

**UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF PENNSYLVANIA**

**ED HENDRICKS AND JODY
HENDRICKS, on Behalf of Themselves
and All Others Similarly Situated,**

Plaintiffs,

v.

**VOLKSWAGEN GROUP OF
AMERICA, INC.**

Defendant.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiffs, Ed Hendricks and Jody Hendricks, individually and on behalf of all similarly situated persons, by and through the undersigned attorneys, allege the following upon information and belief, except for those allegations pertaining to Plaintiffs, which are based upon personal knowledge, after due investigation by the undersigned counsel.

NATURE OF THE ACTION

1. This is a civil action seeking monetary damages and other relief from Volkswagen Group of America, Inc. ("Volkswagen") arising out of Volkswagen's deceptive scheme to violate U.S. law. Volkswagen duped consumers and federal regulators into believing that certain Volkswagen vehicles complied with federal emissions rules and regulations promulgated by the United States Environmental Protection Agency ("EPA") when, in reality, Volkswagen utilized sophisticated software to mask the vehicles' true emissions.

2. From at least 2009 through the present, Volkswagen has marketed certain diesel

vehicles as environmentally-friendly "CleanDiesels" (collectively "Class Vehicles").

Volkswagen has touted its "CleanDiesel" vehicles as not only compliant with mandatory federal emissions standards under the Clean Air Act ("CAA"), 42 U.S.C. §§ 7401-7671q, but as possessing a superior combination of low-environmental impact and performance, which Volkswagen used to justify a premium price.

3. Volkswagen's claims of low-environmental impact and performance, or even minimum compliance with federal emissions standards, were false.

4. On September 18, 2015, the EPA issued a Notice of Violation ("NOV") to Volkswagen declaring that Volkswagen "manufactured and installed defeat devices in certain model year 2009 through 2015 diesel lightweight duty vehicles[.]" *See* September 8, 2015 Notice of Violation, attached as Exhibit A. "These defeat devices bypass, defeat, or render inoperative elements of the vehicles' emission control system that exist to comply with [Clean Air Act ("CAA"), 42 U.S.C. §§ 7401-7671q] emission standards. Therefore, [Volkswagen] violated section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B)." *Id.*

5. On November 2, 2015, the EPA issued a second NOV directed to Volkswagen and also to Porsche AG and Porsche Cars North America. This second notice was issued as a result of the EPA's ongoing investigation, in which it conducted additional testing specifically designed to detect potential defeat devices. Through this testing, the EPA identified additional diesel vehicles found to contain the same emissions cheating device that was the subject of the September notice. *See* November 2, 2015 Notice of Violation, attached as Exhibit B.

6. In other words, Volkswagen installed software "that sense when the vehicle was being tested for compliance with EPA emissions standards" and caused a fraudulent, compliant

result to be registered. *See* Ex. A, September NOV. In reality, the Class Vehicles were not compliant with EPA emissions standards at all. For instance, Class Vehicles' emissions of nitrogen oxides ("NoX") are actually up to 40 times higher than EPA-compliant levels. *Id.*

7. As a result of Volkswagen's unfair, deceptive, and/or fraudulent misrepresentations or omissions, hundreds of thousands of unsuspecting consumers purchased or leased—at a premium—a Class Vehicle that did not comply with federal emissions requirements. Plaintiffs are such consumers. Had Plaintiffs and other Class members known that Volkswagen fraudulently employed a "defeat device" to fake EPA emissions test results at the time they purchased or leased a Class Vehicle, they would not have purchased or leased those vehicles, or would have paid substantially less for the vehicles than they did. Even if Volkswagen initiates a recall, Plaintiffs and other Class members will be required to spend greater sums on fuel and will not obtain the represented efficiency or performance characteristics of their purchased or leased vehicles. Not only that, but the Class Vehicles will certainly be worth less in the aftermarket due to the decrease in efficiency and performance as well as the stigma now surrounding these vehicles.

JURISDICTION AND VENUE

8. This Court has original jurisdiction of this action under the Class Action Fairness Act of 2005. Pursuant to 28 U.S.C. §§ 1332(d), this Court has original jurisdiction because the aggregate claims of the putative Class exceed \$5 million, exclusive of interest and costs, and at least one of the members of the proposed classes is a citizen of a different state than Volkswagen.

9. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because Volkswagen is subject to personal jurisdiction here and regularly conducts business in this district, and because on information and belief a substantial part of the events or omissions giving rise to the claims asserted herein occurred in this district.

THE PARTIES

10. Plaintiffs, Ed Hendricks and Jody Hendricks, husband and wife, are residents and citizens of Chester County, Pennsylvania.

11. Defendant, Volkswagen Group of America, Inc. is a New Jersey Corporation and maintains its principal place of business at 2200 Ferdinand Porsche Dr., Herndon, Virginia. Volkswagen regularly conducts business in Pennsylvania and elsewhere. It has specific, as well as general and systematic, contacts in Pennsylvania.

12. Volkswagen manufactures, distributes, sells, leases and warrants the Class Vehicles (among others) under the Volkswagen, Audi and Porsche brand names throughout the United States.

COMMON FACTUAL ALLEGATIONS

A. Overview of Federal Emissions Requirements

13. Among the emissions subjected to EPA requirements under the CAA are a vehicle's emission of nitrogen oxides (NOx) during normal operation. NOx can be dangerous to human health and have been linked with ozone depletion and other deleterious environmental effects. The CAA and the regulations promulgated thereunder aim to protect human health and the environment by reducing emissions of NOx and other pollutants from motor vehicles.

14. To enforce the CAA, the EPA administers a certification program that requires every vehicle sold in the United States to receive a certificate of conformity, which attests that the vehicle's emissions meet federal emissions requirements.

15. Part of the application process to attain a certificate of conformity requires an applicant to identify and explain any system or device that may reduce the effectiveness of a vehicle's emission control system. 40 C.F.R. § 86.1844-01(d)(11).

16. A "defeat device" (as used herein, a "device" includes a "system") is an auxiliary emission control device "that reduces the effectiveness of the emission control system under conditions which may reasonably be expected to be encountered in normal vehicle operation and use[.]" 40 C.F.R. § 86.1803-01.

17. Because defeat devices circumvent the very purpose of the CAA and regulations promulgated thereunder, it is a violation of federal law to manufacture, sell, or install them in vehicles. *See* 42 U.S.C. § 7522(a)(3)(B); 40 C.F.R. § 86.1854-12(a)(3)(ii). Consequently, vehicles equipped with such devices cannot be certified under the EPA's regulations, and cannot be sold in the United States. *See* 42 U.S.C. §§ 7522(a); 40 C.F.R. § 86-1854-12(a).

B. Volkswagen Deceptive Scheme to Flout Federal Emissions Requirements

18. Beginning at least as early as 2009, Volkswagen marketed a number of four-cylinder vehicles equipped with diesel engines as "eco-friendly and fuel-efficient vehicles" (collectively, "Class Vehicles"). Volkswagen asserted that these vehicles were highly rated according to strict EPA emissions standards.

19. Because these "green" Class Vehicles featured supposedly unique or superior efficiency and performance characteristics, Volkswagen charged a premium for these vehicles

over comparable models that did not share these purported characteristics. And, of course, Volkswagen represented that all Class Vehicles were certified in accordance with EPA emissions standards.

20. Volkswagen's representations were false. Contrary to its clear and express representations, the Class Vehicles did not possess superior eco-friendly or related performance characteristics. Volkswagen omitted the material fact that it developed and secretly installed software that masked the Class Vehicles' true emissions in normal operating conditions. Thus, the software constituted a defeat device under the CAA. In essence, Volkswagen faked the Class Vehicles' emissions results to obtain certificates of conformity and the right to sell vehicles in the United States, and then went ahead and touted those fake emissions results as a justification to charge a premium in the marketplace.

C. Plaintiffs Fall Victim to Volkswagen's Scheme

21. Plaintiffs, Ed and Jody Hendricks, purchased a new 2011 Volkswagen Jetta TDI with a 2.0 Liter Turbo Diesel engine in August 2011. The Hendricks' Jetta bears the following vehicle identification number ("VIN"): 3VWLL7AJGBM119690.

22. At the time of purchase, Volkswagen knew or had reason to know that the vehicle Plaintiffs were buying was equipped with a defeat device, but did not disclose this to Plaintiffs.

23. Plaintiffs purchased the vehicle on the reasonable yet mistaken belief that the vehicle complied with federal emissions requirements, was properly EPA certified, and would retain all of its represented operating characteristics, including efficiency and performance.

24. Plaintiffs purchased the vehicle, in part, because of the "CleanDiesel" system represented by Volkswagen. Shortly before their purchases, Plaintiffs had reviewed television

and/or Internet advertisements or related materials, which on information and belief Volkswagen caused to be made, that underscored the cleanliness, eco-friendliness, efficiency, and performance of the engine system in the vehicle that was ultimately purchased. Nothing available to Plaintiffs suggested that Volkswagen had surreptitiously installed a defeat device to circumvent federal emissions requirements, or disclosed that the vehicles actually emitted up to 40 times the permitted levels of certain pollutants. Plaintiffs would not have purchased the vehicle, or would have paid less for it, had they known these facts. As a result of Volkswagen's deceptive misrepresentations or omissions, Plaintiffs have suffered an ascertainable loss.

FRAUDULENT CONCEALMENT AND TOLLING

25. Upon information and belief, Volkswagen has affirmatively concealed from Plaintiffs and other Class members its unlawful conduct. Volkswagen planned and implemented its unlawful scheme in private, and affirmatively strove to avoid discussing or disclosing same, and took other actions to hide and conceal the unlawful conduct.

26. For instance, Volkswagen was under a duty imposed by federal law to disclose to Plaintiffs and other Class members the true nature, character, and quality of emissions from the Class Vehicles, and compliance status with federal emissions requirements. Volkswagen did not disclose these true facts to Plaintiffs and other Class members, or the EPA. Indeed, Plaintiffs and other members of the Class did not know, nor had any way to know through the exercise of reasonable diligence, about Volkswagen's wrongful conduct as alleged herein until the EPA disclosed its investigation on or about September 18, 2015, which up until that point had been non-public.

27. Because of the above, Plaintiffs and other Class members did not discover, nor could they discover through reasonable diligence, Volkswagen's deceptive, fraudulent, and unlawful conduct alleged herein. Volkswagen's false and misleading explanations, or obfuscations, lulled Plaintiffs and Class members into believing that the prices paid for purchased or leased Class Vehicles were consistent with Volkswagen's fraudulent misrepresentations and omissions.

28. As a result of Volkswagen's affirmative and other acts of concealment, any applicable statute of limitations affecting the rights of Plaintiffs and other Class members has been tolled. Plaintiffs and other Class members exercised reasonable diligence by among other things promptly investigating the allegations contained herein after sufficient information was discoverable. Despite other efforts, Plaintiffs were unable to discover, and could not have discovered, the unlawful conduct alleged herein at the time it occurred or at an earlier time so as to enable this complaint to be filed sooner.

29. Because Volkswagen was under an obligation to comply with federal emissions requirements, it is estopped from being able to assert any statute of limitations defense in this action.

30. Volkswagen's unlawful conduct alleged herein and the effects thereof are continuing and, as a direct and proximate result, Plaintiffs and Class members have and continue to suffer ascertainable losses.

CLASS ALLEGATIONS

31. Plaintiffs bring this action on behalf of themselves and all others similarly situated pursuant to Fed. R. Civ. P.23(a), (b)(2), and (b)(3). This action satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of Rule 23.

32. The proposed classes are defined as:

Nationwide Class: All persons in the United States who, from at least 2009 through the present, purchased or leased an Class Vehicle (as defined below).

Pennsylvania State Subclass: All persons in the Commonwealth of Pennsylvania who, from at least 2009 through the present, purchased or leased an Class Vehicle (as defined below).

The “Class Vehicles” include:

Model Year(s)	Make and Model(s)
2009-2015	VW Jetta TDI
2009-2014	VW Jetta Sportswagen TDI
2010-2015	VW Golf TDI
2015	VW Golf Sportswagen TDI
2012-2015	VW Beetle TDI & Beetle Convertible TDI
2012-2015	VW Passat TDI
2014	VW Touareg TDI
2010-2015	Audi A3 TDI
2016	Audi A6 Quattro
2016	Audi A7 Quattro
2016	Audi A8
2016	Audi A8L
2016	Audi Q5
2015	Porsche Cayenne

33. Plaintiffs reserve the right to modify or amend the definition of the proposed Classes before the Court determines whether certification is appropriate.

34. Excluded from the Classes are Volkswagen, its parents, subsidiaries, affiliates, officers and directors, any entity in which Volkswagen has a controlling interest, all customers who make a timely election to be excluded, governmental entities, and all judges assigned to hear any aspect of this litigation, as well as their immediate family members.

35. The members of the Classes are so numerous that joinder is impractical. The Classes consist of many thousands of members, the identities of whom are within the knowledge of and can be ascertained by resort to Volkswagen's records.

36. The claims of the representative Plaintiffs are typical of the claims of the Classes in that the representative Plaintiffs, like all Class members, purchased (or leased) a Class Vehicle. The representative Plaintiffs, like all Class members, have been damaged by Volkswagen's misconduct in that they have been harmed by the same deceptive, misleading, and/or fraudulent pretenses and practices. Furthermore, the factual basis of Volkswagen's misconduct is common to all Class members, and represents a common thread of unfair and unconscionable conduct resulting in injury to all members of the Classes.

37. There are numerous questions of law and fact common to the Classes and those common questions predominate over any affecting only individual Class Members.

38. Among the questions of law and fact common to the Classes are whether:

- a) Volkswagen unlawfully, falsely, deceptively, or misleadingly represented that the Class Vehicles complied with CAA and EPA emissions requirements;
- b) Volkswagen installed defeat devices in the Class Vehicles in violation of federal law;
- c) The Class Vehicles did not meet CAA and EPA emissions requirements;

- d) Volkswagen unlawfully, falsely, deceptively, or misleadingly induced Class members into purchasing or leasing a Class Vehicle based on misrepresentations and false promises;
 - e) Volkswagen wrongfully omitted its installation or use of a defeat device to mask the Class Vehicles' emissions;
 - f) To the extent applicable, whether and how long Volkswagen fraudulently concealed its past and ongoing wrongful conduct from Plaintiffs and other members of the Classes;
 - g) Volkswagen was unjustly enriched through the company's actions; and
 - h) Volkswagen violated consumer protection and other state laws.
39. Other questions of law and fact common to the Classes include:
- a) The proper method or methods by which to measure damages; and
 - b) The declaratory and injunctive relief to which the Classes are entitled.
40. Plaintiffs' claims are typical of the claims of other Class members, in that they arise out of the same or substantially similar wrongful conduct by Volkswagen. Plaintiffs have suffered the harm alleged and have no interests antagonistic to the interests of any other Class member.
41. Plaintiffs are committed to the vigorous prosecution of this action and have retained competent counsel experienced in the prosecution of class actions and, in particular, class actions on behalf of consumers. Accordingly, Plaintiffs are adequate representatives and will fairly and adequately protect the interests of the Classes.
42. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Since the amount of each individual Class member's claim is small relative to the complexity of the litigation, and due to the financial resources of Volkswagen, no Class member could afford to seek legal redress individually for the claims

alleged herein. Therefore, absent a class action, the Class members will continue to suffer losses and Volkswagen's misconduct will proceed without remedy.

43. Even if Class members themselves could afford such individual litigation, the court system could not. Individualized litigation would significantly increase the delay and expense to all parties and to the Court. Individualized litigation would also create the potential for inconsistent or contradictory rulings. By contrast, a class action presents far fewer management difficulties, allows claims to be heard which might otherwise go unheard because of the relative expense of bringing individual lawsuits, and provides the benefits of adjudication, economies of scale and comprehensive supervision by a single court.

COUNT I
Fraud and Fraudulent Inducement
Nationwide Class

44. Plaintiffs repeat the preceding paragraphs as if set forth fully herein.

45. Volkswagen affirmatively misrepresented and/or did not disclose sufficient facts to render non-misleading its statements about the emissions certification, efficiency, and performance characteristics of the Class Vehicles. These misrepresentations or omissions include, inter alia, whether the Class Vehicles truly passed federal emissions requirements (they did not), or possessed the efficiency and performance characteristics advertised (they did not).

46. Volkswagen knew, or reasonably should have known, that its representations alleged herein were materially false or misleading, or that omission of material facts rendered such representations false or misleading. Volkswagen also knew, or had reason to know, that its misrepresentations and omissions would induce Class members to purchase or lease Class Vehicles.

47. Volkswagen's misrepresentations or omissions were material and a substantial factor in Plaintiffs' and Class members' purchasing or leasing Class Vehicles.

48. Volkswagen intended its misrepresentations or omissions to induce Plaintiffs and Class members to purchase or lease Class Vehicles, or had reckless disregard for same.

49. But for these misrepresentations (or omissions), Plaintiffs and Class members would not have purchased or leased Class Vehicles, and/or would have purchased or leased them at lower prices.

50. Plaintiffs and Class members were justified in relying on Volkswagen's misrepresentations. The same or substantively identical misrepresentations were communicated, and/or the same or substantively identical omissions were not communicated, to each Class member, including through promotional materials prepared and disseminated by Volkswagen. To the extent applicable, reliance can be presumed under these circumstances.

51. Plaintiffs and Class members were damaged by reason of Volkswagen's misrepresentations or omissions alleged herein.

COUNT II
Negligent Misrepresentation and Omission
Nationwide Class

52. Plaintiff repeats the preceding paragraphs as if set forth fully herein.

53. Volkswagen had or undertook a duty to accurately and truthfully represent to consumers the truth regarding Volkswagen's statements about the Class Vehicles' emissions certifications, efficiency, and performance characteristics.

54. Volkswagen failed to exercise ordinary care in making representations concerning the Class Vehicles' certifiability, efficiency, and performance characteristics.

55. Volkswagen negligently misrepresented or omitted the Class Vehicle's true certifiability, efficiency, and performance characteristics.

56. Volkswagen's statements were false at the time the misrepresentations were made (or the omissions were not made).

57. Volkswagen knew, or reasonably should have known, that its representations alleged herein were materially false or misleading, or that omission of material facts rendered such representations false or misleading. Volkswagen also knew, or had reason to know, that its misrepresentations and omissions would induce Class members to purchase or lease Class Vehicles.

58. As a direct and proximate result of Volkswagen's acts and omissions described herein, Plaintiffs and other Class members have suffered harm, and will continue to do so.

59. Volkswagen's misrepresentations or omissions were material and a substantial factor in Plaintiffs' and Class members' purchasing or leasing Class Vehicles.

60. But for these misrepresentations (or omissions), Plaintiffs and Class members would not have purchased or leased Class Vehicles, and/or would have purchased or leased them at lower prices.

61. Plaintiffs and Class members were justified in relying on Volkswagen's misrepresentations. The same or substantively identical misrepresentations were communicated, and/or the same or substantively identical omissions were not communicated, to each Class member, including through promotional materials prepared and disseminated by Volkswagen. To the extent applicable, reliance can be presumed in these circumstances.

62. Plaintiffs and Class members were damaged by reason of Volkswagen's

misrepresentations or omissions alleged herein.

COUNT III
Breach of Contract
Nationwide Class

63. Plaintiffs repeat the preceding paragraphs as if set forth fully herein.

64. Each and every sale or lease of a Class Vehicle constitutes a contract between Volkswagen and the purchaser or lessee. These sale or lease agreements are standardized forms prepared by Volkswagen, do not vary or do not substantially vary in pertinent materials respects, and are thrust upon the Nationwide Class by Volkswagen and thus constitute contracts of adhesion.

65. Upon information and belief, Volkswagen's sales and lease agreements provide that the Class Vehicles being sold or leased comply with related warranties, including those concerning CAA and EPA regulatory compliance.

66. Volkswagen materially breached these contracts by, inter alia, selling or leasing Plaintiffs and the other members of the Nationwide Class defective or non-conforming Class Vehicles and by misrepresenting or failing to disclose the existence of the "defeat device" and/or defective design, including information known to Volkswagen rendering each Class Vehicle less safe and emissions compliant, and thus less valuable, than vehicles not equipped with CleanDiesel engine systems and "defeat devices."

67. Plaintiffs and the Nationwide Class are entitled to recover all damages proximately caused by Volkswagen's breach, including compensatory, incidental, and consequential damages, and pre- and post judgment interest. Damages may be quantified on a classwide basis. Also, or in the alternative, Plaintiffs and the Nationwide Class are entitled to

restitution, disgorgement, rescission, and similar equitable relief. Any provisions in the sales and lease agreements to the contrary are unconscionable, severable, voidable, and/or void.

68. Further, by common law or statute, the sales and lease agreements impose upon each party a duty of good faith and fair dealing. Good faith and fair dealing, in connection with executing contracts and discharging performance and other duties according to their terms, means preserving the spirit—not merely the letter—of the bargain. Put differently, the parties to a contract are mutually obligated to comply with the substance of their contract in addition to its form. Evading the spirit of the bargain and abusing the power to specify terms constitute examples of bad faith in the performance of contracts.

69. Subterfuge and evasion violate the obligation of good faith in performance even when an actor believes their conduct to be justified. Bad faith may be overt or may consist of inaction, and fair dealing may require more than honesty. Examples of bad faith are evasion of the spirit of the bargain, willful rendering of imperfect performance, abuse of a power to specify terms, and interference with or failure to cooperate in the other party's performance.

70. Volkswagen has breached not only the sales and lease agreements but the covenant of good faith and fair dealing in those agreements through its wrongful actions alleged herein.

71. Plaintiffs and members of the Nationwide Class have sustained damages as a result of Volkswagen's breach of the sales and lease agreements and the covenant of good faith and fair dealing under each sales and lease agreement.

72. Volkswagen's fraud as alleged herein amounts to an illusory promise rendering any agreement unenforceable, unconscionable, void, and/or voidable.

COUNT IV
Breach of Express Warranty
Nationwide Class

73. Plaintiffs repeat the preceding paragraphs as if set forth fully herein.

74. Volkswagen made numerous representations, descriptions, and promises to Plaintiffs and Class members regarding the performance and emission controls of the Class Vehicles.

75. Volkswagen, however, knew or should have known that its representations, descriptions, and promises were false. Volkswagen was aware that it had installed defeat devices in the vehicles it sold or leased to Plaintiffs and other Class members.

76. Plaintiffs and other Class members reasonably relied on Volkswagen's representations in purchasing or leasing "clean" diesel vehicles. Those vehicles, however, did not perform as was warranted. Unbeknownst to Plaintiffs and other Class members, those vehicles included devices that caused their emission reduction systems to perform at levels worse than advertised. Those devices are defects. Accordingly, Volkswagen breached its express warranty by providing a product containing defects that were never disclosed to the Plaintiffs and Class members; as well as warranting the certifiability of the Class Vehicles under CAA and EPA emissions standards.

77. As a direct and proximate result of Volkswagen's false and misleading representations and warranties, Plaintiffs and other Class members suffered significant damages.

COUNT V
Breach of Implied Warranty
Nationwide Class

78. Plaintiffs repeat the preceding paragraphs as if set forth fully herein.

79. Volkswagen impliedly warranted that the Class Vehicles were of merchantable quality, fit for their intended or ordinary purpose, and/or were compliant with CAA and EPA emissions standards.

80. The Class Vehicles failed to conform to Volkswagen's implied warranty regarding their functionality as alleged herein, including but not limited to the vehicles' certifiability, efficiency, and performance.

81. As a direct and proximate result of Volkswagen's false and misleading representations and warranties, Plaintiffs and other Class members suffered significant injury when Volkswagen sold them vehicles that, it is now clear, are worth far less than the price Plaintiffs and other Class members paid for them.

COUNT VI
Unjust Enrichment
Nationwide Class

82. Plaintiffs repeat the preceding paragraphs as if set forth fully herein.

83. By means of Volkswagen's wrongful conduct alleged herein, Volkswagen knowingly induced Plaintiffs and members of the National Class to purchase or lease Class Vehicles.

84. Volkswagen knowingly received and retained wrongful benefits from Plaintiffs and members of the National Class. In so doing, Volkswagen acted intentionally or with conscious disregard for the rights of Plaintiffs and members of the National Class.

85. As a result of Volkswagen's wrongful conduct as alleged herein, Volkswagen has been unjustly enriched at the expense, and to the detriment, of Plaintiffs and members of the National Class.

86. Volkswagen's unjust enrichment is traceable to, and resulted directly and proximately from, the wrongful conduct alleged herein.

87. It is unfair and inequitable for Volkswagen to be permitted to retain the benefits it received, and is still receiving, without justification, from the wrongful conduct alleged herein. Volkswagen's retention of such benefits under the circumstances is inequitable.

88. The financial benefits derived by Volkswagen rightfully belong to Plaintiffs and members of the Nationwide Class, in whole or in part. Volkswagen should be compelled to account for and disgorge in a common fund for the benefit of Plaintiffs and members of the Nationwide Class all wrongful or inequitable proceeds received from them. A constructive trust should be imposed upon all wrongful or inequitable sums received by Volkswagen traceable to Plaintiffs and the members of the Nationwide Class.

89. Plaintiffs and members of the Nationwide Class have no adequate remedy at law.

90. Volkswagen's fraud as alleged herein amounts to an illusory promise rendering any agreement unenforceable, unconscionable, void or voidable.

COUNT VII
Negligence Per Se
Nationwide Class

91. Plaintiffs repeat the preceding paragraphs as if set forth fully herein.

92. Volkswagen owed a duty to Plaintiffs and the Nationwide Class to obtain proper emissions certifications under the CAA and EPA regulations promulgated thereunder.

93. Volkswagen breached that duty by failing to obtain the proper emissions certifications under the CAA and EPA regulations promulgated thereunder as a prerequisite to selling the Class Vehicles in the United States.

94. As a direct and proximate result of Volkswagen's conduct as alleged herein, Plaintiffs and other members of the Nationwide Class have sustained damages.

COUNT VIII
Violation of Pennsylvania's Unfair Trade Practices and Consumer Protection Law
Pennsylvania Class

95. Plaintiffs repeat the preceding paragraphs as if set forth fully herein.

96. This claim is asserted on behalf of the members of the Pennsylvania State Subclass under Pennsylvania's Unfair Trade Practices and Consumer Protection Law ("UTPCPL"), 73 P.S. § 201-1, et seq.

97. The UTPCFL, 73 P.S. § 201-3 prohibits "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce."

98. Volkswagen has engaged in unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce by, inter alia:

- a) "Using deceptive representations in connection with goods or services," *See* 73 P.S. § 201-2(4)(iv);
- b) "Failing to comply with the terms of any written guarantee ... ," *See* 73 P.S. § 201-2(4)(xiv); and
- c) "Engaging in any other fraudulent or deceptive conduct which creates a likelihood or confusion or of misunderstanding," *See* 73 P.S. § 201-2(4)(xxi).

99. Volkswagen violated the above sections by engaging in the conduct alleged herein.

100. Pursuant to 73 P.S. § 201-9.2, et seq., Plaintiffs and members of the Pennsylvania State Subclass purchased or leased Class Vehicles primarily for personal, family or household

purposes that did not comply with federal emissions requirements, or did not possess the advertised efficiency and performance characteristics.

101. Volkswagen engaged in unlawful conduct, made affirmative misrepresentations or omissions, or otherwise violated the UTPCPL by, inter alia, knowingly, intentionally, and recklessly misleading Plaintiffs and members of the Pennsylvania State Subclass about the certifiability, efficiency, and performance characteristics of the Class Vehicles.

102. To the extent applicable, Volkswagen intended that Plaintiffs and Pennsylvania State Subclass members would rely on the company's misrepresentations, or acts of concealment and omissions. Further, to the extent applicable, reliance can be presumed under the circumstances.

103. Volkswagen's conduct caused Plaintiffs and members of the Pennsylvania State Subclass to suffer ascertainable losses in the form of sums paid for the purchase or lease of Class Vehicles that would not otherwise have been incurred in whole or in part.

104. A causal relationship exists between Volkswagen's unlawful conduct and the ascertainable losses suffered by Plaintiffs and the Pennsylvania State Subclass.

105. As redress for Volkswagen's repeated and ongoing violations of the UTPCPL, Plaintiffs and the Pennsylvania State Subclass are entitled to, inter alia, damages and declaratory relief.

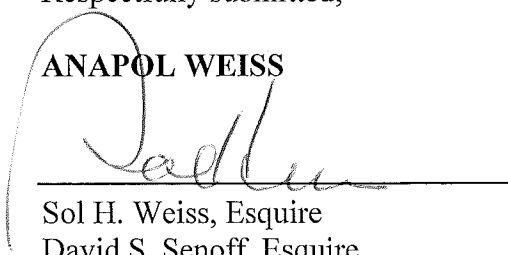
PRAYER FOR RELIEF

WHEREFORE, Plaintiffs and the Classes demand a jury trial on all claims so triable and judgment as follows:

1. A declaration that Volkswagen's conduct alleged herein is fraudulent, deceptive, wrongful, unfair, inequitable, and unconscionable;
2. Restitution owing to Plaintiffs and the Classes as a result of the wrongs alleged herein in an amount to be determined at trial;
3. An accounting and disgorgement of the ill-gotten gains derived by Volkswagen's misconduct;
4. Actual damages in an amount according to proof (doubled or trebled as permitted by law);
5. A temporary and permanent injunction enjoining Volkswagen from engaging in the same wrongful conduct going forward including requiring Volkswagen to adequately disclose facts to render truthful its representations;
6. Punitive and exemplary damages;
7. Pre judgment and post judgment interest at the maximum rate permitted by applicable law;
8. Costs and disbursements assessed by Plaintiffs in connection with this action, including reasonable attorneys' fees; and
9. Such other relief as this Court deems just and proper.

Respectfully submitted,

ANAPOL WEISS



Sol H. Weiss, Esquire
David S. Senoff, Esquire
Paola Pearson, Esquire
One Logan Square
130 N. 18th Street, Suite 1600
Philadelphia, PA 19103
(215) 735-1130

sweiss@anapolweiss.com
dsenoff@anapolweiss.com
ppearson@anapolweiss.com

Exhibit “A”



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 18 2015

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

*VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED*

Volkswagen AG
Audi AG
Volkswagen Group of America, Inc.
Thru:

David Geanakopoulos
Executive Vice President Public Affairs and General Counsel
Volkswagen Group of America, Inc.
2200 Ferdinand Porsche Drive
Herndon, VA 20171

Stuart Johnson
General Manager
Engineering and Environmental Office
Volkswagen Group of America, Inc.
3800 Hamlin Road
Auburn Hills, MI 48326

Re: Notice of Violation

Dear Mr. Geanakopoulos and Mr. Johnson:

The United States Environmental Protection Agency (EPA) has investigated and continues to investigate Volkswagen AG, Audi AG, and Volkswagen Group of America (collectively, VW) for compliance with the Clean Air Act (CAA), 42 U.S.C. §§ 7401–7671q, and its implementing regulations. As detailed in this Notice of Violation (NOV), the EPA has determined that VW manufactured and installed defeat devices in certain model year 2009 through 2015 diesel light-duty vehicles equipped with 2.0 liter engines. These defeat devices bypass, defeat, or render inoperative elements of the vehicles' emission control system that exist to comply with CAA emission standards. Therefore, VW violated section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B). Additionally, the EPA has determined that, due to the existence of the defeat

devices in these vehicles, these vehicles do not conform in all material respects to the vehicle specifications described in the applications for the certificates of conformity that purportedly cover them. Therefore, VW also violated section 203(a)(1) of the CAA, 42 U.S.C. § 7522(a)(1), by selling, offering for sale, introducing into commerce, delivering for introduction into commerce, or importing these vehicles, or for causing any of the foregoing acts.

Law Governing Alleged Violations

This NOV arises under Part A of Title II of the CAA, 42 U.S.C. §§ 7521–7554, and the regulations promulgated thereunder. In creating the CAA, Congress found, in part, that “the increasing use of motor vehicles . . . has resulted in mounting dangers to the public health and welfare.” CAA § 101(a)(2), 42 U.S.C. § 7401(a)(2). Congress’ purpose in creating the CAA, in part, was “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,” and “to initiate and accelerate a national research and development program to achieve the prevention and control of air pollution.” CAA § 101(b)(1)–(2), 42 U.S.C. § 7401(b)(1)–(2). The CAA and the regulations promulgated thereunder aim to protect human health and the environment by reducing emissions of nitrogen oxides (NO_x) and other pollutants from mobile sources of air pollution. Nitrogen oxides are a family of highly reactive gases that play a major role in the atmospheric reactions with volatile organic compounds (VOCs) that produce ozone (smog) on hot summer days. Breathing ozone can trigger a variety of health problems including chest pain, coughing, throat irritation, and congestion. Breathing ozone can also worsen bronchitis, emphysema, and asthma. Children are at greatest risk of experiencing negative health impacts from exposure to ozone.

The EPA’s allegations here concern light-duty motor vehicles for which 40 C.F.R. Part 86 sets emission standards and test procedures and section 203 of the CAA, 42 U.S.C. § 7522, sets compliance provisions. Light-duty vehicles must satisfy emission standards for certain air pollutants, including NO_x. 40 C.F.R. § 86.1811-04. The EPA administers a certification program to ensure that every vehicle introduced into United States commerce satisfies applicable emission standards. Under this program, the EPA issues certificates of conformity (COCs), and thereby approves the introduction of vehicles into United States commerce.

To obtain a COC, a light-duty vehicle manufacturer must submit a COC application to the EPA for each test group of vehicles that it intends to enter into United States commerce. 40 C.F.R. § 86.1843-01. The COC application must include, among other things, a list of all auxiliary emission control devices (AECDs) installed on the vehicles. 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. 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).

A defeat device is an AECD “that 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.

Motor vehicles equipped with defeat devices, such as those at issue here, cannot be certified. EPA, *Advisory Circular Number 24: Prohibition on use of Emission Control Defeat Device* (Dec. 11, 1972); *see also* 40 C.F.R. §§ 86-1809-01, 86-1809-10, 86-1809-12. Electronic control systems which may receive inputs from multiple sensors and control multiple actuators that affect the emission control system’s performance are AECDs. EPA, *Advisory Circular Number 24-2: Prohibition of Emission Control Defeat Devices – Optional Objective Criteria* (Dec. 6, 1978). “Such elements of design could be control system logic (i.e., computer software), and/or calibrations, and/or hardware items.” *Id.*

“Vehicles are covered by a certificate of conformity 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, including those issued to VW, state 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. *See also* 40 C.F.R. §§ 86.1844-01 (listing required content for COC applications), 86.1848-01(b) (authorizing the EPA to issue COCs on any terms that are necessary or appropriate to assure that new motor vehicles satisfy the requirements of the CAA and its regulations).

The CAA makes it a violation “for any person to manufacture or sell, or offer to sell, or install, any part or component intended for use with, or as part of, any motor vehicle or motor vehicle engine, where a principal effect of the part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this subchapter, and where the person knows or should know that such part or component is being offered for sale or installed for such use or put to such use.” CAA § 203(a)(3)(B), 42 U.S.C. § 7522(a)(3)(B); 40 C.F.R. § 86.1854-12(a)(3)(ii). Additionally, 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). It is also a violation to cause any of the foregoing acts. CAA § 203(a), 42 U.S.C. § 7522(a); 40 C.F.R. § 86-1854-12(a).

Alleged Violations

Each VW vehicle identified by the table below has AECDs that were not described in the application for the COC that purportedly covers the vehicle. Specifically, VW manufactured and installed software in the electronic control module (ECM) of these vehicles that sensed when the vehicle was being tested for compliance with EPA emission standards. For ease of reference, the EPA is calling this the “switch.” The “switch” senses whether the vehicle is being tested or not based on various inputs including the position of the steering wheel, vehicle speed, the duration of the engine’s operation, and barometric pressure. These inputs precisely track the parameters of the federal test procedure used for emission testing for EPA certification purposes. During EPA

emission testing, the vehicles' ECM ran software which produced compliant emission results under an ECM calibration that VW referred to as the "dyno calibration" (referring to the equipment used in emissions testing, called a dynamometer). At all other times during normal vehicle operation, the "switch" was activated and the vehicle ECM software ran a separate "road calibration" which reduced the effectiveness of the emission control system (specifically the selective catalytic reduction or the lean NOx trap). As a result, emissions of NOx increased by a factor of 10 to 40 times above the EPA compliant levels, depending on the type of drive cycle (e.g., city, highway).

The California Air Resources Board (CARB) and the EPA were alerted to emissions problems with these vehicles in May 2014 when the West Virginia University's (WVU) Center for Alternative Fuels, Engines & Emissions published results of a study commissioned by the International Council on Clean Transportation that found significantly higher in-use emissions from two light duty diesel vehicles (a 2012 Jetta and a 2013 Passat). Over the course of the year following the publication of the WVU study, VW continued to assert to CARB and the EPA that the increased emissions from these vehicles could be attributed to various technical issues and unexpected in-use conditions. VW issued a voluntary recall in December 2014 to address the issue. CARB, in coordination with the EPA, conducted follow up testing of these vehicles both in the laboratory and during normal road operation to confirm the efficacy of the recall. When the testing showed only a limited benefit to the recall, CARB broadened the testing to pinpoint the exact technical nature of the vehicles' poor performance, and to investigate why the vehicles' onboard diagnostic system was not detecting the increased emissions. None of the potential technical issues suggested by VW explained the higher test results consistently confirmed during CARB's testing. It became clear that CARB and the EPA would not approve certificates of conformity for VW's 2016 model year diesel vehicles until VW could adequately explain the anomalous emissions and ensure the agencies that the 2016 model year vehicles would not have similar issues. Only then did VW admit it had designed and installed a defeat device in these vehicles in the form of a sophisticated software algorithm that detected when a vehicle was undergoing emissions testing.

VW knew or should have known that its "road calibration" and "switch" together bypass, defeat, or render inoperative elements of the vehicle design related to compliance with the CAA emission standards. This is apparent given the design of these defeat devices. As described above, the software was designed to track the parameters of the federal test procedure and cause emission control systems to underperform when the software determined that the vehicle was not undergoing the federal test procedure.

VW's "road calibration" and "switch" are AECDs¹ that were neither described nor justified in the applicable COC applications, and are illegal defeat devices. Therefore each vehicle identified by the table below does not conform in a material respect to the vehicle specifications described in the COC application. As such, VW violated section 203(a)(1) of the CAA, 42 U.S.C. § 7522(a)(1), each time it sold, offered for sale, introduced into commerce, delivered for introduction into commerce, or imported (or caused any of the foregoing with respect to) one of the hundreds of thousands of new motor vehicles within these test groups. Additionally, VW

¹ There may be numerous engine maps associated with VW's "road calibration" that are AECDs, and that may also be defeat devices. For ease of description, the EPA is referring to these maps collectively as the "road calibration."

violated section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), each time it manufactured and installed into these vehicles an ECM equipped with the “switch” and “road calibration.”

The vehicles are identified by the table below. All vehicles are equipped with 2.0 liter diesel engines.

Model Year	EPA Test Group	Make and Model(s)
2009	9VWXV02.035N	VW Jetta, VW Jetta Sportwagen
2009	9VWXV02.0U5N	VW Jetta, VW Jetta Sportwagen
2010	AVWXV02.0U5N	VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3
2011	BVWXV02.0U5N	VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3
2012	CVWXV02.0U5N	VW Beetle, VW Beetle Convertible, VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3
2012	CVWXV02.0U4S	VW Passat
2013	DVWXV02.0U5N	VW Beetle, VW Beetle Convertible, VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3
2013	DVWXV02.0U4S	VW Passat
2014	EVWXV02.0U5N	VW Beetle, VW Beetle Convertible, VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3
2014	EVWXV02.0U4S	VW Passat
2015	FVGAV02.0VAL	VW Beetle, VW Beetle Convertible, VW Golf, VW Golf Sportwagen, VW Jetta, VW Passat, Audi A3

Enforcement

The EPA’s investigation into this matter is continuing. The above table represents specific violations that the EPA believes, at this point, are sufficiently supported by evidence to warrant the allegations in this NOV. The EPA may find additional violations as the investigation continues.

The EPA is authorized to refer this matter to the United States Department of Justice for initiation of appropriate enforcement action. Among other things, 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;^[1] CAA § 205(a), 42 U.S.C. § 7524(a); 40 C.F.R. § 19.4. In addition, any manufacturer who, on or after January 13, 2009, sold, offered for sale, introduced into commerce, delivered for introduction into commerce, imported, or caused any of the foregoing acts with respect to any new motor vehicle that was not covered by an EPA-issued COC is subject, among other things, to a civil penalty of up to \$37,500 for each violation.^[2] CAA § 205(a), 42 U.S.C. § 7524(a); 40 C.F.R. § 19.4. The EPA may seek, and district courts may order, equitable remedies to further address these alleged violations. CAA § 204(a), 42 U.S.C. § 7523(a).

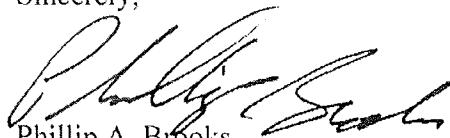
^[1] \$2,750 for violations occurring prior to January 13, 2009.

^[2] \$32,500 for violations occurring prior to January 13, 2009.

The EPA is available to discuss this matter with you. Please contact Meetu Kaul, the EPA attorney assigned to this matter, to discuss this NOV. Ms. Kaul can be reached as follows:

Meetu Kaul
U.S. EPA, Air Enforcement Division
1200 Pennsylvania Avenue, NW
William Jefferson Clinton Federal Building
Washington, DC 20460
(202) 564-5472
kaul.meetu@epa.gov

Sincerely,

A handwritten signature in black ink, appearing to read "Phillip A. Brooks", is written over the printed name.

Phillip A. Brooks
Director
Air Enforcement Division
Office of Civil Enforcement

Copy:

Todd Sax, California Air Resources Board
Walter Benjamin Fisherow, United States Department of Justice
Stuart Drake, Kirkland & Ellis LLP

Exhibit “B”



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV - 2 2015

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

*VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED*

Volkswagen AG
Audi AG
Porsche AG
Volkswagen Group of America, Inc.
Porsche Cars North America, Inc.
Thru:

David Geanacopoulos
Executive Vice President Public Affairs and
General Counsel
Volkswagen Group of America, Inc.
2200 Ferdinand Porsche Drive
Herndon, VA 20171

Joseph Folz
Vice President, General Counsel and
Secretary
Porsche Cars North America, Inc.
One Porsche Drive
Atlanta, GA 30354

Stuart Johnson
General Manager
Engineering and Environmental Office
Volkswagen Group of America, Inc.
3800 Hamlin Road
Auburn Hills, MI 48326

Walter J. Lewis
Manager, Regulatory Affairs
Porsche Cars North America, Inc.
980 Hammond Drive, Suite 1000
Atlanta, GA 30328

Re: Notice of Violation

Dear Mr. Geanacopoulos, Mr. Johnson, Mr. Folz, and Mr. Lewis:

The United States Environmental Protection Agency (EPA) has investigated and continues to investigate Volkswagen AG, Audi AG, Porsche AG, Volkswagen Group of America, Inc., and Porsche Cars North America, Inc., (collectively, VW) for compliance with the Clean Air Act (CAA), 42 U.S.C. §§ 7401-7671q, and its implementing regulations. As detailed in this Notice of Violation (NOV), the EPA has determined that VW manufactured and installed defeat devices

in certain model year 2014 – 2016 diesel light-duty vehicles equipped with 3.0 liter engines. These defeat devices bypass, defeat, or render inoperative elements of the vehicles' emission control system that exist to comply with CAA emission standards. Therefore, VW violated section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B). Additionally, the EPA has determined that, due to the existence of the defeat devices in these vehicles, these vehicles do not conform in all material respects to the vehicle specifications described in the applications for the certificates of conformity that purportedly cover them. Therefore, VW also violated section 203(a)(1) of the CAA, 42 U.S.C. § 7522(a)(1), by selling, offering for sale, introducing into commerce, delivering for introduction into commerce, or importing these vehicles, or for causing any of the foregoing acts.

Law Governing Alleged Violations

This NOV arises under Part A of Title II of the CAA, 42 U.S.C. §§ 7521–7554, and the regulations promulgated thereunder. In creating the CAA, Congress found, in part, that “the increasing use of motor vehicles . . . has resulted in mounting dangers to the public health and welfare.” CAA § 101(a)(2), 42 U.S.C. § 7401(a)(2). Congress' purpose in creating the CAA, in part, was “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,” and “to initiate and accelerate a national research and development program to achieve the prevention and control of air pollution.” CAA § 101(b)(1)–(2), 42 U.S.C. § 7401(b)(1)–(2). The CAA and the regulations promulgated thereunder aim to protect human health and the environment by reducing emissions of nitrogen oxides (NOx) and other pollutants from mobile sources of air pollution. Nitrogen oxides are a family of highly reactive gases that play a major role in the atmospheric reactions with volatile organic compounds (VOCs) that produce ozone (smog) on hot summer days. Breathing ozone can trigger a variety of health problems including chest pain, coughing, throat irritation, and congestion. Breathing ozone can also worsen bronchitis, emphysema, and asthma. Children are at greatest risk of experiencing negative health impacts from exposure to ozone.

The EPA's allegations here concern light-duty motor vehicles for which 40 C.F.R. Part 86 sets emission standards and test procedures and section 203 of the CAA, 42 U.S.C. § 7522, sets compliance provisions. Light-duty vehicles must satisfy emission standards for certain air pollutants, including NOx. 40 C.F.R. § 86.1811-04. The EPA administers a certification program to ensure that every vehicle introduced into United States commerce satisfies applicable emission standards. Under this program, the EPA issues certificates of conformity (COCs), and thereby approves the introduction of vehicles into United States commerce.

To obtain a COC, a light-duty vehicle manufacturer must submit a COC application to the EPA for each test group of vehicles that it intends to enter into United States commerce. 40 C.F.R. § 86.1843-01. The COC application must include, among other things, a list of all auxiliary emission control devices (AECDs) installed on the vehicles. 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. 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).

A defeat device is an AECD “that 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.

Motor vehicles equipped with defeat devices, such as those at issue here, cannot be certified. EPA, *Advisory Circular Number 24: Prohibition on use of Emission Control Defeat Device* (Dec. 11, 1972); see also 40 C.F.R. §§ 86-1809-01, 86-1809-10, 86-1809-12. Electronic control systems which may receive inputs from multiple sensors and control multiple actuators that affect the emission control system’s performance are AECDs. EPA, *Advisory Circular Number 24-2: Prohibition of Emission Control Defeat Devices – Optional Objective Criteria* (Dec. 6, 1978). “Such elements of design could be control system logic (i.e., computer software), and/or calibrations, and/or hardware items.” *Id.*

“Vehicles are covered by a certificate of conformity 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, COCs issued by EPA, including those issued to VW, state 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. See also 40 C.F.R. §§ 86.1844-01 (listing required content for COC applications), 86.1848-01(b) (authorizing the EPA to issue COCs on any terms that are necessary or appropriate to assure that new motor vehicles satisfy the requirements of the CAA and its regulations).

The CAA makes it a violation “for any person to manufacture or sell, or offer to sell, or install, any part or component intended for use with, or as part of, any motor vehicle or motor vehicle engine, where a principal effect of the part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this subchapter, and where the person knows or should know that such part or component is being offered for sale or installed for such use or put to such use.” CAA § 203(a)(3)(B), 42 U.S.C. § 7522(a)(3)(B); 40 C.F.R. § 86.1854-12(a)(3)(ii). Additionally, 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). It is also a violation to cause any of the foregoing acts. CAA § 203(a), 42 U.S.C. § 7522(a); 40 C.F.R. § 86-1854-12(a).

Alleged Violations

Each VW vehicle identified by the table below has AECDs that were not described in the application for the COC that purportedly covers the vehicle. Specifically, VW manufactured and installed software in the electronic control module (ECM) of each vehicle that causes the vehicle to perform differently when the vehicle is being tested for compliance with EPA emission standards than in normal operation and use.

When this software determines the vehicle has begun the FTP 75 Federal emission test procedure, it directs the vehicle to employ a low NOx temperature conditioning mode. A status bit in the software indicates that a “temperature conditioning” mode is active. In this low NOx temperature conditioning mode, the vehicle operates under a number of emission control parameters, including injection timing, exhaust gas recirculation rate, and common rail fuel pressure in such a way that the parameters yield low engine-out NOx emissions and high exhaust temperatures. The high exhaust temperatures heat the selective catalytic reduction system (“catalyst”) and improve the catalyst’s ability to reduce tailpipe NOx emissions. In this low NOx temperature conditioning mode, the combination of low engine-out NOx and improved catalyst performance results in tailpipe NOx emissions that are below the applicable emissions standard.

However, the software employs a “timer” that coincides with the low NOx temperature conditioning mode. At exactly one second after the completion of the initial phases of the FTP 75 Federal emissions test procedure (1,370 seconds, which is when the vehicle would normally be turned off), this software directs the vehicle to cease low NOx temperature conditioning mode. The “temperature conditioning” status bit switches to zero, and a second status bit indicates the activation of “transition to normal mode.” In this “normal mode,” the emission control system is immediately less effective. Compared to the low NOx temperature conditioning mode, the vehicle employs a different injection timing, exhaust gas recirculation rate, and common rail fuel pressure. This yields higher levels of NOx from the engine and reduced exhaust temperatures.

In addition, when the vehicle starts under conditions that the software determines *are not* the beginning of the FTP 75 Federal emission test procedure, the vehicle does not use the low NOx temperature conditioning mode at all. Instead, the emission control parameters are set consistent with the “normal mode.”

In sum, as soon as the vehicle senses that it is not being tested, it uses “normal mode.” In “normal mode,” tailpipe emissions of NOx are up to 9 times the applicable NOx standard levels, depending on model type and type of drive cycle (e.g., city, highway).

This NOV is based on vehicle emission testing performed by the EPA’s National Vehicle and Fuel Emissions Laboratory, California Air Resources Board’s Hagen-Smit Laboratory, and Environment Canada’s River Road Laboratory. This testing was performed since EPA’s announcement on September 25, 2015, that it would perform additional testing “using driving cycles and conditions that may reasonably be expected to be encountered in normal operation

and use, for the purposes of investigating a potential defeat device.” EPA, *EPA Conducted Confirmatory Testing* (Sept. 25, 2015).

VW knew or should have known that the software described above bypasses, defeats, or renders inoperative elements of the vehicle design related to compliance with the CAA emission standards. This is apparent given the design of these defeat devices. As described above, the software was designed to track federal test procedures and cause emission control systems to underperform when the software determined that the vehicle was not being tested.

VW’s software described above includes one or more AECDs that were neither described nor justified in the applicable COC applications, and are illegal defeat devices. Therefore each vehicle identified by the table below does not conform in a material respect to the vehicle specifications described in the COC application. As such, VW violated section 203(a)(1) of the CAA, 42 U.S.C. § 7522(a)(1), each time it sold, offered for sale, introduced into commerce, delivered for introduction into commerce, or imported (or caused any of the foregoing with respect to) one of the new motor vehicles within these test groups. Additionally, VW violated section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), each time it manufactured and installed into these vehicles an ECM equipped with the software described above.

The vehicles are identified by the table below. All vehicles are equipped with 3.0 liter diesel engines.

Model Year	EPA Test Group	Make and Model(s)
2014	EADXT03.02UG	VW Touareg
2015	FPRXT03.0CDD	Porsche Cayenne
2016	GVGAJ03.0NU4	Audi A6 Quattro, A7 Quattro, A8, A8L, and Q5

Enforcement

The EPA’s investigation into this matter is continuing. The above table represents specific violations that the EPA believes, at this point, are sufficiently supported by evidence to warrant the allegations in this NOV. The EPA may find additional violations as the investigation continues.

The EPA is authorized to refer this matter to the United States Department of Justice for initiation of appropriate enforcement action. Among other things, 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; CAA § 205(a), 42 U.S.C. § 7524(a); 40 C.F.R. § 19.4. In addition, any manufacturer who, on or after January 13, 2009, sold, offered for sale, introduced into commerce, delivered for introduction into commerce, imported, or caused any of the foregoing acts with respect to any new motor vehicle that was not covered by an EPA-issued COC is subject, among other things, to a civil penalty of up to \$37,500 for each violation. CAA § 205(a), 42 U.S.C. § 7524(a); 40 C.F.R. § 19.4. The EPA may

seek, and district courts may order, equitable remedies to further address these alleged violations. CAA § 204(a), 42 U.S.C. § 7523(a).

The EPA is available to discuss this matter with you. Please contact Meetu Kaul, the EPA attorney assigned to this matter, to discuss this NOV. Ms. Kaul can be reached as follows:

Meetu Kaul
U.S. EPA, Air Enforcement Division
1200 Pennsylvania Avenue, NW
William Jefferson Clinton Federal Building
Washington, DC 20460
(202) 564-5472
kaul.meetu@epa.gov

Sincerely,

A handwritten signature in black ink, appearing to read "Susan Shinkman", written in a cursive style.

Susan Shinkman
Director
Office of Civil Enforcement

Copy:

Todd Sax, California Air Resources Board
Walter Benjamin Fisherow, United States Department of Justice
Stuart Drake, Kirkland & Ellis LLP

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Ed Hendricks and Jody Hendricks on Behalf of Themselves and all others similarly situated

(b) County of Residence of First Listed Plaintiff Chester
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Sol H. Weiss, Esquire, David S. Senoff, Esquire, Paola Pearson, Esquire
Anapol Weiss
130 N. 18th Street, Suite 1600, Philadelphia, PA 19103
(215) 735-1130

DEFENDANTS

Volkswagen Group of America, Inc.

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|---------------------------------------|---------------------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input checked="" type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities Employment <input type="checkbox"/> 446 Amer. w/Disabilities Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. §§ 1332(d)

Brief description of cause:

Volkswagen deceived consumers and federal regulators into believing that certain vehicles complied with federal emissions rules.

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

12/01/2015

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: Chester County, Pennsylvania

Address of Defendant: 2200 Ferdinand Porsche Drive, Herndon, VA

Place of Accident, Incident or Transaction: _____
(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities?

Yes ☒ No ☐

RELATED CASE, IF ANY:

Case Number: 5:15-cv-06045

Judge Edward G. Smith

Date Terminated: _____

2:15-cv-06090

Berle M. Schiller

2:15-cv-05364

R. Barclay Surrick

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?
Yes ☒ No ☐
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?
Yes ☒ No ☐
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?
Yes ☐ No ☒
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?
Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☐ All other Federal Question Cases
(Please specify) _____

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☒ All other Diversity Cases
(Please specify) Other Fraud

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, Sol H. Weiss

counsel of record do hereby certify:

- ☒ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;
- ☒ Relief other than monetary damages is sought.

DATE: December 1, 2015

[Signature]
Attorney-at-Law

15925

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: December 1, 2015

[Signature]
Attorney-at-Law

15925

Attorney I.D.#

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

CASE MANAGEMENT TRACK DESIGNATION FORM

Ed Hendricks and Jody Hendricks
on behalf of themselves and all others
similarly situated

v.

Volkswagen Group of America, Inc.

CIVIL ACTION

NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) (☒)
- (f) Standard Management – Cases that do not fall into any one of the other tracks. ()

December 1, 2015

Date

(215) 735-1130

Telephone

Attorney-at-law

(215) 875-7701

FAX Number

Plaintiffs

Attorney for

sweiss@anapolweiss.com

E-Mail Address