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13 **UNITED STATES DISTRICT COURT**
 14 **CENTRAL DISTRICT OF CALIFORNIA**

15 KEITH WALKER, on behalf of
 16 himself and all others similarly
 17 situated,

18 Plaintiffs,

19 v.

20 VOLKSWAGEN GROUP OF
 21 AMERICA, INC. and
 22 VOLKSWAGEN AG,

23 Defendants.

Case No. _____

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

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CLASS ACTION COMPLAINT

1 **NATURE OF THE CASE**

2 1. In recent decades, fewer diesel engine vehicles have appeared on U.S.
3 roadways. Even though diesel engines can usually provide more torque than gas
4 engines, they are also higher polluters and more expensive. Diesel passenger cars thus
5 began to disappear in the 1980s and 1990s, and were all but eliminated in 2004, when
6 the California Air Resources Board (CARB) implemented rigorous emission standards
7 that effectively banned their use. Finally, in the late 2000s, Volkswagen introduced a
8 supposedly new breed of diesel vehicles that could meet CARB’s emission standards.
9 Volkswagen told consumers they could finally have it all—power, fuel economy, and
10 low emissions—if only they were willing to pay a few thousand dollars more for these
11 “clean diesel” vehicles.

12 2. But Volkswagen’s diesel vehicles were anything but “clean.” Rather than
13 devoting its time to actually designing and manufacturing a cleaner engine, Volkswagen
14 focused on finding a way to cheat. The new “clean diesel” vehicles remained incapable
15 of passing federal and state emissions standards, but Volkswagen equipped the vehicles
16 with illegal software designed to falsify the vehicles’ emissions. The software
17 automatically detects when a vehicle is undergoing emissions testing and activates the
18 full emissions control system. Then, as soon as the test is over, the software switches
19 the vehicles back into “road calibration,” eliminating some pollution controls. In other
20 words, when the vehicles are actually driven (as opposed to being tested), they emit ten
21 to forty times the lawful amount of nitrogen oxide—a pollutant that contributes to smog
22 and serious health problems.

23 3. Without its illegal software, Volkswagen would not have been able to sell a
24 single “clean diesel” vehicle in the United States. But Volkswagen’s scheme worked for
25 years, allowing it to place a half million of these vehicles on America’s roads. Only
26 recently, after a university study called the emissions levels into question, and the EPA
27 and CARB began to investigate, was the validity of the test results called into question.
28 Even then, Volkswagen continued to lie. It told the government that the university study

1 results were anomalous and fixable. A few weeks ago, Volkswagen was finally
2 compelled to admit what it had done.

3 4. Volkswagen's conduct violates federal law, California's consumer
4 protection statutes and common law, and is a breach of applicable warranties. Plaintiffs
5 bring this suit on behalf of themselves and proposed nationwide and California classes to
6 obtain damages (both actual and punitive), restitution, and to enjoin Volkswagen from
7 continuing to deceive consumers.

8 **PARTIES**

9 5. Plaintiff Keith Walker is a citizen and resident of Palmdale, California,
10 located in Los Angeles County.

11 6. Defendant Volkswagen Group of America, Inc. is a New Jersey corporation
12 with its headquarters and principal place of business in Herndon, Virginia.

13 7. Defendant Volkswagen AG is a German corporation and the parent
14 company of Volkswagen Group of America, Inc. Its headquarters and principal place of
15 business are in Wolfsburg, Germany. The two defendants are referred to collectively in
16 this complaint as "Volkswagen."

17 **JURISDICTION AND VENUE**

18 8. This Court has jurisdiction over this action under the Class Action Fairness
19 Act, 28 U.S.C. § 1332(d). There are at least 100 members in the proposed class, the
20 aggregated claims of the individual class members exceed the sum or value of
21 \$5,000,000, exclusive of interests and costs, and this is a class action in which
22 Defendants Volkswagen AG and Volkswagen Group of America, Inc. are citizens of
23 different jurisdictions from members of the proposed class, including Plaintiff Walker.

24 9. This Court may exercise jurisdiction over Volkswagen because
25 Volkswagen is registered to conduct business in California; has sufficient minimum
26 contacts in California; and intentionally avails itself of the markets within California
27 through the promotion, sale, marketing, and distribution of its vehicles, thus rendering
28 the exercise of jurisdiction by this Court proper and necessary.

1 10. Venue is proper in this District under 28 U.S.C. § 1391 because
2 Volkswagen resides in this District and a substantial part of the events or omissions
3 giving rise to Plaintiff's claims occurred in this District.

4 **SUBSTANTIVE ALLEGATIONS**

5 Volkswagen

6 11. Volkswagen designs, manufactures, markets, distributes, and warrants
7 vehicles in the United States under the Volkswagen and Audi brand names. Volkswagen
8 recently surpassed Toyota, becoming the world's largest automaker, with diesel engine
9 vehicles accounting for over 20 percent of its sales.

10 12. This case involves approximately 500,000 model year 2009-2015
11 Volkswagen and Audi brand vehicles. All are equipped with a 2.0L diesel engine.

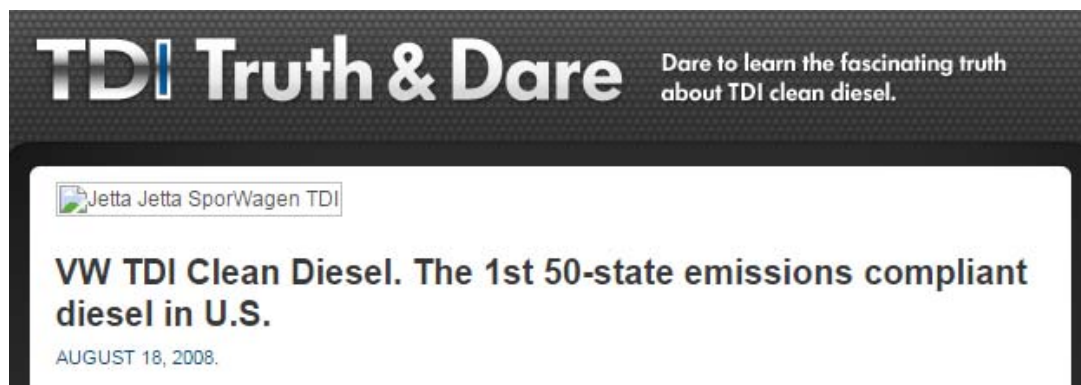
12 Clean Diesel

13 13. Diesel engines first became common in American passenger vehicles in the
14 1970s and 1980s, but gained a reputation as "dirty" because they emitted noxious gases
15 and particulate matter. As diesel engines need to be more robust than comparable
16 gasoline engines, diesel-powered vehicles also cost more to produce and commanded a
17 premium price. These factors, combined with increasingly stringent emissions
18 regulations caused diesel passenger vehicles to become increasingly unpopular in the
19 American market.

20 14. In the mid-2000s, California and several other states passed new emission
21 standards strictly regulating exhaust emissions, including oxides of nitrogen (NOx).
22 This effectively banned the sale of diesel passenger vehicles in these states because the
23 nature of diesel engines inherently makes NOx emissions a particularly difficult problem
24 to resolve. Facing the implementation of similarly stringent federal regulations,
25 Volkswagen and several other manufacturers launched the joint BlueTec Diesel
26 Initiative to research and develop "exhaust emission treatment systems which meet even
27 the strictest emission regulations in the US market."
28

1 15. By the late 2000s, Volkswagen claimed to have improved diesel technology
2 and developed an environmentally-friendly diesel engine that could meet modern
3 emissions standards. Volkswagen marketed these new vehicles as “Clean Diesel,”
4 arguing that its engines were much improved from the diesels of the 1970s and 1980s.
5 Taking advantage of then-rising fuel prices, and diesel engines’ fuel-efficiency and high
6 torque outputs, Volkswagen told consumers they could have it all—power, high fuel
7 economy, and low emissions—if they paid a few thousand dollars more for its “clean”
8 diesel vehicle.

9 16. To overcome consumer perceptions of “dirty” diesel vehicles, Volkswagen
10 embarked on a major marketing campaign emphasizing its vehicles’ low emissions and
11 environmental friendliness. Volkswagen created various webpages, press releases, and
12 television commercials dedicated to differentiating “Clean Diesel” from consumer
13 perceptions of dirty diesel vehicles. In August 2008, Volkswagen kicked off the
14 campaign by announcing that it had developed the first diesel vehicle compliant in all
15 fifty states under modern emission standards, its 2.0L TDI (Turbocharged Direct
16 Injection) engine. CEO Stefan Jacoby stated: “We’re proud to be the first manufacturer
17 to offer a clean diesel vehicle for sale in all fifty states” and argued that the clean diesel
18 Jetta model “truly offer[s] a no compromise alternative fuel driving experience, that
19 provides the customer the best of both worlds—excellent fuel efficiency combined with
20 a dynamic driving experience.” Below is an image of the headline from Volkswagen’s
21 announcement:



1 17. Following this announcement, the diesel Volkswagen Jetta TDI was
2 awarded the 2009 Green Car of the Year by *Green Car Journal*. Volkswagen began to
3 promote it as the “Official Pace Car of the Environment” and again described its clean
4 diesel vehicles as the “best of both worlds, an alternative fuel vehicle with no
5 compromises.” Volkswagen’s website specifically emphasized emissions compliance,
6 describing how “[f]uel efficiency, performance and convenience come standard with the
7 50-state compliant Jetta TDI sedan and Sportswagen models, which meet the most
8 stringent emission standards in California.” Another Volkswagen promotion suggested
9 that clean diesel vehicles were a “new alternative for shoppers craving efficiency, low
10 emissions, and unrivaled value all in one attractive package.” Most of all, Volkswagen
11 tried to distance itself from consumer perceptions of dirty diesel emissions, describing
12 how “[t]hose old realities no longer apply.” Below are images from Volkswagen’s
13 webpage promoting the environmental friendliness of its clean diesel vehicles:



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With reduced emissions.

These are not the kind of diesel engines that you find spewing sooty exhaust like an old 18-wheeler. Clean diesel vehicles meet some of the strictest standards in the world. Plus, TDI technology helps reduce sooty emissions by up to 90%, giving you a fuel-efficient and eco-conscious vehicle.¹

 [Watch and learn about TDI® Clean Diesel](#)

This ain't your daddy's diesel.

Stinky, smoky, and sluggish. Those old diesel realities no longer apply. Enter TDI Clean Diesel. Ultra-low-sulfur fuel, direct injection technology, and extreme efficiency.¹ We've ushered in a new era of diesel.

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



18. In an effort to compete with the environmental advantages of hybrid vehicles, Volkswagen created a webpage titled *Clean Diesel v. Hybrid* where it compared the advantages and disadvantages of hybrids and clean diesels. Volkswagen argues that its diesel emissions are as “clean” as hybrid emissions, describing how “the TDI engines in both the Jetta Sedan, Sportwagen and the Toureg SUV are certified to

1 meet the same tough government emission standards—known as ‘Tier 2 Bin 5’—as the
2 cleanest gasoline-electric hybrids.”

3 19. To further emphasize the company’s environmental focus, Volkswagen
4 created an entire campaign devoted environmental sustainability called “Think Blue.”
5 According to Volkswagen’s Think Blue campaign, the company is dedicated to
6 sustainable mobility and eco-friendly living, and its diesel vehicles are part of an
7 environmentally friendly lifestyle. The TDI webpage states that “TDI represents one
8 part of the Volkswagen Think Blue initiative, our goal of creating and encouraging eco-
9 conscious products and behaviors.” Think Blue is “about being more responsible on the
10 road and more environmentally conscious.”

11 20. Other statements about clean diesel in Volkswagen marketing materials
12 included how:

- 13 a. Clean diesel is “[f]or the eco-conscious and the high-performance-
14 conscious;”
- 15 b. Clean diesel is “more efficient, eco-conscious, and fun to drive;”
- 16 c. Clean diesel technology “impacts fuel efficiency and performance,
17 while being a more eco-conscious choice;”
- 18 d. Volkswagen’s manufacturing “continues to refine and perfect the
19 clean diesel technology we have pioneered, which delivers a dramatic
20 reduction in both fuel consumption and exhaust emissions and offers
21 some of the cleanest and most efficient alternatives on the market
22 today.”

23 Diesel Engine Emissions

24 21. The diesel internal combustion engine differs from the typical gasoline
25 powered engine in that it uses highly compressed hot air to ignite the fuel rather than
26 using a spark plug. As in a gasoline engine, the burning fuel rapidly expands, moving
27 the piston, which transmits power to the crankshaft.

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1 22. The “Clean Diesel” vehicles that Volkswagen introduced in 2008 used a
2 new-generation 2.0 Liter TDI with a common rail injection system. The 2.0L TDI was
3 based on the 1.9L TDI, one of the most frequently built diesel engines in the world and
4 Volkswagen’s most common engine outside the United States. Volkswagen introduced
5 the 2.0L TDI to accommodate increasing demand for improvements in sound, fuel
6 consumption, and exhaust gas emissions. The engine utilizes a special computer-
7 controlled exhaust gas after-treatment system that Volkswagen claimed met federal and
8 CARB emission standards when first introduced.

9 23. Emissions have often been an obstacle for diesel vehicles. While the use of
10 cleaner fuels and new technologies has improved certain types of emissions problems,
11 others remain. As a result of their high combustion and compression pressures, diesel
12 engines typically produce high levels of NO_x in the combustion process.

13 Oxides of Nitrogen

14 24. Oxides of nitrogen (or NO_x) are a highly reactive group of gases that the
15 EPA and other government agencies have found to create environmental problems and
16 public health hazards, including smog, ground-level ozone, and acid rain. For example,
17 direct exposure to NO_x can cause respiratory problems, such as lung irritation,
18 bronchitis, or pneumonia. When NO_x combines with sunlight, it may create
19 photochemical smog, which appears as a brownish ground-level haze and causes chest
20 pains, shortness of breath, coughing and wheezing, and eye irritation. NO_x is one of the
21 main ingredients involved in the formation of ground-level ozone. Breathing ozone can
22 also trigger a variety of health problems including chest pain, coughing, throat irritation,
23 and congestion and can worsen bronchitis, emphysema, and asthma. Children are at the
24 greatest risk of experiencing negative health impacts from exposure to ozone. When
25 mixed with rain in the atmosphere, NO_x can create nitric acid or acid rain. NO_x is also a
26 contributor to global warming.

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1 Regulatory Framework

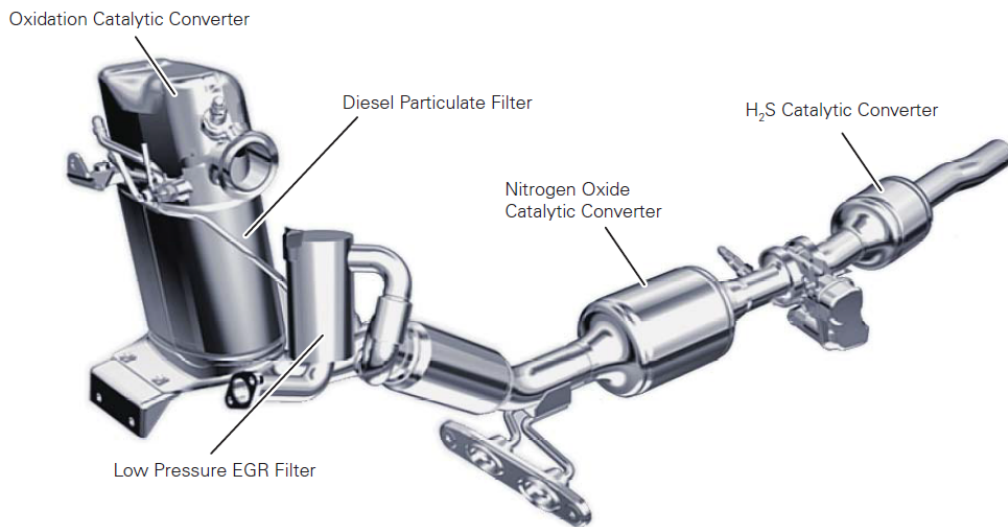
2 25. Because of the serious hazards created by NO_x emissions, both the EPA
3 and CARB have regulated NO_x.

4 26. The federal Clean Air Act prohibits the sale of any vehicle in the United
5 States that does not comply with emissions regulations set by the EPA. 42 U.S.C. §
6 7522. The current regulations, Tier 2, were implemented by the EPA between 2004 and
7 2009, and apply to all light-duty vehicles regardless of the fuel that they use. The Tier 2
8 regulations include certification levels of different levels of stringency, called
9 certification bins. Volkswagen chose to certify Class Vehicles to the Tier 2, Bin 5
10 standard, which has a maximum NO_x level of .05 g/mi for a vehicle's intermediate life
11 (5 years/50,000 miles) and .07 g/mi for a vehicle's full useful life (10 years/120,000
12 miles). 40 C.F.R. § 86.1811-04(c). In addition, a manufacturer's fleet average of NO_x
13 for any given model year must be under .07 g/mi. *Id.* at § 86.1811-04(d).

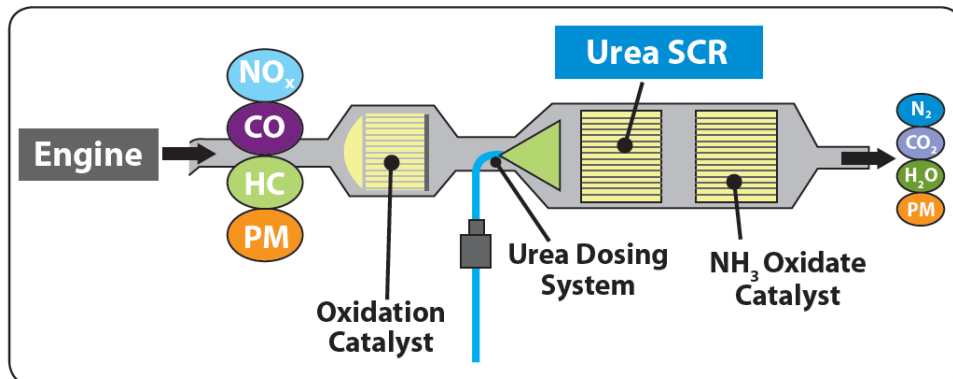
14 27. On the state level, CARB adopted Low-Emissions Vehicle (LEV) II
15 emission standards that generally became applicable in the 2004 model year. *See* The
16 California Low-Emission Vehicle Regulations,
17 [http://www.arb.ca.gov/msprog/levprog/cleandoc/cleancomplete%20lev-](http://www.arb.ca.gov/msprog/levprog/cleandoc/cleancomplete%20lev-ghg%20regs%201-15.pdf)
18 [ghg%20regs%201-15.pdf](http://www.arb.ca.gov/msprog/levprog/cleandoc/cleancomplete%20lev-ghg%20regs%201-15.pdf) (amended January 1, 2015); Cal. Code. Regs. Tit. 13 § 1961.
19 Under the LEV II standard, NO_x emissions were significantly tightened and required
20 light-duty passenger vehicles (including Class Vehicles) to emit no more than .05 g/mi
21 initially, and no more than .07 g/mi over their useful life. Cal. Code. Regs. Tit. 13 §
22 1961.

23 28. To comply with EPA and CARB regulations concerning NO_x, vehicle
24 manufacturers use a variety of exhaust treatment systems to control NO_x emissions.
25 Exhaust gas recirculation (EGR) systems reintroduce some exhaust gases into the
26 engine's intake. This lowers the peak temperature of combustion, which reduces the
27 chance of NO_x forming. Some vehicles use a lean NO_x trap, a system that relies on the
28 power control module's ability to toggle the air-fuel ratio between rich and lean. The

1 trap absorbs NO_x from exhaust during lean air mixtures, and ultimately reduces it to
2 nitrogen gas when the air-fuel ratio is switched to a rich mixture and back to lean.
3 Newer diesel vehicles may utilize selective catalytic reduction systems (SCR). SCR is a
4 process that uses ammonia or urea water solutions in the exhaust stream to remove
5 oxygen from NO_x, forming water instead. SCR systems only work well within specific
6 temperature ranges and when using specific proportions of chemicals. Diagrams of a
7 lean NO_x trap (referred to as a Nitrogen Oxide Catalytic Converter) and an SCR system
8 appear below:



SCR SYSTEM



1 29. Federal and California regulations require manufacturers to apply for
2 certifications that their vehicles meet applicable emission standards. 40 C.F.R. §
3 86.1843-01. The federal application must include a list of all auxiliary emission control
4 devices installed on the vehicle. *Id.* at § 86.1844-01(d)(11). An auxiliary emission
5 control device is defined as “any element of design which senses . . . any . . . parameter
6 for the purpose of activating, modulating, delaying, or deactivating the operation of any
7 part of the emission control system.” *Id.* at § 86.1803-01. The federal application must
8 also contain a detailed justification for each auxiliary emission control device that results
9 in a reduction in the effectiveness of the emission control system, and a rationale for
10 why it is not a “defeat device.” *Id.* at § 86.1844-01(d)(11).

11 30. Defeat devices are expressly forbidden by federal regulations. *See* EPA,
12 *Advisory Circular Number 24: Prohibition on use of Emission Control Defeat Device*
13 (Dec. 11, 1972); *see also* 40 C.F.R. §§ 86-1809-01, 86-1809-10, 86-1809-12. Stated
14 simply, a defeat device is hardware or software that “defeats” the vehicle’s emission
15 controls during normal vehicle operation—enabling the vehicle to produce low
16 emissions during emissions testing, but not during normal operation. The Clean Air Act
17 makes it a violation for any person to sell, manufacture, or install any component in a
18 motor vehicle “where a principal effect of the part or component is to bypass, defeat, or
19 render inoperative any device or element of design installed on or in a motor vehicle . . .
20 in compliance with the regulations under this subchapter, and where the person knows or
21 should know that such part or component is being offered for sale or installed for such
22 use or put to such use.” Clean Air Act, 42 U.S.C. § 7522(a)(3)(B); 40 C.F.R. §
23 86.1854012(a)(3)(ii). Similarly, the EPA has specifically recognized that electronic
24 control systems that affect the emission control system’s performance may be defeat
25 devices. EPA, *Advisory Circular Number 24-2: Prohibition on Emission Control Defeat*
26 *Devices – Optional Objective Criteria* (Dec. 6, 1978).

27 31. Every vehicle sold in the U.S. must be covered by Certificate of Conformity
28 from the EPA. 40 C.F.R. § 86.1843-01. However, vehicles are only covered by a

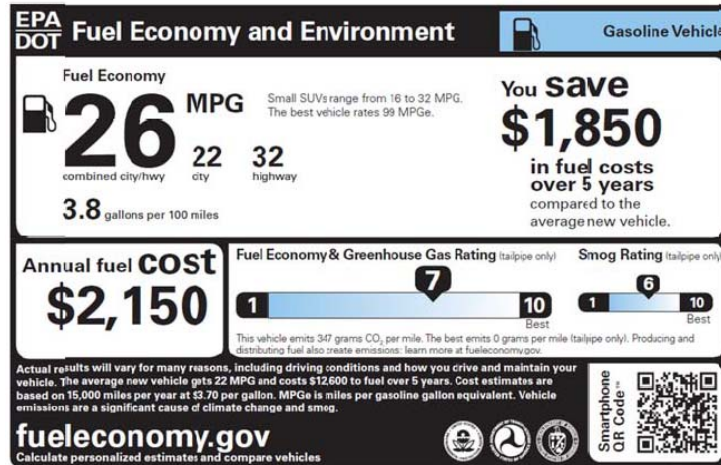
1 Certificate of Conformity if they are sold as described in the manufacturer’s application
2 for certification. *Id.* at §86.1848-10(c)(6). Similarly, auto manufacturers must be
3 certified by CARB in order to sell vehicles in California. Motor vehicles equipped with
4 defeat devices, which reduce the effectiveness of the emission control system during
5 normal driving conditions, cannot be certified.

6 32. Both federal and California regulations mandate that manufactures include
7 certain emissions-related labels on the vehicles they sell. First, the regulations require
8 that an emissions label titled “Vehicle Emission Control Information” be placed under
9 the hood or in the engine compartment and contain “an unconditional statement of
10 compliance” with federal and California emissions regulations. 40 C.F.R. § 86.1807-01;
11 Cal. Code. Regs. Tit. 13 § 1965. Auto manufacturers must affix this label to every
12 motor vehicle that they intend to sell to the public in the United States subject to the
13 applicable emissions standards. Below is an exemplar Emission Control label from a
14 non-diesel Volkswagen vehicle:



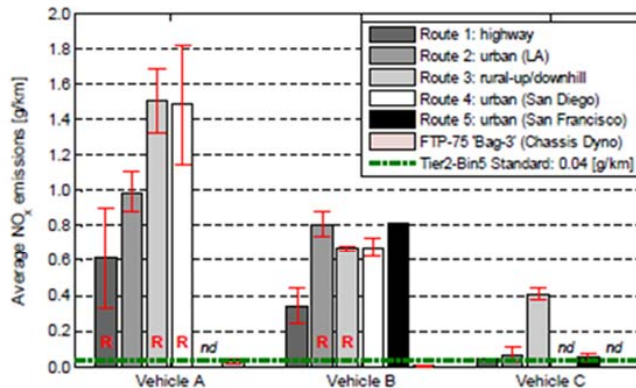
24 33. Beginning in the 1998 model year, a Smog Index label began appearing on
25 all new cars sold in California. The label was intended to help consumers compare smog
26 forming emissions from different vehicles within that model year. Cars manufactured
27 after January 1, 2009, were also required to affix an Environmental Performance label.
28 These labels provided both a Smog Score and a Global Warming Score, ranging from 1

1 to 10, with 10 being the cleanest and 5 being the average vehicle. An example of this
 2 label from a non-diesel vehicle is below:



13 WVU Emissions Study and Subsequent Government Investigation

14 34. In May 2014, West Virginia University’s Center for Alternative Fuels,
 15 Engines & Emissions published the results of a study commissioned by the International
 16 Council on Clean Transportation that found in-use emissions from two Volkswagen
 17 vehicles (a 2012 Jetta and a 2013 Passat) that were significantly higher than the Tier 2
 18 Bin 5 NO_x standard. The Jetta exceeded the standard by 15 to 35 times and the Passat
 19 exceeded it by 5 to 20 times. Below is a graph of the results from that study:



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 Figure 4.3: Average NO_x emissions of test vehicles over the five test routes compared to US-EPA Tier2-Bin5 emissions standard; repeat test variation intervals are presented as ±1σ; Route 1 for Vehicle A includes rush-hour/non-rush-hour driving, 'R' designates routes including a test with DPF regeneration event, 'nd' - no data available

1 35. Following publication of the study, the EPA and CARB began to
2 investigate the issue. Volkswagen responded that increased emissions could be the result
3 of unexpected technical issues or conditions. Volkswagen then issued a voluntary recall
4 in December 2014, but testing performed by CARB and the EPA showed that there was
5 only a limited benefit to the recall and that the vehicles still did not comply with EPA or
6 CARB standards.

7 36. CARB and the EPA told Volkswagen that they would not approve
8 certificates of conformity for Volkswagen's 2016 model year diesel vehicles until it
9 explained the results, leading Volkswagen finally to admit that it had been deceiving the
10 government and consumers. In a meeting with CARB and EPA staff on September 3,
11 2015, Volkswagen admitted that Class Vehicles were designed and manufactured with a
12 defeat device in the form of a sophisticated software algorithm that detected when the
13 vehicle was being tested for emissions standards based on inputs including the position
14 of the steering wheel, vehicle speed, the duration of the engine's operation, and
15 barometric pressure. These inputs track the parameters of the federal and state
16 procedures used for certification testing. During EPA emission testing, the vehicles'
17 electronic control modules ran a particular calibration called the "dyno calibration"
18 (referring to the equipment used in emissions testing—the dynamometer) that produced
19 compliant emissions results. At all other times during normal vehicle operation, the
20 vehicle software ran a separate "road calibration" that reduced the effectiveness of the
21 lean NOx trap and SCR emission control systems. As a result, emissions of NOx
22 increased by a factor of 10 to 40 times above EPA compliant levels when driven by a
23 consumer.

24 37. On September 18, 2015, the EPA and CARB issued notices to Volkswagen
25 directing CARB to immediately initiate discussions to rectify the emission non-
26 compliance and noting that the EPA may seek up to \$37,500 for each violation.

27 38. Christopher Grundler, director of the EPA's Office of Transportation of Air
28 Quality, said it is "incomprehensible" how the world's largest automaker could install

1 “defeat devices” to evade emissions requirements. The agency said the vehicles’
2 software intentionally detects when the car is undergoing official emissions testing, “and
3 turns full emissions controls on only during the test.” When vehicles are being driven
4 normally, the computer disables the emissions controls.

5 39. In a statement on September 20, 2015, Volkswagen CEO Martin
6 Winterkorn said the company was “deeply sorry that we have broken the trust of our
7 customers and the public.” Regarding the allegations by the EPA, a spokesperson for
8 Volkswagen stated: “We have admitted it to the regulator. It is true. We are actively
9 cooperating with the regulator.” Volkswagen also announced that it was halting sales of
10 all 2.0L TDI engine vehicles in the United States.

11 40. Because disengaging pollution controls can yield better performance,
12 implementing changes to the emissions system will impact vehicle performance and fuel
13 economy.

14 **PLAINTIFF’S EXPERIENCE**

15 41. Plaintiff Keith Walker bought a new 2015 Volkswagen Passat with a 2.0L
16 TDI Engine from Antelope Valley Volkswagen in Palmdale, California in October 2014.

17 42. Plaintiff Walker purchased his vehicle in part, because he believed it was
18 fuel efficient and good for the environment. Before purchasing his vehicle, Plaintiff
19 reviewed its product labels and supporting documentation. These materials did not
20 disclose that his vehicle did not comply with applicable emissions regulations or that
21 Volkswagen had installed a defeat device in his Passat. Plaintiff Walker chose to
22 purchase his vehicle instead of a competing product, in part, based on these
23 representations. Thus, Plaintiff reasonably believed at the point of sale that his vehicle
24 complied with applicable emissions standards and did not contain a defeat device.

25 43. Had Plaintiff known that his vehicle did not comply with applicable federal
26 or California emission standards, he would not have purchased their vehicles or would
27 have paid less for it.

28

1 **CLASS ACTION ALLEGATIONS**

2 44. "Class Vehicles" includes the 2.0L diesel versions of the following
3 vehicles:

- 4 a. 2009-2015 Volkswagen Jetta (including the Jetta Sportswagen);
- 5 b. 2010-2015 Volkswagen Golf (including the Golf Sportswagen);
- 6 c. 2010-2015 Audi A3;
- 7 d. 2012-2015 Volkswagen Beetle (including the Beetle Convertible);
- 8 and
- 9 e. 2012-2015 Volkswagen Passat.

10 45. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiff brings
11 this action on behalf of himself and the following proposed classes of persons, initially
12 defined as:

13 **Nationwide Class:**

14 All persons who bought or leased a Class Vehicle in the United States.

15 **California Class:**

16 All persons who bought or leased a Class Vehicle in California.

17 46. Excluded from the proposed class is Volkswagen; any affiliate, parent, or
18 subsidiary of Volkswagen; any entity in which Volkswagen has a controlling interest;
19 any officer, director, or employee of Volkswagen; any successor or assign of
20 Volkswagen; and any judge to whom this case is assigned and any member of his or her
21 immediate family.

22 47. Numerosity. Volkswagen has sold hundreds of thousands of Class
23 Vehicles, such that there are far too many class members to be practically joined in a
24 single action. Class members may be notified of the pendency of this action by mail,
25 supplemented (if deemed necessary or appropriate by the Court) by published notice.

26 48. Existence and predominance of common questions. Common questions of
27 law and fact exist as to all members of the proposed class and predominate over
28 questions affecting only individual class members. These common questions include:

- 1 a. Whether Volkswagen installed a defeat device in Class Vehicles;
- 2 b. Whether Class Vehicles fail to comply with the applicable federal
- 3 and state emissions regulations as a result of the defeat device;
- 4 c. Whether Volkswagen had a duty to disclose the existence of the
- 5 defeat device and its consequences to its customers;
- 6 d. Whether Volkswagen's marketing of Class Vehicles was likely to
- 7 deceive or mislead consumers;
- 8 e. Whether the existence of the defeat device and its consequences
- 9 would be considered material by an objectively reasonable person;
- 10 f. Whether Volkswagen's conduct violates any applicable warranties;
- 11 and
- 12 g. Whether Volkswagen's conduct injured Plaintiff and the members of
- 13 the proposed class.

14 49. Typicality. Plaintiff's claims are typical of the claims of the proposed
15 classes. Plaintiff and the class members he proposes to represent purchased or leased
16 Class Vehicles that contain the same defeat device, giving rise to substantially the same
17 claims.

18 50. Adequacy. Plaintiff is an adequate representative of the proposed classes
19 because his interests do not conflict with the interests of the class members he seeks to
20 represent. Plaintiff has retained counsel competent and experienced in complex class
21 action litigation, and intends to prosecute this action vigorously.

22 51. Superiority. The action may be certified under Rule 23(b)(3) because
23 common questions predominate as described above and because a class action is the best
24 available method for the fair and efficient adjudication of this controversy. This
25 litigation involves technical issues that will require expert testimony and targeted
26 discovery of sophisticated defendants, and could not practically be taken on by
27 individual litigants. In addition, individual litigation of class members' claims would be
28 impracticable and unduly burdensome to the court system and has the potential to lead to

1 inconsistent results. A class action presents fewer management problems and provides
2 the benefits of single adjudication, economies of scale, and comprehensive supervision
3 by a single court.

4 52. In the alternative to class certification under Rule 23(b)(3), the proposed
5 classes may be certified under Rule 23(b)(2) because Volkswagen has acted or refused
6 to act on grounds generally applicable to the class, thereby making final injunctive relief
7 or corresponding declaratory appropriate with respect to the class as a whole.

8 **COUNT ONE**

9 **VIOLATION OF THE MAGNUSON-MOSS WARRANTY ACT**

10 **(15 U.S.C. §§ 2301 et seq.)**

11 **(On Behalf of the Nationwide Class)**

12 53. Plaintiff incorporates by reference each preceding and succeeding
13 paragraph as though fully set forth herein.

14 54. Plaintiff brings this class on behalf of himself and a Nationwide Class, as
15 defined above, against Defendants.

16 55. The Class Vehicles are “consumer products” under 15 U.S.C. § 2301(1).

17 56. Plaintiff and the members of the putative Class are “consumers” under 15
18 U.S.C. § 2301(3).

19 57. Defendants are “suppliers” and “warrantors” within the meaning of 15
20 U.S.C. § 2301(4)-(5).

21 58. Defendants provided purchasers and lessees of Class Vehicles multiple
22 written warranties as defined by 15 U.S.C. § 2301(6).

23 59. ***Manufacturer’s Warranty.*** Defendants provided Plaintiff and each
24 member of the Nationwide Class who purchased a new Class Vehicle with a
25 Manufacturer’s Warranty, which provides “bumper-to-bumper” limited express warranty
26 coverage for a minimum of 3 years or 36,000 miles, whichever comes first. This
27 warranty covers emissions related repairs. This warranty is directly applicable to the
28 Class Vehicles.

1 60. As required by law, Defendants also provided a Federal Emissions
2 Warranty to members of the Nationwide Class and a California Emissions Warranty to
3 members of the California Class. Vehicles certified to meet California emissions
4 standards and registered in states which have adopted those standards are also entitled to
5 coverage under the California Emissions Warranty.

6 61. ***Federal Emissions Warranty.*** Consistent with federal law, Defendants
7 provided Plaintiff and the proposed Nationwide Class with a “performance warranty”
8 and a “design and defect warranty.” In the event that a vehicle fails an emissions test,
9 these warranties cover all emissions related parts for 2 years or 24,000 miles (whichever
10 comes first), with the catalytic converter, engine control unit, and onboard diagnostic
11 device covered for 8 years or 80,000 miles (whichever comes first). These warranties are
12 directly applicable to the Class Vehicles.

13 62. ***California Emissions Warranty.*** California law requires additional
14 warranty coverage beyond that required by federal law. Under California law, all
15 emissions related performance and parts are covered for 3 years or 50,000 miles
16 (whichever comes first), and a vehicle-specific list of more expensive emissions related
17 parts is covered for 7 years or 70,000 miles (whichever comes first). In addition, the 8
18 year or 80,000 mile coverage for the catalytic converter, engine control unit, and
19 onboard diagnostic device required by Federal law also applies. 13 Cal. Code. Regs. §
20 2038; *see* Cal. Health & Safety Code § 43205. The California Emissions Warranty
21 provisions described here cover vehicles up to 14,000 pounds GVWR, and are directly
22 applicable to the Class Vehicles.

23 63. Defendants breached these warranties by selling the Class Vehicles with a
24 defeat device which renders the emissions control systems defective, and the Class
25 Vehicles thus do not comply with emissions standards set by federal law. This device
26 cannot be repaired or redressed without materially altering the advertised estimated fuel
27 economy and other performance characteristics of the vehicle.

28

1 Vehicles to either bypass or render inoperative elements of the vehicle design related to
2 compliance with federal and California emission standards, and that its vehicles emit as
3 much as 40 times the amount of pollution allowed under federal and California law. In
4 addition, Defendants intentionally concealed and suppressed the material fact that the
5 vehicles, if brought in compliance with federal and California emissions standards,
6 would exhibit diminished performance and fuel economy, as compared to the
7 performance and fuel economy promised by Defendants through their advertising and
8 marketing.

9 70. Defendants had a duty to disclose these facts because they had exclusive
10 knowledge of the material facts described above and such facts were not known or
11 reasonably knowable by the Plaintiff and proposed class; because it actively concealed
12 these material facts from the Plaintiff and the proposed class; and because it made partial
13 representations regarding the Class Vehicles' emissions and the vehicles compliance
14 with federal and state law, while at the same time suppressing material facts regarding
15 the vehicle's emission of the pollutant nitrogen oxide.

16 71. These facts which Defendants concealed were material because they
17 suggested, falsely, that these vehicles are compliant with federal and state emissions
18 requirements. In addition, these facts were material because whether the Class Vehicles
19 are so compliant, and whether they are "clean" diesel vehicles, directly impact the value
20 of the Class Vehicles purchased or leased by Plaintiff and the proposed nationwide class.

21 72. Defendants actively concealed or suppressed these material facts at least
22 since 2009, in order to profit from the sale of these vehicles and to defraud Plaintiff and
23 consumers.

24 73. Plaintiff and the proposed Nationwide Class had no knowledge of, and had
25 no reason to know, that Defendants had concealed or suppressed these material facts. In
26 fact, such facts were exclusively known by Defendants. Plaintiff and the proposed
27 Nationwide Class would not have purchased the Class Vehicles, or would have paid
28

1 substantially less for them, had Defendants not concealed or suppressed these material
2 facts.

3 74. As a result of Defendants' fraudulent concealment, Plaintiff and the
4 proposed Nationwide Class's vehicles have lost significant value. Plaintiff and the
5 proposed Class are thus entitled to damages in an amount to be determined at trial.

6 75. Because Defendants' conduct was wanton, deliberate, oppressive and
7 malicious, or in reckless disregard of Plaintiff's and the proposed Nationwide Class's
8 consumer and contractual rights, Plaintiff and the proposed Nationwide Class are
9 entitled to an award of punitive or exemplary damages in an amount to be determined at
10 trial.

11 **COUNT THREE**

12 **VIOLATION OF THE CALIFORNIA UNFAIR COMPETITION LAW**

13 **(CAL. BUS. & PROF. CODE § 17200)**

14 **(On Behalf of the California Class)**

15 76. Plaintiff and the California Class incorporate by reference each preceding
16 and succeeding paragraph as though fully set forth herein.

17 77. Plaintiff brings this claim on behalf of himself and on behalf of the
18 members of the California Class against Defendants.

19 78. Defendants' acts and practices, as alleged in this complaint, constitute
20 unlawful, unfair, and fraudulent business practices, in violation of the Unfair
21 Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et seq.*

22 79. Defendants' acts and practices constitute unlawful business practices, as
23 discussed elsewhere in this Complaint, in that they violate section 203(a)(3)(B) of the
24 Clean Air Act (CAA), 42 U.S.C. § 7522(a)(3)(B) and its implementing regulations;
25 section 203(a)(1) of the CAA, 42 U.S.C. § 7522(a)(1) and its implementing
26 regulations; the federal Magnuson-Moss Warranty Act; California's Consumers Legal
27 Remedies Act; California's Song-Beverly Consumer Warranty Act; California law
28 governing vehicle emissions; and breach Volkswagen's warranties.

1 80. Defendants' acts and practices constitute unfair practices in that (i) they are
2 unethical, unscrupulous, and substantially injurious to consumers; (ii) any legitimate
3 utility of Defendants' conduct is outweighed by the harm to consumers; (iii) the injury is
4 not one that consumers reasonably could have avoided; and/or (iv) the conduct runs
5 afoul of the policies underlying the federal Clean Air Act, its implementing regulations,
6 and California emissions standards, which seek to minimize harmful emissions and
7 provide consumers with accurate information about the pollutant levels emitted by
8 vehicles placed in the stream of commerce.

9 81. Defendants' acts and practices constitute fraudulent practices in that they
10 are likely to deceive a reasonable consumer, who would not have purchased a Class
11 Vehicle, or would have paid substantially less for a Class Vehicle, had Volkswagen had
12 adequately disclosed that the Class Vehicles failed to comply with federal and California
13 emissions standards.

14 82. As a direct and proximate result of Defendants' unlawful, unfair, and
15 fraudulent business practices, Plaintiff and the proposed California Class have suffered
16 injury in fact and lost money or property, in that they bought or leased Class Vehicles
17 they otherwise would not have, overpaid for their vehicles, did not receive the benefit of
18 their bargain, and their Class Vehicles suffered a diminution in value. In addition,
19 Plaintiff and the proposed class will incur additional fuel costs, and a diminution in the
20 performance of their respective Class Vehicles, if and when their Class Vehicles are
21 altered in order to bring them into compliance with federal and state emissions
22 standards. Meanwhile, Defendants have sold or leased more Class Vehicles than they
23 otherwise could have and charged inflated prices for Class Vehicles, thereby unjustly
24 enriching itself.

25 83. Plaintiff and the proposed California Class are entitled to equitable relief,
26 including restitutionary disgorgement of all profits accruing to Defendants because of
27 their unfair and deceptive practices and such other orders as may be necessary to prevent
28 the future use of these practices.

1 **COUNT FOUR**

2 **VIOLATION OF CALIFORNIA'S FALSE ADVERTISING LAW**

3 **(CAL. BUS. & PROF. CODE §§ 17500, et seq.)**

4 **(On Behalf of the California Class)**

5 84. Plaintiff and the California Class incorporate by reference all allegations of
6 the preceding and succeeding paragraphs as though fully set forth herein.

7 85. Plaintiff brings this claim on behalf of himself and on behalf of the
8 members of the California Class against Defendants.

9 86. California's False Advertising Law prohibits any "unfair, deceptive, untrue,
10 or misleading advertising." Cal. Bus. & Prof. Code § 17500. This prohibition extends to
11 advertising which is false, and also advertising which, although true, is either actually
12 misleading or which has a capacity, likelihood or tendency to deceive or confuse the
13 public.

14 87. Through advertising, marketing, and other publications described at length
15 above, Defendants disseminated, or caused to be disseminated, in California and
16 nationally, statements regarding the Class Vehicles which were false or misleading,
17 including that these vehicles are "Clean Diesel" vehicles when, in fact, they did not meet
18 federal or California emissions standards.

19 88. Defendants' misrepresentations and omissions regarding the Class
20 Vehicles' emissions compliance, its performance, and its fuel efficiency were material
21 and likely to deceive reasonable consumers such as Plaintiff and the California Class.

22 89. Volkswagen knew or should have known these statements were false and
23 misleading and would deceive consumers, including Plaintiff and the California Class.

24 90. Plaintiff and the California Class have suffered injury-in-fact, including the
25 loss of money and property, as a result of Defendants' misrepresentations and omissions,
26 which are unfair, deceptive, untrue, or misleading in violation of the False Advertising
27 Law. Plaintiff and the California Class would not have purchased or leased the Class
28 Vehicles had they known of the deceptive nature of Defendants' misrepresentations and

1 omissions, or they would have paid less for the Class Vehicles. Also, Plaintiff and the
2 proposed class will incur additional fuel costs, and a diminution in the performance of
3 their respective Class Vehicles, if and when their Class Vehicles are altered in order to
4 bring them into compliance with federal and state emissions standards.

5 91. Plaintiff and the proposed California Class are entitled to equitable relief,
6 including restitutionary disgorgement of all profits accruing to Defendants because of
7 their deceptive practices and an order requiring Volkswagen to adequately disclose and
8 repair the defect.

9 **COUNT FIVE**

10 **VIOLATIONS OF CALIFORNIA'S CONSUMER LEGAL REMEDIES ACT**

11 **(CAL. CIV. CODE § 1750, et seq.)**

12 **(On Behalf of the California Class)**

13 92. Plaintiff and the California Class incorporate by reference each preceding
14 and succeeding paragraph as though fully set forth at length herein.

15 93. Defendants violated the Consumers Legal Remedies Act (CLRA),
16 California Civil Code §§ 1770(a)(2), (3), (5), (7), (9), and (16), by engaging in unfair
17 methods of competition and unfair and deceptive acts and practices in connection with
18 transactions—namely, the sale of Class Vehicles to Plaintiff and the proposed California
19 Class—that were intended to, and did, result in the sale and lease of goods to consumers.
20 In connection with the sale or lease of Class Vehicles to Plaintiff and California Class
21 members, Defendants concealed and failed to disclose that Class Vehicles do not meet
22 federal and state emissions standards and that they achieve their performance and fuel
23 efficiency as a result of an illegal defeat device. These facts are material to a reasonable
24 consumer in that they negatively affect Class Vehicles' environmental emissions and
25 market value. If and when the Class Vehicles are altered to bring them into compliance
26 with federal and state emissions standards, Plaintiff and the proposed class will incur
27 additional fuel costs, and a diminution in the performance of their respective Class
28 Vehicles. Defendants had a duty to disclose these facts to consumers because they had

1 exclusive knowledge of those facts, which were not known or reasonably knowable by
2 the Plaintiff and proposed class; because it actively concealed these material facts from
3 the Plaintiff and the proposed class; and because it made partial representations
4 regarding Class Vehicles' emissions and compliance with federal and state emissions
5 law, while at the same time suppressing material facts regarding the vehicle's emissions.

6 94. As a direct and proximate result of Defendants' conduct, Plaintiff and
7 California Class members have been harmed. Plaintiff and the other California Class
8 members bought or leased Class Vehicles they otherwise would not have, overpaid for
9 their vehicles, did not receive the benefit of their bargain, and their Class Vehicles
10 suffered a diminution in value. Meanwhile, Defendants have sold more Class Vehicles
11 than they otherwise could have and charged inflated prices for Class Vehicles, thereby
12 unjustly enriching themselves.

13 95. Plaintiff and the proposed Class are entitled to equitable relief and a
14 declaration that Defendants' conduct violates the Consumer Legal Remedies Act.

15 96. Plaintiff disclaims any request for monetary relief, including punitive
16 damages, under the Consumer Legal Remedies Act at this time but reserve the right to
17 seek such relief after providing Defendants with the notice required by the Act.

18 **COUNT SIX**

19 **VIOLATION OF THE SONG-BEVERLY CONSUMER WARRANTY ACT**

20 **BREACH OF IMPLIED WARRANTY**

21 **(CAL. CIV. CODE §§ 1791, et seq.)**

22 **(On Behalf of the California Class)**

23 97. Plaintiff and the California Class incorporate by reference each preceding
24 and succeeding paragraph as though fully set forth at length herein.

25 98. Plaintiff brings this claim on behalf of himself and the California Class.

26 99. Class Vehicles are "consumer goods" within the meaning of Cal. Civ. Code
27 § 1791(a).

28

1 100. Volkswagen is a “manufacturer” within the meaning of Cal. Civ. Code §
2 1791(j).

3 101. Volkswagen impliedly warranted to Plaintiff and the California Class that
4 Class Vehicles were “merchantable” within the meaning of Cal. Civ. Code §§ 1791.1(a)
5 & 1792.

6 102. Cal. Civ. Code § 1791.1(a) states: “Implied warranty of merchantability” or
7 “implied warranty that goods are merchantable” means that the consumer goods meet
8 each of the following:

- 9 (1) Pass without objection in the trade under the contract description.
- 10 (2) Are fit for the ordinary purposes for which such goods are used.
- 11 (3) Are adequately contained, packaged, and labeled.
- 12 (4) Conform to the promises or affirmations of fact made on the
13 container or label.

14 103. Class Vehicles would not pass without objection in the automotive trade
15 because the Class Vehicles do not conform in material respects with federal and
16 California emissions standards, were sold with an illegal defeat device, as described
17 above, and emit pollutants such as NO_x by a factor of 10 to 40 times above the EPA
18 compliant levels.

19 104. As described above, the Class Vehicles are not fit for ordinary purposes for
20 which such goods are used.

21 105. Class Vehicles are not adequately labeled because the labeling
22 misrepresents that the vehicles are compliant with federal and California emissions
23 standards or fails to disclose such non-compliance.

24 106. Volkswagen’s conduct deprived Plaintiff and the proposed California Class
25 of the benefit of their bargain and has caused Class Vehicles to be worth less than what
26 Plaintiff and other proposed California Class members paid.

27 107. As a direct and proximate result of Volkswagen’s breach of its duties,
28 proposed California Class members received goods whose condition substantially

1 impairs their value. Plaintiff and the proposed California Class have been damaged by
2 the diminished value of the vehicles, the vehicles' malfunctioning, and actual and
3 potential increased maintenance and repair costs.

4 108. Plaintiff and Class members have complied with all obligations under the
5 warranty, or otherwise have been excused from performance of said obligations as a
6 result of Defendants' conduct described herein.

7 109. Under Cal. Civ. Code §§ 1791.1(d) & 1794, Plaintiff and proposed
8 California Class members are entitled to damages and other legal and equitable relief
9 including, at their election, the purchase price of their Class Vehicles, or the
10 overpayment or diminution in value of their Class Vehicles, and are also entitled to their
11 attorney fees and costs.

12 **TOLLING**

13 110. Any applicable statute of limitations that might otherwise bar any class
14 member's claims is tolled by Volkswagen's knowing and active concealment of the
15 defeat devices Class Vehicles. Volkswagen kept Plaintiff and the members of the class
16 ignorant of vital information essential to the pursuit of their claims. Class members
17 could not reasonably have discovered that their vehicles contained defeat devices prior
18 to the EPA's Notice of Violation on September 18, 2015.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff prays for judgment as follows:

- 21
- 22 a. For an order certifying the proposed classes and Plaintiff's counsel to
23 represent the classes;
 - 24 b. For an order requiring Volkswagen to buy back Class Vehicles or
25 otherwise, free of charge, remove the defeat devices from Class Vehicles,
26 ensure that Class Vehicles comply with applicable emission standards, and
27 otherwise ensure that Class Vehicles conform to promised performance and
28 fuel economy guarantees;

- 1 c. For an order awarding Plaintiff and class members actual, statutory,
2 punitive or any other form of damages provided by statute, except that no
3 monetary relief is presently sought for violations of the Consumers Legal
4 Remedies Act;
- 5 d. For an order awarding Plaintiff and class members restitution, disgorgement
6 or other equitable relief provided by statute or as the Court deems proper,
7 except that no monetary relief is presently sought for violations of the
8 Consumers Legal Remedies Act;
- 9 e. For an order awarding Plaintiff and class members pre-judgment and post-
10 judgment interest;
- 11 f. For an order awarding Plaintiff and class members reasonable attorney fees
12 and costs of suit, including expert witness fees; and
- 13 g. For an order awarding such other and further relief as this Court may deem
14 just and proper.

15 **JURY DEMAND**

16 Pursuant to Fed. R. Civ. P. 38(b), Plaintiff demands a trial by jury for all issues so
17 triable under the law.

18
19 Dated: September 21, 2015

Respectfully submitted,

20
21 **GIRARD GIBBS LLP**

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