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13
14 **UNITED STATES DISTRICT COURT**
15 **NORTHERN DISTRICT OF CALIFORNIA**
16 **SAN FRANCISCO DIVISION**
17

18 DARIN PETERSEN and PAMELA)
WILHELMS, individually and on behalf)
19 of all those similarly situated,)

20 Plaintiffs,)

21 v.)

22 VOLKSWAGEN GROUP OF)
AMERICA, INC., a New Jersey)
23 Corporation, and VOLKSWAGEN AG, a)
24 corporation organized under the laws of)
Germany,)

25 Defendants.)
26 _____)
27
28

Case No. 3:16-CV-00300

**CLASS ACTION COMPLAINT FOR
DAMAGES, DECLARATORY AND
INJUNCTIVE RELIEF AND
RESTITUTION**

JURY TRIAL DEMANDED

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SUMMARY OF THE CASE

1
2 1. This case arises from Defendants Volkswagen AG and Volkswagen Group of
3 America, Inc.’s (collectively, “Volkswagen” or “Defendants”) purposeful and intentional breach
4 of the laws of the United States and the rules and regulations of California and the
5 Environmental Protection Agency (“EPA”) by selling in California and throughout the United
6 States Volkswagen, Porche and Audi vehicles that purposefully evaded federal and state laws.

7 2. The United States Government, through the EPA, as well as California state
8 regulators, have passed and enforce laws designed to protect citizens from pollution and in
9 particular, certain chemicals and agents known to cause disease in humans. Automobile
10 manufacturers must abide by these laws and must adhere to California and federal EPA rules and
11 regulations.

12 3. As Assistant Administrator for the Office of Enforcement and Compliance
13 Assurance at the EPA, Cynthia Giles, stated: “Using a defeat device in cars to evade clean air
14 standards is illegal and a threat to public health.” Yet this is exactly what Volkswagen has done
15 in its 2009-2015 Volkswagen, Porche and Audi CleanDiesel vehicles.

16 4. Sophisticated software in the Volkswagen, Porche and Audi diesel vehicles sold
17 by Volkswagen in the United States detects when the vehicle is undergoing official emissions
18 testing and turns full emissions controls on during the test. However, as detailed in the EPA’s
19 Notice of Violation (“NOV”), at all other times that the vehicle is running, the emissions controls
20 are suppressed. This results in cars that meet emissions standards in the laboratory or testing
21 station, but during normal operation emit nitrogen oxides (NOx) at up to 40 times the standard
22 allowed under federal and state laws and regulations. As such, the software produced and used
23 by Volkswagen constitutes a “defeat device” as defined by the Clean Air Act.

24 5. By manufacturing and selling cars with defeat devices that allowed for higher
25 levels of emissions than what was certified to the EPA, and higher levels than California and
26 federal regulations allow, Volkswagen violated the Clean Air Act and California state
27
28

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1 regulations, defrauded its customers, including Plaintiffs, and engaged in unfair competition
2 under California and federal law.

3 6. According to the EPA NOV, and admitted by Volkswagen, Volkswagen installed
4 its defeat device in at least the following diesel models of its vehicles (the “Affected Vehicles”):
5 MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2012-
6 2015 VW Passat; and MY 2009-2015 Audi A3. Discovery is expected to reveal additional
7 vehicle models and model years that are properly included as Affected Vehicles.

8 7. Representative Plaintiffs DARIN PETERSEN and PAMELA WILHELMS, on
9 behalf of themselves and all others similarly situated, bring this action individually and on behalf
10 of all other current and former owners or lessees of Affected Vehicles. Plaintiffs seek damages,
11 declaratory and injunctive relief, and equitable relief for the conduct of Volkswagen related to
12 the defeat device, as alleged in this Complaint.

13 8. Specifically, Plaintiffs seek:

14 a. The return of the premium that they paid for a CleanDiesel over the cost of the
15 same model and trim of car with a gasoline engine;

16 b. Restitution of the purchase price of their car should any “fix” installed by
17 Volkswagen result in a degradation of performance and/or fuel efficiency or alternatively,
18 restitution of the market value of their car just prior to the public disclosure of Defendants’
19 concealed use of the illegal defeat devices to evade clean air standards;

20 c. Compensation for additional sums spent for fuel/maintenance as a result of any
21 “fix”;

22 d. Restitution for purchase of extended warranties that will go unused;

23 e. A lump sum for remediation of the environmental damage Plaintiffs and the Class
24 unwittingly contributed to by driving cars that they believed were clean, but were in fact in
25 violation of state and EPA regulations and the Clean Air Act;

26
27
28

1 f. Injunctive relief requiring Defendants to facilitate and bear the expense of
2 planting and maintaining healthy trees one-for-one of each Affected Vehicle sold in California
3 and the United States along public highways in every effected state.

4 **FACTUAL ALLEGATIONS**

5 **EPA and California Regulations Place a Premium on the Reduction of Pollutants that**
6 **Cause Smog and Are Harmful to Human Health**

7 9. The Clean Air Act, enacted in 1970, is a comprehensive federal law that regulates
8 air emissions from stationary and mobile sources. 42 U.S.C. § 7401, *et seq.* (1970). Congress
9 determined that “the increasing use of motor vehicles . . . has resulted in mounting dangers to the
10 public health and welfare.” CAA § 101(a)(2), 42 U.S.C. § 7401(a)(2). The Clean Air Act and the
11 regulations under it, as well as California regulations, were passed and are intended to reduce the
12 emission of NOx and other pollutants, thereby protecting human health and the environment.

13 10. NOx contributes to nitrogen dioxide, ground-level ozone, and fine particulate
14 matter. When humans are exposed to nitrogen dioxide, they may be at a greater risk for serious
15 health dangers, including asthma attacks and other respiratory illness requiring hospitalization.
16 Ozone and particulate matter exposure have been associated with premature death due to
17 respiratory-related or cardiovascular-related effects. Children, the elderly, and people with pre-
18 existing respiratory illness are at an elevated risk for adverse health consequences associated
19 with these pollutants.

20 11. The Clean Air Act requires car makers to certify that vehicles sold in the United
21 States meet federal emissions standards. The EPA certifies conformity with regulations to car-
22 makers for vehicles that satisfy emissions regulations. To be sold in the United States, a vehicle
23 must be certified by the EPA to comply with its regulations.

24 12. The Clean Air Act makes it a violation for “any person to manufacture or sell, or
25 offer to sell, or install, any part or component intended for use with, or as part of, any motor
26 vehicle or motor vehicle engine, where a principal effect of the part or component is to bypass,
27 defeat, or render inoperative any device or element of design installed on or in a motor vehicle or
28 motor vehicle engine in compliance with regulations under this subchapter, and where the person

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1 knows or should know that such part or component is being offered for sale or installed for such
2 use or put to such use.”

3 13. The Clean Air Act defines a “defeat device” as one “that reduces the
4 effectiveness of the emission control system under conditions which may reasonably be expected
5 to be encountered in normal vehicle operation use.” When a defeat device is in place, it can
6 bypass, defeat, or render inoperative elements of the vehicle’s emission control system that are
7 put in place to ensure compliance with the Clean Air Act. Motor vehicles that are equipped with
8 defeat devices cannot be certified by the EPA.

9 14. California’s emission standards are even more stringent than EPA standards.
10 Several states have adopted California’s standards and also demand even more from car-makers
11 than the EPA. California emissions regulations are administered by the California Air Resources
12 Board, or CARB.

13 **Volkswagen Falsely Pitched Itself as a Leader in Environmental Issues**

14
15 15. Volkswagen is a German automotive company that manufactures and sells
16 vehicles under the Volkswagen, Audi, Porsche and other brand names with operations in
17 approximately 150 countries, including the United States. In the first half of 2015, Volkswagen
18 surpassed Toyota as the world’s largest automaker by sales, selling 5.04 million vehicles in the
19 first six months of the year. By July 2015, Volkswagen ranked eighth on the Fortune Global 500
20 list of the world’s largest companies.

21 16. Despite Volkswagen’s ascension to become the world’s biggest automaker,
22 Volkswagen sales lagged in the United States. Volkswagen has sought to improve sales in the
23 United States by touting the performance and reliability of its vehicles and its environmental
24 leadership. Volkswagen’s 2013 Annual Report emphasizes that “Volkswagen intends to become
25 the global economic and environmental leader among automobile manufacturers by 2018” and
26 that “[w]e are focusing in particular on the environmentally friendly orientation and profitability
27 of our vehicle projects.”
28

Volkswagen Falsely Marketed its Diesel Engine Systems as Clean and Green

1
2 17. Volkswagen broadly boasted about the performance and environmental
3 cleanliness of its engine systems. In an October 2008 press release, Volkswagen bragged:

4 The Jetta TDI is amongst the ten most fuel efficient vehicles on the US market. In
5 the recently published “Fuel Economy Guide 2009” the EPA (Environmental
6 Protection Agency) listed the Jetta TDI in the top ten low consumption and low
7 emissions vehicles.

8 In the current edition of the publication, the Jetta 2.0 l Clean TDI, introduced to
9 the market two months ago, is praised particularly for its excellent consumption
10 figures - it has a fuel consumption of 5.7 litre per 100 kilometre. Moreover, the
11 Jetta Clean TDI also fulfils stringent Californian emission standards. This was
12 achieved through modifications within the engine and *by implementing an
13 exhaust treatment system developed especially by Volkswagen and which
14 reduces nitrogen oxide emissions (NOx) by up to 90 percent.* The central
15 element of the exhaust treatment system is the NOx storage catalytic converter.

16 18. Since introducing the 2.0L TDI CleanDiesel engine in 2008, Volkswagen has
17 touted it as a “fantastic power train” that “gives very good fuel economy” and “is also good for
18 the environment because it puts out 25% less greenhouse gas emissions than what a gasoline
19 engine would . . . cuts out the particulate emissions by 90% and the emissions of nitrous oxide
20 are cut by 95% . . . [and is] clean enough to be certified in all 50 states.”

21 19. The TDI CleanDiesel engines are turbocharged and directly inject fuel into each
22 cylinder via fuel injectors. Volkswagen has stated, “[t]he superior qualities of the 2.0 Liter TDI
23 engine with common rail injection systems are oriented towards future challenges in acoustics,
24 comfort, and exhaust gas after-treatment . . . confirming Volkswagen’s role as a pioneer in diesel
25 technology.”

26 20. Volkswagen has marketed and advertised its CleanDiesel models as
27 extraordinarily clean, EPA certified in all 50 states, and powerful. Promotional material used in
28 2010, and similar materials, have been used across the spectrum of models using the CleanDiesel
engine system.

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1 21. Volkswagen’s advertising, which keyed on the unique combination of clean,
2 efficient and highly performing, was very effective. In fact, Volkswagen has become the largest
3 seller of diesel passenger vehicles in the United States.

4 22. In an October 2009 interview with Business Insider, when asked “[w]hat is the
5 advantage of a diesel over a hybrid,” VW of America’s Chief Operating officer, Mark Barnes,
6 stated:

7 It’s also good for the environment because it puts out 25% less greenhouse gas
8 emissions than what a gasoline engine would. And thanks to the uniqueness of the
9 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 certified in all 50 states.

10 23. Volkswagen doubled-down on “clean” and “green” vehicles. Being highly
11 efficient, fun, and “clean” are the central messages for Volkswagen’s diesel engine campaign.

12 24. Volkswagen also touted the performance characteristics of the TDI CleanDiesel,
13 claiming that clean emission technology did not sacrifice its 236 lbs/ft of torque and
14 turbocharged CleanDiesel engine. In a recent 2015 Volkswagen Golf sales brochure,
15 Volkswagen states:

16 With the 2.0L TDI engine, you’ll appreciate every fuel-efficient mile with the
17 EPA-estimated 45 hwy mpg. But that’s only half the story. Step on the pedal and
18 feel the 236 lb-ft of torque and let the performance tell the other half.

19 25. Volkswagen also claimed that TDI CleanDiesel models “typically have a higher
20 resale value versus comparable gasoline vehicles.”

21 26. Even when Volkswagen knew that EPA investigators had discovered—or at the
22 very least suspected—their fraud and the defeat device, it continued to deceive its customers
23 through false recalls and false advertising.

24 27. Beginning in April 2015, Volkswagen issued VW Action Code 2306, which was a
25 recall for CleanDiesel equipped vehicles. Volkswagen *claimed* that the recall was a “repair” and
26 that it “improved” the engine management system. In November 2015, while still stopping short
27 of actually *admitting* its fraud and malfeasance, Volkswagen issued a letter to leaseholders and
28

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1 purchasers of Affected Vehicles, including Representative Plaintiff DARIN PETERSEN,
 2 offering to give “a \$500 Volkswagen Prepaid Loyalty Card, a \$500 Volkswagen Dealership
 3 Card, and 24-hour Roadside Assistance at no charge for three years” as a “goodwill gesture” –
 4 yet astoundingly unrepentant in its closing assertion, falsely claimed: “**It is important to**
 5 **emphasize that this is an emissions issue and that the Environmental Protection Agency has**
 6 **stated that your car remains safe and legal to drive**” – notwithstanding Defendants’
 7 knowledge that the Affected Vehicles continue to emit nitrogen oxides (NOx) at up to 40 times
 8 the standard allowed under federal and state laws and regulations during normal operations.

9 28. Volkswagen continued its aggressive campaign to dupe its customers into
 10 believing its cars were clean and environmentally friendly. In advertisements appearing on its
 11 webpage as recent as September 21, 2015, Volkswagen extended the deceit. These ads are only
 12 now being stripped from Volkswagen’s websites.

13 29. Volkswagen’s now dubious concern for the environment extended beyond its
 14 CleanDiesel campaigns. On the “Environment” page of its website, Volkswagen claims that it
 15 takes

16 . . . environmental responsibility very seriously. When it comes to making our
 17 cars as green as possible, Volkswagen has an integrated strategy focused on
 18 reducing fuel consumption and emissions, building the world’s cleanest diesel
 19 engines and developing totally new power systems, which utilize new fuel
 20 alternatives.

21 30. Volkswagen trumpeted its apparent environmental *bone fides* when the Audi A3
 22 TDI and VW Jetta TDI were named the 2010 Green Car of the Year and the 2009 Green Car of
 23 the Year. Ironically, a key feature of the most recent CleanDiesel advertisements was “***Promise***
 24 ***kept.***”

25 31. On the Volkswagen CleanDiesel webpage, it continued to mislead consumers,
 26 touting the supposedly reduced greenhouse gas emission of the CleanDiesel engine system.
 27
 28

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1 32. Through its “Think Blue” program, Volkswagen claimed to have a policy of
2 being “more responsible on the road and more environmentally conscious—not just in our cars.”
3 Whether Volkswagen had any care at all for the environment is now, at best, debatable.

4 33. On its website to promote its “clean” diesel technology,
5 www.clearlybetterdiesel.org, Volkswagen falsely claimed that its CleanDiesel engine system
6 reduces smog and “meets the highest standards in all 50 states, thanks to ultra-low sulfur diesel
7 (ULSD) fuel and innovative engine technology that burns cleaner.”

8
9 **Volkswagen’s CleanDiesel Engine Systems Were a Fraud**

10 34. The EPA’s investigation of Volkswagen was prompted by a May 15, 2014,
11 publication titled “In-Use Emissions Testing of Light-Duty Diesel Vehicles in the United States”
12 by the Center for Alternative Fuels, Engines & Emissions (“CAFEE”) of West Virginia
13 University (“the CAFEE Report”).

14 35. The International Council of Clean Transportation (“ICCT”) hired CAFEE to
15 conduct in-use testing of three light-duty diesel vehicles. According to the CAFEE Report, in the
16 tested vehicles “real-world NOx emissions were found to exceed the US-EPA ... standard by a
17 factor[s] of 5 to 35.”

18 36. Those findings led the EPA to conduct its own further investigation, which
19 ultimately revealed that, contrary to Volkswagen’s vigorous efforts to promote itself as a “green”
20 company with an extraordinary commitment to environmental protection, it was instead a liar
21 and a cheat—its CleanDiesel technology was a fraud and its cars were gross polluters that were,
22 in fact, not even legal to drive on U.S. roadways.

23 37. On September 18, 2015, the EPA issued to Volkswagen and its parent
24 Volkswagen AG and Audi AG a Notice of Violation (“NOV”). The NOV explained the EPA’s
25 allegations that Volkswagen installed sophisticated software in the Volkswagen and Audi diesel
26 vehicles sold by Volkswagen in the United States that detects when the vehicle is undergoing
27 official emissions testing and turns full emissions controls on only during the test. At all other
28 times that the vehicle is running, however, the emissions controls are deactivated, meaning that

1 pollution is freely released into the environment at levels that exceed those allowed by federal
2 and state laws and regulations.

3 38. The software produced and used by Volkswagen falls under the legal description
4 of a defeat device, which is prohibited by the Clean Air Act. Because modern cars include
5 sophisticated computers and sensors throughout the car, modern emissions testing uses the car's
6 own sensors and computer controls to measure the presence of pollutants and track compliance
7 with EPA and state emissions standards. Emissions testing stations plug a diagnostic device into
8 the car's on-board diagnostics ("OBD II") port and use the exhaust sensors installed in the car to
9 measure the substances emitted. Some states, instead of or in addition to an OBD II diagnostic
10 device, use a probe inserted into the exhaust pipe to measure emissions.

11 39. Volkswagen's defeat device used software and sophisticated algorithms to detect
12 when the cars were undergoing emissions testing, and only then engaged pollution suppression
13 systems to ensure that emissions complied with regulatory standards. When the car was not
14 being emissions tested—that is, under all other operating conditions—the electronic engine
15 control systems operated the vehicle with no regard for regulatory emissions restrictions.

16 40. The result is that Volkswagen's CleanDiesel vehicles would meet emissions
17 standards in labs or testing stations, but at all other times emit NOx at *up to 40 times the*
18 *standard* allowed under United States laws and regulations.

19 41. As the journal *Popular Mechanics* reported, non-Volkswagen diesels commonly
20 use urea injection to "neutralize" NOx emission, but those systems add weight and complexity to
21 the engine. "Everyone wondered how VW met emissions standards while foregoing urea
22 injection. As it turns out, they didn't. It wasn't magical German engineering. Just plain old
23 fraud."

24 42. Remarkably, Volkswagen has done this before. As reported in *USA Today* and
25 the *Los Angeles Times*, Volkswagen was accused of using a defeat device to pass emissions
26 standards in vehicles it made in 1972-73. While Volkswagen denied wrongdoing, it paid a
27 \$120,000 fine in 1974 in order to settle charges that "it gamed pollution control systems in four
28

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1 models by changing carburetor settings and shutting off an emissions-control system at low
 2 temperatures.” Volkswagen also agreed to install corporate controls to prevent a future similar
 3 occurrence. Apparently those controls were not effective.

4 43. On September 20, 2015, Volkswagen admitted that the EPA allegations were
 5 true. It admitted using a defeat device in the Affected Vehicles. Prior to his resignation as a result
 6 of the disclosure of the emissions fraud, Volkswagen’s CEO Martin Winterkorn stated: “I
 7 personally am deeply sorry that we have broken the trust of our customers and the public.”

8 44. Michael Horn, President and CEO of Volkswagen Group of America, reportedly
 9 admitted on September 21, 2015:

10 As you have seen since Friday, the EPA, the Environmental Protection Agency,
 11 has issued a statement...that Volkswagen Group manipulated engine software in
 12 our TDI diesel cars, and we violated emissions standards. The CEO of our parent
 13 company, Dr. Martin Winterkorn, said yesterday Volkswagen will fully cooperate
 14 with the responsible agencies, and much much more important as I see it, he
 15 stated that he was personally and deeply sorry for this—that Volkswagen has
 16 broken the trust of our customers, and the public here in America. And lastly he
 17 stated that this matter, and this is I think common sense, now this is the first
 18 priority for him personally and for the entire [board]. So let’s be clear about this:
 19 our company was dishonest with the EPA and the California Air Resources
 20 Board, and with all of you. And in my German words, we’ve totally screwed up.
 21 We must fix those cars, and prevent this from ever happening again, and we have
 22 to make things right—with the government, the public, our customers, our
 23 employees, and also very importantly our dealers. This kind of behavior, I can tell
 24 you out of my heart, is completely inconsistent with our core values. The three
 25 core values of our brand are value, innovation, and in this context very
 26 importantly, responsibility: for our employees, for our stakeholders, and for the
 27 environment. So it goes totally against what we believe is right. Along with our
 28 German headquarters, we are committed to do what must be done, and to begin to
 restore your trust.

24 45. In what will perhaps prove to be the automotive understatement of the decade,
 25 Mr. Horn said Volkswagen “screwed up.”

26 46. By manufacturing and selling cars with “defeat devices” that allowed for higher
 27 levels of emissions than were certified to the EPA, Volkswagen violated the Clean Air Act,
 28 defrauded its customers, placed in commerce vehicles that were illegal to drive on U.S.

1 roadways, and engaged in unfair competition and false advertising under California and federal
2 laws.

3 47. Moreover, Volkswagen's fraud harmed not just the customers it duped into
4 buying its heavily polluting—not so—CleanDiesels, but it harmed the environment. Through six
5 years of fraud, Volkswagen put on the United States roadways over 483,000 cars that spewed up
6 to 40 times the permitted level of NOx and other pollutants. These emissions have undeniably
7 harmed the air quality and environment and, as a result, harmed the United States, California,
8 and its citizens.

9 Volkswagen Profited From its Fraud

10
11 48. Volkswagen has charged a substantial premium for the Affected Vehicles,
12 ironically marketed by Volkswagen as "CleanDiesel." For example, for the 2015 Volkswagen
13 Jetta, the base S model has a starting MSRP of \$18,780. The base TDI S CleanDiesel, however,
14 has a starting MSRP of \$21,640, a price premium of \$2,860.

15 49. The CleanDiesel premium for the highest trim Jetta model is substantially higher.
16 The highest level gas Jetta SE has a starting MSRP of \$20,095, while the CleanDiesel TDI SEL
17 MSRP is \$26,410, a staggering \$6,315 premium.

18 50. These price premiums occur across all of the vehicles lines in which Volkswagen
19 installed its defeat device for emissions testing. The following table sets forth the price premium
20 in 2015 for each base, mid-level and top-line trim for each affected model. Similar premiums
21 existed for each Affected Vehicle for every model year:

22 2015 CleanDiesel Price Premiums

24 Model	25 Base	26 Mid-level	27 Top-line
28 <i>VW Jetta</i>	\$2,860	\$4,300	\$6,315
<i>VW Beetle</i>	\$4,635	n/a	\$2,640

<i>VW Golf</i>	\$2,950	\$1,000	\$1,000
<i>VW Passat</i>	\$5,755	\$4,750	\$6,855
<i>Audi A3</i>	\$2,805	\$3,095	\$2,925

Volkswagen's False Advertising and Fraud Has Profoundly Harmed Owners of Affected Vehicles

51. As illustrated above, Class members paid large premiums to purchase Affected Vehicles. They paid these premiums as a result of Volkswagen's false claims that the CleanDiesel engine system was environmentally friendly, clean, efficient and EPA complaint. Class members were harmed because from the day they drove their Affected Vehicle off the lot, they did not get what they paid for.

52. In addition, as a direct result of the disclosure of Volkswagen's CleanDiesel fraud, Affected Vehicles have sharply decreased in value and are presently nearly unsalable. In fact, Volkswagen has halted all sales of Affected Vehicles, new or used, so that even its dealers are stuck with Affected Vehicles that they cannot sell. Each Class member has, therefore, suffered a direct pecuniary loss in the form of the decreased value of his or her Affected Vehicle.

53. The loss in value is particularly acute and affects Class members because they do not want to own cars that pollute and harm the environment. Cleanliness was the core of Volkswagen's marketing efforts and a driving factor in purchase decisions. Class members want to sell their Affected Vehicles but they cannot without incurring substantial losses.

54. Moreover, many Class members purchased their vehicles with financing in the form of car loans or leases. The drop in value of Affected Vehicles has caused the financing to be underwater, meaning that Class members will have to pay money, over and above whatever they can sell their car for, in order to get into a car that is actually legal to drive on United States roadways.

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1 55. Class members have suffered a substantial drop in the market value for their
 2 Affected Vehicles following the public disclosure that defeat devices to evade clean air standards
 3 were illegally installed.

4 56. Additionally, Volkswagen has been ordered by the EPA to recall the Affected
 5 Vehicles and repair them so that they comply with EPA emissions requirements at all times
 6 during normal operation. However, Volkswagen will not be able to make the Affected Vehicles
 7 comply with emissions standards without substantially degrading their performance
 8 characteristics, including their horsepower and their efficiency.

9 57. As a result, even if Volkswagen is able to make the Affected Vehicles EPA
 10 compliant, Class members will nonetheless suffer actual harm and damages because their
 11 vehicles will no longer perform as they did when purchased and as advertised. This will
 12 necessarily result in a diminution in value of every Affected Vehicle and it will cause owners of
 13 Affected Vehicles to pay more for fuel while using their affected vehicles.

14 58. The harm described immediately above is not at all speculative. In April 2015,
 15 Volkswagen issued a recall for one line of Affected Vehicles, the Audi A3 diesel. Volkswagen
 16 claimed this was a “repair” that “improved” engine management software. But scores of Class
 17 members reported that immediately after having the recall repair performed, their vehicle
 18 performance and fuel efficiency precipitously dropped 10-20%. These owners have already
 19 suffered harm to the value of their cars and have been harmed from having to pay additional
 20 sums for fuel. Contrary to Volkswagen’s false spin, following “repair,” A3 owners reported on
 21 enthusiast blogs posts such as the following:

22 Had my update done couple weeks ago and I’ve noticed a sizable
 23 performance hit afterwards, compared to previous tanks pre-update.
 24 38.00 MPG
 25 36.42 MPG
 26 37.77 MPG
 27 37.51 MPG
 28 37.05 MPG
 //////////////////////////////////////////////////////////////////// RECALL Performed
 34.13 MPG
 33.12 MPG

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1 [. . .]

2 edt: [sic] real data...

3 bought car in Jan in CA (first two is drive back)

4 38.14

5 36.63

6 32.10

7 32.99

8 32.77

9 32.15

10 29.94 (recall done during this tank)

11 26.67

12 25.79

13 26.10

14 59. In addition, many Class members purchased very expensive extended warranties
 15 for their Affected Vehicles, intending to own the vehicles for many years beyond the initial
 16 warranty. However, as a result of Volkswagen's fraud, Class members no longer want to own the
 17 Affected Vehicles and when they sell them, in addition to losses from the cars being worth much
 18 less as a result of Volkswagen's fraud, they will lose the value of the extended warranties that
 19 they purchased.

20 60. Further compounding the harm to Class members is that as of the date of this
 21 filing, Volkswagen has provided no guidance directly to customers or to its dealer network.
 22 Concerned owners of Affected Vehicles have been told absolutely nothing about what will
 23 happen to their cars, what Volkswagen intends to do, or what owners should do. Instead, calls to
 24 dealers and Volkswagen itself either go unanswered, or are answered with "we don't know."

25 61. As a result of Volkswagen's unfair, deceptive, and/or fraudulent business
 26 practices, and its failure to disclose that under normal operating conditions the Affected Vehicles
 27 emit up to 40 times the allowed levels, owners and/or lessees of the Affected Vehicles have
 28 suffered losses in money and/or property, and continue to suffer such ongoing losses.

62. Had Plaintiffs and Class members known of the defeat device at the time they
 purchased or leased their Affected Vehicles, they would not have purchased or leased those
 vehicles, or would have paid substantially less for the vehicles than they did. Moreover, when
 and if Volkswagen recalls Affected Vehicles, in addition to its prior recall of the Audi A3, and

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1 degrades the CleanDiesel engine performance in order to make the Affected Vehicles compliant
 2 with EPA standards, all Plaintiffs and Class members will be required to pay extra for fuel and
 3 will not obtain the performance characteristics of their vehicles when purchased. As such,
 4 Affected Vehicles will necessarily be worth less in the marketplace because of the decrease in
 5 both performance and efficiency.

6 63. As a result of Volkswagen's unfair, deceptive, and/or fraudulent business
 7 practices, and its failure to disclose that under normal operating conditions the Affected Vehicles
 8 emit up to 40 times the allowed levels of pollutants, the environment and air quality in the United
 9 States, and California in particular, has been harmed. If the EPA and other regulators had known
 10 of the true nature of the CleanDiesel engine system and the true levels of pollutants it emitted, it
 11 would not have certified it for use on the United States roadways and the air quality and
 12 environment in the United States and particularly California would not have been harmed.

13 JURISDICTION

14
 15 64. This Court has jurisdiction pursuant to the Class Action Fairness Act of 2005, 28
 16 U.S.C. § 1332(d), because the proposed Class consists of 100 or more members; the amount in
 17 controversy exceeds \$5,000,000, exclusive of costs and interest; and minimal diversity exists.
 18 This Court also has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. §
 19 1367.

20 VENUE

21 65. Venue is proper in this District under 28 U.S.C. § 1391 because a substantial part
 22 of the events or omissions giving rise to Plaintiffs' claims occurred in this District.
 23 Representative Plaintiffs are domiciled in this District and purchased an Affected Vehicle in this
 24 District. Volkswagen has its Test Center California located in California "with a primary focus
 25 on powertrain and systems development, government compliance, and field quality testing."
 26 Volkswagen has marketed, advertised, sold, and leased the Affected Vehicles within this District.
 27
 28

PARTIES

1
2 66. Plaintiff DARIN PETERSEN is an individual domiciled in Oakland, California.
3 In or about September, 2010, Plaintiff purchased a new 2010 JETTA WGN 2.0L TDI
4 CleanDiesel, from VW of Langhorn, an authorized Volkswagen dealer in Langhorn,
5 Pennsylvania. The car was financed and paid off in 2015 through Volkswagen. Plaintiff licensed
6 and registered this vehicle in California, and still owns this vehicle. Unknown to Plaintiff at the
7 time the vehicle was purchased, the vehicle was equipped with an emissions control defeat
8 device which caused the vehicle to get an undue EPA certification and pass emissions tests, but
9 at all other times emit up to 40 times the allowed level of pollutants, including NOx. The use of
10 the defeat device by Volkswagen has caused and will cause Plaintiff out-of-pocket loss, future
11 attempted repairs, future additional fuel costs, loss of warranty value, and diminished value of
12 his vehicle. Volkswagen knew about and purposefully used the defeat device, but did not
13 disclose the defeat device and its effects to Plaintiff, so Plaintiff purchased the vehicle on the
14 reasonable, but mistaken, belief that the vehicle complied with United States emissions
15 standards, was properly EPA certified, and would retain all of its operating characteristics
16 throughout its useful life.

17 67. Plaintiff PAMELA WILHELMS is an individual domiciled in California. In or
18 about June, 2014, Plaintiff purchased a new 2014 JETTA SPORTWAGON TDI CleanDiesel,
19 from Boardwalk VW in Redwood City, California. The car was financed through Volkswagen.
20 Plaintiff licensed and registered this vehicle in California, and still owns this vehicle. Unknown
21 to Plaintiff at the time the vehicle was purchased, the vehicle was equipped with an emissions
22 control defeat device which caused the vehicle to get an undue EPA certification and pass
23 emissions tests, but at all other times emit up to 40 times the allowed level of pollutants,
24 including NOx. The use of the defeat device by Volkswagen has caused and will cause Plaintiff
25 out-of-pocket loss, future attempted repairs, future additional fuel costs, loss of warranty value,
26 and diminished value of her vehicle. Volkswagen knew about and purposefully used the defeat
27 device, but did not disclose the defeat device and its effects to Plaintiff, so Plaintiff purchased the
28 vehicle on the reasonable, but mistaken, belief that the vehicle complied with United States

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1 emissions standards, was properly EPA certified, and would retain all of its operating
2 characteristics throughout its useful life.

3 68. Defendant Volkswagen Group of America, Inc., is a corporation doing business in
4 all 50 states (including the District of Columbia) and is organized under the laws of the State of
5 New Jersey, with its principal place of business located at 2200 Ferdinand Porsche Dr., Herndon,
6 Virginia 20171.

7 69. Defendant Volkswagen Aktiengesellschaft, doing business as Volkswagen Group
8 and/or Volkswagen AG (“Volkswagen AG”), has its principal place of business in Wolfsburg,
9 Germany. Volkswagen AG is a corporation organized under the laws of Germany and it is the
10 parent corporation of Volkswagen Group of America, Inc.

11 70. Volkswagen Group of American, Inc., and Volkswagen AG were and are at all
12 times relevant to the allegations in this complaint working in concert under the common
13 objective to engage in the emissions scheme described in this complaint. Each of Volkswagen
14 Group of America and Volkswagen AG were and are the agents of each other and have acted and
15 act for their common goals and profit. Therefore, all acts and knowledge ascribed to one of
16 Volkswagen Group of America or Volkswagen AG are properly imputed to the other.
17 Volkswagen Group of America and Volkswagen AG are referred to collectively herein as
18 Volkswagen or “VW.”

19 71. At all times relevant to this action, Volkswagen manufactured, distributed, sold,
20 leased, and warranted the Affected Vehicles under the Volkswagen and Audi brand names
21 throughout the United States, including California. Volkswagen and/or its parents, affiliates and
22 agents designed, manufactured, and installed the CleanDiesel engine systems in the Affected
23 Vehicles, which included the “defeat device.” Volkswagen and/or its parents, affiliates and
24 agents developed and disseminated the owner’s manuals and warranty booklets, advertisements,
25 and other promotional materials relating to the Affected Vehicles.

26
27
28

TOLLING OF THE STATUTE OF LIMITATIONS

Discovery Rule Tolling

1
2
3 72. Class Members had no way of knowing about Volkswagen’s deception with
4 respect to its CleanDiesel engine system and “defeat device.” It took federal EPA and California
5 Air Resources Board investigations to uncover Volkswagen’s deception, which involved
6 sophisticated software manipulation on Volkswagen’s part. As reported by the Los Angeles
7 Times on September 18, 2015, it took California Air Resources Board testing on a special
8 dynamometer in a laboratory, open road testing using portable equipment, and the use of special
9 testing devised by the Board to uncover Volkswagen’s scheme and to detect how software on the
10 engine’s electronic control module was deceiving emissions certifications tests. Plainly,
11 Volkswagen was intent on expressly hiding its behavior from regulators and consumers. This is
12 the quintessential case for tolling.

13 73. Within the time period of any applicable statutes of limitation, Plaintiffs and
14 members of the proposed classes could not have discovered through the exercise of reasonable
15 diligence that Volkswagen was concealing the conduct complained of herein and
16 misrepresenting the Company’s true position with respect to the emission qualities of its
17 vehicles.

18 74. Plaintiffs and the other Class members did not discover, and did not know of facts
19 that would have caused a reasonable person to suspect, that Volkswagen did not report
20 information within its knowledge to federal and state authorities, its dealerships, or consumers;
21 nor would a reasonable and diligent investigation have disclosed that Volkswagen had
22 information in its possession about the existence of its sophisticated emissions scheme and that it
23 opted to conceal that information, which was discovered by Plaintiffs only shortly before this
24 action was filed.

25 75. Nor in any event would such an investigation on the part of Plaintiffs and other
26 Class members have disclosed that Volkswagen valued profits over compliance with federal and
27 state law, or the trust of Plaintiffs and other Class members had placed in its representations, or
28

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1 that necessarily, Volkswagen actively discouraged its personnel from raising or disclosing issues
2 with regard to the true quality of the emissions, and the emissions software, of its vehicles, or of
3 Volkswagen's emissions scheme.

4 76. For all these reasons, all applicable statutes of limitations have been tolled by
5 operation of the discovery rule with respect to claims as to all vehicles identified herein.

6
7 **Fraudulent Concealment Tolling**

8 77. All applicable statutes of limitation have also been tolled by Volkswagen's
9 knowing and active fraudulent concealment and denial of the facts alleged herein throughout the
10 time period relevant to this action.

11 78. Instead of disclosing its emissions scheme, or that the quality and quantity of
12 emissions from the subject vehicles were far worse than represented, and of its disregard of
13 federal and state law, Volkswagen falsely represented that its vehicles complied with federal and
14 state emissions standards, and that it was a reputable manufacturer whose representations could
15 be trusted.

16
17 **Estoppel**

18 79. Volkswagen was under a continuous duty to disclose to Plaintiffs and the other
19 Class members the true character, quality, and nature of emissions from the vehicles at issue, and
20 of those vehicles' emissions systems, and of the compliance of those systems with applicable
21 federal and state law.

22 80. Volkswagen knowingly, affirmatively, and actively concealed the true nature,
23 quality, and character of the emissions systems, and the emissions, of the vehicles at issue.

24 81. Volkswagen was also under a continuous duty to disclose to Plaintiffs and Class
25 members that it had engaged in the scheme complained of herein to evade federal and state
26 emissions and clean air standards, and that it systematically devalued compliance with, and
27 deliberately flouted, federal and state laws regulating vehicle emissions and clean air.

28

1 82. Based on the foregoing, Volkswagen is estopped from relying on any statutes of
 2 limitations in defense of this action.

3 4 **CLASS ALLEGATIONS**

5 83. Representative Plaintiffs bring this action pursuant to the provisions of Rules
 6 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure, on behalf of themselves and the
 7 following class and subclasses (collectively, the “Classes”):

8 **The Nationwide Class**

9 All persons or entities in the United States who owned and/or leased an “Affected
 10 Vehicle” as of September 18, 2015. Affected Vehicles include, without limitation,
 11 the diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY
 2009-2015 VW Golf; MY 2012-2015 VW Passat; and MY 2009-2015 Audi A3.

12 **The California Subclass**

13 All persons or entities in the state of California who owned and/or leased an
 14 “Affected Vehicle” as of September 18, 2015. Affected Vehicles include, without
 15 limitation, the diesel-powered: MY 2009-2015 VW Jetta; MY 2009-2015 VW
 16 Beetle; MY 2009-2015 VW Golf; MY 2012-2015 VW Passat; and MY 2009-
 2015 Audi A3.

17 84. Excluded from the Class are individuals who have personal injury claims
 18 resulting from the installation of the defeat device in the CleanDiesel engine system. Also
 19 excluded from the Class are Volkswagen and its subsidiaries and affiliates; all persons who make
 20 a timely election to be excluded from the Class; governmental entities; and the judge to whom
 21 this case is assigned and his/her immediate family. Plaintiffs reserve the right to revise the Class
 22 definition based upon information learned through discovery.

23 85. Certification of Plaintiffs’ claims for class-wide treatment is appropriate because
 24 Plaintiffs can prove the elements of their claims on a class-wide basis using the same evidence as
 25 would be used to prove those elements in individual actions alleging the same claim, and a
 26 multiplicity of suits would otherwise be necessarily filed absent Class Certification.

27 86. This action has been brought and may be properly maintained on behalf of each of
 28 the Classes proposed herein under Federal Rule of Civil Procedure 23.

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1 87. **Numerosity:** Federal Rule of Civil Procedure 23(a)(1): The members of the
 2 Classes are so numerous and geographically dispersed that individual joinder of all Class
 3 members is impracticable. While Plaintiffs are informed and believe that there are not less than
 4 hundreds of thousands of members of the Class, and the California subclass, the precise number
 5 of Class and Subclass members is unknown to Plaintiffs, but may be ascertained from
 6 Volkswagen's books and records. Class members may be notified of the pendency of this action
 7 by recognized, Court-approved notice dissemination methods, which may include U.S. mail,
 8 electronic mail, Internet postings, and/or published notice.

9 88. **Commonality and Predominance:** Federal Rule of Civil Procedure 23(a)(2) and
 10 23(b)(3): This action involves common questions of law and fact, which predominate over any
 11 questions affecting individual Class members, including, without limitation:

- 12 a. Whether Volkswagen engaged in the conduct alleged herein;
- 13 b. Whether Volkswagen designed, advertised, marketed, distributed, leased, sold,
 14 or otherwise placed Affected Vehicles into the stream of commerce in the United States;
- 15 c. Whether the CleanDiesel engine system in the Affected Vehicles contains a defect
 16 in that it does not comply with U.S. EPA and/or California requirements and federal and state
 17 emissions regulations;
- 18 d. Whether the CleanDiesel engine systems in Affected Vehicles can be made to
 19 comply with EPA and California standards without substantially degrading the performance
 20 and/or efficiency of the Affected Vehicles;
- 21 e. Whether Volkswagen knew about the defeat device and, if so, how long
 22 Volkswagen has known;
- 23 f. Whether Volkswagen designed, manufactured, marketed, and distributed Affected
 24 Vehicles with a defeat device;
- 25 g. Whether Volkswagen's conduct violates the consumer protection statutes, false
 26 advertising laws, sales contracts, warranty laws, and other laws as asserted herein;
- 27
- 28

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1 h. Whether Plaintiffs and the other Class members overpaid for their Affected
2 Vehicles;

3 i. Whether Plaintiffs and the other Class members are entitled to equitable relief,
4 including, but not limited to, restitution or injunctive relief; and

5 j. Whether Plaintiffs and the other Class members are entitled to damages and other
6 monetary relief and, if so, in what amount.

7 89. **Typicality:** Federal Rule of Civil Procedure 23(a)(3): Plaintiffs' claims are typical
8 of the other Class members' claims because, among other things, all Class members were
9 comparably injured through Volkswagen's wrongful conduct as described above.

10 90. **Adequacy:** Federal Rule of Civil Procedure 23(a)(4): Representative Plaintiffs are
11 adequate Class representatives because their interests do not conflict with the interests of the
12 other members of the Class and Subclass they seek to represent; Plaintiffs have retained counsel
13 competent and experienced in complex class action litigation; and Plaintiffs intend to prosecute
14 this action vigorously. The Classes' interests will be fairly and adequately protected by Plaintiffs
15 and their counsel.

16 91. **Declaratory and Injunctive Relief:** Federal Rule of Civil Procedure 23(b)(2):
17 Volkswagen has acted or refused to act on grounds generally applicable to Plaintiffs and the
18 other members of the Classes, thereby making appropriate final injunctive relief and declaratory
19 relief, as described below, with respect to the Class as a whole.

20 92. **Superiority:** Federal Rule of Civil Procedure 23(b)(3): A class action is superior
21 to any other available means for the fair and efficient adjudication of this controversy, and no
22 unusual difficulties are likely to be encountered in the management of this class action. The
23 damages or other financial detriment suffered by Plaintiffs and the other Class members are
24 relatively small compared to the burden and expense that would be required to individually
25 litigate their claims against Volkswagen, so it would be impracticable for the members of the
26 Classes to individually seek redress for Volkswagen's wrongful conduct. Even if Class members
27 could afford individual litigation, the court system could not. Individualized litigation creates a
28

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1 potential for inconsistent or contradictory judgments, and increases the delay and expense to all
2 parties and the court system. By contrast, the class action device presents far fewer management
3 difficulties, and provides the benefits of single adjudication, economy of scale, and
4 comprehensive supervision by a single court.

5
6 **FIRST CLAIM FOR RELIEF**
7 **VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW**
8 **(California Business & Professions Code §§ 17200, *et seq.*)**

9 93. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
10 forth herein.

11 94. Plaintiffs bring this Claim for Relief on behalf of the Nationwide Class and the
12 California Subclass.

13 95. California’s Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code §§ 17200,
14 *et seq.*, proscribes acts of unfair competition, including “any unlawful, unfair or fraudulent
15 business act or practice and unfair, deceptive, untrue or misleading advertising.”

16 96. Volkswagen’s conduct, as described herein, was and is in violation of the UCL.
17 Volkswagen’s conduct violates the UCL in at least the following ways:

18 a. By knowingly and intentionally concealing from Plaintiffs, the Nationwide Class
19 and the California Subclass members that the Affected Vehicles suffer from a design defect
20 while obtaining money from Plaintiffs and the Class and California Subclass;

21 b. By marketing Affected Vehicles as possessing functional and defect-free, EPA-
22 compliant CleanDiesel engine systems;

23 c. By purposefully installing an illegal “defeat device” in the Affected Vehicles to
24 fraudulently obtain EPA certification and cause Affected Vehicles to pass emissions tests when
25 in truth and fact they did not pass such tests;

26 d. By violating federal laws, including the Clean Air Act; and

27 e. By violating other California laws, including California laws.

28 97. Volkswagen’s misrepresentations and omissions alleged herein caused Plaintiffs
and the California Subclass members to make their purchases or leases of the Affected Vehicles.

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1 Absent those misrepresentations and omissions, Plaintiffs and the other California Subclass
 2 members would not have purchased or leased these vehicles, would not have purchased or leased
 3 these Affected Vehicles at the prices they paid, and/or would have purchased or leased less
 4 expensive alternative vehicles that did not contain CleanDiesel engine systems that failed to
 5 comply with EPA and California emissions standards.

6 98. Accordingly, Plaintiffs and the other California Subclass members have suffered
 7 injury in fact including lost money or property as a result of Volkswagen's misrepresentations
 8 and omissions.

9 99. Plaintiffs seek to enjoin further unlawful, unfair, and/or fraudulent acts or
 10 practices by Volkswagen under Cal. Bus. & Prof. Code § 17200.

11 100. Plaintiffs requests that this Court enter such orders or judgments as may be
 12 necessary to enjoin Volkswagen from continuing its unfair, unlawful, and/or deceptive practices
 13 and to restore to Plaintiffs and members of the Class any money it acquired by unfair
 14 competition, including restitution and/or restitutionary disgorgement, as provided in Cal. Bus. &
 15 Prof. Code § 17203 and Cal. Bus. & Prof. Code § 3345; and for such other relief set forth below.

16 **SECOND CLAIM FOR RELIEF**
 17 **VIOLATION OF CALIFORNIA CONSUMER LEGAL REMEDIES ACT**
 18 **(California Civil Code §§ 1750, *et seq.*)**

19 101. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
 20 forth herein.

21 102. Plaintiffs bring this Count on behalf of the California Subclass.

22 103. California's Consumers Legal Remedies Act ("CLRA"), Cal. Civ. Code §§ 1750,
 23 *et seq.*, proscribes "unfair methods of competition and unfair or deceptive acts or practices
 24 undertaken by any person in a transaction intended to result or which results in the sale or lease
 25 of goods or services to any consumer."

26 104. The Affected Vehicles are "goods" as defined in Cal. Civ. Code § 1761(a).
 27
 28

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1 105. Plaintiffs and the other California Subclass members are “consumers” as defined
2 in Cal. Civ. Code § 1761(d), and Plaintiffs, the other California Subclass members, and
3 Volkswagen are “persons” as defined in Cal. Civ. Code § 1761(c).

4 106. As alleged above, Volkswagen made numerous representations concerning the
5 benefits, efficiency, performance and safety features of CleanDiesel engine systems that were
6 misleading.

7 107. In purchasing or leasing the Affected Vehicles, Plaintiffs and the other California
8 Subclass members were deceived by Volkswagen’s failure to disclose that the Affected Vehicles
9 were equipped with defective CleanDiesel engine systems that failed EPA and California
10 emissions standards.

11 108. Volkswagen’s conduct, as described hereinabove, was and is in violation of the
12 CLRA. Volkswagen’s conduct violates at least the following enumerated CLRA provisions:

13 a. Cal. Civ. Code § 1770(a)(2): Misrepresenting the approval or certification of
14 goods;

15 b. Cal. Civ. Code § 1770(a)(3): Misrepresenting the certification by another;

16 c. Cal. Civ. Code § 1770(a)(5): Representing that goods have sponsorship, approval,
17 characteristics, uses, benefits, or quantities which they do not have;

18 d. Cal. Civ. Code § 1770(a)(7): Representing that goods are of a particular standard,
19 quality, or grade, if they are of another;

20 e. Cal. Civ. Code § 1770(a)(9): Advertising goods with intent not to sell them as
21 advertised; and

22 f. Cal. Civ. Code § 1770(a)(16): Representing that goods have been supplied in
23 accordance with a previous representation when they have not.

24 109. Plaintiffs and the other California Subclass members have suffered injury in fact
25 and actual damages resulting from Volkswagen’s material omissions and misrepresentations
26 because they paid an inflated purchase or lease price for the Affected Vehicles and because they
27
28

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1 stand to pay additional fuel costs if and when their Affected Vehicles are made to comply with
 2 emissions standards.

3 110. Volkswagen knew, should have known, or was reckless in not knowing of the
 4 defective design and/or manufacture of the CleanDiesel engine systems, and that the Affected
 5 Vehicles were not suitable for their intended use.

6 111. The facts concealed and omitted by Volkswagen to Plaintiffs and the other
 7 California Subclass members are material in that a reasonable consumer would have considered
 8 them to be important in deciding whether to purchase or lease the Affected Vehicles or pay a
 9 lower price. Had Plaintiffs and the other California Subclass members known about the defective
 10 nature of the Affected Vehicles, they would not have purchased or leased the Affected Vehicles
 11 or would not have paid the prices they paid.

12 112. In accordance with California Civil Code § 1780(a), Plaintiffs and members of the
 13 Class seek injunctive relief for Volkswagen's violations of the CLRA.

14 113. While Plaintiffs do not seek to recover damages under the CLRA in this initial
 15 Complaint, after mailing appropriate notice and demand in accordance with Civil Code § 1782(a)
 16 & (d), Plaintiffs will subsequently amend this Complaint to also include a request for
 17 compensatory and punitive damages.

18
 19 **THIRD CLAIM FOR RELIEF**
 20 **VIOLATION OF CALIFORNIA FALSE ADVERTISING LAW**
 21 **(California Business & Professions Code §§ 17500, *et seq.*)**

22 114. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
 23 forth herein.

24 115. Plaintiffs bring this Count on behalf of the California Subclass.

25 116. California Bus. & Prof. Code § 17500 states: "It is unlawful for
 26 any...corporation... with intent directly or indirectly to dispose of real or personal property...to
 27 induce the public to enter into any obligation relating thereto, to make or disseminate or cause to
 28 be made or disseminated... from this state before the public in any state, in any newspaper or
 other publication, or any advertising device,...or in any other manner or means whatever,

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1 including over the Internet, any statement...which is untrue or misleading, and which is known,
2 or which by the exercise of reasonable care should be known, to be untrue or misleading.”

3 117. Volkswagen caused to be made or disseminated through California and the United
4 States, through advertising, marketing and other publications, statements that were untrue or
5 misleading, and which were known, or which by the exercise of reasonable care should have
6 been known to Volkswagen, to be untrue and misleading to consumers, including Plaintiffs and
7 the other Class members.

8 118. Volkswagen has violated § 17500 because the misrepresentations and omissions
9 regarding the safety, reliability, and functionality of Affected Vehicles as set forth in this
10 Complaint were material and likely to deceive a reasonable consumer.

11 119. Plaintiffs and the other Class members have suffered an injury in fact, including
12 the loss of money or property, as a result of Volkswagen’s unfair, unlawful, and/or deceptive
13 practices. In purchasing or leasing their Affected Vehicles, Plaintiffs and the other Class
14 members relied on the misrepresentations and/or omissions of Volkswagen with respect to the
15 safety, performance and reliability of the Affected Vehicles. Volkswagen’s representations
16 turned out not to be true because the Affected Vehicles are distributed with faulty and defective
17 CleanDiesel engine systems, rendering certain safety and emissions functions inoperative. Had
18 Plaintiffs and the other Class members known this, they would not have purchased or leased their
19 Affected Vehicles and/or paid as much for them. Accordingly, Plaintiffs and the other Class
20 members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

21 120. All of the wrongful conduct alleged herein occurred, and continues to occur, in
22 the conduct of Volkswagen’s business. Volkswagen’s wrongful conduct is part of a pattern or
23 generalized course of conduct that is still perpetuated and repeated, both in the State of
24 California and nationwide.

25 121. Plaintiffs, individually and on behalf of the other Class members, request that this
26 Court enter such orders or judgments as may be necessary to enjoin Volkswagen from continuing
27 their unfair, unlawful, and/or deceptive practices and to restore to Plaintiffs and the other Class
28

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1 members any money Volkswagen acquired by unfair competition, including restitution and/or
2 restitutionary disgorgement, and for such other relief set forth below.

3
4 **FOURTH CLAIM FOR RELIEF**
5 **BREACH OF CONTRACT**

6 122. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
7 forth herein.

8 123. This claim is brought on behalf of the Nationwide Class and the California
9 Subclass.

10 124. Volkswagen's misrepresentations and omissions alleged herein, including
11 Volkswagen's failure to disclose the existence of the "defeat device" and/or defective design as
12 alleged herein, caused Plaintiffs and the other California Subclass members to make their
13 purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions,
14 Plaintiffs and the other California Subclass members would not have purchased or leased these
15 Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they
16 paid, and/or would have purchased or leased less expensive alternative vehicles that did not
17 contain the CleanDiesel engine system and the "defeat device." Accordingly, Plaintiffs, the
18 Nationwide Class and the California Subclass members overpaid for their Affected Vehicles and
19 did not receive the benefit of their bargain.

20 125. Each and every sale or lease of an Affected Vehicle by an authorized Volkswagen
21 dealer constitutes a contract between Volkswagen and the purchaser or lessee. Volkswagen
22 breached these contracts by selling or leasing Plaintiffs and the other California Subclass
23 members defective Affected Vehicles and by misrepresenting or failing to disclose the existence
24 of the "defeat device" and/or defective design, including information known to Volkswagen
25 rendering each Affected Vehicle less safe and emissions compliant, and thus less valuable, than
26 vehicles not equipped with CleanDiesel engine systems and "defeat devices."

27 126. As a direct and proximate result of Volkswagen's breach of contract, Plaintiffs
28 and the California Subclass have been damaged in an amount to be proven at trial, which shall

1 include, but is not limited to, all compensatory damages, incidental and consequential damages,
2 and other damages allowed by law.

3
4 **FIFTH CLAIM FOR RELIEF**
5 **MISREPRESENTATION AND/OR FRAUD BY CONCEALMENT**

6 127. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
7 forth herein.

8 128. This claim is brought on behalf of the Nationwide Class and the California
9 Subclass.

10 129. Volkswagen intentionally concealed and suppressed material facts concerning the
11 quality of the Affected Vehicles. As alleged in this Complaint, notwithstanding references in the
12 very model names of the subject vehicles as “CleanDiesel,” or to their engines as “TDI
13 CleanDiesel” engines, Volkswagen engaged in a secret scheme to evade federal and state vehicle
14 emissions standards by installing software designed to conceal its vehicles’ emissions of the
15 pollutant nitrogen oxide, which contributes to the creation of ozone and smog.

16 130. The software installed on the vehicles at issue was designed nefariously to kick-in
17 during emissions certification testing, such that the vehicles would show far lower emissions
18 than when actually operating on the road. The result was what Volkswagen intended: vehicles
19 passed emissions certifications by way of deliberately induced false readings. Reportedly,
20 Volkswagen’s deliberate, secret scheme resulted in noxious emissions from these vehicles at up
21 to 40 times applicable standards.

22 131. Plaintiffs, the Nationwide Class and California Subclass members reasonably
23 relied upon Volkswagen’s false representations. They had no way of knowing that Volkswagen’s
24 representations were false and gravely misleading. As alleged herein, Volkswagen employed
25 extremely sophisticated methods of deception. Plaintiffs and California Subclass members did
26 not, and could not, unravel Volkswagen’s deception on their own.

27 132. Volkswagen concealed and suppressed material facts concerning what is
28 evidently the true culture of Volkswagen – one characterized by an emphasis on profits and sales

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1 above compliance with federal and state clean air laws, and emissions regulations that are meant
2 to protect the public and consumers. It also emphasized profits and sales over the trust that
3 Plaintiffs and California Subclass members placed in its representations. As one customer, Priya
4 Shah, put it in a quotation cited by the Los Angeles Times in a September 15, 2015 article, “It’s
5 just a blatant disregard and intentional manipulation of the system. That’s just a whole other
6 level of not only lying to the government, but also lying to your consumer. People buy diesel
7 cars from Volkswagen because they feel they are clean diesel cars.” As Ms. Shah put it, “I don’t
8 want to be spewing noxious gases into the environment.”

9 133. Necessarily, Volkswagen also took steps to ensure that its employees did not
10 reveal the details of its scheme to regulators or consumers, including Plaintiffs, the Nationwide
11 Class and California Subclass Members. Volkswagen did so in order to boost the reputations of
12 its vehicles and to falsely assure purchasers and lessors of its vehicles, including previously
13 owned vehicles, that Volkswagen is a reputable manufacturer that complies with applicable law,
14 including federal and state clean air laws and emissions regulations, and that its vehicles likewise
15 comply with applicable law and regulations.

16 134. Volkswagen’s false representations were material to consumers, both because
17 they concerned the quality of the Affected Vehicles, including their compliance with applicable
18 federal and state laws and regulations regarding clean air and emissions, and also because the
19 misrepresentations played a significant role in the value of the vehicles. As Volkswagen well
20 knew, its customers, including Plaintiffs, the Nationwide Class and California Subclass
21 Members, highly valued that the vehicles they were purchasing or leasing were clean diesel cars,
22 and they paid accordingly.

23 135. Volkswagen had a duty to disclose the emissions scheme it engaged in with
24 respect to the Affected Vehicles because knowledge of the scheme and its details were known
25 and/or accessible only to Volkswagen, because Volkswagen had exclusive knowledge as to
26 implementation and maintenance of its scheme, and because Volkswagen knew the facts were
27 not known to or reasonably discoverable by Plaintiffs or California Subclass Members.
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1 136. Volkswagen also had a duty to disclose the true facts because it made general
2 affirmative representations about the qualities of its vehicles with respect to emissions standards,
3 starting with references to them as clean diesel cars, or cars with clean diesel engines, which
4 were misleading, deceptive, and incomplete without the disclosure of the additional facts set
5 forth above regarding its emissions scheme, the actual emissions of its vehicles, its actual
6 philosophy with respect to compliance with federal and state clean air laws and emissions
7 regulations, and its actual practices with respect to the vehicles at issue. Having volunteered to
8 provide information to Plaintiffs, Volkswagen had the duty to disclose not just the partial truth,
9 but the entire truth.

10 137. These omitted and concealed facts were material because they directly impact the
11 value of the Affected Vehicles purchased or leased by Plaintiffs and California Subclass
12 members.

13 138. Whether a manufacturer's products comply with federal and state clean air laws
14 and emissions regulations, and whether that manufacturer tells the truth with respect to such
15 compliance or non-compliance, are material concerns to a reasonable consumer, including with
16 respect to the emissions certification testing their vehicles must pass. Volkswagen represented to
17 Plaintiffs, the Nationwide Class and California Subclass members that they were purchasing
18 clean diesel vehicles, and certification testing appeared to confirm this – except that, secretly,
19 Volkswagen had subverted the testing process thoroughly.

20 139. Volkswagen actively concealed and/or suppressed these material facts, in whole
21 or in part, to pad and protect its profits and to avoid the perception that its vehicles did not or
22 could not comply with federal and state laws governing clean air and emissions, which
23 perception would hurt the brand's image and cost Volkswagen money, and it did so at the
24 expense of Plaintiffs, the Nationwide Class and California Subclass members.

25 140. On information and belief, Volkswagen has still not made full and adequate
26 disclosures, and continues to defraud Plaintiffs, the Nationwide Class and California Subclass
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1 members by concealing material information regarding the emission qualities of its vehicles and
2 its emissions scheme.

3 141. Plaintiffs, the Nationwide Class and California Subclass members were unaware
4 of the omitted material facts referenced herein, and they would not have acted as they did if they
5 had known of the concealed and/or suppressed facts, in that they would not have purchased
6 purportedly “clean” diesel cars manufactured by Volkswagen, and/or would not have continued
7 to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of
8 the information concealed from them.

9 142. Plaintiffs, the Nationwide Class and California Subclass Members’ actions were
10 justified. Volkswagen was in exclusive control of the material facts, and such facts were not
11 known to the public, Plaintiffs, or California Subclass Members.

12 143. Because of the concealment and/or suppression of the facts, Plaintiffs, the
13 Nationwide Class and California Subclass members have sustained damage because they own
14 vehicles that are diminished in value as a result of Volkswagen’s concealment of the true quality
15 and quantity of those vehicles’ emissions and Volkswagen’s failure to timely disclose the actual
16 emission qualities and quantities of millions of Volkswagen- Porche- and Audi- branded vehicles
17 and the serious issues engendered by Volkswagen’s corporate policies.

18 144. Had Plaintiffs, the Nationwide Class and California Subclass members been
19 aware of Volkswagen’s emissions scheme, and the company’s callous disregard for compliance
20 with applicable federal and state laws and regulations, Plaintiffs, the Nationwide Class and
21 California Subclass members who purchased or leased new or previously owned vehicles would
22 have paid less for their vehicles or would not have purchased or leased them at all.

23 145. The value of Plaintiffs, the Nationwide Class and California Subclass Members’
24 vehicles has diminished as a result of Volkswagen’s fraudulent concealment of its emissions
25 scheme, which has greatly tarnished the Volkswagen, Porche and Audi brand names attached to
26 Plaintiffs’ and California Subclass members’ vehicles and made any reasonable consumer
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1 reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have
2 been fair market value for the vehicles.

3 146. In addition, Class members are entitled to damages for loss of use, costs of
4 additional fuel, costs of unused warranties, and other damages to be proved at trial.

5 147. Accordingly, Volkswagen is liable to Plaintiffs and California Subclass members
6 for damages in an amount to be proven at trial.

7 148. Volkswagen's acts were done wantonly, maliciously, oppressively, deliberately,
8 with intent to defraud, and in reckless disregard of Plaintiffs' and California Subclass members'
9 rights and the representations that Volkswagen made to them, in order to enrich Volkswagen.

10 149. As such, Volkswagen's conduct warrants an assessment of punitive damages in an
11 amount sufficient to deter such conduct in the future, which amount is to be determined
12 according to proof.

13
14 **REQUEST FOR RELIEF**

15 WHEREFORE, Plaintiffs, individually and on behalf of members of the Nationwide
16 Class and the California Subclass, respectfully request that the Court enter judgment in their
17 favor and against Defendants, as follows:

18 a. Certification of the proposed Nationwide Class and California Subclass, including
19 appointment of Plaintiffs' counsel as Class Counsel;

20 b. An order temporarily and permanently enjoining Volkswagen from continuing the
21 unlawful, deceptive, fraudulent, and unfair business practices alleged in this Complaint;

22 c. Injunctive relief in the form of a recall or free replacement program;

23 d. Injunctive relief in the form of environmental remediation to offset the harm
24 caused by the illegal emissions of the CleanDiesel engine systems – specifically including
25 injunctive relief requiring Defendants to facilitate and bear the expense of planting and
26 maintaining healthy trees one-for-one of each Affected Vehicle sold in California and the United
27 States along public highways in every effected state.
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1 e. Return of the premium paid for a CleanDiesel over the cost of the same model
2 and trim of car with a gasoline engine;

3 f. Restitution of the purchase price of each Affected Vehicle should any “fix”
4 installed by Volkswagen result in a degradation of performance and/or fuel efficiency, or
5 alternatively, at the election of any Class member, reconveyance to Defendants of their Affected
6 Vehicles together with restitution of the market value of that vehicle just prior to the public
7 disclosure of Defendants’ concealed use of the illegal defeat devices to evade clean air standards;

8 g. Compensation for additional sums spent for fuel/maintenance resulting from any
9 fix;

10 h. Restitution for purchase of extended warranties that will go unused;

11 i. All other costs, restitution and damages proximately caused by Defendants
12 misconduct as alleged herein, including punitive damages, and disgorgement in an amount to be
13 determined at trial;

14 j. An order requiring Volkswagen to pay both pre- and post-judgment interest on
15 any amounts awarded;

16 k. An award of costs and attorneys’ fees; and such other or further relief as may be
17 appropriate.

18 **DEMAND FOR JURY TRIAL**

19 Plaintiffs hereby demand a jury trial for all claims so triable.

20
21 Dated: January 19, 2016

22 **SCOTT COLE & ASSOCIATES, APC**

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24 By: /s/ Matthew R. Bainer
25 Matthew R. Bainer, Esq.
26 Attorneys for Representative Plaintiffs
27 and the Plaintiff Classes
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