacturer that valued environmental cleanliness and
12 efficiency, and that stood behind its vehicles after they were sold.

13 3056. Volkswagen compounded the deception by repeatedly asserting that the Class
14 Vehicles were safe, reliable, environmentally clean, efficient, and of high quality, and by
15 claiming to be a reputable manufacturer that valued safety, environmental cleanliness, and
16 efficiency, and stood behind its vehicles after they were sold.

17 3057. The Clean Air Act and EPA regulations require that automobiles limit their
18 emissions output to specified levels. These laws are intended for the protection of public health
19 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the
20 Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 CFR § 86.1809. By
21 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available
22 for purchase, Volkswagen violated federal law and therefore engaged in conduct that violates the
23 Texas DTPA.

24 3058. Volkswagen knew it had installed the “defeat device” in the Class Vehicles, and
25 knew the true nature of its “clean” diesel engine system for at least six years, but concealed all of
26 that information until recently. Volkswagen also knew that it valued profits over environmental
27 cleanliness, efficiency, and compliance with the law, and that it was manufacturing, selling, and
28

1 distributing vehicles throughout the United States that did not comply with EPA regulations, but
2 it concealed this information as well.

3 3059. Volkswagen intentionally and knowingly misrepresented material facts regarding
4 the Class Vehicles with intent to mislead Plaintiffs and the Texas Class.

5 3060. Volkswagen knew or should have known that its conduct violated the Texas
6 DTPA.

7 3061. Defendants owed Plaintiffs and Texas Class members a duty to disclose, truthfully,
8 all the facts concerning the cleanliness, efficiency and reliability of the Class Vehicles because
9 they:

- 10 a. possessed exclusive knowledge that they were
11 manufacturing, selling, and distributing vehicles throughout
12 the United States that did not comply with EPA regulations;
- 13 b. intentionally concealed the foregoing from regulators,
14 Plaintiffs, Class members; and/or
- 15 c. Made incomplete or negligent representations about the
16 environmental cleanliness and efficiency of the Class
17 Vehicles generally, and the use of the defeat device in
18 particular, while purposefully withholding material facts
19 from Plaintiffs that contradicted these representations.

20 3062. Defendants concealed the illegal defeat device and the true emissions, efficiency
21 and performance of the Class Vehicles, resulting in a raft of negative publicity once
22 Volkswagen's fraud was exposed. The value of the Class Vehicles has therefore plummeted. In
23 light of the stigma Volkswagen's misconduct attached to the Class Vehicles, the Class Vehicles
24 are now worth less than they otherwise would be worth.

25 3063. Defendants' supply and use of the illegal defeat device and concealment of the true
26 characteristics of the "clean" diesel engine system were material to Plaintiffs and the Texas Class.
27 A vehicle made by a reputable manufacturer of environmentally friendly vehicles is worth more
28 than an otherwise comparable vehicle made by a disreputable manufacturer of environmentally
dirty vehicles that conceals its polluting engines rather than promptly remedying them.

3064. Defendants' unfair or deceptive acts or practices were likely to and did in fact
deceive regulators and reasonable consumers, including Plaintiffs and Texas Class members,

1 about the true environmental cleanliness and efficiency of Volkswagen-branded vehicles, the
2 quality of the Volkswagen brand, the devaluing of environmental cleanliness and integrity at
3 Volkswagen, and the true value of the Class Vehicles.

4 3065. Plaintiffs and Texas Class members suffered ascertainable loss and actual damages
5 as a direct and proximate result of Volkswagen's misrepresentations and its concealment of and
6 failure to disclose material information. Plaintiffs and the Texas Class members who purchased
7 or leased the Class Vehicles would not have purchased or leased them at all and/or—if the
8 Vehicles' true nature had been disclosed and mitigated, and the Vehicles rendered legal to sell—
9 would have paid significantly less for them. Plaintiffs also suffered diminished value of their
10 vehicles, as well as lost or diminished use.

11 3066. Defendants had an ongoing duty to all Volkswagen customers to refrain from
12 unfair and deceptive practices under the Texas DTPA in the course of its business.

13 3067. Defendants' violations present a continuing risk to Plaintiffs as well as to the
14 general public. Defendants' unlawful acts and practices complained of herein affect the public
15 interest.

16 3068. Pursuant to Tex. Bus. & Com. Code § 17.50, Plaintiffs and the Texas Class seek
17 an order enjoining Volkswagen's unfair and/or deceptive acts or practices, damages, multiple
18 damages for knowing and intentional violations, pursuant to § 17.50(b)(1), punitive damages, and
19 attorneys' fees, costs, and any other just and proper relief available under the Texas DTPA.

20 3069. On September 21, 2015, certain Plaintiffs sent a letter complying with Tex. Bus. &
21 Com. Code § 17.505(a). Because Volkswagen failed to remedy its unlawful conduct within the
22 requisite time period, Plaintiffs seek all damages and relief to which Plaintiffs and the Texas
23 Class are entitled.

24 **TEXAS COUNT II:**
25 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
26 **(Tex. Bus. & Com. Code §§ 2.314 and 2A.212)**

27 3070. Plaintiffs reallege and incorporate by reference all allegations of the preceding
28 paragraphs as though fully set forth herein.

1 3071. Plaintiffs bring this Count on behalf of the Texas Class, against VW AG, VW
2 America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the “VW
3 Entity Defendants”).

4 3072. The VW Entity Defendants are and were at all relevant times “merchants” with
5 respect to motor vehicles under Tex. Bus. & Com. Code § 2.104(1) and 2A.103(a)(20), and
6 “sellers” of motor vehicles under § 2.103(a)(4).

7 3073. With respect to leases, the VW Entity Defendants are and were at all relevant
8 times “lessors” of motor vehicles under Tex. Bus. & Com. Code § 2A.103(a)(16).

9 3074. The Class Vehicles are and were at all relevant times “goods” within the meaning
10 of Tex. Bus. & Com. Code §§ 2.105(a) and 2A.103(a)(8).

11 3075. A warranty that the Class Vehicles were in merchantable condition and fit for the
12 ordinary purpose for which vehicles are used is implied by law pursuant to Tex. Bus. & Com.
13 Code §§ 2.314 and 2A.212.

14 3076. These Class Vehicles, when sold or leased and at all times thereafter, were not in
15 merchantable condition and are not fit for the ordinary purpose for which vehicles are used.
16 Specifically, the Class Vehicles are inherently defective in that they do not comply with federal
17 and state emissions standards, rendering certain emissions functions inoperative; and the “clean”
18 diesel engine system was not adequately designed, manufactured, and tested.

19 3077. Volkswagen was provided notice of these issues by the investigations of the EPA
20 and individual state regulators, numerous complaints filed against it including the instant
21 Complaint, and by numerous individual letters and communications sent by Plaintiffs and others
22 within a reasonable amount of time after the allegations of Class Vehicle defects became public.

23 3078. As a direct and proximate result of the VW Entity Defendants’ breach of the
24 implied warranty of merchantability, Plaintiffs and the other Texas Class members have been
25 damaged in an amount to be proven at trial.
26
27
28

**TEXAS COUNT III:
BREACH OF EXPRESS WARRANTY
(Tex. Bus. & Com. Code §§ 2.313 and 2A.210)**

1
2
3 3079. Plaintiffs reallege and incorporate by reference all preceding allegations as though
4 fully set forth herein.

5 3080. Plaintiffs bring this Count on behalf of the Texas Class, against VW AG, VW
6 America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the “VW
7 Entity Defendants”).

8 3081. The VW Entity Defendants are and were at all relevant times “merchants” with
9 respect to motor vehicles under Tex. Bus. & Com. Code § 2.104(1) and 2A.103(a)(20), and
10 “sellers” of motor vehicles under § 2.103(a)(4).

11 3082. With respect to leases, the VW Entity Defendants are and were at all relevant
12 times “lessors” of motor vehicles under Tex. Bus. & Com. Code § 2A.103(a)(16).

13 3083. The Class Vehicles are and were at all relevant times “goods” within the meaning
14 of Tex. Bus. & Com. Code §§ 2.105(a) and 2A.103(a)(8).

15 3084. In connection with the purchase or lease of each one of its new vehicles, the VW
16 Entity Defendants provide an express New Vehicle Limited Warranty (“NVLW”) for a period of
17 three years or 36,000 miles, whichever occurs first. This NVLW exists to cover “any repair to
18 correct a manufacturers defect in materials or workmanship.”

19 3085. The Clean Air Act requires manufacturers of light-duty vehicles to provide two
20 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
21 Warranty.”

22 3086. The EPA requires vehicle manufacturers to provide a Performance Warranty with
23 respect to the vehicles’ emission systems. Thus, Volkswagen also provides an express warranty
24 for its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
25 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
26 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
27 emission control components are covered for the first eight years or 80,000 miles, whichever
28 comes first. These major emission control components subject to the longer warranty include the

1 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
2 device or computer.

3 3087. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
4 with respect to their vehicles' emission systems. Thus, the VW Entity Defendants also provide an
5 express warranty for their vehicles through a Federal Emission Control System Defect Warranty.
6 The Design and Defect Warranty required by the EPA covers repair of emission control or
7 emission related parts which fail to function or function improperly because of a defect in
8 materials or workmanship. This warranty provides protection for two years or 24,000 miles,
9 whichever comes first, or, for the major emission control components, for eight years or 80,000
10 miles, whichever comes first.

11 3088. As manufacturers of light-duty vehicles, the VW Entity Defendants were required
12 to provide these warranties to purchasers or lessees of their "clean" diesel vehicles.

13 3089. The VW Entity Defendants' warranties formed a basis of the bargain that was
14 reached when Plaintiffs and other Texas Class members purchased or leased their Class Vehicles
15 equipped with the non-compliant "clean" diesel engine and emission systems.

16 3090. Plaintiffs and the Texas Class members experienced defects within the warranty
17 period. Despite the existence of warranties, the VW Entity Defendants failed to inform Plaintiffs
18 and Texas Class members that the Class Vehicles were intentionally designed and manufactured
19 to be out of compliance with applicable state and federal emissions laws, and failed to fix the
20 defective emission components free of charge.

21 3091. The VW Entity Defendants breached the express warranty promising to repair and
22 correct a manufacturing defect or materials or workmanship of any parts they supplied. The VW
23 Entity Defendants have not repaired or adjusted, and have been unable to repair or adjust, the
24 Class Vehicles' materials and workmanship defects.

25 3092. Affording the VW Entity Defendants a reasonable opportunity to cure their breach
26 of written warranties would be unnecessary and futile here. For example, the Frequently Asked
27 Questions ("FAQ") section of VW's informational website states:
28

1 **How soon will the remedy be available, and how am I going to**
2 **be compensated for this?**

3 We cannot offer a firm date now because we need to work on a
4 remedy and review it with the government. We are proceeding as
5 quickly as possible.

6 3093. In his Congressional testimony on October 8, 2015, Michael Horn stated that
7 Volkswagen intends to make Class Vehicles compliant with emission standards through software
8 fixes and the installation of auxiliary hardware, but that fix will take “1 to 2 years, minimum.”
9 When questioned on remedies for consumers, he stated that Volkswagen may pay customers for a
10 loss in resale values because of the scandal. He said that Volkswagen is not considering
11 providing loaner vehicles because the U.S. government says the vehicles are safe to drive.

12 3094. Michael Horn’s testimony serves as an admission that the limited warranty
13 promising to repair and/or correct a manufacturing defect fails in its essential purpose because the
14 VW Entity Defendants cannot meet that promise within a reasonable time.

15 3095. Furthermore, the limited warranty promising to repair and/or correct a
16 manufacturing defect fails in its essential purpose because the contractual remedy is insufficient
17 to make Plaintiffs and the other Texas Class members whole and because the VW Entity
18 Defendants have failed and/or have refused to adequately provide the promised remedies within a
19 reasonable time.

20 3096. Accordingly, recovery by Plaintiffs and the other Texas Class members is not
21 restricted to the limited warranty promising to repair and/or correct a manufacturing defect, and
22 Plaintiffs, individually and on behalf of the other Texas Class members, seek all remedies as
23 allowed by law.

24 3097. Also, as alleged in more detail herein, at the time the VW Entity Defendants
25 warranted and sold or leased the Class Vehicles, they knew that the Class Vehicles were
26 inherently defective and did not conform to their warranties; further, the VW Entity Defendants
27 had wrongfully and fraudulently concealed material facts regarding the Class Vehicles. Plaintiffs
28 and the other Texas Class members were therefore induced to purchase or lease the Class
 Vehicles under false and/or fraudulent pretenses.

1 3098. Moreover, many of the injuries flowing from the Class Vehicles cannot be
2 resolved through the limited remedy of “replacements or adjustments,” as many incidental and
3 consequential damages have already been suffered because of Volkswagen’s fraudulent conduct
4 as alleged herein, and because of its failure and/or continued failure to provide such limited
5 remedy within a reasonable time, and any limitation on Plaintiffs’ and the other Texas Class
6 members’ remedies would be insufficient to make Plaintiffs and the other Texas Class members
7 whole.

8 3099. Finally, because of the VW Entity Defendants’ breach of warranty as set forth
9 herein, Plaintiffs and the other Texas Class members assert, as additional and/or alternative
10 remedies, the revocation of acceptance of the goods and the return to Plaintiffs and the other
11 Texas Class members of the purchase or lease price of all Class Vehicles currently owned or
12 leased, and for such other incidental and consequential damages as allowed.

13 3100. The VW Entity Defendants were provided notice of these issues by numerous
14 complaints filed against them, including the instant Complaint, within a reasonable amount of
15 time after Volkswagen publicly admitted to using a defeat device in the Class Vehicles to evade
16 clean air standards.

17 3101. As a direct and proximate result of the VW Entity Defendants’ breach of express
18 warranties, Plaintiff and the other Texas Class members have been damaged in an amount to be
19 determined at trial.

20 **UTAH**

21 **UTAH COUNT I:**
22 **VIOLATIONS OF UTAH CONSUMER SALES PRACTICES ACT**
23 **(Utah Code Ann. § 13-11-1, et seq.)**

24 3102. Plaintiffs incorporate by reference each preceding paragraph as though fully set
25 forth herein.

26 3103. Plaintiffs Alters, King, Otto, and Wilson (for the purpose of this section,
27 “Plaintiffs”) bring this action on behalf of themselves and the Utah Class against all Defendants.

28 3104. Plaintiffs and Utah Class members are “persons” under the Utah Consumer Sales
Practices Act (“Utah CSPA”), Utah Code § 13-11-3(5). The sales and leases of the Class Vehicles

1 to the Plaintiffs and Utah Class members were “consumer transactions” within the meaning of
2 Utah Code § 13-11-3(2).

3 3105. Volkswagen is a “supplier” within the meaning of Utah Code § 13-11-3(6).

4 3106. The Utah CSPA makes unlawful any “deceptive act or practice by a supplier in
5 connection with a consumer transaction.” Specifically, “a supplier commits a deceptive act or
6 practice if the supplier knowingly or intentionally: (a) indicates that the subject of a consumer
7 transaction has sponsorship, approval, performance characteristics, accessories, uses, or benefits,
8 if it has not” or “(b) indicates that the subject of a consumer transaction is of a particular standard,
9 quality, grade, style, or model, if it is not.” Utah Code § 13-11-4. “An unconscionable act or
10 practice by a supplier in connection with a consumer transaction” also violates the Utah CSPA.
11 Utah Code § 13-11-5.

12 3107. In the course of Volkswagen’s business, Volkswagen intentionally or negligently
13 concealed and suppressed material facts concerning the true emissions produced by the misnamed
14 “CleanDiesel” engines in the Class Vehicles. Defendants accomplished this by installing illegal
15 defeat device software in the Class Vehicles that caused the vehicles to operate in a low emission
16 test mode only during emissions testing. During normal operations, the Class Vehicles would
17 emit grossly larger quantities of noxious contaminants, sometimes 40 times over applicable
18 standards. The result was what Volkswagen intended—the Class Vehicles passed emissions
19 testing by way of deliberately induced false readings. Plaintiffs and Utah Class members had no
20 way of discerning that Volkswagen’s representations were false and misleading because
21 Volkswagen’s defeat device software was extremely sophisticated technology. Plaintiffs and
22 Utah Class members did not and could not unravel Volkswagen’s deception on their own. In fact,
23 it took years before the academic engineering community—specifically a research team at
24 WVU’s Center for Alternative Fuels, Engines & Emissions—detected Volkswagen’s cheat using
25 sophisticated, expensive equipment and applying decades of combined experience.

26 3108. Volkswagen thus violated the Utah CSPA, at a minimum by: (1) representing that
27 the Class Vehicles have sponsorship, approval, characteristics, ingredients, uses, benefits, or
28 quantities which they do not have; (2) representing that the Class Vehicles are of a particular

1 standard, quality, and grade when they are not; (3) advertising the Class Vehicles with the intent
2 not to sell them as advertised; (4) using any other methods, acts or practices which mislead or
3 deceive members of the public in a material respect concerning the Class Vehicles with the intent
4 to induce consumers to purchase or lease the Class Vehicles.

5 3109. In the course of Volkswagen's business, and in connection with consumer
6 transactions, Volkswagen engaged in misleading, false, unfair or deceptive acts or practices that
7 violated the Utah CSPA by installing, failing to disclose and/or actively concealing the "defeat
8 device" and the true cleanliness and performance of the "clean" diesel engine system, by
9 marketing its vehicles as legal, reliable, environmentally clean, efficient, and of high quality, and
10 by presenting itself as a reputable manufacturer that valued environmental cleanliness and
11 efficiency, and that stood behind its vehicles after they were sold.

12 3110. Volkswagen compounded the deception by repeatedly asserting that the Class
13 Vehicles were safe, reliable, environmentally clean, efficient, and of high quality, and by
14 claiming to be a reputable manufacturer that valued safety, environmental cleanliness, and
15 efficiency, and stood behind its vehicles after they were sold.

16 3111. The Clean Air Act and EPA implementing regulations require that automobiles
17 limit their emissions output to specified levels. These laws are intended for the protection of
18 public health and welfare. "Defeat devices" like those in the Class Vehicles are defined and
19 prohibited by the Clean Air Act and its regulations. *See* 42 U.S.C. § 7522(a)(3)(B); 40 CFR
20 § 86.1809. By installing illegal "defeat devices" in the Class Vehicles and by making those
21 vehicles available for purchase, Volkswagen violated federal law and therefore engaged in
22 conduct that violates the Utah CSPA.

23 3112. Volkswagen knew it had installed the "defeat device" in the Class Vehicles, and
24 knew the true nature of its "clean" diesel engine system for at least six years, but concealed all of
25 that information until recently. Volkswagen also knew that it valued profits over environmental
26 cleanliness, efficiency, and compliance with the law, and that it was manufacturing, selling, and
27 distributing vehicles throughout the United States that did not comply with EPA regulations, but
28 it concealed this information as well.

1 3113. Volkswagen intentionally and knowingly misrepresented material facts regarding
2 the Class Vehicles with intent to mislead Plaintiffs and the Utah Class.

3 3114. Volkswagen knew or should have known that its conduct violated the Utah CSPA.

4 3115. Defendants owed Plaintiffs and Utah Class members a duty to disclose, truthfully,
5 all the facts concerning the cleanliness, efficiency and reliability of the Class Vehicles because
6 they:

- 7 a. possessed exclusive knowledge that they were
8 manufacturing, selling, and distributing vehicles throughout
9 the United States that did not comply with EPA regulations;
10 b. intentionally concealed the foregoing from regulators,
11 Plaintiffs, Class members; and/or
12 c. Made incomplete or negligent representations about the
13 environmental cleanliness and efficiency of the Class
14 Vehicles generally, and the use of the defeat device in
15 particular, while purposefully withholding material facts
16 from Plaintiffs that contradicted these representations.

14 3116. Defendants concealed the illegal defeat device and the true emissions, efficiency
15 and performance of the Class Vehicles, resulting in a raft of negative publicity once
16 Volkswagen's fraud was exposed. The value of the Class Vehicles has therefore plummeted. In
17 light of the stigma Volkswagen's misconduct attached to the Class Vehicles, the Class Vehicles
18 are now worth less than they otherwise would be worth.

19 3117. Defendants' supply and use of the illegal defeat device and concealment of the true
20 characteristics of the "clean" diesel engine system were material to Plaintiffs and the Utah Class.
21 A vehicle made by a reputable manufacturer of environmentally friendly vehicles is worth more
22 than an otherwise comparable vehicle made by a disreputable manufacturer of environmentally
23 dirty vehicles that conceals its polluting engines rather than promptly remedying them.

24 3118. Defendants' unfair or deceptive acts or practices were likely to and did in fact
25 deceive regulators and reasonable consumers, including Plaintiffs and Utah Class members, about
26 the true environmental cleanliness and efficiency of Volkswagen-branded vehicles, the quality of
27 the Volkswagen brand, the devaluing of environmental cleanliness and integrity at Volkswagen,
28 and the true value of the Class Vehicles.

1 3119. Plaintiffs and Utah Class members suffered ascertainable loss and actual damages
 2 as a direct and proximate result of Volkswagen’s misrepresentations and its concealment of and
 3 failure to disclose material information. Plaintiffs and the Utah Class members who purchased or
 4 leased the Class Vehicles would not have purchased or leased them at all and/or—if the Vehicles’
 5 true nature had been disclosed and mitigated, and the Vehicles rendered legal to sell—would have
 6 paid significantly less for them. Plaintiffs also suffered diminished value of their vehicles, as well
 7 as lost or diminished use.

8 3120. Defendants had an ongoing duty to all Volkswagen customers to refrain from
 9 unfair and deceptive practices under the Utah CSPA in the course of its business.

10 3121. Defendants’ violations present a continuing risk to Plaintiffs as well as to the
 11 general public. Defendants’ unlawful acts and practices complained of herein affect the public
 12 interest.

13 **UTAH COUNT II:**
 14 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
 15 **(Utah Code §§ 70A-2-314 and 70A-2A-212)**

16 3122. Plaintiffs reallege and incorporate by reference all allegations of the preceding
 17 paragraphs as though fully set forth herein.

18 3123. Plaintiffs bring this Count on behalf of the Utah Class, against VW AG, VW
 19 America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the “VW
 20 Entity Defendants”).

21 3124. The VW Entity Defendants are and were at all relevant times “merchants” with
 22 respect to motor vehicles under Utah Code § 70A-2-104(1) and 70A-2a-103(1)(t), and “sellers” of
 23 motor vehicles under § 70A-2-103(1)(d).

24 3125. With respect to leases, the VW Entity Defendants are and were at all relevant
 25 times “lessors” of motor vehicles under Utah Code § 70A-2a-103(1)(p).

26 3126. The Class Vehicles are and were at all relevant times “goods” within the meaning
 27 of Utah Code §§ 70A-2-105(1) and 70A-2a-103(1)(h).
 28

1 3127. A warranty that the Class Vehicles were in merchantable condition and fit for the
2 ordinary purpose for which vehicles are used is implied by law pursuant to Utah Code §§ 70A-2-
3 314 and 70A-2a-212.

4 3128. These Class Vehicles, when sold or leased and at all times thereafter, were not in
5 merchantable condition and are not fit for the ordinary purpose for which vehicles are used.
6 Specifically, the Class Vehicles are inherently defective in that they do not comply with federal
7 and state emissions standards, rendering certain emissions functions inoperative; and the “clean”
8 diesel engine system was not adequately designed, manufactured, and tested.

9 3129. Volkswagen was provided notice of these issues by the investigations of the EPA
10 and individual state regulators, numerous complaints filed against it including the instant
11 Complaint, and by numerous individual letters and communications sent by Plaintiffs and others
12 within a reasonable amount of time after the allegations of Class Vehicle defects became public.

13 3130. As a direct and proximate result of the VW Entity Defendants’ breach of the
14 implied warranty of merchantability, Plaintiffs and the other Utah Class members have been
15 damaged in an amount to be proven at trial.

16 **UTAH COUNT III:**
17 **BREACH OF EXPRESS WARRANTY**
18 **(Utah Code §§ 70A-2-313 and 70A-2A-210)**

19 3131. Plaintiffs reallege and incorporate by reference all preceding allegations as though
20 fully set forth herein.

21 3132. Plaintiffs bring this Count on behalf of the Utah Class, against VW AG, VW
22 America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the “VW
23 Entity Defendants”).

24 3133. The VW Entity Defendants are and were at all relevant times “merchants” with
25 respect to motor vehicles under Utah Code § 70A-2-104(1) and 70A-2a-103(1)(t), and “sellers” of
26 motor vehicles under § 70A-2-103(1)(d).

27 3134. With respect to leases, the VW Entity Defendants are and were at all relevant
28 times “lessors” of motor vehicles under Utah Code § 70A-2a-103(1)(p).

1 3135. The Class Vehicles are and were at all relevant times “goods” within the meaning
2 of Utah Code §§ 70A-2-105(1) and 70A-2a-103(1)(h).

3 3136. In connection with the purchase or lease of each one of its new vehicles, the VW
4 Entity Defendants provide an express New Vehicle Limited Warranty (“NVLW”) for a period of
5 three years or 36,000 miles, whichever occurs first. This NVLW exists to cover “any repair to
6 correct a manufacturers defect in materials or workmanship.”

7 3137. The Clean Air Act requires manufacturers of light-duty vehicles to provide two
8 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
9 Warranty.”

10 3138. The EPA requires vehicle manufacturers to provide a Performance Warranty with
11 respect to the vehicles’ emission systems. Thus, Volkswagen also provides an express warranty
12 for its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
13 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
14 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
15 emission control components are covered for the first eight years or 80,000 miles, whichever
16 comes first. These major emission control components subject to the longer warranty include the
17 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
18 device or computer.

19 3139. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
20 with respect to their vehicles’ emission systems. Thus, the VW Entity Defendants also provide an
21 express warranty for their vehicles through a Federal Emission Control System Defect Warranty.
22 The Design and Defect Warranty required by the EPA covers repair of emission control or
23 emission related parts which fail to function or function improperly because of a defect in
24 materials or workmanship. This warranty provides protection for two years or 24,000 miles,
25 whichever comes first, or, for the major emission control components, for eight years or 80,000
26 miles, whichever comes first.

27 3140. As manufacturers of light-duty vehicles, the VW Entity Defendants were required
28 to provide these warranties to purchasers or lessees of their “clean” diesel vehicles.

1 3141. The VW Entity Defendants’ warranties formed a basis of the bargain that was
2 reached when Plaintiffs and other Utah Class members purchased or leased their Class Vehicles
3 equipped with the non-compliant “clean” diesel engine and emission systems.

4 3142. Plaintiffs and the Utah Class members experienced defects within the warranty
5 period. Despite the existence of warranties, the VW Entity Defendants failed to inform Plaintiffs
6 and Utah Class members that the Class Vehicles were intentionally designed and manufactured to
7 be out of compliance with applicable state and federal emissions laws, and failed to fix the
8 defective emission components free of charge.

9 3143. The VW Entity Defendants breached the express warranty promising to repair and
10 correct a manufacturing defect or materials or workmanship of any parts they supplied. The VW
11 Entity Defendants have not repaired or adjusted, and have been unable to repair or adjust, the
12 Class Vehicles’ materials and workmanship defects.

13 3144. Affording the VW Entity Defendants a reasonable opportunity to cure their breach
14 of written warranties would be unnecessary and futile here. For example, the Frequently Asked
15 Questions (“FAQ”) section of VW’s informational website states:

16 **How soon will the remedy be available, and how am I going to**
17 **be compensated for this?**

18 We cannot offer a firm date now because we need to work on a
19 remedy and review it with the government. We are proceeding as
 quickly as possible.

20 3145. In his Congressional testimony on October 8, 2015, Michael Horn stated that
21 Volkswagen intends to make Class Vehicles compliant with emission standards through software
22 fixes and the installation of auxiliary hardware, but that fix will take “1 to 2 years, minimum.”
23 When questioned on remedies for consumers, he stated that Volkswagen may pay customers for a
24 loss in resale values because of the scandal. He said that Volkswagen is not considering
25 providing loaner vehicles because the U.S. government says the vehicles are safe to drive.

26 3146. Michael Horn’s testimony serves as an admission that the limited warranty
27 promising to repair and/or correct a manufacturing defect fails in its essential purpose because the
28 VW Entity Defendants cannot meet that promise within a reasonable time.

1 3147. Furthermore, the limited warranty promising to repair and/or correct a
2 manufacturing defect fails in its essential purpose because the contractual remedy is insufficient
3 to make Plaintiffs and the other Utah Class members whole and because the VW Entity
4 Defendants have failed and/or have refused to adequately provide the promised remedies within a
5 reasonable time.

6 3148. Accordingly, recovery by Plaintiffs and the other Utah Class members is not
7 restricted to the limited warranty promising to repair and/or correct a manufacturing defect, and
8 Plaintiffs, individually and on behalf of the other Utah Class members, seek all remedies as
9 allowed by law.

10 3149. Also, as alleged in more detail herein, at the time the VW Entity Defendants
11 warranted and sold or leased the Class Vehicles, they knew that the Class Vehicles were
12 inherently defective and did not conform to their warranties; further, the VW Entity Defendants
13 had wrongfully and fraudulently concealed material facts regarding the Class Vehicles. Plaintiffs
14 and the other Utah Class members were therefore induced to purchase or lease the Class Vehicles
15 under false and/or fraudulent pretenses.

16 3150. Moreover, many of the injuries flowing from the Class Vehicles cannot be
17 resolved through the limited remedy of “replacements or adjustments,” as many incidental and
18 consequential damages have already been suffered because of Volkswagen’s fraudulent conduct
19 as alleged herein, and because of its failure and/or continued failure to provide such limited
20 remedy within a reasonable time, and any limitation on Plaintiffs’ and the other Utah Class
21 members’ remedies would be insufficient to make Plaintiffs and the other Utah Class members
22 whole.

23 3151. Finally, because of the VW Entity Defendants’ breach of warranty as set forth
24 herein, Plaintiffs and the other Utah Class members assert, as additional and/or alternative
25 remedies, the revocation of acceptance of the goods and the return to Plaintiffs and the other Utah
26 Class members of the purchase or lease price of all Class Vehicles currently owned or leased, and
27 for such other incidental and consequential damages as allowed.
28

1 3152. The VW Entity Defendants were provided notice of these issues by numerous
2 complaints filed against them, including the instant Complaint, within a reasonable amount of
3 time after Volkswagen publicly admitted to using a defeat device in the Class Vehicles to evade
4 clean air standards.

5 3153. As a direct and proximate result of the VW Entity Defendants' breach of express
6 warranties, Plaintiff and the other Utah Class members have been damaged in an amount to be
7 determined at trial.

8 **VERMONT**

9 **VERMONT COUNT I:**
10 **VIOLATIONS OF VERMONT CONSUMER PROTECTION ACT**
11 **(Vt. Stat. Ann. Tit. 9, § 2451 et seq.)**

12 3154. Plaintiffs incorporate by reference each preceding paragraph as though fully set
13 forth herein.

14 3155. Plaintiffs Ebenstein and Malloy (for the purpose of this section, "Plaintiffs") bring
15 this action on behalf of themselves and the Vermont Class against all Defendants.

16 3156. Plaintiffs and the Vermont Class are "consumers" within the meaning of Vt. Stat.
17 Tit. 9, § 2451a(a).

18 3157. Defendants are "person[s]" within the meaning of Vt. Code R. § 100(3) (citing Vt.
19 Stat. Tit. 9, § 2453).

20 3158. Volkswagen is engaged in "commerce" within the meaning of Vt. Stat. Tit. 9,
21 § 2453(a).

22 3159. The Vermont Consumer Protection Act ("Vermont CPA") prohibits "[u]nfair
23 methods of competition in commerce and unfair or deceptive acts or practices in commerce...."
24 Vt. Stat. Tit. 9, § 2453(a).

25 3160. In the course of Volkswagen's business, Volkswagen intentionally or negligently
26 concealed and suppressed material facts concerning the true emissions produced by the misnamed
27 "CleanDiesel" engines in the Class Vehicles. Defendants accomplished this by installing illegal
28 defeat device software in the Class Vehicles that caused the vehicles to operate in a low emission
test mode only during emissions testing. During normal operations, the Class Vehicles would

1 emit grossly larger quantities of noxious contaminants, sometimes 40 times over applicable
2 standards. The result was what Volkswagen intended—the Class Vehicles passed emissions
3 testing by way of deliberately induced false readings. Plaintiffs and Vermont Class members had
4 no way of discerning that Volkswagen’s representations were false and misleading because
5 Volkswagen’s defeat device software was extremely sophisticated technology. Plaintiffs and
6 Vermont Class members did not and could not unravel Volkswagen’s deception on their own. In
7 fact, it took years before the academic engineering community—specifically a research team at
8 WVU’s Center for Alternative Fuels, Engines & Emissions—detected Volkswagen’s cheat using
9 sophisticated, expensive equipment and applying decades of combined experience.

10 3161. Volkswagen thus violated the Act, at a minimum by: (1) soliciting consumers to
11 purchase the Class Vehicles when solicitation was not a bona fide effort to sell the advertised
12 goods or services; (2) engaging in advertising which would create in the mind of a reasonable
13 consumer a false impression; and (3) failing to fully disclose material exclusions, reservations,
14 limitations, modifications, or conditions of the Class Vehicles. Vt. Code R. § 103.

15 3162. Defendants engaged in misleading, false, unfair or deceptive acts or practices that
16 violated the Vermont UTPA by installing, failing to disclose and/or actively concealing the
17 “defeat device” and the true cleanliness and performance of the “clean” diesel engine system, by
18 marketing its vehicles as legal, reliable, environmentally clean, efficient, and of high quality, and
19 by presenting itself as a reputable manufacturer that valued environmental cleanliness and
20 efficiency, and that stood behind its vehicles after they were sold.

21 3163. Volkswagen compounded the deception by repeatedly asserting that the Class
22 Vehicles were safe, reliable, environmentally clean, efficient, and of high quality, and by
23 claiming to be a reputable manufacturer that valued safety, environmental cleanliness, and
24 efficiency, and stood behind its vehicles after they were sold.

25 3164. The Clean Air Act and EPA regulations require that automobiles limit their
26 emissions output to specified levels. These laws are intended for the protection of public health
27 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the
28 Clean Air Act and its regulations. See 42 U.S.C. § 7522(a)(3)(B); 40 CFR § 86.1809. By

1 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available
2 for purchase, Volkswagen violated federal law and therefore engaged in conduct that violates the
3 Vermont UTPA.

4 3165. Volkswagen knew it had installed the “defeat device” in the Class Vehicles, and
5 knew the true nature of its “clean” diesel engine system for at least six years, but concealed all of
6 that information until recently. Volkswagen also knew that it valued profits over environmental
7 cleanliness, efficiency, and compliance with the law, and that it was manufacturing, selling, and
8 distributing vehicles throughout the United States that did not comply with EPA regulations, but
9 it concealed this information as well.

10 3166. Volkswagen intentionally and knowingly misrepresented material facts regarding
11 the Class Vehicles with intent to mislead Plaintiffs and the Vermont Class.

12 3167. Volkswagen knew or should have known that its conduct violated the Vermont
13 UTPA.

14 3168. Defendants owed Plaintiffs and Vermont Class members a duty to disclose,
15 truthfully, all the facts concerning the cleanliness, efficiency and reliability of the Class Vehicles
16 because they:

- 17 a. possessed exclusive knowledge that they were
18 manufacturing, selling, and distributing vehicles throughout
the United States that did not comply with EPA regulations;
- 19 b. intentionally concealed the foregoing from regulators,
20 Plaintiffs, Class members; and/or
- 21 c. Made incomplete or negligent representations about the
22 environmental cleanliness and efficiency of the Class
23 Vehicles generally, and the use of the defeat device in
particular, while purposefully withholding material facts
from Plaintiffs that contradicted these representations.

24 3169. Defendants concealed the illegal defeat device and the true emissions, efficiency
25 and performance of the Class Vehicles, resulting in a raft of negative publicity once
26 Volkswagen’s fraud was exposed. The value of the Class Vehicles has therefore plummeted. In
27 light of the stigma Volkswagen’s misconduct attached to the Class Vehicles, the Class Vehicles
28 are now worth less than they otherwise would be worth.

1 3170. Defendants’ supply and use of the illegal defeat device and concealment of the true
2 characteristics of the “clean” diesel engine system were material to Plaintiffs and the Vermont
3 Class. A vehicle made by a reputable manufacturer of environmentally friendly vehicles is worth
4 more than an otherwise comparable vehicle made by a disreputable manufacturer of
5 environmentally dirty vehicles that conceals its polluting engines rather than promptly remedying
6 them.

7 3171. Defendants’ unfair or deceptive acts or practices were likely to and did in fact
8 deceive regulators and reasonable consumers, including Plaintiffs and Vermont Class members,
9 about the true environmental cleanliness and efficiency of Volkswagen-branded vehicles, the
10 quality of the Volkswagen brand, the devaluing of environmental cleanliness and integrity at
11 Volkswagen, and the true value of the Class Vehicles.

12 3172. Plaintiffs and Vermont Class members suffered ascertainable loss and actual
13 damages as a direct and proximate result of Volkswagen’s misrepresentations and its concealment
14 of and failure to disclose material information. Plaintiffs and the Vermont Class members who
15 purchased or leased the Class Vehicles would not have purchased or leased them at all and/or—if
16 the Vehicles’ true nature had been disclosed and mitigated, and the Vehicles rendered legal to
17 sell—would have paid significantly less for them. Plaintiffs also suffered diminished value of
18 their vehicles, as well as lost or diminished use.

19 3173. Defendants had an ongoing duty to all Volkswagen customers to refrain from
20 unfair and deceptive practices under the Vermont UTPA in the course of its business.

21 3174. Defendants’ violations present a continuing risk to Plaintiffs as well as to the
22 general public. Defendants’ unlawful acts and practices complained of herein affect the public
23 interest.

24 3175. Pursuant to Vt. Stat. Tit. 9, § 2461(b), Plaintiffs and the Vermont Class seek an
25 order enjoining Volkswagen’s unfair and/or deceptive acts or practices, actual damages, damages
26 up to three times the consideration provided, punitive damages, attorneys’ fees, costs, and any
27 other just and proper relief available under the Vermont UTPA.
28

**VERMONT COUNT II:
VERMONT LEMON LAW
(Vt. Stat. Tit. 9, § 4170, et al.)**

1
2
3 3176. Plaintiff and the Vermont Class own or lease “motor vehicles” within the meaning
4 of Vt. Stat. tit. 9, § 4171(6), because these vehicles were purchased, leased, or registered in
5 Vermont by Volkswagen and were registered in Vermont within 15 days of the date of purchase
6 or lease. These vehicles are not: (1) tractors, (2) motorized highway building equipment, (3) road-
7 making appliances, (4) snowmobiles, (5) motorcycles, (5) mopeds, (6) the living portion of
8 recreation vehicles, or (7) trucks with a gross vehicle weight over 10,000 pounds.

9 3177. The VW Entity Defendants are “manufacturer[s]” of the Class Vehicles within the
10 meaning of Vt. Stat. Tit. 9, § 4171(7) because it manufactures and assembles new motor vehicles
11 or imports for distribution through distributors of motor vehicles. It is also a “manufacturer”
12 within the definition of “distributor” and “factory branch.” *Id.*

13 3178. Plaintiff and the Vermont Class are “consumers” within the meaning of Vt. Stat.
14 Tit. 9, § 4171(2) because they bought or leased the Class Vehicles, were transferred their vehicles
15 during the duration the applicable warranty, or are otherwise entitled to the attendant terms of
16 warranty. They are not governmental entities or a business or commercial enterprise that registers
17 or leases three or more motor vehicles.

18 3179. The Class Vehicles did not conform to their express warranties during the term of
19 warranty because they were not cleaner vehicles and contained a “defeat device” designed to
20 circumvent state and federal emissions standards. These devices did in fact circumvent emissions
21 standards and substantially impaired the use, market value, and safety of their motor vehicles.

22 3180. Volkswagen had actual knowledge of the conformities during the term of warranty.
23 But the nonconformities continued to exist throughout this term, as they have not been fixed.
24 Plaintiffs and class members are excused from notifying Volkswagen of the nonconformities
25 because it was already fully aware of the problem—as it intentionally created it—and any repair
26 attempt is futile.

27
28

1 3181. Volkswagen has had a reasonable opportunity to cure the nonconformities during
2 the relevant period because of its actual knowledge of, creation of, and attempt to conceal the
3 nonconformities, but has not done so as required under Vt. Stat. Tit. 9, § 4173.

4 3182. For vehicles purchased, Plaintiff and the Vermont Class demand a full refund of
5 the contract price and all credits and allowances for any trade-in or down payment, license fees,
6 finance charges, credit charges, registration fees and any similar charges and incidental and
7 consequential damages. Vt. Stat. Tit. 9, § 4173(e). For vehicles leased, Plaintiff and the Vermont
8 Class demand the aggregate deposit and rental payments previously paid, and any incidental and
9 consequential damages incurred. Vt. Stat. Tit. 9, § 4173(e), (i). Plaintiff and the Vermont Class
10 reject an offer of replacement and will retain their vehicles until payment is tendered.

11 **VERMONT COUNT III:**
12 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
13 **(Vt. Stat. Tit. 9A, §§ 2-314 and 2A-212)**

14 3183. Plaintiffs reallege and incorporate by reference all allegations of the preceding
15 paragraphs as though fully set forth herein.

16 3184. Plaintiffs bring this Count on behalf of the Vermont Class, against VW AG, VW
17 America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the “VW
18 Entity Defendants”).

19 3185. The VW Entity Defendants are and were at all relevant times “merchants” with
20 respect to motor vehicles under Vt. Stat. Tit. 9A, § 2-104(1) and 2A-103(1)(t), and “sellers” of
21 motor vehicles under § 2-103(1)(d).

22 3186. With respect to leases, the VW Entity Defendants are and were at all relevant
23 times “lessors” of motor vehicles under Vt. Stat. Tit. 9A, § 2A-103(1)(p).

24 3187. The Class Vehicles are and were at all relevant times “goods” within the meaning
25 of Vt. Stat. Tit. 9A, §§ § 2-105(1) and 2A-103(1)(h).

26 3188. A warranty that the Class Vehicles were in merchantable condition and fit for the
27 ordinary purpose for which vehicles are used is implied by law pursuant to Vt. Stat. Tit. 9A, §§ 2-
28 314 and 2A-212.

1 3189. These Class Vehicles, when sold or leased and at all times thereafter, were not in
2 merchantable condition and are not fit for the ordinary purpose for which vehicles are used.
3 Specifically, the Class Vehicles are inherently defective in that they do not comply with federal
4 and state emissions standards, rendering certain emissions functions inoperative; and the “clean”
5 diesel engine system was not adequately designed, manufactured, and tested.

6 3190. Volkswagen was provided notice of these issues by the investigations of the EPA
7 and individual state regulators, numerous complaints filed against it including the instant
8 Complaint, and by numerous individual letters and communications sent by Plaintiffs and others
9 within a reasonable amount of time after the allegations of Class Vehicle defects became public.

10 3191. As a direct and proximate result of the VW Entity Defendants’ breach of the
11 implied warranty of merchantability, Plaintiffs and the other Vermont Class members have been
12 damaged in an amount to be proven at trial.

13 **VERMONT COUNT IV:**
14 **BREACH OF EXPRESS WARRANTY**
15 **(Vt. Stat. Tit. 9A, §§ 2-313 and 2A-210)**

16 3192. Plaintiffs reallege and incorporate by reference all preceding allegations as though
17 fully set forth herein.

18 3193. Plaintiffs bring this Count on behalf of the Vermont Class, against VW AG, VW
19 America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the “VW
20 Entity Defendants”).

21 3194. The VW Entity Defendants are and were at all relevant times “merchants” with
22 respect to motor vehicles under Vt. Stat. Tit. 9A, § 2-104(1) and 2A-103(1)(t), and “sellers” of
23 motor vehicles under § 2-103(1)(d).

24 3195. With respect to leases, the VW Entity Defendants are and were at all relevant
25 times “lessors” of motor vehicles under Vt. Stat. Tit. 9A, § 2A-103(1)(p).

26 3196. The Class Vehicles are and were at all relevant times “goods” within the meaning
27 of Vt. Stat. Tit. 9A, §§ 2-105(1) and 2A-103(1)(h).

28 3197. In connection with the purchase or lease of each one of its new vehicles, the VW
Entity Defendants provide an express New Vehicle Limited Warranty (“NVLW”) for a period of

1 three years or 36,000 miles, whichever occurs first. This NVLW exists to cover “any repair to
2 correct a manufacturers defect in materials or workmanship.”

3 3198. The Clean Air Act requires manufacturers of light-duty vehicles to provide two
4 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
5 Warranty.”

6 3199. The EPA requires vehicle manufacturers to provide a Performance Warranty with
7 respect to the vehicles’ emission systems. Thus, Volkswagen also provides an express warranty
8 for its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
9 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
10 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
11 emission control components are covered for the first eight years or 80,000 miles, whichever
12 comes first. These major emission control components subject to the longer warranty include the
13 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
14 device or computer.

15 3200. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
16 with respect to their vehicles’ emission systems. Thus, the VW Entity Defendants also provide an
17 express warranty for their vehicles through a Federal Emission Control System Defect Warranty.
18 The Design and Defect Warranty required by the EPA covers repair of emission control or
19 emission related parts which fail to function or function improperly because of a defect in
20 materials or workmanship. This warranty provides protection for two years or 24,000 miles,
21 whichever comes first, or, for the major emission control components, for eight years or 80,000
22 miles, whichever comes first.

23 3201. As manufacturers of light-duty vehicles, the VW Entity Defendants were required
24 to provide these warranties to purchasers or lessees of their “clean” diesel vehicles.

25 3202. The VW Entity Defendants’ warranties formed a basis of the bargain that was
26 reached when Plaintiffs and other Vermont Class members purchased or leased their Class
27 Vehicles equipped with the non-compliant “clean” diesel engine and emission systems.
28

1 3203. Plaintiffs and the Vermont Class members experienced defects within the warranty
2 period. Despite the existence of warranties, the VW Entity Defendants failed to inform Plaintiffs
3 and Vermont Class members that the Class Vehicles were intentionally designed and
4 manufactured to be out of compliance with applicable state and federal emissions laws, and failed
5 to fix the defective emission components free of charge.

6 3204. The VW Entity Defendants breached the express warranty promising to repair and
7 correct a manufacturing defect or materials or workmanship of any parts they supplied. The VW
8 Entity Defendants have not repaired or adjusted, and have been unable to repair or adjust, the
9 Class Vehicles' materials and workmanship defects.

10 3205. Affording the VW Entity Defendants a reasonable opportunity to cure their breach
11 of written warranties would be unnecessary and futile here. For example, the Frequently Asked
12 Questions ("FAQ") section of VW's informational website states:

13 **How soon will the remedy be available, and how am I going to**
14 **be compensated for this?**

15 We cannot offer a firm date now because we need to work on a
16 remedy and review it with the government. We are proceeding as
 quickly as possible.

17 3206. In his Congressional testimony on October 8, 2015, Michael Horn stated that
18 Volkswagen intends to make Class Vehicles compliant with emission standards through software
19 fixes and the installation of auxiliary hardware, but that fix will take "1 to 2 years, minimum."
20 When questioned on remedies for consumers, he stated that Volkswagen may pay customers for a
21 loss in resale values because of the scandal. He said that Volkswagen is not considering
22 providing loaner vehicles because the U.S. government says the vehicles are safe to drive.

23 3207. Michael Horn's testimony serves as an admission that the limited warranty
24 promising to repair and/or correct a manufacturing defect fails in its essential purpose because the
25 VW Entity Defendants cannot meet that promise within a reasonable time.

26 3208. Furthermore, the limited warranty promising to repair and/or correct a
27 manufacturing defect fails in its essential purpose because the contractual remedy is insufficient
28 to make Plaintiffs and the other Vermont Class members whole and because the VW Entity

1 Defendants have failed and/or have refused to adequately provide the promised remedies within a
2 reasonable time.

3 3209. Accordingly, recovery by Plaintiffs and the other Vermont Class members is not
4 restricted to the limited warranty promising to repair and/or correct a manufacturing defect, and
5 Plaintiffs, individually and on behalf of the other Vermont Class members, seek all remedies as
6 allowed by law.

7 3210. Also, as alleged in more detail herein, at the time the VW Entity Defendants
8 warranted and sold or leased the Class Vehicles, they knew that the Class Vehicles were
9 inherently defective and did not conform to their warranties; further, the VW Entity Defendants
10 had wrongfully and fraudulently concealed material facts regarding the Class Vehicles. Plaintiffs
11 and the other Vermont Class members were therefore induced to purchase or lease the Class
12 Vehicles under false and/or fraudulent pretenses.

13 3211. Moreover, many of the injuries flowing from the Class Vehicles cannot be
14 resolved through the limited remedy of “replacements or adjustments,” as many incidental and
15 consequential damages have already been suffered because of Volkswagen’s fraudulent conduct
16 as alleged herein, and because of its failure and/or continued failure to provide such limited
17 remedy within a reasonable time, and any limitation on Plaintiffs’ and the other Vermont Class
18 members’ remedies would be insufficient to make Plaintiffs and the other Vermont Class
19 members whole.

20 3212. Finally, because of the VW Entity Defendants’ breach of warranty as set forth
21 herein, Plaintiffs and the other Vermont Class members assert, as additional and/or alternative
22 remedies, the revocation of acceptance of the goods and the return to Plaintiffs and the other
23 Vermont Class members of the purchase or lease price of all Class Vehicles currently owned or
24 leased, and for such other incidental and consequential damages as allowed.

25 3213. The VW Entity Defendants were provided notice of these issues by numerous
26 complaints filed against them, including the instant Complaint, within a reasonable amount of
27 time after Volkswagen publicly admitted to using a defeat device in the Class Vehicles to evade
28 clean air standards.

1 WVU's Center for Alternative Fuels, Engines & Emissions—detected Volkswagen's cheat using
2 sophisticated, expensive equipment and applying decades of combined experience.

3 3221. Volkswagen thus violated the Act, at a minimum by: (1) misrepresenting the
4 source, sponsorship, approval, or certification of goods or services; (2) misrepresenting that goods
5 or services have certain quantities, characteristics, ingredients, uses, or benefits; (3)
6 misrepresenting that goods or services are of a particular standard, quality, grade, style or model;
7 (4) advertising goods or services with intent not to sell them as advertised; and (5) using any other
8 deception, fraud, false pretense, false promise, or misrepresentation in connection with a
9 consumer transaction. Va. Code § 59.1-200(A).

10 3222. Defendants engaged in misleading, false, unfair or deceptive acts or practices that
11 violated the Virginia CPA by installing, failing to disclose and/or actively concealing the “defeat
12 device” and the true cleanliness and performance of the “clean” diesel engine system, by
13 marketing its vehicles as legal, reliable, environmentally clean, efficient, and of high quality, and
14 by presenting itself as a reputable manufacturer that valued environmental cleanliness and
15 efficiency, and that stood behind its vehicles after they were sold.

16 3223. Volkswagen compounded the deception by repeatedly asserting that the Class
17 Vehicles were safe, reliable, environmentally clean, efficient, and of high quality, and by
18 claiming to be a reputable manufacturer that valued safety, environmental cleanliness, and
19 efficiency, and stood behind its vehicles after they were sold.

20 3224. The Clean Air Act and EPA regulations require that automobiles limit their
21 emissions output to specified levels. These laws are intended for the protection of public health
22 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the
23 Clean Air Act and its regulations. See 42 U.S.C. § 7522(a)(3)(B); 40 CFR § 86.1809. By
24 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available
25 for purchase, Volkswagen violated federal law and therefore engaged in conduct that violates the
26 Virginia CPA.

27 3225. Volkswagen knew it had installed the “defeat device” in the Class Vehicles, and
28 knew the true nature of its “clean” diesel engine system for at least six years, but concealed all of

1 that information until recently. Volkswagen also knew that it valued profits over environmental
2 cleanliness, efficiency, and compliance with the law, and that it was manufacturing, selling, and
3 distributing vehicles throughout the United States that did not comply with EPA regulations, but
4 it concealed this information as well.

5 3226. Volkswagen intentionally and knowingly misrepresented material facts regarding
6 the Class Vehicles with intent to mislead Plaintiffs and the Virginia Class.

7 3227. Volkswagen knew or should have known that its conduct violated the Virginia
8 CPA.

9 3228. Defendants owed Plaintiffs and Virginia Class members a duty to disclose,
10 truthfully, all the facts concerning the cleanliness, efficiency and reliability of the Class Vehicles
11 because they:

- 12 a. possessed exclusive knowledge that they were
13 manufacturing, selling, and distributing vehicles throughout
14 the United States that did not comply with EPA regulations;
- 15 b. intentionally concealed the foregoing from regulators,
16 Plaintiffs, Class members; and/or
- 17 c. Made incomplete or negligent representations about the
18 environmental cleanliness and efficiency of the Class
19 Vehicles generally, and the use of the defeat device in
20 particular, while purposefully withholding material facts
21 from Plaintiffs that contradicted these representations.

22 3229. Defendants concealed the illegal defeat device and the true emissions, efficiency
23 and performance of the Class Vehicles, resulting in a raft of negative publicity once
24 Volkswagen's fraud was exposed. The value of the Class Vehicles has therefore plummeted. In
25 light of the stigma Volkswagen's misconduct attached to the Class Vehicles, the Class Vehicles
26 are now worth less than they otherwise would be worth.

27 3230. Defendants' supply and use of the illegal defeat device and concealment of the true
28 characteristics of the "clean" diesel engine system were material to Plaintiffs and the Virginia
Class. A vehicle made by a reputable manufacturer of environmentally friendly vehicles is worth
more than an otherwise comparable vehicle made by a disreputable manufacturer of

1 environmentally dirty vehicles that conceals its polluting engines rather than promptly remedying
2 them.

3 3231. Defendants' unfair or deceptive acts or practices were likely to and did in fact
4 deceive regulators and reasonable consumers, including Plaintiffs and Virginia Class members,
5 about the true environmental cleanliness and efficiency of Volkswagen-branded vehicles, the
6 quality of the Volkswagen brand, the devaluing of environmental cleanliness and integrity at
7 Volkswagen, and the true value of the Class Vehicles.

8 3232. Plaintiffs and Virginia Class members suffered ascertainable loss and actual
9 damages as a direct and proximate result of Volkswagen's misrepresentations and its concealment
10 of and failure to disclose material information. Plaintiffs and the Virginia Class members who
11 purchased or leased the Class Vehicles would not have purchased or leased them at all and/or—if
12 the Vehicles' true nature had been disclosed and mitigated, and the Vehicles rendered legal to
13 sell—would have paid significantly less for them. Plaintiffs also suffered diminished value of
14 their vehicles, as well as lost or diminished use.

15 3233. Defendants had an ongoing duty to all Volkswagen customers to refrain from
16 unfair and deceptive practices under the Virginia CPA in the course of its business.

17 3234. Defendants' violations present a continuing risk to Plaintiffs as well as to the
18 general public. Defendants' unlawful acts and practices complained of herein affect the public
19 interest.

20 3235. Pursuant to Va. Code § 59.1-204(A)–(B), Plaintiffs and the Virginia Class are
21 entitled to the greater of actual damages or \$500 for each Virginia Class member, attorneys' fees,
22 and costs. Because Volkswagen's actions were willful, Plaintiffs and the Virginia Class should
23 each receive the greater of treble damages or \$1,000. *Id.*

24 **VIRGINIA COUNT II:**
25 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
26 **(Va. Code §§ 8.2-314 and 8.2A-212)**

27 3236. Plaintiffs reallege and incorporate by reference all allegations of the preceding
28 paragraphs as though fully set forth herein.

1 3237. Plaintiffs bring this Count on behalf of the Virginia Class, against VW AG, VW
2 America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the “VW
3 Entity Defendants”).

4 3238. The VW Entity Defendants are and were at all relevant times “merchants” with
5 respect to motor vehicles under Va. Code § 8.2-104(1) and 8.2A-103(1)(t), and “sellers” of motor
6 vehicles under § 8.2-103(1)(d).

7 3239. With respect to leases, the VW Entity Defendants are and were at all relevant
8 times “lessors” of motor vehicles under Va. Code § 8.2A-103(1)(p).

9 3240. The Class Vehicles are and were at all relevant times “goods” within the meaning
10 of Va. Code §§ 8.2-105(1) and 8.2A-103(1)(h).

11 3241. A warranty that the Class Vehicles were in merchantable condition and fit for the
12 ordinary purpose for which vehicles are used is implied by law pursuant to Va. Code §§ 8.2-314
13 and 8.2A-212.

14 3242. These Class Vehicles, when sold or leased and at all times thereafter, were not in
15 merchantable condition and are not fit for the ordinary purpose for which vehicles are used.
16 Specifically, the Class Vehicles are inherently defective in that they do not comply with federal
17 and state emissions standards, rendering certain emissions functions inoperative; and the “clean”
18 diesel engine system was not adequately designed, manufactured, and tested.

19 3243. Volkswagen was provided notice of these issues by the investigations of the EPA
20 and individual state regulators, numerous complaints filed against it including the instant
21 Complaint, and by numerous individual letters and communications sent by Plaintiffs and others
22 within a reasonable amount of time after the allegations of Class Vehicle defects became public.

23 3244. As a direct and proximate result of the VW Entity Defendants’ breach of the
24 implied warranty of merchantability, Plaintiffs and the other Virginia Class members have been
25 damaged in an amount to be proven at trial.

**VIRGINIA COUNT III:
BREACH OF EXPRESS WARRANTY
(Va. Code §§ 8.2-313 and 8.2A-210)**

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3 3245. Plaintiffs reallege and incorporate by reference all preceding allegations as though
4 fully set forth herein.

5 3246. Plaintiffs bring this Count on behalf of the Virginia Class, against VW AG, VW
6 America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the “VW
7 Entity Defendants”).

8 3247. The VW Entity Defendants are and were at all relevant times “merchants” with
9 respect to motor vehicles under Va. Code § 8.2-104(1) and 8.2A-103(1)(t), and “sellers” of motor
10 vehicles under § 8.2-103(1)(d).

11 3248. With respect to leases, the VW Entity Defendants are and were at all relevant
12 times “lessors” of motor vehicles under Va. Code § 8.2A-103(1)(p).

13 3249. The Class Vehicles are and were at all relevant times “goods” within the meaning
14 of Va. Code §§ 8.2-105(1) and 8.2A-103(1)(h).

15 3250. In connection with the purchase or lease of each one of its new vehicles, the VW
16 Entity Defendants provide an express New Vehicle Limited Warranty (“NVLW”) for a period of
17 three years or 36,000 miles, whichever occurs first. This NVLW exists to cover “any repair to
18 correct a manufacturers defect in materials or workmanship.”

19 3251. The Clean Air Act requires manufacturers of light-duty vehicles to provide two
20 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
21 Warranty.”

22 3252. The EPA requires vehicle manufacturers to provide a Performance Warranty with
23 respect to the vehicles’ emission systems. Thus, Volkswagen also provides an express warranty
24 for its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
25 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
26 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
27 emission control components are covered for the first eight years or 80,000 miles, whichever
28 comes first. These major emission control components subject to the longer warranty include the

1 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
2 device or computer.

3 3253. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
4 with respect to their vehicles' emission systems. Thus, the VW Entity Defendants also provide an
5 express warranty for their vehicles through a Federal Emission Control System Defect Warranty.
6 The Design and Defect Warranty required by the EPA covers repair of emission control or
7 emission related parts which fail to function or function improperly because of a defect in
8 materials or workmanship. This warranty provides protection for two years or 24,000 miles,
9 whichever comes first, or, for the major emission control components, for eight years or 80,000
10 miles, whichever comes first.

11 3254. As manufacturers of light-duty vehicles, the VW Entity Defendants were required
12 to provide these warranties to purchasers or lessees of their "clean" diesel vehicles.

13 3255. The VW Entity Defendants' warranties formed a basis of the bargain that was
14 reached when Plaintiffs and other Virginia Class members purchased or leased their Class
15 Vehicles equipped with the non-compliant "clean" diesel engine and emission systems.

16 3256. Plaintiffs and the Virginia Class members experienced defects within the warranty
17 period. Despite the existence of warranties, the VW Entity Defendants failed to inform Plaintiffs
18 and Virginia Class members that the Class Vehicles were intentionally designed and
19 manufactured to be out of compliance with applicable state and federal emissions laws, and failed
20 to fix the defective emission components free of charge.

21 3257. The VW Entity Defendants breached the express warranty promising to repair and
22 correct a manufacturing defect or materials or workmanship of any parts they supplied. The VW
23 Entity Defendants have not repaired or adjusted, and have been unable to repair or adjust, the
24 Class Vehicles' materials and workmanship defects.

25 3258. Affording the VW Entity Defendants a reasonable opportunity to cure their breach
26 of written warranties would be unnecessary and futile here. For example, the Frequently Asked
27 Questions ("FAQ") section of VW's informational website states:
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How soon will the remedy be available, and how am I going to be compensated for this?

We cannot offer a firm date now because we need to work on a remedy and review it with the government. We are proceeding as quickly as possible.

3259. In his Congressional testimony on October 8, 2015, Michael Horn stated that Volkswagen intends to make Class Vehicles compliant with emission standards through software fixes and the installation of auxiliary hardware, but that fix will take “1 to 2 years, minimum.” When questioned on remedies for consumers, he stated that Volkswagen may pay customers for a loss in resale values because of the scandal. He said that Volkswagen is not considering providing loaner vehicles because the U.S. government says the vehicles are safe to drive.

3260. Michael Horn’s testimony serves as an admission that the limited warranty promising to repair and/or correct a manufacturing defect fails in its essential purpose because the VW Entity Defendants cannot meet that promise within a reasonable time.

3261. Furthermore, the limited warranty promising to repair and/or correct a manufacturing defect fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and the other Virginia Class members whole and because the VW Entity Defendants have failed and/or have refused to adequately provide the promised remedies within a reasonable time.

3262. Accordingly, recovery by Plaintiffs and the other Virginia Class members is not restricted to the limited warranty promising to repair and/or correct a manufacturing defect, and Plaintiffs, individually and on behalf of the other Virginia Class members, seek all remedies as allowed by law.

3263. Also, as alleged in more detail herein, at the time the VW Entity Defendants warranted and sold or leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did not conform to their warranties; further, the VW Entity Defendants had wrongfully and fraudulently concealed material facts regarding the Class Vehicles. Plaintiffs and the other Virginia Class members were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

1 3264. Moreover, many of the injuries flowing from the Class Vehicles cannot be
2 resolved through the limited remedy of “replacements or adjustments,” as many incidental and
3 consequential damages have already been suffered because of Volkswagen’s fraudulent conduct
4 as alleged herein, and because of its failure and/or continued failure to provide such limited
5 remedy within a reasonable time, and any limitation on Plaintiffs’ and the other Virginia Class
6 members’ remedies would be insufficient to make Plaintiffs and the other Virginia Class
7 members whole.

8 3265. Finally, because of the VW Entity Defendants’ breach of warranty as set forth
9 herein, Plaintiffs and the other Virginia Class members assert, as additional and/or alternative
10 remedies, the revocation of acceptance of the goods and the return to Plaintiffs and the other
11 Virginia Class members of the purchase or lease price of all Class Vehicles currently owned or
12 leased, and for such other incidental and consequential damages as allowed.

13 3266. The VW Entity Defendants were provided notice of these issues by numerous
14 complaints filed against them, including the instant Complaint, within a reasonable amount of
15 time after Volkswagen publicly admitted to using a defeat device in the Class Vehicles to evade
16 clean air standards.

17 3267. As a direct and proximate result of the VW Entity Defendants’ breach of express
18 warranties, Plaintiff and the other Virginia Class members have been damaged in an amount to be
19 determined at trial.

20 **WASHINGTON**

21 **WASHINGTON COUNT I:**
22 **VIOLATIONS OF THE WASHINGTON CONSUMER PROTECTION ACT**
23 **(Wash. Rev. Code Ann. §§ 19.86.010, et seq.)**

24 3268. Plaintiffs incorporate by reference each preceding paragraph as though fully set
25 forth herein.

26 3269. Plaintiffs Clements, Dial, Herr, and Mallery (for the purpose of this section,
27 “Plaintiffs”) bring this action on behalf of themselves and the Washington Class against all
28 Defendants.

1 3270. Defendants, Plaintiffs, and the Washington Class are “persons” within the meaning
2 of Wash. Rev. Code § 19.86.010(2).

3 3271. Volkswagen is engaged in “trade” or “commerce” within the meaning of Wash.
4 Rev. Code § 19.86.010(2).

5 3272. The Washington Consumer Protection Act (“Washington CPA”) makes unlawful
6 “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any
7 trade or commerce.” Wash. Rev. Code § 19.86.020.

8 3273. In the course of Volkswagen’s business, Volkswagen intentionally or negligently
9 concealed and suppressed material facts concerning the true emissions produced by the misnamed
10 “CleanDiesel” engines in the Class Vehicles. Defendants accomplished this by installing illegal
11 defeat device software in the Class Vehicles that caused the vehicles to operate in a low emission
12 test mode only during emissions testing. During normal operations, the Class Vehicles would
13 emit grossly larger quantities of noxious contaminants, sometimes 40 times over applicable
14 standards. The result was what Volkswagen intended—the Class Vehicles passed emissions
15 testing by way of deliberately induced false readings. Plaintiffs and Washington Class members
16 had no way of discerning that Volkswagen’s representations were false and misleading because
17 Volkswagen’s defeat device software was extremely sophisticated technology. Plaintiffs and
18 Washington Class members did not and could not unravel Volkswagen’s deception on their own.
19 In fact, it took years before the academic engineering community—specifically a research team at
20 WVU’s Center for Alternative Fuels, Engines & Emissions—detected Volkswagen’s cheat using
21 sophisticated, expensive equipment and applying decades of combined experience.

22 3274. Volkswagen thus violated the Act, at a minimum by: (1) making direct statements
23 or causing reasonable inferences about the Class Vehicles that had the tendency to mislead
24 consumers; (2) engaging in advertising concerning the cleanliness of the vehicle, the overall
25 impression of which had the tendency to mislead consumers; and (3) failing to make clear and
26 conspicuous disclosures of limitations, disclaimers, qualifications, conditions, exclusions or
27 restrictions of the Class Vehicles.
28

1 3275. Defendants engaged in misleading, false, unfair or deceptive acts or practices that
2 violated the Washington CPA by installing, failing to disclose and/or actively concealing the
3 “defeat device” and the true cleanliness and performance of the “clean” diesel engine system, by
4 marketing its vehicles as legal, reliable, environmentally clean, efficient, and of high quality, and
5 by presenting itself as a reputable manufacturer that valued environmental cleanliness and
6 efficiency, and that stood behind its vehicles after they were sold.

7 3276. Volkswagen compounded the deception by repeatedly asserting that the Class
8 Vehicles were safe, reliable, environmentally clean, efficient, and of high quality, and by
9 claiming to be a reputable manufacturer that valued safety, environmental cleanliness, and
10 efficiency, and stood behind its vehicles after they were sold.

11 3277. The Clean Air Act and EPA regulations require that automobiles limit their
12 emissions output to specified levels. These laws are intended for the protection of public health
13 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the
14 Clean Air Act and its regulations. See 42 U.S.C. § 7522(a)(3)(B); 40 CFR § 86.1809. By
15 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available
16 for purchase, Volkswagen violated federal law and therefore engaged in conduct that violates the
17 Washington CPA.

18 3278. Volkswagen knew it had installed the “defeat device” in the Class Vehicles, and
19 knew the true nature of its “clean” diesel engine system for at least six years, but concealed all of
20 that information until recently. Volkswagen also knew that it valued profits over environmental
21 cleanliness, efficiency, and compliance with the law, and that it was manufacturing, selling, and
22 distributing vehicles throughout the United States that did not comply with EPA regulations, but
23 it concealed this information as well.

24 3279. Volkswagen intentionally and knowingly misrepresented material facts regarding
25 the Class Vehicles with intent to mislead Plaintiffs and the Washington Class.

26 3280. Volkswagen knew or should have known that its conduct violated the Washington
27 CPA.

28

1 3281. Defendants owed Plaintiffs and Washington Class members a duty to disclose,
2 truthfully, all the facts concerning the cleanliness, efficiency and reliability of the Class Vehicles
3 because they:

- 4 a. possessed exclusive knowledge that they were
5 manufacturing, selling, and distributing vehicles throughout
6 the United States that did not comply with EPA regulations;
- 7 b. intentionally concealed the foregoing from regulators,
8 Plaintiffs, Class members; and/or
- 9 c. Made incomplete or negligent representations about the
10 environmental cleanliness and efficiency of the Class
11 Vehicles generally, and the use of the defeat device in
12 particular, while purposefully withholding material facts
13 from Plaintiffs that contradicted these representations.

11 3282. Defendants concealed the illegal defeat device and the true emissions, efficiency
12 and performance of the Class Vehicles, resulting in a raft of negative publicity once
13 Volkswagen's fraud was exposed. The value of the Class Vehicles has therefore plummeted. In
14 light of the stigma Volkswagen's misconduct attached to the Class Vehicles, the Class Vehicles
15 are now worth less than they otherwise would be worth.

16 3283. Defendants' supply and use of the illegal defeat device and concealment of the true
17 characteristics of the "clean" diesel engine system were material to Plaintiffs and the Washington
18 Class. A vehicle made by a reputable manufacturer of environmentally friendly vehicles is worth
19 more than an otherwise comparable vehicle made by a disreputable manufacturer of
20 environmentally dirty vehicles that conceals its polluting engines rather than promptly remedying
21 them.

22 3284. Defendants' unfair or deceptive acts or practices were likely to and did in fact
23 deceive regulators and reasonable consumers, including Plaintiffs and Washington Class
24 members, about the true environmental cleanliness and efficiency of Volkswagen-branded
25 vehicles, the quality of the Volkswagen brand, the devaluing of environmental cleanliness and
26 integrity at Volkswagen, and the true value of the Class Vehicles.

27 3285. Plaintiffs and Washington Class members suffered ascertainable loss and actual
28 damages as a direct and proximate result of Volkswagen's misrepresentations and its concealment

1 of and failure to disclose material information. Plaintiffs and the Washington Class members
2 who purchased or leased the Class Vehicles would not have purchased or leased them at all
3 and/or—if the Vehicles’ true nature had been disclosed and mitigated, and the Vehicles rendered
4 legal to sell—would have paid significantly less for them. Plaintiffs also suffered diminished
5 value of their vehicles, as well as lost or diminished use.

6 3286. Defendants had an ongoing duty to all Volkswagen customers to refrain from
7 unfair and deceptive practices under the Washington CPA in the course of its business.

8 3287. Defendants’ violations present a continuing risk to Plaintiffs as well as to the
9 general public. Defendants’ unlawful acts and practices complained of herein affect the public
10 interest.

11 3288. Pursuant to Wash. Rev. Code § 19.86.090, Plaintiffs and the Washington Class
12 seek an order enjoining Volkswagen’s unfair and/or deceptive acts or practices, damages,
13 punitive damages, and attorneys’ fees, costs, and any other just and proper relief available under
14 the Washington CPA. Because Volkswagen’s actions were willful and knowing, Plaintiffs’
15 damages should be trebled. *Id.*

16 **WASHINGTON COUNT II:**
17 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
18 **(Wash. Rev. Code §§ 62A.2-314 and 62A.2A-212)**

19 3289. Plaintiffs reallege and incorporate by reference all allegations of the preceding
20 paragraphs as though fully set forth herein.

21 3290. Plaintiffs bring this Count on behalf of the Washington Class, against VW AG,
22 VW America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the
23 “VW Entity Defendants”).

24 3291. The VW Entity Defendants are and were at all relevant times “merchants” with
25 respect to motor vehicles under Wash. Rev. Code § 62A.2-104(1) and 62A.2A-103(1)(t), and
26 “sellers” of motor vehicles under § 2.103(a)(4).

27 3292. With respect to leases, the VW Entity Defendants are and were at all relevant
28 times “lessors” of motor vehicles under Wash. Rev. Code § 62A.2A-103(1)(p).

1 3293. The Class Vehicles are and were at all relevant times “goods” within the meaning
2 of Wash. Rev. Code §§ 62A.2-105(1) and 62A.2A-103(1)(h).

3 3294. A warranty that the Class Vehicles were in merchantable condition and fit for the
4 ordinary purpose for which vehicles are used is implied by law pursuant to Wash. Rev. Code
5 §§ 62A.2-314 and 62A.2A-212.

6 3295. These Class Vehicles, when sold or leased and at all times thereafter, were not in
7 merchantable condition and are not fit for the ordinary purpose for which vehicles are used.
8 Specifically, the Class Vehicles are inherently defective in that they do not comply with federal
9 and state emissions standards, rendering certain emissions functions inoperative; and the “clean”
10 diesel engine system was not adequately designed, manufactured, and tested.

11 3296. Volkswagen was provided notice of these issues by the investigations of the EPA
12 and individual state regulators, numerous complaints filed against it including the instant
13 Complaint, and by numerous individual letters and communications sent by Plaintiffs and others
14 within a reasonable amount of time after the allegations of Class Vehicle defects became public.

15 3297. As a direct and proximate result of the VW Entity Defendants’ breach of the
16 implied warranty of merchantability, Plaintiffs and the other Washington Class members have
17 been damaged in an amount to be proven at trial.

18 **WASHINGTON COUNT III:**
19 **BREACH OF EXPRESS WARRANTY**
 (Wash. Rev. Code §§ 62A.2-313 and 62A.2A-210)

20 3298. Plaintiffs reallege and incorporate by reference all preceding allegations as though
21 fully set forth herein.

22 3299. Plaintiffs bring this Count on behalf of the Washington Class, against VW AG,
23 VW America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the
24 “VW Entity Defendants”).

25 3300. The VW Entity Defendants are and were at all relevant times “merchants” with
26 respect to motor vehicles under Wash. Rev. Code § 62A.2-104(1) and 62A.2A-103(1)(t), and
27 “sellers” of motor vehicles under § 2.103(a)(4).
28

1 3301. With respect to leases, the VW Entity Defendants are and were at all relevant
2 times “lessors” of motor vehicles under Wash. Rev. Code § 62A.2A-103(1)(p).

3 3302. The Class Vehicles are and were at all relevant times “goods” within the meaning
4 of Wash. Rev. Code §§ 62A.2-105(1) and 62A.2A-103(1)(h).

5 3303. In connection with the purchase or lease of each one of its new vehicles, the VW
6 Entity Defendants provide an express New Vehicle Limited Warranty (“NVLW”) for a period of
7 three years or 36,000 miles, whichever occurs first. This NVLW exists to cover “any repair to
8 correct a manufacturers defect in materials or workmanship.”

9 3304. The Clean Air Act requires manufacturers of light-duty vehicles to provide two
10 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
11 Warranty.”

12 3305. The EPA requires vehicle manufacturers to provide a Performance Warranty with
13 respect to the vehicles’ emission systems. Thus, Volkswagen also provides an express warranty
14 for its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
15 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
16 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
17 emission control components are covered for the first eight years or 80,000 miles, whichever
18 comes first. These major emission control components subject to the longer warranty include the
19 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
20 device or computer.

21 3306. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
22 with respect to their vehicles’ emission systems. Thus, the VW Entity Defendants also provide an
23 express warranty for their vehicles through a Federal Emission Control System Defect Warranty.
24 The Design and Defect Warranty required by the EPA covers repair of emission control or
25 emission related parts which fail to function or function improperly because of a defect in
26 materials or workmanship. This warranty provides protection for two years or 24,000 miles,
27 whichever comes first, or, for the major emission control components, for eight years or 80,000
28 miles, whichever comes first.

1 3307. As manufacturers of light-duty vehicles, the VW Entity Defendants were required
2 to provide these warranties to purchasers or lessees of their “clean” diesel vehicles.

3 3308. The VW Entity Defendants’ warranties formed a basis of the bargain that was
4 reached when Plaintiffs and other Washington Class members purchased or leased their Class
5 Vehicles equipped with the non-compliant “clean” diesel engine and emission systems.

6 3309. Plaintiffs and the Washington Class members experienced defects within the
7 warranty period. Despite the existence of warranties, the VW Entity Defendants failed to inform
8 Plaintiffs and Washington Class members that the Class Vehicles were intentionally designed and
9 manufactured to be out of compliance with applicable state and federal emissions laws, and failed
10 to fix the defective emission components free of charge.

11 3310. The VW Entity Defendants breached the express warranty promising to repair and
12 correct a manufacturing defect or materials or workmanship of any parts they supplied. The VW
13 Entity Defendants have not repaired or adjusted, and have been unable to repair or adjust, the
14 Class Vehicles’ materials and workmanship defects.

15 3311. Affording the VW Entity Defendants a reasonable opportunity to cure their breach
16 of written warranties would be unnecessary and futile here. For example, the Frequently Asked
17 Questions (“FAQ”) section of VW’s informational website states:

18 **How soon will the remedy be available, and how am I going to**
19 **be compensated for this?**

20 We cannot offer a firm date now because we need to work on a
21 remedy and review it with the government. We are proceeding as
22 quickly as possible.

22 3312. In his Congressional testimony on October 8, 2015, Michael Horn stated that
23 Volkswagen intends to make Class Vehicles compliant with emission standards through software
24 fixes and the installation of auxiliary hardware, but that fix will take “1 to 2 years, minimum.”
25 When questioned on remedies for consumers, he stated that Volkswagen may pay customers for a
26 loss in resale values because of the scandal. He said that Volkswagen is not considering
27 providing loaner vehicles because the U.S. government says the vehicles are safe to drive.
28

1 3313. Michael Horn’s testimony serves as an admission that the limited warranty
2 promising to repair and/or correct a manufacturing defect fails in its essential purpose because the
3 VW Entity Defendants cannot meet that promise within a reasonable time.

4 3314. Furthermore, the limited warranty promising to repair and/or correct a
5 manufacturing defect fails in its essential purpose because the contractual remedy is insufficient
6 to make Plaintiffs and the other Washington Class members whole and because the VW Entity
7 Defendants have failed and/or have refused to adequately provide the promised remedies within a
8 reasonable time.

9 3315. Accordingly, recovery by Plaintiffs and the other Washington Class members is
10 not restricted to the limited warranty promising to repair and/or correct a manufacturing defect,
11 and Plaintiffs, individually and on behalf of the other Washington Class members, seek all
12 remedies as allowed by law.

13 3316. Also, as alleged in more detail herein, at the time the VW Entity Defendants
14 warranted and sold or leased the Class Vehicles, they knew that the Class Vehicles were
15 inherently defective and did not conform to their warranties; further, the VW Entity Defendants
16 had wrongfully and fraudulently concealed material facts regarding the Class Vehicles. Plaintiffs
17 and the other Washington Class members were therefore induced to purchase or lease the Class
18 Vehicles under false and/or fraudulent pretenses.

19 3317. Moreover, many of the injuries flowing from the Class Vehicles cannot be
20 resolved through the limited remedy of “replacements or adjustments,” as many incidental and
21 consequential damages have already been suffered because of Volkswagen’s fraudulent conduct
22 as alleged herein, and because of its failure and/or continued failure to provide such limited
23 remedy within a reasonable time, and any limitation on Plaintiffs’ and the other Washington Class
24 members’ remedies would be insufficient to make Plaintiffs and the other Washington Class
25 members whole.

26 3318. Finally, because of the VW Entity Defendants’ breach of warranty as set forth
27 herein, Plaintiffs and the other Washington Class members assert, as additional and/or alternative
28 remedies, the revocation of acceptance of the goods and the return to Plaintiffs and the other

1 Washington Class members of the purchase or lease price of all Class Vehicles currently owned
2 or leased, and for such other incidental and consequential damages as allowed.

3 3319. The VW Entity Defendants were provided notice of these issues by numerous
4 complaints filed against them, including the instant Complaint, within a reasonable amount of
5 time after Volkswagen publicly admitted to using a defeat device in the Class Vehicles to evade
6 clean air standards.

7 3320. As a direct and proximate result of the VW Entity Defendants' breach of express
8 warranties, Plaintiff and the other Washington Class members have been damaged in an amount
9 to be determined at trial.

10 **WASHINGTON COUNT IV:**
11 **WASHINGTON LEMON LAW**
12 **(Wash. Rev. Code § 19.118.005, et al.)**

13 3321. Plaintiff and the Washington Class own or lease "new motor vehicles" within the
14 meaning of Wash. Rev. Code § 19.118.021(12), because these vehicles are self-propelled
15 primarily designed for the transportation of persons or property over the public highways and
16 were originally purchased or leased at retail from a new motor vehicle dealer or leasing company
17 in Washington. These vehicles do not include vehicles purchased or leased by a business as part
18 of a fleet of ten or more vehicles at one time or under a single purchase or lease agreement or
19 those portions of a motor home designated, used, or maintained primarily as a mobile dwelling,
20 office, or commercial space.

21 3322. The VW Entity Defendants are "manufacturer[s]" of the Class Vehicles within the
22 meaning of Wash. Rev. Code § 19.118.021(8) because it is in the business of constructing or
23 assembling new motor vehicles or is engaged in the business of importing new motor vehicles
24 into the United States for the purpose of selling or distributing new motor vehicles to new motor
25 vehicle dealers.

26 3323. Plaintiff and the Washington Class are "consumers" within the meaning of Wash.
27 Rev. Code § 19.118.021(4) because they entered into an agreement or contract for the transfer,
28 lease, or purchase of a new motor vehicle, other than for purposes of resale or sublease, during
the eligibility period as defined by Wash. Rev. Code § 19.118.021(6).

1 3324. The Class Vehicles did not conform to their warranties as defined by Wash. Rev.
 2 Code § 19.118.021(22), during the “eligibility period,” defined by Wash. Rev. Code
 3 § 19.118.021(6), or the coverage period under the applicable written warranty because they were
 4 not cleaner vehicles and contained a “defeat device” designed to circumvent state and federal
 5 emissions standards. Wash. Rev. Code § 19.118.031. These devices did in fact circumvent
 6 emissions standards and substantially impaired the use, market value, and safety of their motor
 7 vehicles.

8 3325. Volkswagen had actual knowledge of the conformities during warranty periods.
 9 But the nonconformities continued to exist throughout this term, as they have not been fixed.
 10 Plaintiffs and class members are excused from notifying Volkswagen of the nonconformities
 11 because it was already fully aware of the problem—as it intentionally created it—and any repair
 12 attempt is futile.

13 3326. Volkswagen has had a reasonable opportunity to cure the nonconformities because
 14 of its actual knowledge of, creation of, and attempt to conceal the nonconformities, but has not
 15 done so as required under Wash. Rev. Code § 19.118.031.

16 3327. For vehicles purchased, Plaintiff and the Washington Class demand a full refund
 17 of the contract price, all collateral charges, and incidental costs. Wash. Rev. Code
 18 § 19.118.041(1)(b). For vehicles leased, Plaintiff and the Washington Class demand all payments
 19 made under the lease including but not limited to all lease payments, trade-in value or inception
 20 payment, security deposit, and all collateral charges and incidental costs. The consumer is also
 21 relieved of any future obligation to the lessor or lienholder. *Id.* Plaintiff and the Washington Class
 22 reject an offer of replacement and will retain their vehicles until payment is tendered.

WEST VIRGINIA

**WEST VIRGINIA COUNT I:
 VIOLATIONS OF THE CONSUMER CREDIT AND PROTECTION ACT
 (W. Va. Code § 46A-1-101, *et seq.*)**

26 3328. Plaintiffs incorporate by reference each preceding paragraph as though fully set
 27 forth herein.

1 3329. Plaintiffs Lanham and Moore (for the purpose of this section, “Plaintiffs”) bring
2 this action on behalf of themselves and the West Virginia Class against all Defendants.

3 3330. Defendants, Plaintiffs, and the West Virginia Class are “persons” within the
4 meaning of W. Va. Code § 46A-1-102(31). Plaintiffs and the West Virginia Class members are
5 “consumers” within the meaning of W. Va. Code §§ 46A-1-102(2) and 46A-1-102(12).

6 3331. Volkswagen is engaged in “trade” or “commerce” within the meaning of W. Va.
7 Code § 46A-6-102(6).

8 3332. The West Virginia Consumer Credit and Protection Act (“West Virginia CCPA”)
9 makes unlawful “[u]nfair methods of competition and unfair or deceptive acts or practices in the
10 conduct of any trade or commerce.” W. Va. Code § 46A-6-104.

11 3333. In the course of Volkswagen’s business, Volkswagen intentionally or negligently
12 concealed and suppressed material facts concerning the true emissions produced by the misnamed
13 “CleanDiesel” engines in the Class Vehicles. Defendants accomplished this by installing illegal
14 defeat device software in the Class Vehicles that caused the vehicles to operate in a low emission
15 test mode only during emissions testing. During normal operations, the Class Vehicles would
16 emit grossly larger quantities of noxious contaminants, sometimes 40 times over applicable
17 standards. The result was what Volkswagen intended—the Class Vehicles passed emissions
18 testing by way of deliberately induced false readings. Plaintiffs and West Virginia Class
19 members had no way of discerning that Volkswagen’s representations were false and misleading
20 because Volkswagen’s defeat device software was extremely sophisticated technology. Plaintiffs
21 and West Virginia Class members did not and could not unravel Volkswagen’s deception on their
22 own. In fact, it took years before the academic engineering community—specifically a research
23 team at WVU’s Center for Alternative Fuels, Engines & Emissions—detected Volkswagen’s
24 cheat using sophisticated, expensive equipment and applying decades of combined experience.

25 3334. Volkswagen thus violated the West Virginia CCPA, at a minimum by:
26 representing that the Class Vehicles had characteristics, uses, benefits and qualities which they do
27 not have; representing that the Class Vehicles are of a particular standard, quality and grade when
28 they are not; advertising Class Vehicles with the intent not to sell or lease them as advertised; and

1 engaging in other conduct creating a likelihood of confusion or of misunderstanding. See W.Va.
2 Code § 46A-6-102(7)(E), (G), (I) and (L).

3 3335. Defendants engaged in misleading, false, unfair or deceptive acts or practices that
4 violated the West Virginia CCPA by installing, failing to disclose and/or actively concealing the
5 “defeat device” and the true cleanliness and performance of the “clean” diesel engine system, by
6 marketing its vehicles as legal, reliable, environmentally clean, efficient, and of high quality, and
7 by presenting itself as a reputable manufacturer that valued environmental cleanliness and
8 efficiency, and that stood behind its vehicles after they were sold.

9 3336. Volkswagen compounded the deception by repeatedly asserting that the Class
10 Vehicles were safe, reliable, environmentally clean, efficient, and of high quality, and by
11 claiming to be a reputable manufacturer that valued safety, environmental cleanliness, and
12 efficiency, and stood behind its vehicles after they were sold.

13 3337. The Clean Air Act and EPA regulations require that automobiles limit their
14 emissions output to specified levels. These laws are intended for the protection of public health
15 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the
16 Clean Air Act and its regulations. See 42 U.S.C. § 7522(a)(3)(B); 40 CFR § 86.1809. By
17 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available
18 for purchase, Volkswagen violated federal law and therefore engaged in conduct that violates the
19 West Virginia CCPA.

20 3338. Volkswagen knew it had installed the “defeat device” in the Class Vehicles, and
21 knew the true nature of its “clean” diesel engine system for at least six years, but concealed all of
22 that information until recently. Volkswagen also knew that it valued profits over environmental
23 cleanliness, efficiency, and compliance with the law, and that it was manufacturing, selling, and
24 distributing vehicles throughout the United States that did not comply with EPA regulations, but
25 it concealed this information as well.

26 3339. Volkswagen intentionally and knowingly misrepresented material facts regarding
27 the Class Vehicles with intent to mislead Plaintiffs and the West Virginia Class.
28

1 3340. Volkswagen knew or should have known that its conduct violated the West
2 Virginia CCPA.

3 3341. Defendants owed Plaintiffs and West Virginia Class members a duty to disclose,
4 truthfully, all the facts concerning the cleanliness, efficiency and reliability of the Class Vehicles
5 because they:

- 6 a. possessed exclusive knowledge that they were
7 manufacturing, selling, and distributing vehicles throughout
8 the United States that did not comply with EPA regulations;
- 9 b. intentionally concealed the foregoing from regulators,
10 Plaintiffs, Class members; and/or
- 11 c. Made incomplete or negligent representations about the
12 environmental cleanliness and efficiency of the Class
13 Vehicles generally, and the use of the defeat device in
14 particular, while purposefully withholding material facts
15 from Plaintiffs that contradicted these representations.

16 3342. Defendants concealed the illegal defeat device and the true emissions, efficiency
17 and performance of the Class Vehicles, resulting in a raft of negative publicity once
18 Volkswagen's fraud was exposed. The value of the Class Vehicles has therefore plummeted. In
19 light of the stigma Volkswagen's misconduct attached to the Class Vehicles, the Class Vehicles
20 are now worth less than they otherwise would be worth.

21 3343. Defendants' supply and use of the illegal defeat device and concealment of the true
22 characteristics of the "clean" diesel engine system were material to Plaintiffs and the West
23 Virginia Class. A vehicle made by a reputable manufacturer of environmentally friendly vehicles
24 is worth more than an otherwise comparable vehicle made by a disreputable manufacturer of
25 environmentally dirty vehicles that conceals its polluting engines rather than promptly remedying
26 them.

27 3344. Defendants' unfair or deceptive acts or practices were likely to and did in fact
28 deceive regulators and reasonable consumers, including Plaintiffs and West Virginia Class
members, about the true environmental cleanliness and efficiency of Volkswagen-branded
vehicles, the quality of the Volkswagen brand, the devaluing of environmental cleanliness and
integrity at Volkswagen, and the true value of the Class Vehicles.

1 3345. Plaintiffs and West Virginia Class members suffered ascertainable loss and actual
2 damages as a direct and proximate result of Volkswagen’s misrepresentations and its concealment
3 of and failure to disclose material information. Plaintiffs and the West Virginia Class members
4 who purchased or leased the Class Vehicles would not have purchased or leased them at all
5 and/or—if the Vehicles’ true nature had been disclosed and mitigated, and the Vehicles rendered
6 legal to sell—would have paid significantly less for them. Plaintiffs also suffered diminished
7 value of their vehicles, as well as lost or diminished use.

8 3346. Defendants had an ongoing duty to all Volkswagen customers to refrain from
9 unfair and deceptive practices under the West Virginia CCPA in the course of its business.

10 3347. Defendants’ violations present a continuing risk to Plaintiffs as well as to the
11 general public. Defendants’ unlawful acts and practices complained of herein affect the public
12 interest.

13 3348. Pursuant to W. Va. Code § 46A-6-106(a), Plaintiffs and the West Virginia Class
14 seek an order enjoining Volkswagen’s unfair and/or deceptive acts or practices, damages,
15 punitive damages, and any other just and proper relief available under the West Virginia CCPA.

16 3349. On September 28, 2015, at least one Plaintiff sent a letter complying with W. VA.
17 CODE § 46A-6-106(c). Because Volkswagen failed to remedy its unlawful conduct within the
18 requisite time period, Plaintiffs seek all damages and relief to which Plaintiffs and the West
19 Virginia Class are entitled.

20 **WEST VIRGINIA COUNT II:**
21 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
22 **(W. Va. Code §§ 46-2-314 and 46-2A-212)**

23 3350. Plaintiffs reallege and incorporate by reference all allegations of the preceding
24 paragraphs as though fully set forth herein.

25 3351. Plaintiffs bring this Count on behalf of the West Virginia Class, against VW AG,
26 VW America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the
27 “VW Entity Defendants”).
28

1 3352. The VW Entity Defendants are and were at all relevant times “merchants” with
2 respect to motor vehicles under W. Va. Code § 46-2-104(1) and 46-2A-103(1)(t), and “sellers” of
3 motor vehicles under § 46-2-103(1)(d).

4 3353. With respect to leases, the VW Entity Defendants are and were at all relevant
5 times “lessors” of motor vehicles under W. Va. Code § 46-2A-103(1)(p).

6 3354. The Class Vehicles are and were at all relevant times “goods” within the meaning
7 of W. Va. Code §§ 46-2-105(1) and 46-2A-103(1)(h).

8 3355. A warranty that the Class Vehicles were in merchantable condition and fit for the
9 ordinary purpose for which vehicles are used is implied by law pursuant to W. Va. Code §§ 46-2-
10 314 and 46-2A-212.

11 3356. These Class Vehicles, when sold or leased and at all times thereafter, were not in
12 merchantable condition and are not fit for the ordinary purpose for which vehicles are used.
13 Specifically, the Class Vehicles are inherently defective in that they do not comply with federal
14 and state emissions standards, rendering certain emissions functions inoperative; and the “clean”
15 diesel engine system was not adequately designed, manufactured, and tested.

16 3357. Volkswagen was provided notice of these issues by the investigations of the EPA
17 and individual state regulators, numerous complaints filed against it including the instant
18 Complaint, and by numerous individual letters and communications sent by Plaintiffs and others
19 within a reasonable amount of time after the allegations of Class Vehicle defects became public.

20 3358. As a direct and proximate result of the VW Entity Defendants’ breach of the
21 implied warranty of merchantability, Plaintiffs and the other West Virginia Class members have
22 been damaged in an amount to be proven at trial.

23 **WEST VIRGINIA COUNT III:**
24 **BREACH OF EXPRESS WARRANTY**
25 **(W. Va. Code §§ 46-2-313 and 46-2A-210)**

26 3359. Plaintiffs reallege and incorporate by reference all preceding allegations as though
27 fully set forth herein.
28

1 3360. Plaintiffs bring this Count on behalf of the West Virginia Class, against VW AG,
2 VW America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the
3 “VW Entity Defendants”).

4 3361. The VW Entity Defendants are and were at all relevant times “merchants” with
5 respect to motor vehicles under W. Va. Code §§ 46-2-104(1) and 46-2A-103(1)(t), and “sellers”
6 of motor vehicles under § 46-2-103(1)(d).

7 3362. With respect to leases, the VW Entity Defendants are and were at all relevant
8 times “lessors” of motor vehicles under W. Va. Code § 46-2A-103(1)(p).

9 3363. The Class Vehicles are and were at all relevant times “goods” within the meaning
10 of W. Va. Code §§ 46-2-105(1) and 46-2A-103(1)(h).

11 3364. In connection with the purchase or lease of each one of its new vehicles, the VW
12 Entity Defendants provide an express New Vehicle Limited Warranty (“NVLW”) for a period of
13 three years or 36,000 miles, whichever occurs first. This NVLW exists to cover “any repair to
14 correct a manufacturers defect in materials or workmanship.”

15 3365. The Clean Air Act requires manufacturers of light-duty vehicles to provide two
16 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
17 Warranty.”

18 3366. The EPA requires vehicle manufacturers to provide a Performance Warranty with
19 respect to the vehicles’ emission systems. Thus, Volkswagen also provides an express warranty
20 for its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
21 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
22 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
23 emission control components are covered for the first eight years or 80,000 miles, whichever
24 comes first. These major emission control components subject to the longer warranty include the
25 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
26 device or computer.

27 3367. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
28 with respect to their vehicles’ emission systems. Thus, the VW Entity Defendants also provide an

1 express warranty for their vehicles through a Federal Emission Control System Defect Warranty.
2 The Design and Defect Warranty required by the EPA covers repair of emission control or
3 emission related parts which fail to function or function improperly because of a defect in
4 materials or workmanship. This warranty provides protection for two years or 24,000 miles,
5 whichever comes first, or, for the major emission control components, for eight years or 80,000
6 miles, whichever comes first.

7 3368. As manufacturers of light-duty vehicles, the VW Entity Defendants were required
8 to provide these warranties to purchasers or lessees of their “clean” diesel vehicles.

9 3369. The VW Entity Defendants’ warranties formed a basis of the bargain that was
10 reached when Plaintiffs and other West Virginia Class members purchased or leased their Class
11 Vehicles equipped with the non-compliant “clean” diesel engine and emission systems.

12 3370. Plaintiffs and the West Virginia Class members experienced defects within the
13 warranty period. Despite the existence of warranties, the VW Entity Defendants failed to inform
14 Plaintiffs and West Virginia Class members that the Class Vehicles were intentionally designed
15 and manufactured to be out of compliance with applicable state and federal emissions laws, and
16 failed to fix the defective emission components free of charge.

17 3371. The VW Entity Defendants breached the express warranty promising to repair and
18 correct a manufacturing defect or materials or workmanship of any parts they supplied. The VW
19 Entity Defendants have not repaired or adjusted, and have been unable to repair or adjust, the
20 Class Vehicles’ materials and workmanship defects.

21 3372. Affording the VW Entity Defendants a reasonable opportunity to cure their breach
22 of written warranties would be unnecessary and futile here. For example, the Frequently Asked
23 Questions (“FAQ”) section of VW’s informational website states:

24 **How soon will the remedy be available, and how am I going to**
25 **be compensated for this?**

26 We cannot offer a firm date now because we need to work on a
27 remedy and review it with the government. We are proceeding as
28 quickly as possible.

1 3373. In his Congressional testimony on October 8, 2015, Michael Horn stated that
2 Volkswagen intends to make Class Vehicles compliant with emission standards through software
3 fixes and the installation of auxiliary hardware, but that fix will take “1 to 2 years, minimum.”
4 When questioned on remedies for consumers, he stated that Volkswagen may pay customers for a
5 loss in resale values because of the scandal. He said that Volkswagen is not considering
6 providing loaner vehicles because the U.S. government says the vehicles are safe to drive.

7 3374. Michael Horn’s testimony serves as an admission that the limited warranty
8 promising to repair and/or correct a manufacturing defect fails in its essential purpose because the
9 VW Entity Defendants cannot meet that promise within a reasonable time.

10 3375. Furthermore, the limited warranty promising to repair and/or correct a
11 manufacturing defect fails in its essential purpose because the contractual remedy is insufficient
12 to make Plaintiffs and the other West Virginia Class members whole and because the VW Entity
13 Defendants have failed and/or have refused to adequately provide the promised remedies within a
14 reasonable time.

15 3376. Accordingly, recovery by Plaintiffs and the other West Virginia Class members is
16 not restricted to the limited warranty promising to repair and/or correct a manufacturing defect,
17 and Plaintiffs, individually and on behalf of the other West Virginia Class members, seek all
18 remedies as allowed by law.

19 3377. Also, as alleged in more detail herein, at the time the VW Entity Defendants
20 warranted and sold or leased the Class Vehicles, they knew that the Class Vehicles were
21 inherently defective and did not conform to their warranties; further, the VW Entity Defendants
22 had wrongfully and fraudulently concealed material facts regarding the Class Vehicles. Plaintiffs
23 and the other West Virginia Class members were therefore induced to purchase or lease the Class
24 Vehicles under false and/or fraudulent pretenses.

25 3378. Moreover, many of the injuries flowing from the Class Vehicles cannot be
26 resolved through the limited remedy of “replacements or adjustments,” as many incidental and
27 consequential damages have already been suffered because of Volkswagen’s fraudulent conduct
28 as alleged herein, and because of its failure and/or continued failure to provide such limited

1 remedy within a reasonable time, and any limitation on Plaintiffs’ and the other West Virginia
2 Class members’ remedies would be insufficient to make Plaintiffs and the other West Virginia
3 Class members whole.

4 3379. Finally, because of the VW Entity Defendants’ breach of warranty as set forth
5 herein, Plaintiffs and the other West Virginia Class members assert, as additional and/or
6 alternative remedies, the revocation of acceptance of the goods and the return to Plaintiffs and the
7 other West Virginia Class members of the purchase or lease price of all Class Vehicles currently
8 owned or leased, and for such other incidental and consequential damages as allowed.

9 3380. The VW Entity Defendants were provided notice of these issues by numerous
10 complaints filed against them, including the instant Complaint, within a reasonable amount of
11 time after Volkswagen publicly admitted to using a defeat device in the Class Vehicles to evade
12 clean air standards.

13 3381. As a direct and proximate result of the VW Entity Defendants’ breach of express
14 warranties, Plaintiff and the other West Virginia Class members have been damaged in an amount
15 to be determined at trial.

16 **WEST VIRGINIA COUNT IV:**
17 **BREACH OF NEW MOTOR VEHICLE WARRANTY**
18 **(WEST VIRGINIA “LEMON LAW”)**
(W. Va. Code §§ 46A-6A-1, et seq.)

19 3382. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
20 forth herein.

21 3383. Plaintiffs bring this Count on behalf of the West Virginia Class against the VW
22 Entity Defendants.

23 3384. The West Virginia Class members who purchased or leased the Class Vehicles in
24 West Virginia are “consumers” within the meaning of W. Va. Code § 46A-6A-2(1).

25 3385. The VW Entity Defendants are “manufacturer[s]” of the Class Vehicles within the
26 meaning of W. Va. Code § 46A-6A-2(2).

27 3386. The Class Vehicles are “motor vehicles” as defined by W. Va. Code § 46A-6A-
28 2(4).

1 3387. In connection with the purchase or lease of each one of its new vehicles,
2 Volkswagen provides an express New Vehicle Limited Warranty (NVLW) for a period of three
3 years or 36,000 miles, whichever occurs first. This NVLW exists to cover “any repair to correct a
4 manufacturers defect in materials or workmanship.”

5 3388. The Clean Air Act requires manufacturers of light-duty vehicles to provide two
6 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
7 Warranty.”

8 3389. The EPA requires vehicle manufacturers to provide a Performance Warranty with
9 respect to the vehicles’ emissions systems. Thus, Volkswagen also provides an express warranty
10 for its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
11 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
12 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
13 emission control components are covered for the first eight years or 80,000 miles, whichever
14 comes first. These major emission control components subject to the longer warranty include the
15 catalytic converters, the electronic emissions control unit (ECU), and the onboard emissions
16 diagnostic device or computer.

17 3390. The EPA requires vehicle manufacturers to issue Defect Warranties with respect to
18 their vehicles’ emissions systems. Thus, Volkswagen also provides an express warranty to its
19 vehicles through a Federal Emissions Control System Defect Warranty. The Design and Defect
20 Warranty required by the EPA covers repair of emission control or emission related parts which
21 fail to function or function improperly due to a defect in materials or workmanship. This warranty
22 provides protection for two years or 24,000 miles, whichever comes first, or, for the major
23 emissions control components, for eight years or 80,000 miles, whichever comes first.

24 3391. As a manufacturer of light-duty vehicles, Volkswagen was required to provide
25 these warranties to Plaintiffs and the West Virginia Class members. Volkswagen’s warranties
26 formed the basis of the bargain that was reached when Plaintiffs and other Class members
27 purchased or leased their Class Vehicles equipped with the non-compliant CleanDiesel engine
28 system from Volkswagen.

1 3392. The emissions defect in the Class Vehicles existed from the date of the original
2 sale of the new vehicle to the consumer but could not be detected by a reasonable consumer
3 exercising reasonable care and diligence. Therefore, applicable express warranties for the Class
4 Vehicles containing the defeat device software would be extended. Further extension of the
5 express warranty period is now required because of the difficulties the VW Entity Defendants
6 may have in executing a massive recall of approximately 500,000 Class Vehicles in the United
7 States (along with an additional estimated 11.5 million vehicles worldwide).

8 3393. On, September 28, 2015, at least one West Virginia Plaintiff sent a letter to
9 Volkswagen to provide opportunity to cure pursuant to W.Va. Code §§ 46A-6A-3(a) and 5(c).
10 Volkswagen failed to offer to cure within the requisite statutory time period. Plaintiffs and West
11 Virginia Class members therefore seek all damages and relief available against the VW Entity
12 Defendants under the West Virginia Lemon Law.

13 3394. As a direct and proximate result of the VW Entity Defendants' breaches of their
14 duties under West Virginia's Lemon Law, the West Virginia Class members received goods
15 whose defect substantially impairs their value. The West Virginia Class has been damaged by the
16 diminished market value of the vehicles along with the compromised functioning and/or non-use
17 of their Class Vehicles.

18 3395. The VW Entity Defendants have a duty under § 46A-6A-3 to make all repairs
19 necessary to correct the defect herein described to bring the Class Vehicles into conformity with
20 all written warranties. In the event that the VW Entity Defendants cannot affect such repairs, they
21 have a duty to replace each Class Vehicle with a comparable new motor vehicle that conforms to
22 the warranty.

23 3396. As a result of the VW Entity Defendants' breaches, the Plaintiffs and the West
24 Virginia Class are entitled to the following:

- 25 a. Revocation of acceptance and refund of the purchase price,
26 including, but not limited to, sales tax, license and
27 registration fees, and other reasonable expenses incurred for
28 the purchase of the new motor vehicle, or if there be no such
revocation of acceptance, damages for diminished value of
the motor vehicle;

- 1 b. Damages for the cost of repairs reasonably required to
- 2 conform the motor vehicle to the express warranty;
- 3 c. Damages for the loss of use, annoyance or inconvenience
- 4 resulting from the nonconformity, including, but not limited
- 5 to, reasonable expenses incurred for replacement
- 6 transportation during any period when the vehicle is out of
- 7 service by reason of the nonconformity or by reason of
- 8 repair; and
- 9 d. Reasonable attorney fees.

10 W. Va. Code § 46A-6A-4(b)(1)-(4).

11 **WISCONSIN**

12 **WISCONSIN COUNT I:**

13 **VIOLATIONS OF THE WISCONSIN**

14 **DECEPTIVE TRADE PRACTICES ACT**

15 **(Wis. Stat. § 100.18)**

16 3397. Plaintiffs incorporate by reference each preceding paragraph as though fully set

17 forth herein.

18 3398. Plaintiffs Niegelsen and Swenson (for the purpose of this section, “Plaintiffs”)

19 bring this action on behalf of themselves and the Wisconsin Class against all Defendants.

20 3399. Plaintiffs and the Wisconsin Class members are members of “the public” within

21 the meaning of Wis. Stat. § 100.18(1). Plaintiffs and Wisconsin Class members purchased or

22 leased one or more Class Vehicles.

23 3400. Plaintiffs and Wisconsin Class members are “persons” under the Wisconsin

24 Deceptive Trade Practices Act (“Wisconsin DTPA”), Wis. Stat. § 100.18(1).

25 3401. Volkswagen is a “person, firm, corporation or association” within the meaning of

26 Wis. Stat. § 100.18(1).

27 3402. The Wisconsin DTPA makes unlawful any “representation or statement of fact

28 which is untrue, deceptive or misleading.” Wis. Stat. § 100.18(1).

3403. In the course of Volkswagen’s business, Volkswagen intentionally or negligently

concealed and suppressed material facts concerning the true emissions produced by the misnamed

“CleanDiesel” engines in the Class Vehicles. Defendants accomplished this by installing illegal

defeat device software in the Class Vehicles that caused the vehicles to operate in a low emission

1 test mode only during emissions testing. During normal operations, the Class Vehicles would
2 emit grossly larger quantities of noxious contaminants, sometimes 40 times over applicable
3 standards. The result was what Volkswagen intended—the Class Vehicles passed emissions
4 testing by way of deliberately induced false readings. Plaintiffs and Wisconsin Class members
5 had no way of discerning that Volkswagen’s representations were false and misleading because
6 Volkswagen’s defeat device software was extremely sophisticated technology. Plaintiffs and
7 Wisconsin Class members did not and could not unravel Volkswagen’s deception on their own.
8 In fact, it took years before the academic engineering community—specifically a research team at
9 WVU’s Center for Alternative Fuels, Engines & Emissions—detected Volkswagen’s cheat using
10 sophisticated, expensive equipment and applying decades of combined experience.

11 3404. Volkswagen thus violated the Wisconsin DTPA, at a minimum by making myriad
12 “representation[s] or statement[s] of fact which [are] untrue, deceptive or misleading” concerning
13 the Class Vehicles.

14 3405. In the course of Volkswagen’s business, and in connection with consumer
15 transactions, Volkswagen engaged in misleading, false, unfair or deceptive acts or practices that
16 violated the Wisconsin DTPA by installing, failing to disclose and/or actively concealing the
17 “defeat device” and the true cleanliness and performance of the “clean” diesel engine system, by
18 marketing its vehicles as legal, reliable, environmentally clean, efficient, and of high quality, and
19 by presenting itself as a reputable manufacturer that valued environmental cleanliness and
20 efficiency, and that stood behind its vehicles after they were sold.

21 3406. Volkswagen compounded the deception by repeatedly asserting that the Class
22 Vehicles were safe, reliable, environmentally clean, efficient, and of high quality, and by
23 claiming to be a reputable manufacturer that valued safety, environmental cleanliness, and
24 efficiency, and stood behind its vehicles after they were sold.

25 3407. The Clean Air Act and EPA implementing regulations require that automobiles
26 limit their emissions output to specified levels. These laws are intended for the protection of
27 public health and welfare. “Defeat devices” like those in the Class Vehicles are defined and
28 prohibited by the Clean Air Act and its regulations. See 42 U.S.C. § 7522(a)(3)(B); 40 CFR

1 § 86.1809. By installing illegal “defeat devices” in the Class Vehicles and by making those
2 vehicles available for purchase, Volkswagen violated federal law and therefore engaged in
3 conduct that violates the Wisconsin DTPA.

4 3408. Volkswagen knew it had installed the “defeat device” in the Class Vehicles, and
5 knew the true nature of its “clean” diesel engine system for at least six years, but concealed all of
6 that information until recently. Volkswagen also knew that it valued profits over environmental
7 cleanliness, efficiency, and compliance with the law, and that it was manufacturing, selling, and
8 distributing vehicles throughout the United States that did not comply with EPA regulations, but
9 it concealed this information as well.

10 3409. Volkswagen intentionally and knowingly misrepresented material facts regarding
11 the Class Vehicles with intent to mislead Plaintiffs and the Wisconsin Class.

12 3410. Volkswagen knew or should have known that its conduct violated the Wisconsin
13 DTPA.

14 3411. Defendants owed Plaintiffs and Wisconsin Class members a duty to disclose,
15 truthfully, all the facts concerning the cleanliness, efficiency and reliability of the Class Vehicles
16 because they:

- 17 a. possessed exclusive knowledge that they were
18 manufacturing, selling, and distributing vehicles throughout
the United States that did not comply with EPA regulations;
- 19 b. intentionally concealed the foregoing from regulators,
20 Plaintiffs, Class members; and/or
- 21 c. Made incomplete or negligent representations about the
22 environmental cleanliness and efficiency of the Class
23 Vehicles generally, and the use of the defeat device in
particular, while purposefully withholding material facts
from Plaintiffs that contradicted these representations.

24 3412. Defendants concealed the illegal defeat device and the true emissions, efficiency
25 and performance of the Class Vehicles, resulting in a raft of negative publicity once
26 Volkswagen’s fraud was exposed. The value of the Class Vehicles has therefore plummeted. In
27 light of the stigma Volkswagen’s misconduct attached to the Class Vehicles, the Class Vehicles
28 are now worth less than they otherwise would be worth.

1 3413. Defendants’ supply and use of the illegal defeat device and concealment of the true
2 characteristics of the “clean” diesel engine system were material to Plaintiffs and the Wisconsin
3 Class. A vehicle made by a reputable manufacturer of environmentally friendly vehicles is worth
4 more than an otherwise comparable vehicle made by a disreputable manufacturer of
5 environmentally dirty vehicles that conceals its polluting engines rather than promptly remedying
6 them.

7 3414. Defendants’ unfair or deceptive acts or practices were likely to and did in fact
8 deceive regulators and reasonable consumers, including Plaintiffs and Wisconsin Class members,
9 about the true environmental cleanliness and efficiency of Volkswagen-branded vehicles, the
10 quality of the Volkswagen brand, the devaluing of environmental cleanliness and integrity at
11 Volkswagen, and the true value of the Class Vehicles.

12 3415. Plaintiffs and Wisconsin Class members suffered ascertainable loss and actual
13 damages as a direct and proximate result of Volkswagen’s misrepresentations and its concealment
14 of and failure to disclose material information. Plaintiffs and the Wisconsin Class members who
15 purchased or leased the Class Vehicles would not have purchased or leased them at all and/or—if
16 the Vehicles’ true nature had been disclosed and mitigated, and the Vehicles rendered legal to
17 sell—would have paid significantly less for them. Plaintiffs also suffered diminished value of
18 their vehicles, as well as lost or diminished use.

19 3416. Defendants had an ongoing duty to all Volkswagen customers to refrain from
20 unfair and deceptive practices under the Wisconsin DTPA in the course of its business.

21 3417. Defendants’ violations present a continuing risk to Plaintiffs as well as to the
22 general public. Defendants’ unlawful acts and practices complained of herein affect the public
23 interest.

24 3418. Plaintiffs and the Wisconsin Class seek damages, court costs and attorneys’ fees
25 under Wis. Stat. § 100.18(11)(b)(2), and any other just and proper relief available under the
26 Wisconsin DTPA.

**WISCONSIN COUNT II:
BREACH OF EXPRESS WARRANTY
(Wis. Stat. §§ 402.313 and 411.210)**

1
2
3 3419. Plaintiffs reallege and incorporate by reference all preceding allegations as though
4 fully set forth herein.

5 3420. Plaintiffs bring this Count on behalf of the Wisconsin Class, against VW AG, VW
6 America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the “VW
7 Entity Defendants”).

8 3421. The VW Entity Defendants are and were at all relevant times “merchants” with
9 respect to motor vehicles under Wis. Stat. § 402.104(3) and 411.103(1)(t), and “sellers” of motor
10 vehicles under § 402.103(1)(d).

11 3422. With respect to leases, the VW Entity Defendants are and were at all relevant
12 times “lessors” of motor vehicles under Wis. Stat. § 411.103(1)(p).

13 3423. The Class Vehicles are and were at all relevant times “goods” within the meaning
14 of Wis. Stat. §§ 402.105(1)(c) and 411.103(1)(h).

15 3424. In connection with the purchase or lease of each one of its new vehicles, the VW
16 Entity Defendants provide an express New Vehicle Limited Warranty (“NVLW”) for a period of
17 three years or 36,000 miles, whichever occurs first. This NVLW exists to cover “any repair to
18 correct a manufacturers defect in materials or workmanship.”

19 3425. The Clean Air Act requires manufacturers of light-duty vehicles to provide two
20 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
21 Warranty.”

22 3426. The EPA requires vehicle manufacturers to provide a Performance Warranty with
23 respect to the vehicles’ emission systems. Thus, Volkswagen also provides an express warranty
24 for its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
25 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
26 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
27 emission control components are covered for the first eight years or 80,000 miles, whichever
28 comes first. These major emission control components subject to the longer warranty include the

1 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
2 device or computer.

3 3427. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
4 with respect to their vehicles' emission systems. Thus, the VW Entity Defendants also provide an
5 express warranty for their vehicles through a Federal Emission Control System Defect Warranty.
6 The Design and Defect Warranty required by the EPA covers repair of emission control or
7 emission related parts which fail to function or function improperly because of a defect in
8 materials or workmanship. This warranty provides protection for two years or 24,000 miles,
9 whichever comes first, or, for the major emission control components, for eight years or 80,000
10 miles, whichever comes first.

11 3428. As manufacturers of light-duty vehicles, the VW Entity Defendants were required
12 to provide these warranties to purchasers or lessees of their "clean" diesel vehicles.

13 3429. The VW Entity Defendants' warranties formed a basis of the bargain that was
14 reached when Plaintiffs and other Wisconsin Class members purchased or leased their Class
15 Vehicles equipped with the non-compliant "clean" diesel engine and emission systems.

16 3430. Plaintiffs and the Wisconsin Class members experienced defects within the
17 warranty period. Despite the existence of warranties, the VW Entity Defendants failed to inform
18 Plaintiffs and Wisconsin Class members that the Class Vehicles were intentionally designed and
19 manufactured to be out of compliance with applicable state and federal emissions laws, and failed
20 to fix the defective emission components free of charge.

21 3431. The VW Entity Defendants breached the express warranty promising to repair and
22 correct a manufacturing defect or materials or workmanship of any parts they supplied. The VW
23 Entity Defendants have not repaired or adjusted, and have been unable to repair or adjust, the
24 Class Vehicles' materials and workmanship defects.

25 3432. Affording the VW Entity Defendants a reasonable opportunity to cure their breach
26 of written warranties would be unnecessary and futile here. For example, the Frequently Asked
27 Questions ("FAQ") section of VW's informational website states:
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How soon will the remedy be available, and how am I going to be compensated for this?

We cannot offer a firm date now because we need to work on a remedy and review it with the government. We are proceeding as quickly as possible.

3433. In his Congressional testimony on October 8, 2015, Michael Horn stated that Volkswagen intends to make Class Vehicles compliant with emission standards through software fixes and the installation of auxiliary hardware, but that fix will take “1 to 2 years, minimum.” When questioned on remedies for consumers, he stated that Volkswagen may pay customers for a loss in resale values because of the scandal. He said that Volkswagen is not considering providing loaner vehicles because the U.S. government says the vehicles are safe to drive.

3434. Michael Horn’s testimony serves as an admission that the limited warranty promising to repair and/or correct a manufacturing defect fails in its essential purpose because the VW Entity Defendants cannot meet that promise within a reasonable time.

3435. Furthermore, the limited warranty promising to repair and/or correct a manufacturing defect fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and the other Wisconsin Class members whole and because the VW Entity Defendants have failed and/or have refused to adequately provide the promised remedies within a reasonable time.

3436. Accordingly, recovery by Plaintiffs and the other Wisconsin Class members is not restricted to the limited warranty promising to repair and/or correct a manufacturing defect, and Plaintiffs, individually and on behalf of the other Wisconsin Class members, seek all remedies as allowed by law.

3437. Also, as alleged in more detail herein, at the time the VW Entity Defendants warranted and sold or leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did not conform to their warranties; further, the VW Entity Defendants had wrongfully and fraudulently concealed material facts regarding the Class Vehicles. Plaintiffs and the other Wisconsin Class members were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

1 3438. Moreover, many of the injuries flowing from the Class Vehicles cannot be
2 resolved through the limited remedy of “replacements or adjustments,” as many incidental and
3 consequential damages have already been suffered because of Volkswagen’s fraudulent conduct
4 as alleged herein, and because of its failure and/or continued failure to provide such limited
5 remedy within a reasonable time, and any limitation on Plaintiffs’ and the other Wisconsin Class
6 members’ remedies would be insufficient to make Plaintiffs and the other Wisconsin Class
7 members whole.

8 3439. Finally, because of the VW Entity Defendants’ breach of warranty as set forth
9 herein, Plaintiffs and the other Wisconsin Class members assert, as additional and/or alternative
10 remedies, the revocation of acceptance of the goods and the return to Plaintiffs and the other
11 Wisconsin Class members of the purchase or lease price of all Class Vehicles currently owned or
12 leased, and for such other incidental and consequential damages as allowed.

13 3440. The VW Entity Defendants were provided notice of these issues by numerous
14 complaints filed against them, including the instant Complaint, within a reasonable amount of
15 time after Volkswagen publicly admitted to using a defeat device in the Class Vehicles to evade
16 clean air standards.

17 3441. As a direct and proximate result of the VW Entity Defendants’ breach of express
18 warranties, Plaintiff and the other Wisconsin Class members have been damaged in an amount to
19 be determined at trial.

20 **WISCONSIN COUNT III:**
21 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
22 **(Wis. Stat. §§ 402.314 and 411.212)**

23 3442. Plaintiffs reallege and incorporate by reference all allegations of the preceding
24 paragraphs as though fully set forth herein.

25 3443. Plaintiffs bring this Count on behalf of the Wisconsin Class, against VW AG, VW
26 America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the “VW
27 Entity Defendants”).
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1 3444. The VW Entity Defendants are and were at all relevant times “merchants” with
2 respect to motor vehicles under Wis. Stat. § 402.104(3) and 411.103(1)(t), and “sellers” of motor
3 vehicles under § 402.103(1)(d).

4 3445. With respect to leases, the VW Entity Defendants are and were at all relevant
5 times “lessors” of motor vehicles under Wis. Stat. § 411.103(1)(p).

6 3446. The Class Vehicles are and were at all relevant times “goods” within the meaning
7 of Wis. Stat. §§ 402.105(1)(c) and 411.103(1)(h).

8 3447. A warranty that the Class Vehicles were in merchantable condition and fit for the
9 ordinary purpose for which vehicles are used is implied by law pursuant to Wis. Stat. §§ 402.314
10 and 411.212.

11 3448. These Class Vehicles, when sold or leased and at all times thereafter, were not in
12 merchantable condition and are not fit for the ordinary purpose for which vehicles are used.
13 Specifically, the Class Vehicles are inherently defective in that they do not comply with federal
14 and state emissions standards, rendering certain emissions functions inoperative; and the “clean”
15 diesel engine system was not adequately designed, manufactured, and tested.

16 3449. Volkswagen was provided notice of these issues by the investigations of the EPA
17 and individual state regulators, numerous complaints filed against it including the instant
18 Complaint, and by numerous individual letters and communications sent by Plaintiffs and others
19 within a reasonable amount of time after the allegations of Class Vehicle defects became public.

20 3450. As a direct and proximate result of the VW Entity Defendants’ breach of the
21 implied warranty of merchantability, Plaintiffs and the other Wisconsin Class members have been
22 damaged in an amount to be proven at trial.

23 **WYOMING**

24 **WYOMING COUNT I:**
25 **VIOLATIONS OF THE WYOMING CONSUMER PROTECTION ACT**
26 **(Wyo. Stat. §§ 40-12-101, *et seq.*)**

27 3451. Plaintiffs incorporate by reference each preceding paragraph as though fully set
28 forth herein.

1 3452. Plaintiffs Mills and Tempest (for the purpose of this section, “Plaintiffs”) bring
2 this action on behalf of themselves and the Wyoming Class against all Defendants.

3 3453. Plaintiffs, the Wyoming Class and Defendants are “persons” within the meaning of
4 Wyo. Stat. § 40-12-102(a)(i).

5 3454. The Class Vehicles are “merchandise” pursuant to Wyo. Stat. § 40-12-102(a)(vi).

6 3455. Each sale or lease of an Class Vehicle to a Plaintiff or Wyoming Class member
7 was a “consumer transaction” as defined by Wyo. Stat. § 40-12-102(a)(ii). These consumer
8 transactions occurred “in the course of [Volkswagen’s] business” under Wyo. Stat. § 40-12-
9 105(a). Plaintiffs and Wyoming Class members purchased or leased one or more Class Vehicles.

10 3456. The Wyoming Consumer Protection Act (“Wyoming CPA”) prohibits lists
11 unlawful deceptive trade practices, including when a seller: “(i) Represents that merchandise has
12 a source, origin, sponsorship, approval, accessories, or uses it does not have;” “(iii) Represents
13 that merchandise is of a particular standard, grade, style or model, if it is not;” “(x) Advertises
14 merchandise with intent not to sell it as advertised;” “(xv) Engages in unfair or deceptive acts or
15 practices.” Wyo. Stat. §§ 40-12-105(a).

16 3457. In the course of Volkswagen’s business, Volkswagen intentionally or negligently
17 concealed and suppressed material facts concerning the true emissions produced by the misnamed
18 “CleanDiesel” engines in the Class Vehicles. Defendants accomplished this by installing illegal
19 defeat device software in the Class Vehicles that caused the vehicles to operate in a low emission
20 test mode only during emissions testing. During normal operations, the Class Vehicles would
21 emit grossly larger quantities of noxious contaminants, sometimes 40 times over applicable
22 standards. The result was what Volkswagen intended—the Class Vehicles passed emissions
23 testing by way of deliberately induced false readings. Plaintiffs and Wyoming Class members
24 had no way of discerning that Volkswagen’s representations were false and misleading because
25 Volkswagen’s defeat device software was extremely sophisticated technology. Plaintiffs and
26 Wyoming Class members did not and could not unravel Volkswagen’s deception on their own.
27 In fact, it took years before the academic engineering community—specifically a research team at
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1 WVU’s Center for Alternative Fuels, Engines & Emissions—detected Volkswagen’s cheat using
2 sophisticated, expensive equipment and applying decades of combined experience.

3 3458. Volkswagen thus violated the provisions of the Wyoming CPA, at a minimum by:
4 (1) representing that the Class Vehicles have sponsorships, approvals, and uses which they do not
5 have; (2) representing that the Class Vehicles are of a particular standard, quality, and grade when
6 they are not; and (3) advertising the Class Vehicles with the intent not to sell them as advertised.

7 3459. Defendants engaged in misleading, false, unfair or deceptive acts or practices that
8 violated the Wyoming CPA by installing, failing to disclose and/or actively concealing the
9 “defeat device” and the true cleanliness and performance of the “clean” diesel engine system, by
10 marketing its vehicles as legal, reliable, environmentally clean, efficient, and of high quality, and
11 by presenting itself as a reputable manufacturer that valued environmental cleanliness and
12 efficiency, and that stood behind its vehicles after they were sold.

13 3460. Volkswagen compounded the deception by repeatedly asserting that the Class
14 Vehicles were safe, reliable, environmentally clean, efficient, and of high quality, and by
15 claiming to be a reputable manufacturer that valued safety, environmental cleanliness, and
16 efficiency, and stood behind its vehicles after they were sold.

17 3461. The Clean Air Act and EPA regulations require that automobiles limit their
18 emissions output to specified levels. These laws are intended for the protection of public health
19 and welfare. “Defeat devices” like those in the Class Vehicles are defined and prohibited by the
20 Clean Air Act and its regulations. See 42 U.S.C. § 7522(a)(3)(B); 40 CFR § 86.1809. By
21 installing illegal “defeat devices” in the Class Vehicles and by making those vehicles available
22 for purchase, Volkswagen violated federal law and therefore engaged in conduct that violates the
23 Wyoming CPA.

24 3462. Volkswagen knew it had installed the “defeat device” in the Class Vehicles, and
25 knew the true nature of its “clean” diesel engine system for at least six years, but concealed all of
26 that information until recently. Volkswagen also knew that it valued profits over environmental
27 cleanliness, efficiency, and compliance with the law, and that it was manufacturing, selling, and
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1 distributing vehicles throughout the United States that did not comply with EPA regulations, but
2 it concealed this information as well.

3 3463. Volkswagen intentionally and knowingly misrepresented material facts regarding
4 the Class Vehicles with intent to mislead Plaintiffs and the Wyoming Class.

5 3464. Volkswagen knew or should have known that its conduct violated the Wyoming
6 CPA.

7 3465. Defendants owed Plaintiffs and Wyoming Class members a duty to disclose,
8 truthfully, all the facts concerning the cleanliness, efficiency and reliability of the Class Vehicles
9 because they:

- 10 a. possessed exclusive knowledge that they were
11 manufacturing, selling, and distributing vehicles throughout
12 the United States that did not comply with EPA regulations;
- 13 b. intentionally concealed the foregoing from regulators,
14 Plaintiffs, Class members; and/or
- 15 c. Made incomplete or negligent representations about the
16 environmental cleanliness and efficiency of the Class
17 Vehicles generally, and the use of the defeat device in
18 particular, while purposefully withholding material facts
19 from Plaintiffs that contradicted these representations.

20 3466. Defendants concealed the illegal defeat device and the true emissions, efficiency
21 and performance of the Class Vehicles, resulting in a raft of negative publicity once
22 Volkswagen's fraud was exposed. The value of the Class Vehicles has therefore plummeted. In
23 light of the stigma Volkswagen's misconduct attached to the Class Vehicles, the Class Vehicles
24 are now worth less than they otherwise would be worth.

25 3467. Defendants' supply and use of the illegal defeat device and concealment of the true
26 characteristics of the "clean" diesel engine system were material to Plaintiffs and the Wyoming
27 Class. A vehicle made by a reputable manufacturer of environmentally friendly vehicles is worth
28 more than an otherwise comparable vehicle made by a disreputable manufacturer of
environmentally dirty vehicles that conceals its polluting engines rather than promptly remedying
them.

1 3468. Defendants’ unfair or deceptive acts or practices were likely to and did in fact
2 deceive regulators and reasonable consumers, including Plaintiffs and Wyoming Class members,
3 about the true environmental cleanliness and efficiency of Volkswagen-branded vehicles, the
4 quality of the Volkswagen brand, the devaluing of environmental cleanliness and integrity at
5 Volkswagen, and the true value of the Class Vehicles.

6 3469. Plaintiffs and Wyoming Class members suffered ascertainable loss and actual
7 damages as a direct and proximate result of Volkswagen’s misrepresentations and its concealment
8 of and failure to disclose material information. Plaintiffs and the Wyoming Class members who
9 purchased or leased the Class Vehicles would not have purchased or leased them at all and/or—if
10 the Vehicles’ true nature had been disclosed and mitigated, and the Vehicles rendered legal to
11 sell—would have paid significantly less for them. Plaintiffs also suffered diminished value of
12 their vehicles, as well as lost or diminished use.

13 3470. Defendants had an ongoing duty to all Volkswagen customers to refrain from
14 unfair and deceptive practices under the Wyoming CPA in the course of its business.

15 3471. Defendants’ violations present a continuing risk to Plaintiffs as well as to the
16 general public. Defendants’ unlawful acts and practices complained of herein affect the public
17 interest.

18 3472. Pursuant to Wyo. Stat. § 40-12-108(a), Plaintiffs and the Wyoming Class seek
19 damages as determined at trial, and any other just and proper relief available under the Wyoming
20 CPA, including but not limited to court costs and reasonable attorneys’ fees as provided in Wyo.
21 Stat. § 40-12-108(b).

22 3473. On October 5, 2015, certain Plaintiffs sent a letter complying with Wyo. Stat.
23 § 40-12-109. Because Volkswagen failed to offer to cure, or failed to complete a remedy of its
24 deceptive trade acts and practices within the required time period, see Wyo. Stat. § 40-12-
25 102(a)(ix), Plaintiffs seek all damages and relief available under the Wyoming CPA.

**WYOMING COUNT II:
BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY
(Wyo. Stat. §§ 34.1-2-314 and 34.1-2.A-212)**

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3 3474. Plaintiffs reallege and incorporate by reference all allegations of the preceding
4 paragraphs as though fully set forth herein.

5 3475. Plaintiffs bring this Count on behalf of the Wyoming Class, against VW AG, VW
6 America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the “VW
7 Entity Defendants”).

8 3476. The VW Entity Defendants are and were at all relevant times “merchants” with
9 respect to motor vehicles under Wyo. Stat. §§ 34.1-2-104(a) and 34.1-2.A-103(a)(xx), and
10 “sellers” of motor vehicles under § 34.1-2-103(a)(iv).

11 3477. With respect to leases, the VW Entity Defendants are and were at all relevant
12 times “lessors” of motor vehicles under Wyo. Stat. § 34.1-2.A-103(a)(xvi).

13 3478. The Class Vehicles are and were at all relevant times “goods” within the meaning
14 of Wyo. Stat. §§ 34.1-2-105(a) and 34.1-2.A-103(a)(viii).

15 3479. A warranty that the Class Vehicles were in merchantable condition and fit for the
16 ordinary purpose for which vehicles are used is implied by law pursuant to Wyo. Stat. §§ 34.1-2-
17 314 and 34.1-2.A-212.

18 3480. These Class Vehicles, when sold or leased and at all times thereafter, were not in
19 merchantable condition and are not fit for the ordinary purpose for which vehicles are used.
20 Specifically, the Class Vehicles are inherently defective in that they do not comply with federal
21 and state emissions standards, rendering certain emissions functions inoperative; and the “clean”
22 diesel engine system was not adequately designed, manufactured, and tested.

23 3481. Volkswagen was provided notice of these issues by the investigations of the EPA
24 and individual state regulators, numerous complaints filed against it including the instant
25 Complaint, and by numerous individual letters and communications sent by Plaintiffs and others
26 within a reasonable amount of time after the allegations of Class Vehicle defects became public.
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1 3482. As a direct and proximate result of the VW Entity Defendants’ breach of the
2 implied warranty of merchantability, Plaintiffs and the other Wyoming Class members have been
3 damaged in an amount to be proven at trial.

4 **WYOMING COUNT III:**
5 **BREACH OF EXPRESS WARRANTY**
6 **(Wyo. Stat. § 34.1-2-313)**

7 3483. Plaintiffs reallege and incorporate by reference all preceding allegations as though
8 fully set forth herein.

9 3484. Plaintiffs bring this Count on behalf of the Wyoming Class, against VW AG, VW
10 America, Audi AG, Audi America, Porsche AG, and Porsche America (collectively, the “VW
11 Entity Defendants”).

12 3485. The VW Entity Defendants are and were at all relevant times “merchants” with
13 respect to motor vehicles under Wyo. Stat. §§ 34.1-2-104(a) and 34.1-2.A-103(a)(xx), and
14 “sellers” of motor vehicles under § 34.1-2-103(a)(iv).

15 3486. With respect to leases, the VW Entity Defendants are and were at all relevant
16 times “lessors” of motor vehicles under Wyo. Stat. § 34.1-2.A-103(a)(xvi).

17 3487. The Class Vehicles are and were at all relevant times “goods” within the meaning
18 of Wyo. Stat. §§ 34.1-2-105(a) and 34.1-2.A-103(a)(viii).

19 3488. In connection with the purchase or lease of each one of its new vehicles, the VW
20 Entity Defendants provide an express New Vehicle Limited Warranty (“NVLW”) for a period of
21 three years or 36,000 miles, whichever occurs first. This NVLW exists to cover “any repair to
22 correct a manufacturers defect in materials or workmanship.”

23 3489. The Clean Air Act requires manufacturers of light-duty vehicles to provide two
24 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
25 Warranty.”

26 3490. The EPA requires vehicle manufacturers to provide a Performance Warranty with
27 respect to the vehicles’ emission systems. Thus, Volkswagen also provides an express warranty
28 for its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
required by the EPA applies to repairs that are required during the first two years or 24,000 miles,

1 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
2 emission control components are covered for the first eight years or 80,000 miles, whichever
3 comes first. These major emission control components subject to the longer warranty include the
4 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
5 device or computer.

6 3491. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
7 with respect to their vehicles' emission systems. Thus, the VW Entity Defendants also provide an
8 express warranty for their vehicles through a Federal Emission Control System Defect Warranty.
9 The Design and Defect Warranty required by the EPA covers repair of emission control or
10 emission related parts which fail to function or function improperly because of a defect in
11 materials or workmanship. This warranty provides protection for two years or 24,000 miles,
12 whichever comes first, or, for the major emission control components, for eight years or 80,000
13 miles, whichever comes first.

14 3492. As manufacturers of light-duty vehicles, the VW Entity Defendants were required
15 to provide these warranties to purchasers or lessees of their "clean" diesel vehicles.

16 3493. The VW Entity Defendants' warranties formed a basis of the bargain that was
17 reached when Plaintiffs and other Wyoming Class members purchased or leased their Class
18 Vehicles equipped with the non-compliant "clean" diesel engine and emission systems.

19 3494. Plaintiffs and the Wyoming Class members experienced defects within the
20 warranty period. Despite the existence of warranties, the VW Entity Defendants failed to inform
21 Plaintiffs and Wyoming Class members that the Class Vehicles were intentionally designed and
22 manufactured to be out of compliance with applicable state and federal emissions laws, and failed
23 to fix the defective emission components free of charge.

24 3495. The VW Entity Defendants breached the express warranty promising to repair and
25 correct a manufacturing defect or materials or workmanship of any parts they supplied. The VW
26 Entity Defendants have not repaired or adjusted, and have been unable to repair or adjust, the
27 Class Vehicles' materials and workmanship defects.
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1 3496. Affording the VW Entity Defendants a reasonable opportunity to cure their breach
2 of written warranties would be unnecessary and futile here. For example, the Frequently Asked
3 Questions (“FAQ”) section of VW’s informational website states:

4 **How soon will the remedy be available, and how am I going to**
5 **be compensated for this?**

6 We cannot offer a firm date now because we need to work on a
7 remedy and review it with the government. We are proceeding as
8 quickly as possible.

8 3497. In his Congressional testimony on October 8, 2015, Michael Horn stated that
9 Volkswagen intends to make Class Vehicles compliant with emission standards through software
10 fixes and the installation of auxiliary hardware, but that fix will take “1 to 2 years, minimum.”
11 When questioned on remedies for consumers, he stated that Volkswagen may pay customers for a
12 loss in resale values because of the scandal. He said that Volkswagen is not considering
13 providing loaner vehicles because the U.S. government says the vehicles are safe to drive.

14 3498. Michael Horn’s testimony serves as an admission that the limited warranty
15 promising to repair and/or correct a manufacturing defect fails in its essential purpose because the
16 VW Entity Defendants cannot meet that promise within a reasonable time.

17 3499. Furthermore, the limited warranty promising to repair and/or correct a
18 manufacturing defect fails in its essential purpose because the contractual remedy is insufficient
19 to make Plaintiffs and the other Wyoming Class members whole and because the VW Entity
20 Defendants have failed and/or have refused to adequately provide the promised remedies within a
21 reasonable time.

22 3500. Accordingly, recovery by Plaintiffs and the other Wyoming Class members is not
23 restricted to the limited warranty promising to repair and/or correct a manufacturing defect, and
24 Plaintiffs, individually and on behalf of the other Wyoming Class members, seek all remedies as
25 allowed by law.

26 3501. Also, as alleged in more detail herein, at the time the VW Entity Defendants
27 warranted and sold or leased the Class Vehicles, they knew that the Class Vehicles were
28 inherently defective and did not conform to their warranties; further, the VW Entity Defendants

1 had wrongfully and fraudulently concealed material facts regarding the Class Vehicles. Plaintiffs
2 and the other Wyoming Class members were therefore induced to purchase or lease the Class
3 Vehicles under false and/or fraudulent pretenses.

4 3502. Moreover, many of the injuries flowing from the Class Vehicles cannot be
5 resolved through the limited remedy of “replacements or adjustments,” as many incidental and
6 consequential damages have already been suffered because of Volkswagen’s fraudulent conduct
7 as alleged herein, and because of its failure and/or continued failure to provide such limited
8 remedy within a reasonable time, and any limitation on Plaintiffs’ and the other Wyoming Class
9 members’ remedies would be insufficient to make Plaintiffs and the other Wyoming Class
10 members whole.

11 3503. Finally, because of the VW Entity Defendants’ breach of warranty as set forth
12 herein, Plaintiffs and the other Wyoming Class members assert, as additional and/or alternative
13 remedies, the revocation of acceptance of the goods and the return to Plaintiffs and the other
14 Wyoming Class members of the purchase or lease price of all Class Vehicles currently owned or
15 leased, and for such other incidental and consequential damages as allowed.

16 3504. The VW Entity Defendants were provided notice of these issues by numerous
17 complaints filed against them, including the instant Complaint, within a reasonable amount of
18 time after Volkswagen publicly admitted to using a defeat device in the Class Vehicles to evade
19 clean air standards.

20 3505. As a direct and proximate result of the VW Entity Defendants’ breach of express
21 warranties, Plaintiff and the other Wyoming Class members have been damaged in an amount to
22 be determined at trial.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiffs, individually and on behalf of members of the Nationwide Class
25 and State Classes, respectfully request that the Court grant certification of the proposed
26 Nationwide Class and State Classes, including the designation of Plaintiffs as the named
27 representatives of the Nationwide Class and respective State Classes, the appointment of the
28 undersigned as Class Counsel, and the designation of any appropriate subclasses, under the

1 applicable provisions of Fed. R. Civ. P. 23, and that the Court enter judgment in their favor and
2 against Defendants, as follows:

3 A. An order temporarily and permanently enjoining Defendants from continuing the
4 unlawful, deceptive, fraudulent, harmful, and unfair business conduct and practices alleged in this
5 Complaint;

6 B. Injunctive and equitable relief in the form of a comprehensive program to repair,
7 retrofit, and/or buyback all Class Vehicles, and to fully reimburse and make whole all Class
8 members for all costs and economic losses, and degradation of mileage performance, durability,
9 and reliability that the Class Vehicles will incur by being brought into compliance with federal
10 and state law;

11 C. Environmental reparations, mitigation, and remediation to offset the harm caused
12 by the illegal emissions of the Class Vehicles, based on the mileage driven by all Class Vehicles
13 and/or other appropriate matrices of environmental harm;

14 D. A declaration that Defendants are financially responsible for all Class notice and
15 the administration of Class relief;

16 E. Costs, restitution, compensatory damages for economic loss and out-of-pocket
17 costs, treble damages under Civil RICO, multiple damages under applicable states' laws, punitive
18 and exemplary damages under applicable law; and disgorgement, in an amount to be determined
19 at trial;

20 F. Rescission of all Class Vehicle purchases or leases, including reimbursement
21 and/or compensation of the full purchase price of all Class Vehicles, including taxes, licenses, and
22 other fees.

23 G. Any and applicable statutory and civil penalties;

24 H. An order requiring Defendants to pay both pre- and post-judgment interest on any
25 amounts awarded.

26 I. An award of costs and attorneys' fees, as allowed by law;

27 J. Leave to amend this Complaint to conform to the evidence produced at trial; and

28 K. Such other or further relief as the Court may deem appropriate, just, and equitable.

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs demand a trial by jury of any and all issues in this action so triable of right.

Dated: August 16, 2016

Respectfully submitted,

LIEFF CABRASER HEIMANN &
BERNSTEIN, LLP

By: /s/ Elizabeth J. Cabraser
Elizabeth J. Cabraser

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