

Exhibit 1

Proposed Complaint in Intervention

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

UNITED STATES OF AMERICA,

Plaintiffs,

and

MARIA BOURN, DAVID WATSON,
STEPHEN VERNER, MARK
SCHUMACHER, and THE CENTER
FOR AUTO SAFETY,

Proposed Plaintiff-
Intervenors,

v.

VOLKSWAGEN AG, AUDI AG,
VOLKSWAGEN GROUP OF
AMERICA, INC., VOLKSWAGEN
GROUP OF AMERICA
CHATTANOOGA OPERATIONS,
LLC, DR. ING. H.C. F. PORSCHE AG,
and PORSCHE CARS NORTH
AMERICA, INC.,

Defendants.

Case No. 2:16-cv-10006

Judge Laurie J. Michelson

Magistrate Judge Michael J. Hluchaniuk

JURY TRIAL DEMANDED

**[PROPOSED] COMPLAINT FOR DECLARATORY AND INJUNCTIVE
RELIEF AND FOR CIVIL PENALTIES BY PLAINTIFF-INTERVENORS
MARIA BOURN, DAVID WATSON, STEPHEN VERNER, MARK
SCHUMACHER, AND
THE CENTER FOR AUTO SAFETY**

I. INTRODUCTION

1. Plaintiff-Intervenors Maria Bourn, David Watson, Stephen Verner, Mark Schumacher, and the Center for Auto Safety (“CAS”) hereby adopt and incorporate by reference the claims alleged by Plaintiff the United States of America in this action. Plaintiff-Intervenors make the following additional allegations and raise the following claims:

2. Plaintiff-Intervenors bring this action to address significant and ongoing violations by Defendants, Volkswagen AG (“VWAG”), Volkswagen Group of America, Inc. (“VWoA”), Volkswagen Group of America Chattanooga Operations, LLC (“VWoA Chattanooga”), Audi AG, and Dr. Ing. h.c. F. Porsche AG and Porsche Cars North America, Inc. (collectively, “Porsche”),¹ of the Clean Air Act (“CAA”), 42 U.S.C. §§ 7401-7671q, and its implementing regulations, and the motor vehicle emissions laws, regulations, and orders of California, Connecticut, Maine, Maryland, Massachusetts, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, Vermont, and Washington.

3. On September 18, 2015, the United States Environmental Protection Agency (“EPA”) and the California Air Resources Board (“CARB”) both notified

¹ Unless otherwise indicated herein, all of these defendants will be referred to collectively as “Volkswagen.”

Volkswagen that it had violated federal and state laws and regulations by using a “defeat device”—software specifically intended to circumvent emissions test procedures established by the EPA and by CARB.

4. Since at least 2009, Volkswagen has introduced hundreds of thousands of vehicles that are equipped with defeat devices into the United States, in violation of the CAA.

5. As a result of the defeat devices, Volkswagen’s vehicles did not properly comply with the federal Clean Air Act’s (“CAA”) requirement that all vehicles introduced into the United States obtain EPA-issued Certificates of Conformity (“COCs”).

6. Furthermore, through use of the defeat devices, Defendants’ vehicles exceeded emission limits on nitrogen oxide by up to 40 times the limit set by federal standards, and exceeded state implementation plans by an even greater amount.

7. Because of these serious violations, this citizen suit seeks declaratory and injunctive relief and the imposition of civil penalties under the CAA.

II. JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction over the CAA claims set forth in this complaint pursuant to 42 U.S.C. § 7604(a) and 28 U.S.C. § 1331. The relief requested is authorized pursuant to 28 U.S.C. §§ 2201 and 2202 and 42 U.S.C. §§ 7522 and 7604.

9. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) and (c), in that at least one of the Defendants resides in this judicial district, is licensed to do business or is doing business in this judicial district.

10. To the extent required by 42 U.S.C. § 7604(b)(1)(A), on October 9,

2015, Plaintiff-Intervenors notified in writing the Administrator of the EPA, the governors and environmental agencies of 17 states, and Volkswagen of the alleged violations set forth in this complaint and Plaintiff-Intervenors' intent to sue Volkswagen as a result of its violations of the CAA. A true and accurate copy of Plaintiff-Intervenors' 60-day notice letter is attached as Exhibit 1 and incorporated by reference herein.

11. Plaintiff-Intervenors sent an additional notice letter on November 5, 2015, which is attached as Exhibit 2.

12. Sixty days have passed since notice was served by United States Mail. Additionally, because Plaintiff has commenced this action under the CAA to redress some of the violations alleged in this complaint, Plaintiff-Intervenors may intervene in this suit as of right pursuant to 42 U.S.C. § 7604(b)(1)(B).

13. The United States has informed Proposed Plaintiff-Intervenors that it does not oppose their intervention.

III. THE PARTIES.

A. Plaintiff-Intervenors

14. Plaintiff-Intervenors Maria Bourn ("Bourn") and David Watson ("Watson") are residents of South San Francisco, California. Bourn is a lawyer in San Francisco. Watson is a teacher. In 2015, Bourn and Watson, who are married, purchased a certified, pre-owned 2010 Model Year Jetta SportsWagen from Stevens Creek Volkswagen in San Jose, California. Stevens Creek Volkswagen is a Volkswagen Authorized Dealer. Plaintiff-Intervenors purchased the SportsWagen in reliance on Volkswagen's representations that the car was an environmentally-friendly "clean diesel" vehicle. Plaintiff-Intervenors suffer injuries to their

aesthetic, recreational, environmental, and/or economic interests as a result of Volkswagen's unlawful emissions of pollutants.

15. Plaintiff-Intervenor Mark Schumacher ("Schumacher") resides in Gainesville, Virginia. In 2012, he purchased a 2012 Model Year Volkswagen Passat SE TDI. Schumacher purchased the Passat from Lindsay Volkswagen in Sterling, Virginia. That company is a Volkswagen Authorized Dealer. Plaintiff-Intervenor Schumacher purchased the Passat in reliance on Volkswagen's representations that the car was an environmentally-friendly "clean diesel" vehicle. Schumacher suffers injuries to his aesthetic, recreational, environmental, and/or economic interests as a result of Volkswagen's unlawful emissions of pollutants.

16. Plaintiff-Intervenor Stephen Verner ("Verner") is an architect and resident of Oakland, California. In 2013, he purchased a TDI Golf four door from Royal Motor Sales in San Francisco, California. Royal Motor Sales is an Authorized Volkswagen Dealer. Verner purchased the Golf in reliance on Volkswagen's representations that the car was an environmentally friendly "clean diesel" vehicle. Verner suffers injuries to his aesthetic, recreational, environmental, and/or economic interests as a result of Volkswagen's unlawful emissions of pollutants.

17. CAS is a non-profit, Section 501(c)(3) public interest organization headquartered in Washington, DC. It was founded by consumer advocate Ralph Nader and Consumers Union in 1970 to provide consumers with a voice for auto safety and to provide information to consumers on how to purchase the best motor vehicle for their needs. CAS has over 15,000 members nationwide. CAS is dedicated to promoting automobile and highway safety, ensuring that defective and unsafe automobiles and automobile equipment are removed from the road, helping make

roads safer for motor vehicles through safer designs and traffic, and working for improved fuel efficiency and lower emissions from motor vehicles.

18. As part of its commitment to improved fuel efficiency, in 2008, CAS integrated into its programs the Safe Climate Campaign which aims to fight global warming by promoting laws and regulations that require strict emission standards. The Safe Climate Campaign also pushes automakers to make clean, energy efficient vehicles, and urges consumers to make energy-efficient choices in transportation.

19. Within the meaning of section 302(e) of the CAA, 42 U.S.C. § 7602(e), CAS is a “person” that may commence a civil action under section 304(a)(1) of the Clean Air Act, 42 U.S.C. § 7604(a)(1). CAS sues on behalf of itself and its individual members who were harmed by Volkswagen’s conduct. The organization and its members are adversely affected by the Volkswagen’s vehicles’ excess emissions—in violation of the CAA—that have deleterious impacts on the areas where they live, work, and recreate.

20. CAS has individual standing as an organization because it has been harmed by Volkswagen’s wrongful conduct as alleged herein. CAS had devoted considerable time and resources encouraging automakers to sell energy-efficient vehicles and encouraging members to purchase clean, energy-efficient vehicles. As a result of Defendants’ unlawful conduct, CAS has had to redirect staff time and financial resources away from its planned activities.

21. CAS also has associational standing on behalf of its members who have claims against Volkswagen for the violations alleged in this complaint.

B. Defendants

22. Defendant VWAG is a car corporation organized and existing under

German law, with its principal place of business in Wolfsburg, Germany. VWAG is the parent company of Defendants VWoA, Audi, and Porsche.

23. Defendant Audi AG is a car corporation organized and existing under German law, with its principal place of business in Ingolstadt, Germany. It is owned by VWAG. Audi was created when VWAG merged two of its companies, Auto Union and NSU Motorenwerke AG. Audi is a 99.55%-owned subsidiary of VWAG. Audi is now Volkswagen's luxury vehicle brand, and uses the slogan "Truth in Engineering".

24. Defendant Porsche AG is a car corporation organized and existing under German law, with its principal place of business in Stuttgart, Germany. It is a 100%-owned subsidiary of VWAG.

25. Defendant VWoA is a corporation organized and existing under New Jersey law. Its headquarters are in Herndon, Virginia. VWoA is a wholly-owned subsidiary of VWAG. It is one of the world's largest producers of passenger cars. Through Volkswagen of America, Inc., it sells the Beetle, Beetle Convertible, CC, Eos, e-Golf, Golf, Golf GTI, Golf SportWagen, Jetta, Passat, Tiguan, and Touareg vehicles through Volkswagen Authorized Dealers located in the United States. VWoA's operations in the United States include research and development; parts and vehicle processing; parts distribution; sales, marketing, and service offices; financial service centers; and manufacturing.

26. VWoA Chattanooga is a wholly-owned subsidiary of VWoA. VWoA Chattanooga is incorporated under the laws of the State of Tennessee, and is located in Chattanooga, Tennessee.

27. Defendant Porsche Cars North America is a subsidiary of Porsche AG

that sells Porsche vehicles in the United States. Its United States headquarters are in Atlanta, Georgia.

28. Defendants are “persons” within the meaning of section 302(e) of the CAA, 42 U.S.C. § 7602(e), that may be sued under section 304(a)(1) of the Clean Air Act, 42 U.S.C. § 7604(a)(1).

29. Defendants are “manufacturers” within the meaning of section 216(1) of the CAA, 42 U.S.C. § 7550(1).

IV. LEGAL AND FACTUAL ALLEGATIONS.

A. Regulation of Defeat Devices.

30. Congress enacted the CAA and established the EPA in 1970. The objective of the CAA is “to protect and enhance the quality of the nation’s air resources so as to promote the public health and welfare and the productive capacity of its population.” CAA § 101(b), 42 U.S.C. § 7401(b).

31. The CAA requires vehicle manufacturers to certify to EPA that their cars and trucks will meet applicable federal emission standards. EPA administers a certification program to ensure that every vehicle complies with its emission standards. EPA-issued COCs are required for every vehicle sold in the United States, and EPA must approve every vehicle entering United States commerce. Manufacturers are prohibited from selling, offering for sale, introducing into commerce, delivering for introduction into commerce, or importing, any new motor vehicle unless that vehicle is covered by an EPA-issued COC. CAA § 203(a)(1), 42 U.S.C. § 7522(a)(1); 40 C.F.R. § 86.1854-12(a)(1).

32. Vehicles can be covered by COCs “only if they are in all material

respects as described in the manufacturer's application for certification." 40 C.F.R. § 86.1848-10(c)(6). Similarly, a COC issued by EPA states expressly, "[t]his certificate covers only those new motor vehicles or vehicle engines which conform, in all material respects, to the design specifications" described in the application for that COC.

33. An application for a COC must include, among other things, a list of all auxiliary emission control devices ("AECDs") installed on the vehicle. 40 C.F.R. § 86.1844-01(d)(11). An AECD is "any element of design which senses temperature, vehicle speed, engine RPM, transmission gear, manifold vacuum, or any other parameter for the purpose of activating, modulating, delaying, or deactivating the operation of any part of the emission control system." 40 C.F.R. § 86.1803-01.

34. The COC application must also include "a justification for each AECD, the parameters they sense and control, a detailed justification of each AECD that results in a reduction in effectiveness of the emission control system, and [a] rationale for why it is not a defeat device." 40 C.F.R. § 86.1844-01(d)(11).

35. An AECD is considered to be a "defeat device" if it "reduces the effectiveness of the emission control system under conditions which may reasonably be expected to be encountered in normal vehicle operation and use, unless: (1) Such conditions are substantially included in the Federal emission test procedure; (2) The need for the AECD is justified in terms of protecting the vehicle against damage or accident; (3) The AECD does not go beyond the requirements of engine starting; or (4) The AECD applies only for emergency vehicles." 40 C.F.R. § 86.1803-01.

36. The use of defeat devices is illegal under the CAA, which prohibits the manufacture, selling, or installation of any device that bypasses, defeats, or renders

inoperative a required element of a vehicle's emissions control system. CAA § 203(a)(3)(b), 42 U.S.C. § 7522(a)(3)(b). The CAA regulations also state that new light-duty vehicles are prohibited from being equipped with defeat devices. 40 C.F.R. §§ 86.1809-01, 86.1809-10, 86.1809-12.

B. Emission Standards.

37. In addition to regulating defeat devices and requiring COCs, the CAA imposes emission limitations for various air pollutants. Among these standards is the limitation on emissions of nitrogen oxide ("NO_x"), set by section 202 of the CAA, 42 U.S.C. § 7521, and 40 CFR 86.1811-04. These provisions impose a limitation of 0.07 grams of NO_x per mile for the Affected Vehicles.

38. Under section 222(a)(1) of the CAA, 42 U.S.C. § 7541(a)(1), a manufacturer must warrant that its vehicles meet the emission standards set by section 202 of the CAA, 42 U.S.C. § 7521. A failure to comply with that warranty constitutes a violation of section 203(a)(4)(D) of the CAA, 42 U.S.C. § 7522(a)(4)(D).

39. Additionally, CARB has established emission standards for NO_x. The relevant California standards are found in Cal. Code Regs. tit. 13, §§ 1961, 1961.2. The CARB standards limit NO_x emissions to 0.05 grams per mile. EPA approved the CARB standards through section 209 of the CAA, 42 U.S.C. § 7543.

40. The CARB standards have also been adopted in the following states:

- Connecticut: Conn. Gen. Stat. § 22a-174g; Conn. Agencies Regs. 22a-174-36, 22a-174-36b, 22a-174-36c;
- Maine: Me. Rev. Stat. tit. 38, §§ 585, 585-A, 585-D; Code Me. R. tit.

06-096 Ch. 127, §§ 3-4;

- Maryland: Md. Code, Envir. § 2-1103; Md. Code Regs. 26.11.34.05;
- Massachusetts: Mass. Gen. Laws ch. 111, § 142K; 310 Mass. Code Regs. 7.40;
- New Jersey: N.J. Stat. § 26:2C-8.17; N.J. Admin. Code § 7:27-29.4;
- New York: N.Y. Env't'l Conserv. Law § 19-0301; N.Y. Comp. Codes R. & Regs. tit. 6, § 218-2.1;
- Oregon: Or. Rev. Stat. § 184.889; Or. Admin. R. 340-257-0040, 340-257-0050;
- Pennsylvania: 25 Pa. Code §§ 121.1, 126.412;
- Rhode Island: 23 R.I. Gen. Laws § 23-23-5; R.I. Code R. 25-4-37:37.3;
- Vermont: Vt. Stat. tit. 10, § 567; 16-3 Vt. Code R. § 100:5-1102, 100:5-1103; 16-3 Vt. Code R. § 100 App'x F; and
- Washington: Wash. Rev. Code §§ 70.94.040, 70.120A.010; Wash. Admin. Code 173-423-050(1).

41. EPA approved adoption of the CARB standards in the above states through section 177 of the CAA, 42 U.S.C. § 7507.

C. Volkswagen's Violations.

42. Volkswagen violated these statutes by installing defeat devices on the emission control systems for at least the following Volkswagen, and Audi vehicles with diesel engines sold in the United States ("the Affected Vehicles"):

- VW Jetta TDI (Model Years 2009-15);
- VW Jetta SportWagen TDI (Model Years 2009-14);
- VW Golf TDI (Model Years 2010-15);
- VW Golf SportWagen TDI (Model Year 2015);
- VW Beetle TDI and VW Beetle Convertible TDI (Model Years 2012-15);
- VW Passat TDI (Model Years 2012-15);
- Audi A3 TDI (Model Years 2010-15);
- VW Toureg (Model Years 2014-15);
- Porsche Cayenne A3 TDI (Model Years 2014-16);
- Audi A6 Quattro (Model Years 2015-16);
- Audi A7 Quattro (Model Years 2015-16);
- Audi A8 and A8 L (Model Years 2015-16);
- Audi Q5 (Model Years 2015-16).

43. Volkswagen has already widely acknowledged the use of defeat devices in the Affected Vehicles. Michael Horn, the President and CEO of VWoA, admitted that the defeat devices was installed in approximately 525,000 vehicles in the United States. Volkswagen executives at the highest level of the company were aware of

these emissions violations and these individuals authorized concealment through the use of a sophisticated software code that understood when an engine was being subjected to an emissions test. The software then altered engine settings to allow the vehicle to pass the emissions test. Thereafter, the engine would revert to normal settings for real-world driving conditions.

44. Volkswagen's defeat device is described as a "sophisticated software algorithm" that detects when the car is undergoing emissions testing. The algorithm used information about how the car was being steered, how long the engine ran and atmospheric pressure to "precisely track" the conditions that corresponded to a federal emissions test, according to the EPA. During emissions testing, the software "turns on" the car's full emissions control system in order to pass the test. Under normal driving situations, however, these emissions control systems are *turned off*, allowing the cars to spew as much as 40 times the allowable amount of NO_x into the air.

45. By using defeat devices in the Affected Vehicles, Volkswagen violated section 203(a)(3)(b) of the CAA, 42 U.S.C. § 7522(a)(3)(b), and 40 C.F.R. §§ 86-1809-01, 86-1809-10, 86-1809-12.

46. Volkswagen did not disclose the existence of defeat devices in its applications for COCs for the Affected Vehicles. Therefore, the vehicles did not comply with their COCs, in violation of section 203(a)(1) of the CAA, 42 U.S.C. § 7522(a)(1).

47. Because Volkswagen was using defeat devices, the emissions of the Affected Vehicles exceeded federal emissions standards for NO_x by 9 to 40 times. The NO_x emissions exceeded the CARB standards by even greater amounts. Over

the course of the seven years the Affected Vehicles were in use, they spewed enough NOx to significantly degrade the environment in urban areas.

48. Because the Affected Vehicles violated the NOx emissions standards set by section 202 of the CAA, 42 U.S.C. § 7521, the Affected Vehicles were not compliant with the warranties required by section 222(a)(1) of the CAA, 42 U.S.C. § 7541(a)(1). A failure to comply with that warranty constitutes a violation of section 203(a)(4)(D) of the CAA, 42 U.S.C. § 7522(a)(4)(D).

49. Until Volkswagen is made to remedy the deficiencies in the Affected Vehicles, Volkswagen will continue to be in violation of sections 203(a)(1), 203(a)(3)(b), and 203(a)(4)(D) of the CAA, 42 U.S.C. §§ 7522(a)(1), 7522(a)(3)(b), 7522(a)(4)(D), and the vehicles will continue to spew NOx far in excess of state and federal standards.

V. CAUSES OF ACTION

FIRST CLAIM

Use of Defeat Devices in Violation of CAA § 203(a)(3)(b), 42 U.S.C. § 7522(a)(3)(b)

50. Plaintiff-Intervenors incorporate by reference each preceding and succeeding paragraph.

51. Volkswagen equipped hundreds of thousands of Affected Vehicles with defeat devices in violation of section 203(a)(3)(b) of the CAA, 42 U.S.C. § 7522(a)(3)(b), and 40 C.F.R. §§ 86-1809-01, 86-1809-10, 86-1809-12.

52. Persons who violate section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), are subject to a civil penalty of up to \$3,750 for each violation that

occurred on or after January 13, 2009.² CAA § 205(a), 42 U.S.C. § 7524(a); 40 C.F.R. § 19.4. The Court can also impose additional equitable remedies under section 204(a) of the CAA, 42 U.S.C. § 7523(a), to further address these violations.

53. Plaintiff-Intervenors can file suit for these violations under section 304(a)(1)(A) of the CAA, 42 U.S.C. § 7604(a)(1)(A), because violations of 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), constitutes violations of “an emission standard or limitation under” the CAA, which is defined to include any “schedule or timetable of compliance, emission limitation, standard of performance or emission standard.” CAA § 304(f)(1), 42 U.S.C. § 7604(f)(1).

54. Volkswagen has already admitted that it equipped 525,000 vehicles with defeat devices in violation of section 203(a)(3)(b) of the CAA, 42 U.S.C. § 7522(a)(3)(b).

55. Because the majority of the Affected Vehicles remain in use, Volkswagen’s violations of section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), and, by extension, violations of section 304(a)(1)(A) of the CAA, 42 U.S.C. § 7604(a)(1)(A), continue through the date of the filing of this Complaint.

SECOND CLAIM

Noncompliance with Certificates of Conformity in Violation of CAA § 203(a)(1), 42 U.S.C. § 7522(a)(1)

56. Plaintiff-Intervenors incorporate by reference each preceding and succeeding paragraph.

57. Because Volkswagen equipped the Affected Vehicles with defeat devices, the Affected Vehicles were not properly covered by EPA-issued COCs. By

² \$2,750 for violations occurring prior to January 13, 2009.

distributing vehicles that were not covered by COCs, Defendants violated section 203(a)(1) of the CAA, 42 U.S.C. § 7522(a)(1), and 40 C.F.R. § 86.1854-12(a)(l).

58. Persons who violate section 203(a)(1) of the CAA, 42 U.S.C. § 7522(a)(1), are subject to a civil penalty of up to \$37,500 for each violation that occurred on or after January 13, 2009.³ CAA § 205(a), 42 U.S.C. § 7524(a); 40 C.F.R. § 19.4. The Court can also impose additional equitable remedies under section 204(a) of the CAA, 42 U.S.C. § 7523(a), to further address these violations.

59. Plaintiff-Intervenors can file suit for these violations under section 304(a)(1)(A) of the CAA, 42 U.S.C. § 7604(a)(1)(A), because violations of section 203(a)(1) of the CAA, 42 U.S.C. § 7522(a)(1), constitute violations of “an emission standard or limitation under” the CAA, which is defined to include any “schedule or timetable of compliance, emission limitation, standard of performance or emission standard.” CAA § 304(f)(1), 42 U.S.C. § 7604(f)(1).

60. Volkswagen has already admitted that it equipped 525,000 vehicles with defeat devices, meaning that the vehicles could not be covered by the EPA-issued COCs, in violation of section 203(a)(1) of the CAA, 42 U.S.C. § 7522(a)(1).

61. Because the majority of the Affected Vehicles remain on the road, Volkswagen’s violations of section 203(a)(1) of the CAA, 42 U.S.C. § 7522(a)(1), and, by extension, violations of section 304(a)(1)(A) of the CAA, 42 U.S.C. § 7604(a)(1)(A), continue through the date of the filing of this Complaint.

THIRD CLAIM

Violations of Federal NO_x Emission Standards in CAA § 202 of the CAA, 42 U.S.C. § 7521

³ \$32,500 for violations occurring prior to January 13, 2009.

62. Plaintiff-Intervenors incorporate by reference each preceding and succeeding paragraph.

63. The CAA imposes an emission limitation of 0.07 grams of NO_x per mile for the Affected Vehicles, set by section 202 of the CAA, 42 U.S.C. § 7521, and 40 CFR 86.1811-04.

64. EPA has stated that the Affected Vehicles exceed this standard by 9 to 40 times, depending on the vehicle and the driving conditions (*i.e.*, city vs. highway).

65. Plaintiff-Intervenors can file suit for these violations under section 304(a)(1)(A) of the CAA, 42 U.S.C. § 7604(a)(1)(A), because violations of the emissions standard set by section 202 of the CAA, 42 U.S.C. § 7521, constitutes violations of “an emission standard or limitation under” the CAA, which is defined to include “any a schedule or timetable of compliance, emission limitation, standard of performance or emission standard.” CAA § 304(f)(1), 42 U.S.C. § 7604(f)(1).

66. Volkswagen has already admitted that the Affected Vehicles were equipped with defeat devices, causing them to spew excess emissions in violation of section 202 of the CAA, 42 U.S.C. § 7521.

67. Because the majority of the Affected Vehicles remain in use, Volkswagen’s violations of section 202 of the CAA, 42 U.S.C. § 7521, and, by extension, violations of section 304(a)(1)(A) of the CAA, 42 U.S.C. § 7604(a)(1)(A), continue through the date of the filing of this Complaint.

FOURTH CLAIM
Noncompliance with Emissions Warranties
in Violation CAA § 203(a)(4)(D), 42 U.S.C. § 7522(a)(4)(D)

68. Plaintiff-Intervenors incorporate by reference each preceding and succeeding paragraph.

69. Because Volkswagen's Affected Vehicles violated the NO_x emissions standards set by section 202 of the CAA, 42 U.S.C. § 7521, the Affected Vehicles were not compliant with the warranties required by section 222(a)(1) of the CAA, 42 U.S.C. § 7541(a)(1). A failure to comply with that warranty constitutes a violation of section 203(a)(4)(D) of the CAA, 42 U.S.C. § 7522(a)(4)(D).

70. Persons who violate section 203(a)(4)(D) of the CAA, 42 U.S.C. § 7522(a)(1), are subject to a civil penalty of up to \$37,500 for each violation that occurred on or after January 13, 2009.⁴ CAA § 205(a), 42 U.S.C. § 7524(a); 40 C.F.R. § 19.4. The Court can also impose additional equitable remedies under section 204(a) of the CAA, 42 U.S.C. § 7523(a), to further address these violations.

71. Plaintiff-Intervenors can file suit for these violation under section 304(a)(1)(A) of the CAA, 42 U.S.C. § 7604(a)(1)(A), because violations of 203(a)(4)(D) of the CAA, 42 U.S.C. § 7522(a)(4)(D), constitutes violations of "an emission standard or limitation under" the CAA, which is defined to include any "schedule or timetable of compliance, emission limitation, standard of performance or emission standard." CAA § 304(f)(1), 42 U.S.C. § 7604(f)(1).

72. Volkswagen has already admitted that the Affected Vehicles were equipped with defeat devices, causing them to spew excess emissions in violation of section 202 of the CAA, 42 U.S.C. § 7521, meaning that the Affected Vehicles did not comply with the warranties issued under section 222(a)(1) of the CAA, 42

⁴ \$32,500 for violations occurring prior to January 13, 2009.

U.S.C. § 7541(a)(1), thus constituting a violation of section 203(a)(4)(D) of the CAA, 42 U.S.C. § 7522(a)(4)(D).

73. Because the majority of the Affected Vehicles remain in use, Volkswagen's violations of section 203(a)(4)(D) of the CAA, 42 U.S.C. § 7522(a)(4)(D), and, by extension, violations of section 304(a)(1)(A) of the CAA, 42 U.S.C. § 7604(a)(1)(A), continue through the date of the filing of this Complaint.

FIFTH CLAIM
Violations of CARB NO_x Emission Standards in
Cal. Code Regs. tit. 13, §§ 1961, 1961.2
And Other Adopting States

74. Plaintiff-Intervenors incorporate by reference each preceding and succeeding paragraph.

75. The emissions of the Affected Vehicles exceed the NO_x emission standards set by CARB in Cal. Code Regs. tit. 13, §§ 1961, 1961.2, which limit NO_x emissions to 0.05 grams per mile.

76. The CARB standards have also been adopted in the following states:

- Connecticut: Conn. Gen. Stat. § 22a-174g; Conn. Agencies Regs. 22a-174-36, 22a-174-36b, 22a-174-36c;
- Maine: Me. Rev. Stat. tit. 38, §§ 585, 585-A, 585-D; Code Me. R. tit. 06-096 Ch. 127, §§ 3-4;
- Maryland: Md. Code, Envir. § 2-1103; Md. Code Regs. 26.11.34.05;
- Massachusetts: Mass. Gen. Laws ch. 111, § 142K; 310 Mass. Code Regs. 7.40;

- New Jersey: N.J. Stat. § 26:2C-8.17; N.J. Admin. Code § 7:27-29.4;
- New York: N.Y. Env't'l Conserv. Law § 19-0301; N.Y. Comp. Codes R. & Regs. tit. 6, § 218-2.1;
- Oregon: Or. Rev. Stat. § 184.889; Or. Admin. R. 340-257-0040, 340-257-0050;
- Pennsylvania: 25 Pa. Code §§ 121.1, 126.412;
- Rhode Island: 23 R.I. Gen. Laws § 23-23-5; R.I. Code R. 25-4-37:37.3;
- Vermont: Vt. Stat. tit. 10, § 567; 16-3 Vt. Code R. § 100:5-1102, 100:5-1103; 16-3 Vt. Code R. § 100 App'x F; and
- Washington: Wash. Rev. Code §§ 70.94.040, 70.120A.010; Wash. Admin. Code 173-423-050(1).

77. Because the CARB standards are stricter than the federal standards, Volkswagen is violating the emission standards of these states by even greater amounts than their violations of the federal standards.

78. Plaintiff-Intervenors can file suit for these violations under section 304 of the CAA, 42 U.S.C. § 7604, because the CAA defines “an emission standard or limitation under” the CAA to include any “standard, limitation, or schedule established under . . . any applicable State implementation plan approved by the Administrator.” CAA § 304(f)(4), 42 U.S.C. § 7604(f)(4). The CARB standards were approved for California by the Administrator through section 209 of the CAA, 42 U.S.C. § 7543, and other states were permitted to adopt the CARB standards under section 177 of the CAA, 42 U.S.C. § 7507. Therefore, 42 U.S.C. § 7604

permits Plaintiff-Intervenors to sue for violations of not only the federal NO_x emissions standard, but also violations of the CARB standards throughout the states that have adopted those standards.

79. Volkswagen has already admitted that the Affected Vehicles were equipped with defeat devices, causing them to spew excess emissions in violation of the CARB standards in California, Connecticut, Maine, Maryland, Massachusetts, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Vermont, and Washington.

80. Because the majority of the Affected Vehicles remain in use, Volkswagen's violations of the CARB standards in these states, and, by extension, violations of section 304(a)(1)(A) of the CAA, 42 U.S.C. § 7604(a)(1)(A), continue through the date of the filing of this Complaint.

PRAAYER FOR RELIEF

WHEREFORE, Plaintiff-Intervenors pray that the Court enter judgment on their behalf and on behalf of their members, and:

A. DECLARE that Volkswagen has violated and continues to violate the CAA's prohibition on the use of defeat devices;

B. DECLARE that Volkswagen has violated and continues to violate the CAA's requirement that all vehicles be covered by valid COCs;

C. DECLARE that Volkswagen has violated and continues to violate the federal standards for NO_x emissions;

D. DECLARE that Volkswagen has violated and continues to violate the CARB standards for NO_x emissions;

E. ISSUE A PERMANENT INJUNCTION requiring Volkswagen to take

promptly all measures necessary to bring the Affected Vehicles into compliance with the CAA and CARB emission standards;

F. ORDER Volkswagen to pay a civil penalty pursuant to sections 203(a)(1), 203(a)(3), and 304(a) of the CAA, 42 U.S.C. §§ 7222(a)(1), 7222(a)(3), and 7604(a).

G. ORDER Volkswagen to pay to Plaintiff-Intervenors their costs of litigation, including but not limited to reasonable attorney and expert witness fees, as authorized in section 304(d) of the CAA, 42 U.S.C. § 7604(d).

H. ORDER such other relief as the Court deems necessary and proper.

DATED: January 4, 2016

Respectfully submitted,

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Counsel for Plaintiff-Intervenors

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

UNITED STATES OF AMERICA,

Plaintiffs,

and

MARIA BOURN, DAVID WATSON,
STEPHEN VERNER, MARK
SCHUMACHER, and THE CENTER
FOR AUTO SAFETY,

Proposed Plaintiff-
Intervenors,

v.

VOLKSWAGEN AG, AUDI AG,
VOLKSWAGEN GROUP OF
AMERICA, INC., VOLKSWAGEN
GROUP OF AMERICA
CHATTANOOGA OPERATIONS,
LLC, DR. ING. H.C. F. PORSCHE AG,
and PORSCHE CARS NORTH
AMERICA, INC.,

Defendants.

Case No. 2:16-cv-10006

Judge Laurie J. Michelson

Magistrate Judge Michael J. Hluchaniuk

JURY TRIAL DEMANDED

JURY DEMAND

Plaintiff demands a jury on all issues so triable.

DATED: January 4, 2016

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