

1 Elizabeth J. Cabraser (State Bar No. 083151)
LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
2 275 Battery Street, 29th Floor
San Francisco, CA 94111-3339
3 Telephone: 415.956.1000
Facsimile: 415.956.1008
4 E-mail: ecabraser@lchb.com

5 *Lead Counsel for Plaintiffs*
(Plaintiffs' Steering Committee Members
6 *Listed on Signature Page)*

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

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

MDL 2672 CRB (JSC)

14 This Document Relates to:

**CONSOLIDATED AMENDED
RESELLER DEALERSHIP CLASS
ACTION COMPLAINT**

15 *A to Z Autosports, LLC, and MSI Auto Sales*
And Repair, Inc., v. Volkswagen Group of
16 *America, Inc., Case No. 3:15-cv-05963-CRB*
17 *(transferred from W.D. Wis., Case No. 3:15-*
cv-00664-WMC)

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

11 **INTRODUCTION**

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

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

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

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

18 4. As a result, there are over half a million cars on American roads with illegal
19 emission systems that never should have left the factory, and would not have, but for
20 Volkswagen’s fraudulently obtained EPA Certificates of Conformity (“COCs”), as well as
21 California Air Resources Board (“CARB”) Executive Orders (“EOs”). Since the revelation of
22 Volkswagen’s scheme, the Department of Justice (“DOJ”) has filed a complaint alleging
23 numerous violations of the Clean Air Act (“CAA”), California and other state attorneys general
24 have announced investigations or filed lawsuits concerning Defendants’ fraudulent scheme, and
25

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

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

1 countless other government entities have launched criminal and civil investigations around the
2 globe.

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

9 6. Plaintiffs and the Class (defined below) are automobile dealers that acquired a
10 Class Vehicle for the purpose of resale and had said vehicle in inventory on or after September
11 18, 2015. Class Vehicles include the following models:

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

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

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

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

1 AG, it sold 10.14 million cars worldwide in 2014 – including 6.12 million VW-branded cars, 1.74
2 million Audi-Branded cars, and 189,849 Porsche-branded cars. Combined with other brands,
3 VW AG boasts a 12.9% share of the worldwide passenger car market. VW AG’s sales revenue in
4 2014 totaled €202 billion (approximately \$221 billion) and sales revenue in 2013 totaled €197
5 billion (approximately \$215 billion). At €2.7 billion (approximately \$13.9 billion), VW AG
6 generated its highest ever operating profit in fiscal year 2014, beating the previous record set in
7 2013 by €1.0 billion (approximately \$1.1 billion).

8 16. VW AG engineered, designed, developed, manufactured, and installed the defeat
9 device software on the Class Vehicles equipped with the 2.0-liter TDI® and exported these
10 vehicles with the knowledge and understanding that they would be sold throughout the United
11 States. VW AG also developed, reviewed, and approved the marketing and advertising
12 campaigns designed to sell the Class Vehicles.

13 **2. Volkswagen Group of America, Inc.**

14 17. Volkswagen Group of America, Inc. (“VW America”) is a New Jersey corporation
15 with its principal place of business located at 2200 Ferdinand Porsche Drive, Herndon, Virginia
16 20171. VW America is a wholly-owned subsidiary of Volkswagen AG, and it engages in
17 business, including the advertising, marketing and sale of Volkswagen automobiles, in all 50
18 states. In 2014 alone, VW America sold 552,729 vehicles from its 1,018 dealer locations in all 50
19 states, including 95,240 TDI® “clean” diesel vehicles.

20 **3. Audi AG**

21 18. Audi AG (“Audi AG”) is a German corporation with its principal place of business
22 in Ingolstadt, Germany. Audi AG is the parent of Audi of America, LLC and a subsidiary of the
23 Audi Group, which is a wholly-owned subsidiary of VW AG. Audi AG designs, develops,
24 manufacturers, and sells luxury automobiles. According to Audi AG, the Audi Group sold 1.74
25 million cars worldwide in 2014, with sales revenues in 2014 totaling €3.8 billion (approximately
26 \$58.5 billion). Audi AG’s operating profit in fiscal year 2014 was €1.15 billion (approximately
27 \$5.63 billion).

1 19. Audi AG engineered, designed, developed, manufactured and installed the defeat
2 device software on the Class Vehicles equipped with the 3.0-liter TDI® diesel engine, and
3 exported these vehicles with the knowledge and understanding that they would be sold throughout
4 the United States. Audi AG also developed, reviewed, and approved the marketing and
5 advertising campaigns designed to sell its Class Vehicles.

6 **4. Audi of America, LLC**

7 20. Audi of America, LLC (“Audi America”) is a Delaware limited liability company
8 with its principal place of business located at 2200 Ferdinand Porsche Drive, Herndon, Virginia
9 20171. Audi America is a wholly-owned U.S. subsidiary of Audi AG, and it engages in business,
10 including the advertising, marketing and sale of Audi automobiles, in all 50 states.

11 **5. Dr. Ing. h.c. F. Porsche AG**

12 21. Dr. Ing. h.c. F. Porsche AG (“Porsche AG”) is a German corporation with its
13 principal place of business located in Stuttgart, Germany. Porsche AG designs, develops,
14 manufacturers, and sells luxury automobiles. Porsche AG is a wholly-owned subsidiary of VW
15 AG. According to Porsche AG, it sold 187,208 cars worldwide in 2014, with sales revenues in
16 2014 totaling €7.2 billion (approximately \$18.8 billion). Porsche AG’s operating profit in fiscal
17 year 2014 was €2.79 billion (\$2.97 billion).

18 22. Porsche AG installed the defeat device software on the Class Vehicles equipped
19 with the 3.0-liter TDI® diesel engine, and exported these vehicles with the knowledge and
20 understanding that they would be sold throughout the United States. Porsche AG also developed,
21 reviewed, and approved the marketing and advertising campaigns designed to sell its Class
22 Vehicles.

23 **6. Porsche Cars North America, Inc.**

24 23. Porsche Cars North America, Inc. (“Porsche America”) is a Delaware corporation
25 with its principal place of business located at 1 Porsche Drive, Atlanta, Georgia 30354. Porsche
26 America is a wholly-owned U.S. subsidiary of Porsche AG, and it engages in business, including
27 the advertising, marketing and sale of Porsche automobiles, in all 50 states. According to Porsche
28

1 AG, 2014 represented its best annual results in Porsche history in the U.S., with 47, 007
2 automobiles delivered. Porsche America now maintains a network of 189 dealers nationwide.

3 **7. Martin Winterkorn**

4 24. Martin Winterkorn is a resident of Germany. Winterkorn was CEO of VW AG
5 until he resigned on September 23, 2015, in the wake of the diesel emissions scandal. Notably,
6 Winterkorn was widely regarded as a detail-oriented, micromanaging CEO, who retained control
7 over engineering details that many other CEOs would relinquish fully to deputies. Winterkorn is
8 being investigated by the German government for allegations of fraud. Winterkorn reportedly
9 hand-picked the engineers who designed the defeat devices. Winterkorn received compensation
10 from the illegal scheme and course of conduct based on the revenues and profits from the Class
11 Vehicles, and Volkswagen's increased market share. Winterkorn approved, authorized, directed,
12 ratified, and/or participated in the acts complained of herein. Winterkorn is subject to the
13 personal jurisdiction of this Court as he has availed himself of the laws of the United States
14 through his management and control over VW America as well as the manufacture, distribution,
15 testing, and sale of hundreds of thousands of Class Vehicles imported and sold across the United
16 States. Furthermore, Winterkorn has consistently travelled to the U.S. to attend and make
17 presentations at various car shows across the country in order to promote the sale of the Class
18 Vehicles.

19 **8. Matthias Müller**

20 25. Matthias Müller is a resident of Germany. Müller is a 40-year veteran of
21 Volkswagen, where he began as an apprentice toolmaker at Audi AG in 1977. Müller was
22 appointed coordinator of the Audi model lines in 2002, after Winterkorn took over the
23 management of Audi AG. In 2007, when Winterkorn became CEO of VW AG, Winterkorn
24 appointed Müller as Head of Product Management across all Volkswagen brands. In 2010,
25 Müller was appointed CEO of Porsche AG. In 2014, Müller became the Chief Information
26 Officer of Porsche Automobil Holding SE. Müller became the CEO of VW AG on September
27 25, 2015, upon Winterkorn's resignation amidst the emissions scandal. Müller profited millions
28 of dollars from the illegal scheme and course of conduct based on the revenues and profits from

1 the Class Vehicles and Volkswagen's increased market share. Müller approved, authorized,
2 directed, ratified, and/or participated in the acts complained of herein. Müller is subject to the
3 personal jurisdiction of this Court because he has availed himself of the laws of the United States
4 through his management and control of the American Volkswagen Defendants, as well as the
5 design, manufacture, distribution, testing, and/or sale of hundreds of thousands of Class Vehicles
6 imported and sold across the United States. Furthermore, Müller has consistently travelled to the
7 U.S. to attend and make presentations at various car shows across the country in order to promote
8 the sale of the Class Vehicles.

9 **9. Michael Horn**

10 26. Michael Horn is a resident of Virginia. Horn is President and CEO of VW
11 America. Horn received compensation from the illegal scheme and course of conduct based on
12 the revenues and profits from the Class Vehicles, and Volkswagen's increased market share.
13 Horn approved, authorized, directed, ratified, and/or participated in the acts complained of herein.
14 Horn has admitted that he was aware of the vehicles' emissions non-compliance since at least
15 2014.

16 **10. Rupert Stadler**

17 27. Rupert Stadler is a resident of Germany. Stadler became the CEO of Audi AG on
18 January 1, 2010. Stadler joined Audi AG in 1990 and has held various roles at Audi and VW,
19 including the Head of the Board of Management's Office for Volkswagen and the Head of Group
20 Product Planning. In 2003, Stadler became an Audi AG Board Member and was later being
21 responsible for the Finance and Organisation Division. Stadler joined the Board of Management
22 of Volkswagen when he was appointed to his current role as CEO of Audi AG. Stadler received
23 millions of dollars from the illegal scheme and course of conduct based on the revenues and
24 profits from the Class Vehicles and Volkswagen's increased market share. Stadler approved,
25 authorized, directed, ratified, and/or participated in the acts complained of herein. Stadler is
26 subject to the personal jurisdiction of this Court because he has availed himself of the laws of the
27 United States through his management and control over Audi America as well as the design,
28 manufacture, distribution, testing, and/or sale of hundreds of thousands of Class Vehicles

1 imported and sold across the United States. Furthermore, Stadler has consistently travelled to the
2 U.S. to attend and make presentations at various car shows across the country in order to promote
3 the sale of the Class Vehicles.

4 **11. Robert Bosch GmbH**

5 28. Robert Bosch GmbH is a German multinational engineering and electronics
6 company headquartered in Gerlingen, Germany. Robert Bosch GmbH is the parent company of
7 Robert Bosch LLC. Robert Bosch GmbH, directly and/or through its North-American subsidiary
8 Robert Bosch LLC, at all material times, designed, manufactured, and supplied the defeat device
9 to Volkswagen for use in the Class Vehicles.

10 **12. Robert Bosch, LLC**

11 29. Robert Bosch LLC is a Delaware limited liability company with its principal place
12 of business located at 38000 Hills Tech Drive, Farmington Hills, Michigan 48331. Robert Bosch
13 LLC is a wholly-owned subsidiary of Robert Bosch GmbH. Robert Bosch LLC, directly and/or in
14 conjunction with its parent Robert Bosch GmbH, at all material times, designed, manufactured,
15 and supplied the defeat device to Volkswagen for use in the Class Vehicles.

16 **13. Volkmar Denner**

17 30. Volkmar Denner is a resident of Germany. Denner has been the Chairman CEO of
18 Robert Bosch GmbH since July 1, 2012. Denner contemporaneously holds the position of Chief
19 Technology Officer. Denner joined Bosch in 1986, and has held numerous positions within the
20 company, including, Director of ECU Development, Vice-President of Sales and Development,
21 Semiconductors and Electronic Control Units division, and President of Automotive Electronics
22 division. In 2006, Denner became a member of Robert Bosch GmbH's Board of Management
23 and was later responsible for research and advance engineering, product planning, and technology
24 coordination across the company's three business sectors from July 2010 until his appointment as
25 CEO. Denner received millions of dollars from the illegal scheme and course of conduct based
26 on the revenues and profits from the sale of defeat devices to Volkswagen. Denner approved,
27 authorized, directed, ratified, and/or participated in the acts complained of herein. Denner is
28 subject to the personal jurisdiction of this Court because he has availed himself of the laws of the

1 United States through his management and control over Robert Bosch, LLC as well as his direct
2 participation in the design, manufacture, distribution, testing, and/or sale of hundreds of
3 thousands of defeat devices installed in the Class Vehicles.

4 **COMMON FACTUAL ALLEGATIONS**

5 **A. Volkswagen's Plot to Dominate the Automotive Market**

6 31. Volkswagen's illegal scheme was born out of greed and ambition to dominate the
7 global automotive market at any cost. By Volkswagen's own admissions, the seeds for the
8 scandal were planted in 2005, as Volkswagen was repositioning its fleet in light of tightening
9 emission regulations in our country with "a strategic decision to launch a large-scale promotion of
10 diesel vehicles in the United States in 2005."⁶ While other automakers focused on hybrid or
11 hydrogen-fueled vehicles, Volkswagen pivoted toward "clean" diesel technology as its primary
12 strategy to reach the growing market of environmentally-conscious consumers.

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

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

24 34. In 2007, defendant Winterkorn left his position at Audi to become VW AG's CEO.
25 Winterkorn set goals for Volkswagen to become a world leader in automobile manufacturing.
26

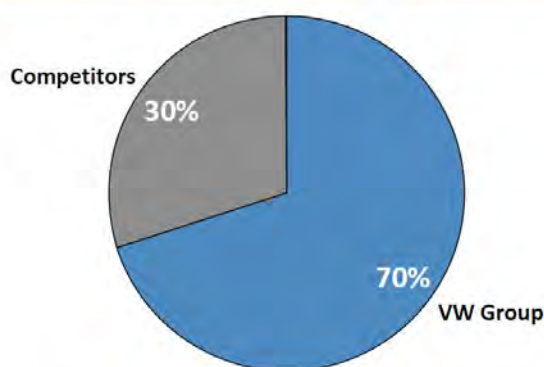
27 ⁶ *Volkswagen making good progress with its investigation, technical solutions, and Group*
28 *realignment*, Volkswagen AG (Dec. 10, 2015),
http://www.volkswagenag.com/content/vwcorp/info_center/en/news/2015/12/VW_PK.html.

1 This included a target of tripling U.S. sales to at least 800,000 vehicles by 2018.⁷ At the time,
 2 diesel-engine vehicles made up just 5% of the U.S. car market, and Winterkorn recognized this as
 3 the perfect opportunity to expand Volkswagen's market share. As shown below in a VW
 4 America presentation touting the success of "clean diesel," this strategy was employed with great
 5 success:⁸

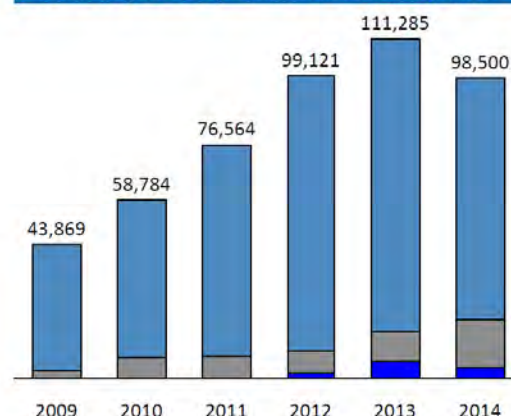
Diesel is an important differentiator for the VW Group

TDI – Turbocharged Direct Injection Diesel

Clean Diesel volume Cars and SUVs 2014



Volkswagen Group Clean Diesel Sales Volume



➔ VW Group US Diesel market share PC ~ 70 %

March 2015

VWoA- Product Strategy

➔ Strong growth since introduction

Source for competitor sales: Polk

4



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

23 36. Behind the scenes, however, Volkswagen realized internally that it was not
 24 possible to roll out these so-called "clean" diesel vehicles within its self-imposed budgets and
 25 engineering constraints. To get the job done, Winterkorn appointed two engineers with whom he

26 ⁷ William Boston, *Volkswagen Emissions Investigation Zeroes In on Two Engineers*, Wall Street
 27 Journal (Oct. 5, 2015), <http://www.wsj.com/articles/vw-emissions-probe-zeroes-in-on-two-engineers-1444011602>.

28 ⁸ Volkswagen AG, *TDI: U.S. Market Success, Clean Diesel Delivers* (March, 2015),
http://cleandieseldelivers.com/media/Douglas-Skorupski-VWoA_DTF_March2015.pdf.

1 had worked closely at Audi (Ulrich Hackenberg and Wolfgang Hatz) to head up R&D and engine
2 development for this project. These two engineers were the chief developers of the TDI engine.⁹
3 Their primary mandate from management was to develop a diesel engine that maintained the
4 performance of traditional gasoline engines with reduced CO₂ emissions and fuel consumption,
5 all while meeting the strict NO_x emission standards in the U.S. Winterkorn also relied upon and
6 worked closely with Frank Tuch, VW's head of quality assurance, who was intimately familiar
7 with the engines and transmissions across all Volkswagen brands.

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

13 38. Diesel fuel is traditionally denser than gasoline, and the syrupy fuel contains
14 longer hydrocarbon chains, which tends to produce a more efficient vehicle. In fact, diesel
15 engines can convert over 45% of fuel energy into useful mechanical energy, whereas gasoline
16 engines convert only 30% of fuel into energy.¹⁰ To make use of this dense diesel fuel, diesel
17 engines combine high temperatures and high compression to produce a pressure-cooker of
18 mechanical energy, as opposed to a spark ignition in the typical gasoline engine. Though more
19 efficient, diesel engines come with their own set of challenges, as highly-compressed diesel
20 emissions can include high levels of NO_x and particulate matter ("PM"), or soot. NO_x emissions
21 can be reduced by adjusting the compression and temperature, but that in turn produces PM, a
22 similarly-undesirable hydrocarbon-based emission.

23 39. Diesel engines thus operate according to this trade-off between NO_x and PM, and
24 for the EPA to designate a diesel car as a "clean" vehicle, it must produce *both* low PM and low

25 ⁹ Jack Ewing, *Volkswagen Engine-Rigging Scheme Said to Have Begun in 2008*, N.Y. Times
26 (Oct. 5, 2015), <http://www.nytimes.com/2015/10/05/business/engine-shortfall-pushed-volkswagen-to-evade-emissions-testing.html>.

27 ¹⁰ *Just the Basics, Diesel Engine*, U.S. Dept. of Energy, Office of Energy Efficiency and
28 Renewable Energy (last visited Feb. 8, 2016), available at
http://www1.eere.energy.gov/vehiclesandfuels/pdfs/basics/jtb_diesel_engine.pdf.

1 NO_x. In 2000, the EPA announced stricter emission standards requiring all diesel models starting
2 in 2007 to produce drastically less NO_x than years prior.

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

8 41. But it was of utmost importance for Volkswagen to achieve (or at least appear to
9 achieve) this "impossible" goal, for it could not legally sell a single vehicle that failed comply
10 with the governmental emission regulations. Before introducing a Class Vehicle into the U.S.
11 stream of commerce (or causing the same), Volkswagen was required to first apply for, and
12 obtain, an EPA-administered COC, certifying that the vehicle comported with the emission
13 standards for pollutants enumerated in 40 C.F.R. §§ 86.1811-04, 86.1811-09, and 86.1811-10.
14 The CAA expressly prohibits automakers, like Volkswagen, from introducing a new vehicle into
15 the stream of commerce without a valid EPA COC. *See* 42 U.S.C. § 7522(a)(1). Moreover,
16 vehicles must be accurately described in the COC application "in all material respects" to be
17 deemed covered by a valid COC. *See* 40 C.F.R. §§ 86.1848-10(c)(6). California's emission
18 standards were even more stringent than those of the EPA. California's regulator, CARB,
19 requires a similar application from automakers to obtain an EO, confirming compliance with
20 California's emission regulations, before allowing the vehicle onto California's roads.

21 42. Thus, in order to successfully grow the U.S. diesel market and meet its ambitious
22 objectives, it was critical that Volkswagen develop the technology to maintain the efficient,
23 powerful performance of a diesel, while drastically reducing NO_x emissions to comply with the
24 CAA and state emission standards.

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26 ¹¹ Danny Hakim, *et al.*, *VW Executive Had a Pivotal Role as Car Maker Struggled With*
27 *Emissions*, N.Y. Times (Dec. 21, 2015),
28 <http://www.nytimes.com/2015/12/22/business/international/vw-executive-had-a-pivotal-role-as-car-maker-struggled-with-emissions.html?mtrref=undefined&gwh=7E46E42F7CCC3D687AEC40DFB2CFA8BA&gwt=pa>
[y](#).

1 43. This high-stakes engineering dilemma led to a deep divide within the company, as
2 two divergent technical approaches emerged. One approach involved a selective catalytic
3 reduction (“SCR”) that proved to be effective but expensive. The other, which utilized a lean
4 NO_x trap, was significantly cheaper but was less effective and resulted in lower fuel efficiency.

5 44. In 2006, Wolfgang Bernhard, then a top executive at VW AG (and former Daimler
6 executive), advocated for the SCR and championed a technology-sharing agreement with
7 Mercedes-Benz and BMW to jointly develop a SCR emission control system utilizing urea— a
8 post-combustion emission suppressant that, when injected into the exhaust stream, converts NO_x
9 into harmless nitrogen and oxygen molecules. This SCR system was generically known as a
10 “Diesel Exhaust Fluid” system and marketed as “Bluetec” by Mercedes and “AdBlue” by
11 Volkswagen and other German vehicle manufacturers. But the solution was expensive, costing
12 \$350 per vehicle.

13 45. Hatz initially supported this solution as well, stating publicly at the Detroit Auto
14 Show in early 2007 that “Bluetec technology allows us to demonstrate Audi’s commitment to
15 always being at the very forefront of diesel technology.”¹² He withdrew his support, however, as
16 Volkswagen’s leadership balked at the \$350 per-vehicle cost of the SCR system. Bernhard
17 ultimately lost the internal battle at Volkswagen and resigned

18 46. Hatz remained and was tasked with implementing the alternative, lower-cost
19 strategy: NO_x traps. This technology involved the storage of NO_x emissions in a catalyst
20 substrate during vehicle operation. Once that substrate filled up, the system burned off the stored
21 NO_x by pumping an extra burst of fuel into the cylinders, most of which passed through to the
22 converter, where it then converts the NO_x into nitrogen and oxygen. This method was cheaper
23 and easier to implement than the SCR system. It was less effective at reducing emissions,
24 however, and resulted in lower fuel efficiency—one of the key elements that necessary to execute
25 Volkswagen’s ambitious sales goals. Accordingly, this option, too, was unacceptable.

26 47. But at Volkswagen, failure was not an option. According to many sources
27 (including journalists, industry insiders, and Volkswagen whistleblowers), Volkswagen’s top

28 ¹² *Id.*

1 brass directed its engineers to find a way to meet emission standards despite tight budgetary and
 2 technical constraints, or suffer the consequences. VW AG's former CEO, Ferdinand Piëch,
 3 created "a culture where performance was driven by fear and intimidation," and his leadership
 4 was characterized as "a reign of terror."¹³ Employees were told, "[y]ou will sell diesels in the
 5 U.S., and you will not fail. Do it, or I'll find somebody who will."¹⁴ Piëch was infamous for
 6 firing subordinates who failed to meet his exacting standards: "Stories are legion in the industry
 7 about Volkswagen engineers and executives shaking in their boots prior to presentations before
 8 Piech, knowing that if he was displeased, they might be fired instantly."¹⁵ And so it seems, out of
 9 self-preservation, the defeat device scandal was born.

10 **B. Defendants' "Defeat Device" Scheme**

11 48. Volkswagen engineers had to find a solution to the "impossible" problem of
 12 passing stricter emission standards while maintaining performance and fuel efficiency, all while
 13 hamstrung by cost-cutting measures. And it had to be done fast, because the new diesel vehicles
 14 were scheduled for imminent release in the U.S.

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

21 50. It became clear that the TDI engine could not meet U.S. emission regulations when
 22 the launch of the Jetta TDI "clean" diesel, initially scheduled for 2007, had to be delayed after
 23 initial emission testing failed.¹⁶ The prospect of failure was unacceptable, so Volkswagen

24 ¹³ Bob Lutz, *One Man Established the Culture That Led to VW's Emissions Scandal*, Road &
 25 Track (Nov. 4, 2015), <http://www.roadandtrack.com/car-culture/a27197/bob-lutz-vw-diesel-fiasco/>.

26 ¹⁴ *Id.*

27 ¹⁵ Doron Levin, *The man who created VW's toxic culture still looms large*, Fortune (Oct. 16,
 2015), <http://fortune.com/2015/10/16/vw-ferdinand-piech-culture/>.

28 ¹⁶ *VW delays Jetta TDI diesel into the US*, Clean MPG (last visited Feb. 8, 2016),
<http://www.cleanmpg.com/community/index.php?threads/7254/>.

1 decided to cheat instead. It has been reported that the decision to cheat the EPA, CARB, and
2 countless other regulators worldwide was an “open secret” in Volkswagen’s engine development
3 department,¹⁷ as it was necessary for the “EA 189 engine to pass U.S. diesel emissions limits
4 within the budget and time frame allotted.”¹⁸

5 51. All modern engines are integrated with sophisticated computer components to
6 manage the vehicle’s operation, such as an electronic diesel control (“EDC”). Bosch tested,
7 manufactured and sold the EDC system used by Volkswagen in the Class Vehicles. This system
8 is more formally referred to as the Electronic Diesel Control Unit 17 (“EDC Unit 17”). Upon its
9 introduction, EDC Unit 17 was publicly-touted by Bosch as follows:

10 ... EDC17 ... controls every parameter that is important for
11 effective, low-emission combustion.

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

24 52. EDC Unit 17 was widely used throughout the automotive industry, including by
25 BMW and Mercedes, to operate modern clean diesel engines. Bosch worked with each vehicle
26 manufacturer that utilized EDC Unit 17 to create a unique set of specifications and software code
27 to manage the vehicle’s engine operation.
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24 ¹⁷ Georgina Prodham, *Volkswagen probe finds manipulation was open secret in department*,
25 Reuters (Jan. 23, 2016), [http://www.reuters.com/article/us-volkswagen-emissions-investigation-
idUSKCN0V02E7](http://www.reuters.com/article/us-volkswagen-emissions-investigation-idUSKCN0V02E7).

26 ¹⁸ Jay Ramey, *VW chairman Poetsch: Company ‘tolerated breaches of rules’*, Autoweek
27 (Dec. 10, 2015), [http://autoweek.com/article/vw-diesel-scandal/vw-chairman-poetsch-company-
tolerated-breaches-rules](http://autoweek.com/article/vw-diesel-scandal/vw-chairman-poetsch-company-tolerated-breaches-rules).

28 ¹⁹ See February 28, 2006 Bosch press release, “The brain of diesel injection: New Bosch EDC17
engine management system,” [http://www.bosch-
presse.de/presseforum/details.htm?txtID=2603&locale=en](http://www.bosch-presse.de/presseforum/details.htm?txtID=2603&locale=en)

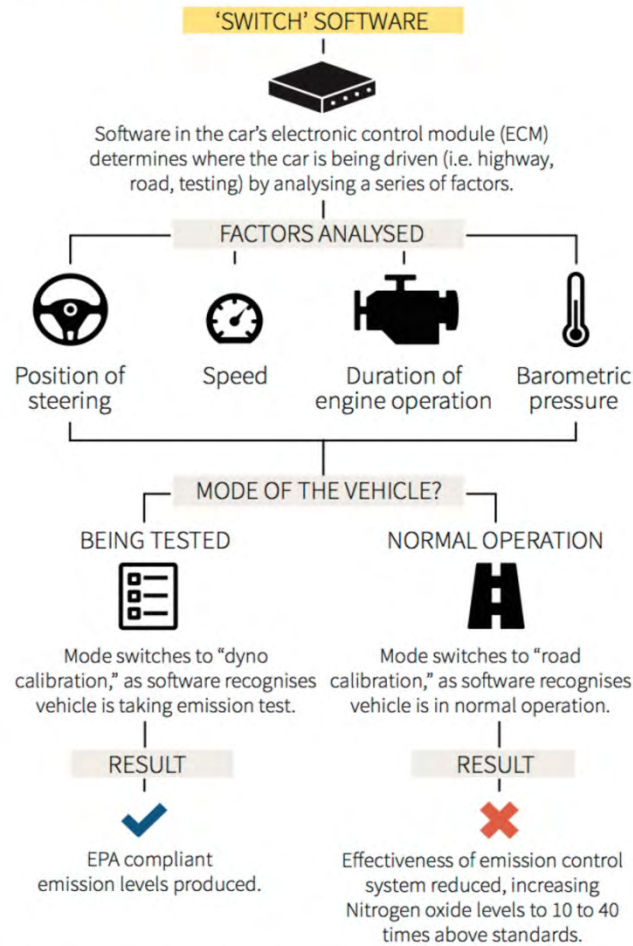
1 53. With respect to the Class Vehicles, however, EDC Unit 17 was also used enable
2 Volkswagen to surreptitiously evade emissions regulations. Bosch and Volkswagen worked
3 together to develop and implement a specific set of software algorithms for implementation in the
4 Class Vehicles, which enabled Volkswagen to adjust fuel levels, exhaust gas recirculation, air
5 pressure levels, and even urea injection rates (for applicable vehicles).²⁰ When carmakers test
6 their vehicles against EPA emission standards, they install their cars on dynamometers (large
7 rollers) and then perform a series of specific maneuvers prescribed by federal regulations.
8 Bosch's EDC Unit 17 gave Volkswagen the power to detect test scenarios by monitoring vehicle
9 speed, acceleration, engine operation, air pressure and even the position of the steering wheel.
10 When the defeat device's algorithm detected that the vehicle was on a dynamometer (and
11 therefore undergoing an emission test), the defeat device downgraded its engine's power and
12 performance, thereby reducing emissions back to legal levels. Once the emission test was
13 complete, the engine would return to full power, and consequently, spew the full amount of
14 illegal NO_x emissions out on the road.²¹ This process is illustrated in the following diagram:
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25 ²⁰ See, e.g., *Engine management*, Bosch Auto Parts (last visited February 8, 2016),
26 [http://de.bosch-
automotive.com/en/parts and accessories/motor and sytems/diesel/engine management 2/engi
27 ne control unit 1](http://de.bosch-automotive.com/en/parts_and_accessories/motor_and_sytems/diesel/engine_management_2/engine_control_unit_1).

28 ²¹ Russell Hotten, *Volkswagen: The scandal explained*, BBC (Dec. 10, 2015),
<http://www.bbc.com/news/business-34324772>.

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How Volkswagen's defeat device works



Source: U.S. Environmental Protection Agency

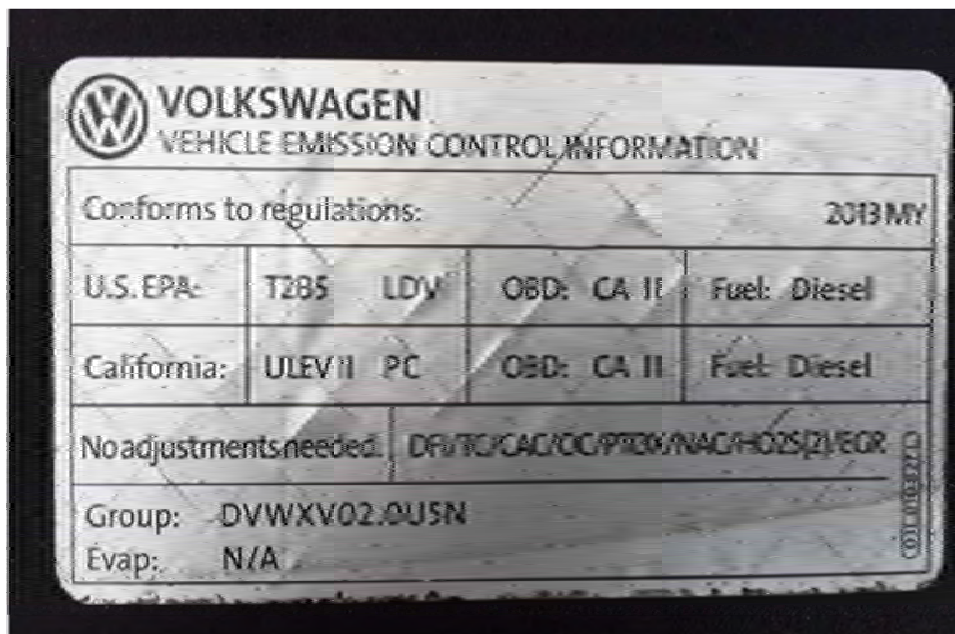
J. Wang, 22/09/2015

REUTERS

54. Make no mistake: this workaround was highly illegal. The CAA expressly prohibits “defeat devices,” defined as any 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; *see also id.*, § 86.1809-10 (“No new light-duty vehicle, light-duty truck, medium-duty passenger vehicle, or complete heavy-duty vehicle shall be equipped with a defeat device.”). Moreover, the CAA prohibits the sale of components used as defect devices, “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.” 42 U.S.C. § 7522(a)(3). Finally, in order to obtain a COC, automakers must submit an

1 application, which lists all auxiliary emission control devices installed in the vehicle, a
2 justification for each, and an explanation of why the control device is not a defeat device.

3 55. Thus, in order to obtain the COCs necessary to sell their vehicles, Volkswagen did
4 not disclose, and affirmatively concealed, the presence of the defeat device. In other words, it
5 lied to the government, its customers, and the public at large. An example of one of
6 Volkswagen's vehicle stickers reflecting its fraudulently-obtained COCs is pictured below:



18 56. Because the COCs were fraudulently-obtained, and because the Class Vehicles did
19 not conform “in all material respects” to the specifications provided in the COC applications, the
20 Class Vehicles were never covered by a valid COC, and thus, were never legal for sale, nor were
21 they EPA and/or CARB compliant, as represented. Volkswagen hid these facts from the EPA,
22 other regulators, and consumers, and it continued to sell and lease the Class Vehicles to the
23 driving public, despite their illegality, and with the complicity of Bosch.

24 57. Volkswagen's illegal workaround was enabled by its close partnership with
25 defendant Bosch, which enjoyed a sizable portion of its annual revenue from manufacturing parts
26 used in Volkswagen's diesel vehicles.²² Bosch was well aware that Volkswagen was using its

27 ²² Approximately 50,000 of Bosch's 375,000 employees worked in the diesel-technology
28 operations branch of Bosch, and Volkswagen was the biggest diesel manufacturer in the world.
See *Bosch probes whether its staff helped VW's emissions rigging*, Automotive News (Jan. 27,
2016), <http://www.autonews.com/article/20160127/COPY01/301279955/bosch-probes-whether->

Footnote continued on next page

1 emissions control components as a defeat device and, in fact, worked with Volkswagen to
2 develop the software algorithm specifically tailored for the Class Vehicles. Although Bosch
3 reportedly “advised” Volkswagen as early as 2007 that the components should only be used for
4 internal testing, not for manipulation of the engine in emission testing,²³ it knew (or certainly
5 should have known) that its lip service would be ignored, and that the components would be used
6 as defeat devices. Bosch supplied Volkswagen with approximately 11 million such emission
7 control components over seven years.

8 58. Volkswagen, likewise, knew better—VW America itself is a recidivist violator of
9 the CAA. In July of 1973, the EPA sought legal action against VW America from the DOJ based
10 on a claim that defeat devices were installed in 1973 Volkswagen vehicles. The matter was
11 swiftly settled for \$120,000 the following year.²⁴ And, in June of 2005, VW America entered
12 into a consent decree with the DOJ, wherein it paid a \$1.1 million penalty for failing to notify the
13 EPA of emissions problems in certain vehicles manufactured by VW in Mexico.²⁵

14 59. What’s past is prologue, and Volkswagen could not help but repeat its cheating
15 ways. With respect to the Class Vehicles, Volkswagen hid the fact of the defeat devices from the
16 EPA, such that the COCs were fraudulently obtained. Specifically, VW America submitted COC
17 applications on behalf of VW AG, Audi AG, and itself, for the 2.0-liter and VW-and Audi-
18 branded 3.0-liter Class Vehicles, describing compliant specifications and concealing the dual-
19 calibration strategy of the defeat device. Similarly, Porsche America submitted COC applications
20 on behalf of Porsche AG and itself for the Porsche-branded 3.0 Liter Class Vehicles, describing
21 compliant specifications and concealing the dual-calibration strategy of the defeat device. But,
22 the Class Vehicles differed in “material respects” from the specifications described in the COC
23 applications as they are non-complaint and equipped with undisclosed defeat devices.

24 *Footnote continued from previous page*
25 [its-staff-helped-vws-emissions-rigging](#).

26 ²³ *VW scandal: Company warned over test cheating years ago*, BBC (Sept. 27, 2015),
<http://www.bbc.com/news/business-34373637>.

27 ²⁴ Rich Gardellsa, *et al.*, *VW had previous run-in over ‘defeat devices’*, NBC News (Sept. 23,
2015), <http://www.cnbc.com/2015/09/23/vw-had-previous-run-in-over-defeat-devices.html>.

28 ²⁵ Consent Decree, *United States v. Volkswagen of Am., Inc.*, Case No. 1:05-cv-01193-GK
(D.D.C. June 15, 2005 and Nov. 4, 2005), ECF Nos. 1-2.

1 60. Because the COCs were fraudulently obtained, the Class Vehicles were never
2 covered by valid COCs, and thus, were never legal for sale. Volkswagen hid these facts from the
3 EPA, CARB and other state regulators, and consumers, and it continued to sell and lease the
4 Class Vehicles to the public, despite their illegality, and with the complicity of Bosch.

5 **C. Volkswagen’s “Clean” Diesel Advertising Campaign**

6 61. While secretly using defeat devices to bypass emission testing, Volkswagen
7 publicly declared a landmark victory—touting that it had successfully optimized its engines to
8 maintain legal emissions, while simultaneously enjoying the cost savings of a lean NO_x trap
9 system. Volkswagen claimed it accomplished this by monitoring and adjusting combustion
10 conditions and using a two-stage exhaust gas recirculation system to reduce initial emissions,
11 while neutralizing the remaining ones with a lean NO_x trap to comply with U.S. law.²⁶
12 Volkswagen branded and advertised this purportedly revolutionary technology to American
13 consumers as “CleanDiesel” TDI technology.

14 62. As we now know, Volkswagen’s “clean” diesel campaign was built upon a lie.
15 Indeed, the Class Vehicles were so “dirty” that they could not pass the minimum emission
16 standards in the U.S., and Volkswagen had to lie to the EPA in order to sell them in the U.S. But,
17 of course, Volkswagen marketed and sold these Class Vehicles without ever disclosing to
18 consumers that they were unlawful to sell or drive due to their high levels of NO_x emissions.

19 **1. VW’s False and Misleading Advertisements**

20 63. VW’s “clean” diesel campaign was its key selling point for consumers
21 increasingly concerned about the environment. Its marketing mission was to “get clean-diesel
22 power the recognition it deserves as a true ‘green’ technology,” thereby growing Volkswagen’s
23 market share to match Winterkorn’s lofty goals.²⁷ The objective was to change the way
24 consumers thought of diesel technology, by replacing the mental image of sulfur emissions amid
25 clouds of thick soot with that of heightened efficiency and reduced CO₂ emissions. In fact, the

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27 ²⁶ See Hadler, *et al.*, *Volkswagen’s New 2.0l TDI Engine Fulfils the Most Stringent Emission*
Standards, Internationales Wiener Motorensymposium 2008; see also *Self Study Program*
826803: 2.0 Liter TDI Common Rail BinS ULEV Engine, Volkswagen of America, Inc. (2008).

28 ²⁷ See e.g., *TDI Clean Diesel*, <http://www.venturavw.com/TDI-clean-diesel.html>.

1 VW website stated: “This ain’t your daddy’s diesel. Stinky, smoky, and sluggish. Those old
2 diesel realities no longer apply. Enter TDI “clean” diesel. Ultra-low-sulfur fuel, direct injection
3 technology, and extreme efficiency. We’ve ushered in a new era of diesel.”²⁸

4 64. Dubbing these diesel engines as “CleanDiesel” was a symptom of the brazen
5 arrogance underlying the fraud. VW’s entire marketing campaign, from the branding of the
6 products to the advertisements, focused on convincing consumers that the Class Vehicles were
7 not merely compliant with emission regulations, but that they exceeded them. This deception
8 culminated in a Guinness World Record attempt in a 2013 Volkswagen Passat TDI, which
9 ironically won an award for “lowest fuel consumption—48 U.S. states for a non-hybrid car.”²⁹

10 65. VW professed that its diesel-based technology was equal or superior to hybrid and
11 electric options offered by its competitors. As described by Mark Barnes (COO of VW America)
12 when asked, “What is the advantage of a diesel over a hybrid?”

13 It’s a fantastic power train. It gives very good fuel economy. It’s
14 also good for the environment because it puts out 25% less
15 greenhouse gas emissions than what a gasoline engine would. And
16 thanks to the uniqueness of the TDI motor, it cuts out the particulate
17 emissions by 90% and the emissions of nitrous oxide are cut by
18 95%. So, a very very clean running engine. Clean enough to be
19 certified in all 50 states. It’s just like driving a high-powered
20 gasoline engine so you are not giving up one bit of the driving
21 experience that you’d expect from a regular gasoline engine.³⁰

22 66. Facing skepticism, Barnes had a ready, if imaginative, response to the question,
23 “How do you re-brand something that’s dirty like diesel as something that’s green?”

24 The way we’ve gone about it is through a number of
25 communication pieces. One of them we’ve used is TDI Truth &
26 Dare. It is a very good website that compares some older diesels
27 versus the current TDI clean diesel. And one of the things we do is
28 we put coffee filters over the exhaust pipes of both cars. We let
29 them run for five minutes and after they are done, we take them off
30 and the older diesel product (not a VW diesel) has a round sooty
31 spot on that coffee filter. Ours is very clean. In fact they actually

25 ²⁸ *Supra* note 2.

26 ²⁹ Nick Palermo, *Volkswagen Passat TDI Sets World Record for Fuel Economy*, Autotrader (July
27 2013), [http://www.autotrader.com/car-news/volkswagen-passat-tdi-sets-world-record-for-fuel-
28 economy-210689](http://www.autotrader.com/car-news/volkswagen-passat-tdi-sets-world-record-for-fuel-economy-210689).

27 ³⁰ Gayathri Vaidyanathan, *Volkswagen: Our Diesel Cars Whup The Prius And Other Hybrids*,
28 Business Insider (Oct. 9, 2009), [http://www.businessinsider.com/volkswagen-preps-for-a-diesel-
revolution-2009-10](http://www.businessinsider.com/volkswagen-preps-for-a-diesel-revolution-2009-10).

1 make coffee out of the filter that was attached to the Volkswagen
2 clean diesel tail pipe and they drink it.³¹

3 67. VW also advertised that its vehicles performed better on the road than in test
4 conditions, touting in a 2008 press release: “While the Environmental Protection Agency
5 estimates the Jetta TDI at an economical 29 mpg city and 40 mpg highway, Volkswagen went a
6 step further to show real world fuel economy of the Jetta TDI. Leading third-party certifier,
7 AMCI, tested the Jetta TDI and found it performed 24 percent better in real world conditions,
8 achieving 38 mpg in the city and 44 mpg on the highway.”³² This discrepancy could only be
9 obtained by modifying the exhaust after treatment control, thereby decreasing vehicle operating
10 costs at the expense of massively increased NO_x emissions.

11 68. Volkswagen distinguished the TDI “clean” diesel engines from other, “stinky,
12 smoky, sluggish” diesels, proclaiming its “eco-conscious” status and of course failing to disclose
13 that the Class Vehicles were “dirty” themselves. These messages were prevalent in
14 Volkswagen’s extensive marketing campaign.

15 69. Some advertisements, for example, specifically emphasized the low emissions and
16 eco-friendliness of the vehicles:
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26 ³¹ *Id.*

27 ³² Jake Fisher, *Did Volkswagen Use ‘Cheat Mode’ as a Selling Point?*, Consumer Reports
28 (Oct, 19, 2015), <http://www.consumerreports.org/volkswagen/did-volkswagen-use-cheat-mode-as-a-selling-point?loginMethod=auto>.

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Ultra low emissions. Jetta TDI Clean Diesel.



70. Others touted the combination of fuel efficiency and power:



Volkswagen Turbo Diesel Injection.
Less fuel consumption with added engine power.



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

Come test drive one today.



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

This ain't your daddy's diesel.

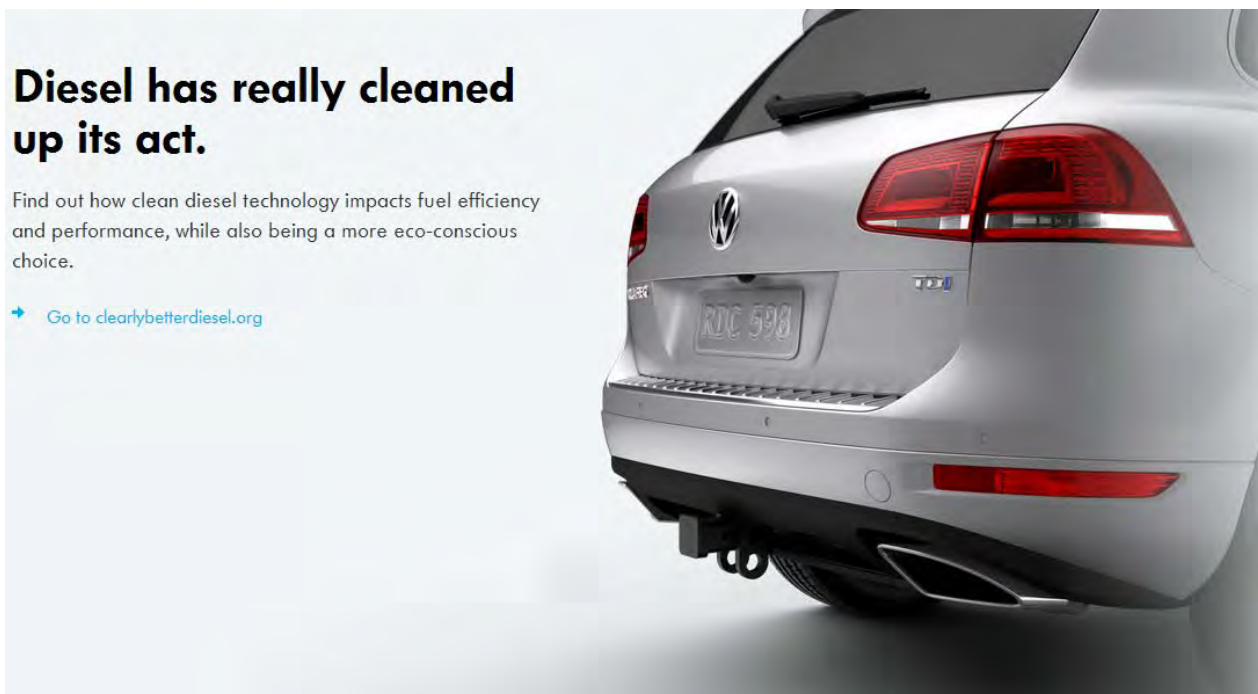
Stinky, smoky, and sluggish. Those old diesel realities no longer apply. Enter TDI Clean Diesel. Ultra-low-sulfur fuel, direct injection technology, and extreme efficiency. We've ushered in a new era of diesel.

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

[View key fuel efficiency info ?](#)



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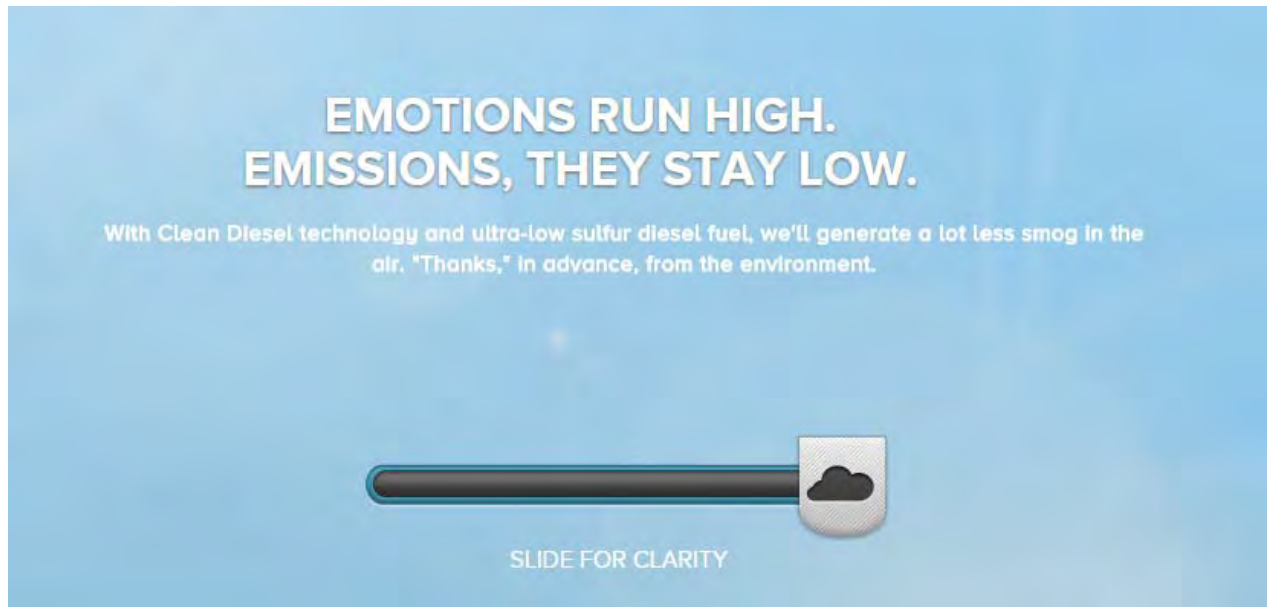


72. In addition, VW directed consumers to the www.clearlybetterdiesel.org website, which partnered with affiliates Audi and Porsche, as well as Bosch, Mercedes, and BMW. This website touted the benefits of newly developed diesel technology as “clean” and environmentally friendly. Although it has been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



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

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

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



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



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



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

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

7 Let TDI “clean” diesel set you free from the filling station. Our TDI
8 engines achieve astonishing mileage and range—up to 43 highway
9 mpg and 795 miles on a single tank without sacrificing one bit of
10 turbocharged performance. *That’s all thanks to the TDI
11 technology that uses a direct injection system and runs on ultra-
12 low-sulfur diesel, helping reduce sooty emissions by up to 90%
13 compared to previous diesel engines.* On most models, you can
14 even choose the available DSG automatic transmission with
15 Tiptronic to take that turbo engine to a whole new level.³³
16 (Emphasis added.)

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

18 When you’ve had your fill of filling stations, hit the road in your
19 TDI “clean” diesel Volkswagen. These engines achieve astonishing
20 mileage and range—up to 43 highway mpg and 795 miles on a single
21 tank without sacrificing one bit of turbocharged performance.
22 *That’s all thanks to the TDI technology that uses a direct
23 injection system, and runs on ultra-low-sulfur diesel, helping
24 reduce emissions by up to 90% compared to previous diesels.* Far
25 and away, it’s our best diesel yet.³⁴ (Emphasis added.)

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

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

...

³³ Brochure: 2012 Volkswagen Family,
<http://cdn.dealereprocess.com/cdn/brochures/volkswagen/2012-family.pdf>.

³⁴ Brochure: 2013 Volkswagen Family,
<http://cdn.dealereprocess.com/cdn/brochures/volkswagen/2013-volkswagenfamily.pdf>.

1 *both you and the planet.* So whether you're in the market for
 2 IntelliChoice's 2010 "Best Overall Value Compact Car over
 3 \$17,000," or you want to go for a variation on that theme and get
 4 the ever-popular TDI model, you can't go wrong. In fact, you can
 5 go very right for a long, long time."³⁷

6 84. A Volkswagen 2012 Passat TDI brochure states:

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

16 ...

17 The TDI "clean" diesel engine was designed and engineered around
 18 one simple belief: driving is more fun than refueling. *So besides the
 19 reduced emissions and torque-filled benefits you experience
 20 behind the wheel of the Passat TDI, it also saves you money at the
 21 pump.*³⁸ (Emphasis added.)

22 85. A Volkswagen 2013 Beetle TDI brochure states:

23 Start the TDI® "clean" diesel model and hear the surprisingly quiet
 24 purr of *the first clean diesel Beetle*, designed for both power and
 25 efficiency.³⁹ (Emphasis added.)

26 86. A Volkswagen 2014 Beetle TDI brochure states:

27 2.0L TDI "clean" diesel engine. Engineered with the idea that less
 28 is more. The Beetle TDI has lower CO₂ emissions compared to
 84% of other vehicles. *So every getaway you make will be a
 cleaner one.*⁴⁰ (Emphasis added.)

29 87. A Volkswagen 2014 TDI Touareg brochure states:

30 3.0L TDI "clean" diesel engine. Engineered with the idea that less
 31 is more. The Touareg TDI has lower CO₂ emissions compared to
 32 88% of other vehicles. *So every getaway you make will be a clean
 33 one.*⁴¹ (Emphasis added.)

34 ³⁷ Brochure: 2011 Volkswagen Golf,
 35 <http://cdn.dealereprocess.com/cdn/brochures/volkswagen/2011-golf.pdf>.

36 ³⁸ Brochure: 2012 Volkswagen Passat, <https://static.beepi.com/Brochures/17001.pdf>.

37 ³⁹ Brochure: 2013 Volkswagen Beetle, <https://static.beepi.com/Brochures/22980.pdf>.

38 ⁴⁰ Brochure: 2014 Volkswagen Beetle, <https://static.beepi.com/Brochures/23900.pdf>.

39 ⁴¹ Brochure: 2014 Volkswagen Touareg, <https://static.beepi.com/Brochures/18663.pdf>.

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

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



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

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



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



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

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

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

21 ...

22 ***Long gone are the days of dirty, smoking diesel engines. Audi
TDI clean diesel technology is responsible for the cleanest diesel
engines in the world, with 30 percent fewer CO₂ emissions than
comparable gasoline engines, making it an environmentally friendly
alternative to gasoline power. In fact, TDI clean diesel is
compliant with California’s ULEV II requirement—the world’s
most stringent emission standard. The result is a significant
reduction in emissions that contribute to global warming.***⁴²
26 (Emphasis added.)

27
28 ⁴² Brochure: 2011 Audi A3, <http://www.slideshare.net/MichiganCarSales/2011-audi-a3-detroit-mi-fred-lavery-company>.

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

4 Taking advantage of the greater power density of diesel fuel over
5 traditional gasoline, the available 240-hp 3.0-liter TDI® clean
6 diesel V6 delivers incredible torque (428 lb-ft) and passing power,
7 while boasting impressive fuel efficiency numbers. ***It also produces
8 fewer emissions with a combination of Piezo direct injection, a
9 high compression ratio, and innovative after-exhaust treatment
10 that helps eliminate up to 95% of diesel NOx emissions.***⁴³
(Emphasis added.)

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

13 With 240 hp and 428 lb-ft of torque on tap, the available 3.0-liter
14 TDI® clean diesel engine's elasticity in the passing lane is almost
15 as impressive as its ability to take on even the longest road trips.
16 ***And with features like AdBlue® exhaust after-treatment helping
17 to make every journey a little cleaner, this is a performance win
18 for all sides.***⁴⁴ (Emphasis added.)

19 3. Porsche's False and Misleading Advertisements

20 96. Porsche similarly exploited the "clean" diesel branding for its Cayenne SUV to
21 falsely convey that the vehicle was environmentally friendly and legal to drive. The "clean"
22 diesel marketing and advertising for the Cayenne SUV also omitted the material fact that the
23 COC issued by the EPA for the vehicle was based on a fundamental lie. Those ads were unfair,
24 deceptive, false, and misleading for the same reasons, as stated above.
25

26 _____
27 ⁴³ Brochures 2016 Audi A6, [https://www.audiusa.com/content/dam/audiusa/Documents/2016-
28 Audi-A6-brochure.pdf](https://www.audiusa.com/content/dam/audiusa/Documents/2016-Audi-A6-brochure.pdf), and 2016 Audi A7,
<https://www.audiusa.com/content/dam/audiusa/Documents/2016-Audi-A7-brochure.pdf>.

⁴⁴ Brochure: 2016 Audi A8, <http://pa.motorwebs.com/audi/brochure/a8.pdf>.

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



15 98. Moreover, the brochure for Porsche’s diesel-powered 2013 Cayenne SUV,
16 available online and at dealerships, touted the vehicle’s “Intelligent Performance and efficiency—
17 the core characteristics of Porsche engineering.”⁴⁵ It boasted that “[t]his is no ordinary diesel.
18 This is a Porsche 3.0-liter V6 turbo diesel engine. It’s a technological marvel, able to take its
19 unique fuel source and transform it into clean, efficient, and incredibly torque-rich power.”
20 Further, the brochure exclaimed Porsche “refined” diesel engine technology, which made its
21 diesel engine “far advanced from what many people perceive—especially in terms of its
22 acceleration, clean emissions, and quiet running operation.”⁴⁶ The brochure even touted its “low
23 emissions” on a page entitled: “A cleaner diesel. Exhaust technologies.”⁴⁷ Porsche described the
24 exhaust system and stated that its exhaust technologies “help to ensure the reduction of harmful
25

26

27 ⁴⁵ Brochure: 2012 Cayenne Diesel, <https://static.beepi.com/Brochures/17053.pdf>.

28 ⁴⁶ *Id.*

⁴⁷ *Id.*

1 pollutants into the environment and make the Cayenne diesel compliant with U.S. emission
2 standards.”⁴⁸ Unfortunately, these statements were all untrue.

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

6 99. Volkswagen’s massive advertising campaign for the Class Vehicles proved highly
7 successful, as Volkswagen took a commanding lead in U.S. diesel vehicle sales. Volkswagen’s
8 diesel vehicles were profiled on environmental websites and blogs as the responsible choice,
9 relying on Volkswagen’s representations of high mileage and low emissions.⁴⁹

10 100. And the success of Volkswagen’s advertising campaign resulted in skyrocketing
11 sales. In 2007, VW America sold 230,572 cars in the United States—a far cry from Winterkorn’s
12 goal of 800,000 sales in 2018—and a negligible number of those were diesel vehicles. In fact, in
13 2007 only approximately 16,700 light-duty diesel vehicles were sold in the United States.⁵⁰ As
14 Volkswagen released its “clean” diesel lineup and fraudulent advertising campaign, sales of the
15 Class Vehicles grew dramatically, from 43,869 in 2009 to a peak of 111,285 in 2013.⁵¹ This
16 largely accounted for VW America’s sales growth to over 400,000 sales in 2013, nearly double
17 the sales in 2007.⁵² Likewise, the Class Vehicles contributed significantly to Audi’s growth from
18 93,506 sales in 2007 to 182,011 in 2014.⁵³

19 101. Volkswagen reaped considerable benefit from their fraud, charging premiums of
20 thousands of dollars for the “clean” diesel models of the Class Vehicles.

21 ⁴⁸ *Id.*

22 ⁴⁹ See, e.g., Jim Motavalli, *Clean diesel: What you need to know*, Mother Nature Network (Apr. 5,
23 2013), <http://www.mnn.com/green-tech/transportation/blogs/clean-diesel-what-you-need-to-know>;
24 Anthony Ingram, *2015 VW Golf, Beetle, Passat, Jetta All Get New Clean Diesel Engine*,
25 Green Car Reports (Mar. 19, 2014), http://www.greencarreports.com/news/1090957_2015-vw-golf-beetle-passat-jetta-all-get-new-clean-diesel-engine (last visited on Sept. 28, 2015).

26 ⁵⁰ Paul Eisenstein, *Volkswagen Scandal Delivers ‘Black Eye’ to Diesel Tech as a Whole*, NBC
27 News (Sept. 24, 2015), <http://www.nbcnews.com/business/autos/volkswagen-scandal-delivers-black-eye-diesel-tech-whole-n433016>.

28 ⁵¹ *Supra* note 7.

⁵² *Volkswagen Reports December 2013 and Year-End Results*, Volkswagen (Jan. 3, 2014),
<http://media.vw.com/release/592/>.

⁵³ *Audi achieves fifth straight year of U.S. record sales with 182,011 vehicles in 2014*, Audi USA
(Jan. 5, 2015), <https://www.audiusa.com/newsroom/news/press-releases/2015/01/audi-achieves-fifth-straight-year-of-us-record-sales-with-182011-vehicles-in-2014>.

1 102. Volkswagen also engaged in an aggressive lobbying campaign for federal tax
2 credits for the Class Vehicles, akin to the credits offered for electric cars.⁵⁴ These efforts were
3 met with some success, as many of the Class Vehicles were deemed eligible for federal income
4 tax credits in order to spur “clean” diesel technology. In fact, at least \$78 million was earmarked
5 for TDI Jetta buyers in 2009 and 2010.⁵⁵

6 **D. Defendants’ Dirty Diesel Scheme Starts to Unravel**

7 103. Defendants’ illegal scheme started to unravel approximately five years after
8 Volkswagen introduced its first diesel model containing the defeat device into the U.S. stream of
9 commerce. In May 2014, West Virginia University’s Center for Alternative Fuels, Engines &
10 Emissions published results of a study commissioned by the International Council on Clean
11 Transportation (“ICCT”), which found that certain of the Class Vehicles’ real world NO_x and
12 other emissions exceeded the allowable EPA emission standards.⁵⁶

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

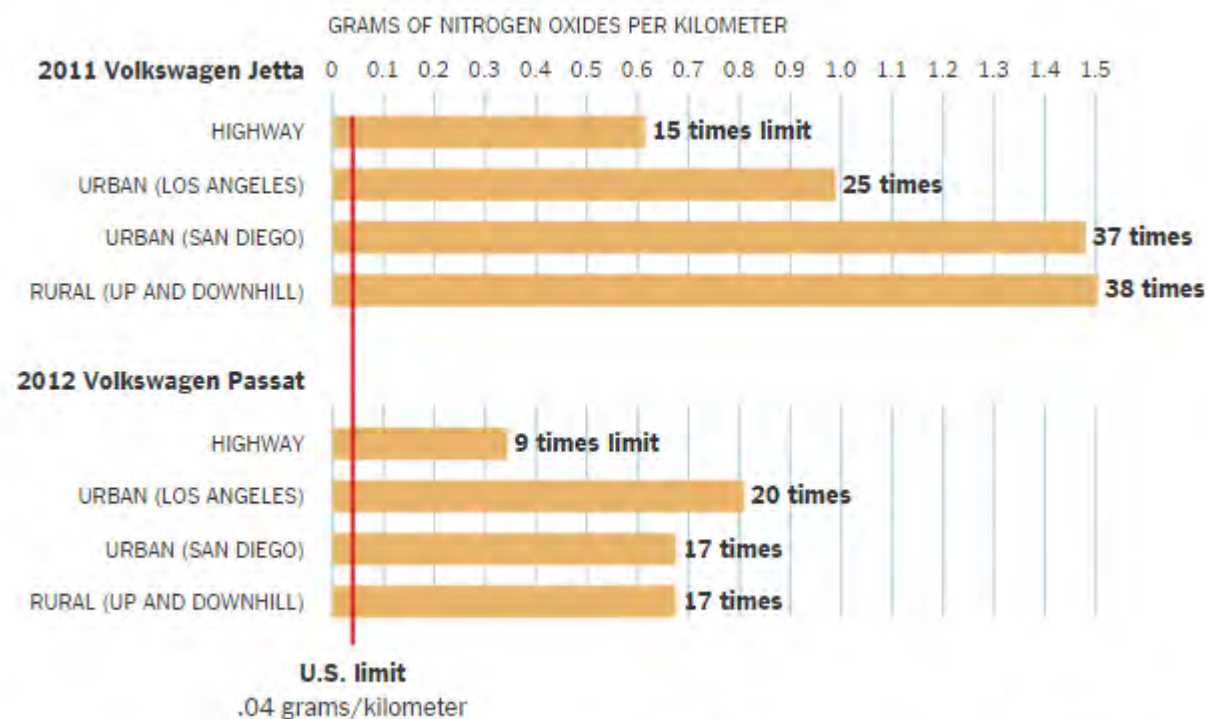
19 105. Shockingly, the study showed that, contrary to testing lab results, real world
20 driving of Volkswagen “clean” diesel vehicles produced levels of NO_x up to 40 times higher than
21 legal limits promulgated by the EPA and CARB:

22
23
24 ⁵⁴ Steve Birr, *Volkswagen Lobbied Obama Administration For Green Tax Credits*, The Daily
25 Caller (Oct. 13, 2015), [http://dailycaller.com/2015/10/13/volkswagen-lobbied-obama-
administration-for-green-tax-credits/](http://dailycaller.com/2015/10/13/volkswagen-lobbied-obama-administration-for-green-tax-credits/).

26 ⁵⁵ *Volkswagen shares plunge on emissions scandal; U.S. widens probe*, Reuters (Sept. 21, 2015),
<https://finance.yahoo.com/news/volkswagen-shares-plunge-most-six-071319964.html>.

27 ⁵⁶ *See Final Report: In Use Emissions Testing of Light-Duty Diesel Vehicles in the United States*,
28 International Council on Clean Transportation (May 15, 2015),
[http://www.theicct.org/sites/default/files/publications/WVU_LDDVin-
use_ICCT_Report_Final_may_2014.pdf](http://www.theicct.org/sites/default/files/publications/WVU_LDDVin-use_ICCT_Report_Final_may_2014.pdf).

Average emissions of nitrogen oxides in on-road testing



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

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

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

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

5 **E. Once Caught, Volkswagen Admitted its Fraud—in Part**

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

11 110. On September 18, 2015, the EPA issued a Notice of Violation of the CAA (the
 12 "First NOV") to VW AG, Audi AG, and VW America for installing illegal defeat devices in
 13 2009-2015 Volkswagen and Audi diesel cars equipped with 2.0-liter diesel engines. That same
 14 day, CARB sent a letter to VW AG, Audi AG, and VW America, advising that it had initiated an
 15 enforcement investigation of Volkswagen pertaining to the vehicles at issue in the First NOV.

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

20 I personally am deeply sorry that we have broken the trust of our
 21 customers and the public. We will cooperate fully with the
 22 responsible agencies, with transparency and urgency, to clearly,
 23 openly, and completely establish all of the facts of this case.
 Volkswagen has ordered an external investigation of this matter. . . .
 We do not and will not tolerate violation of any kind of our internal
 rules or of the law.⁵⁷

24 In his video, Winterkorn further apologized by stating:

25 The irregularities in our group's diesel engines go against
 26 everything Volkswagen stands for. To be frank with you,

27 ⁵⁷ See *Statement of Prof. Dr. Martin Winterkorn, CEO of Volkswagen AG*, Volkswagen AG
 28 (*Sept. 20, 2012*), http://www.volkswagenag.com/content/vwcorp/info_center/en/news/2015/09/statement_ceo_of_volkswagen_ag.html.

1 manipulation at Volkswagen must never happen again. . . . I
 2 personally am deeply sorry that we have broken the trust of our
 3 customers. I would like to make a formal apology to our customers
 4 to the authorities and to the general public for this misconduct.⁵⁸

5 112. That same day, Volkswagen confirmed that it had ordered dealers to stop selling
 6 both new and used vehicles with 2.0-liter diesel engines.⁵⁹ Volkswagen continued to sell its 3.0-
 7 liter diesel models, despite containing similar, but not-yet-disclosed defeat devices.

8 113. On September 21, 2015, Volkswagen spokesman John Schilling stated in an email
 9 that Volkswagen was “committed to fixing this issue as soon as possible” and to “developing a
 10 remedy that meets emissions standards and satisfies our loyal and valued customers.”⁶⁰

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

14 Our company was dishonest, with the EPA and the California Air
 15 Resources Board, and with all of you and in my German words, *we*
 16 *have totally screwed up*. We have to make things right, with the
 17 government, the public, our customers, our employees and also
 18 very important, our dealers.⁶¹ (Emphasis added.)

19 Defendant Horn’s presentation on the new Passat, notably, did not promote the environmental
 20 efficiency of the car’s “clean” diesel model.

21 115. On September 22, 2015, Volkswagen announced that 11 million diesel cars
 22 worldwide were installed with the same defeat device software that had evaded emission testing
 23 by U.S. regulators. Contemporaneously, Volkswagen announced that it had set aside reserves of
 24 6.5 billion euros (\$7.3 billion) in the third quarter to address the matter.⁶²

25 ⁵⁸ See Joe Lorio, *VW Chairman Martin Winterkorn Releases Video Addressing Scandal, Is Not Stepping Down*, Car and Driver (Sept. 22, 2015), <http://blog.caranddriver.com/vw-chairman-martin-winterkorn-releases-video-addressing-scandal-is-not-stepping-down/>.

26 ⁵⁹ Jack Ewing, *Volkswagen to Stop Sales of Diesel Cars Involved in Recall*, N.Y. Times (Sept. 20, 2015), <http://www.nytimes.com/2015/09/21/business/international/volkswagen-chief-apologizes-for-breach-of-trust-after-recall.html>.

27 ⁶⁰ Jad Mouadwad, *et al.*, *The Wrath of Volkswagen’s Drivers*, N.Y. Times (Sept. 21, 2015), <http://www.nytimes.com/2015/09/22/business/the-wrath-of-volkswagens-drivers.html>.

28 ⁶¹ Christine Seib, *Volkswagen’s US Boss: We Totally Screwed Up*, CNBC (Sept. 22, 2015), <http://www.cnbc.com/2015/09/21/volkswagen-us-ceo-screwed-up-on-eca-emissions-diesel-test-rigging.html>.

⁶² Nathan Bomey, *Volkswagen Emission Scandal Widens: 11 Million Cars Affected*, USA Today (Sept. 22, 2015), <http://www.usatoday.com/story/money/cars/2015/09/22/volkswagen-emissions->

Footnote continued on next page

1 116. On September 23, 2015, Winterkorn resigned from his position as CEO of VW
2 AG. In his resignation statement, Winterkorn insisted that he was not personally involved in the
3 emissions scandal: “Above all, I am stunned that misconduct on such a scale was possible in the
4 Volkswagen Group. I am doing this in the interests of the company even though I am not aware
5 of any wrongdoing on my part.”⁶³

6 117. Following Winterkorn’s resignation, Volkswagen released a statement that it had
7 set up a special committee to lead its own inquiry into the scandal and expected “further
8 personnel consequences in the next days.” It added: “The internal group investigations are
9 continuing at a high tempo. All participants in these proceedings that have resulted in
10 immeasurable harm for Volkswagen will be subject to the full consequences.” However, the
11 committee insisted that Winterkorn “had no knowledge of the manipulation of emissions data.”⁶⁴

12 118. On September 25, 2015, Defendant Matthias Müller, the Chairman of Porsche AG,
13 was named as Winterkorn’s successor. Immediately upon assuming his new role, Müller issued a
14 press release stating:

15 My most urgent task is to win back trust for the Volkswagen
16 Group—by leaving no stone unturned and with maximum
17 transparency, as well as drawing the right conclusions from the
18 current situation. Under my leadership, Volkswagen will do
19 everything it can to develop and implement the most stringent
20 compliance and governance standards in our industry.⁶⁵

21 119. On October 8, 2015, Defendant Horn made frank admissions of culpability in his
22 testimony before the House Committee on Energy and Commerce’s Subcommittee on Oversight
23 and Investigations. Under oath, Horn testified: “On behalf of our Company, and my colleagues in
24 Germany, I would like to offer a sincere apology for Volkswagen’s use of a software program

25 *Footnote continued from previous page*
26 [scandal/72605874/](http://www.theguardian.com/business/2015/sep/23/volkswagen-scandal/72605874/).

27 ⁶³ Graham Ruddick, *Volkswagen chief quits over emissions scandal as car industry faces crisis*,
28 The Guardian (Sept. 23, 2015), [http://www.theguardian.com/business/2015/sep/23/volkswagen-
chief-martin-winterkorn-quits-emissions-scandal](http://www.theguardian.com/business/2015/sep/23/volkswagen-chief-martin-winterkorn-quits-emissions-scandal).

⁶⁴ *Id.*

⁶⁵ *Matthias Müller appointed CEO of the Volkswagen Group*, Volkswagen AG (Sept. 25, 2015),
http://www.volkswagenag.com/content/vwcorp/info_center/en/news/2015/09/CEO.html.

1 that served to defeat the regular emissions testing regime.”⁶⁶ In response to a question from the
2 Subcommittee Chairman, Representative Tim Murphy, whether the software was installed “for
3 the express purpose of beating tests,” Horn testified, “it was installed for this purpose, yes.”⁶⁷

4 120. On November 2, 2015, the EPA issued a second Notice of Violation of the CAA
5 (the “Second NOV”) to VW AG, Audi AG, and VW America, this time directed at the larger 3.0-
6 liter, 6-cylinder diesel models—the same vehicles that Volkswagen continued to sell through its
7 dealers after the First NOV.⁶⁸ The Second NOV, which was also issued to Porsche AG and
8 Porsche America, alleged that Volkswagen had installed illegal defeat devices in certain vehicles
9 equipped with 3.0-liter diesel engines for model years 2014–16. Although not identical, the
10 cheating alleged of Volkswagen in the Second NOV concerned essentially the same mechanism
11 Volkswagen used—and admitted to using—in the First NOV.

12 121. However, shortly after it received the Second NOV, Volkswagen fired back at the
13 EPA’s new claims of fraud, denying that it installed defeat device software in the identified 3.0-
14 liter diesel vehicles. In response to the Second NOV, Volkswagen issued the following bold
15 statement: “Volkswagen AG wishes to emphasize that no software has been installed in the 3.0-
16 liter V6 diesel power units to alter emissions characteristics in a forbidden manner.”⁶⁹

17 122. Yet, the following day, despite Volkswagen’s insistence that the 3.0-liter diesel
18 emission system was legal, Volkswagen ordered dealers to stop selling all six models at issue in
19 the Second NOV, in addition to the Audi Q7, which was also equipped with a 3.0-liter diesel
20 engine.⁷⁰

23 ⁶⁶ *Supra* note 1.

24 ⁶⁷ *Id.*

25 ⁶⁸ Letter from Susan Shinkman, Director, EPA Office of Civil Enforcement to Volkswagen dated
26 Nov. 2, 2015, <http://www.epa.gov/sites/production/files/2015-11/documents/vw-nov-2015-11-02.pdf>.

27 ⁶⁹ Emily Field, *Volkswagen Slams Newest EPA Emissions Fraud Claims*, Law360 (Nov. 3, 2015),
28 <http://www.law360.com/articles/722478/volkswagen-slams-newest-epa-emissions-fraud-claims>.

⁷⁰ Paul Lienert, *Volkswagen tells dealers to stop selling some 3.0 V6 diesel models*, Reuters
(Nov. 4, 2015), <http://www.reuters.com/article/us-volkswagen-emissions-stopsale-idUSKCN0ST2E420151104>.

1 123. On November 4, 2015, following its directive to halt sales of the 3.0-liter diesel
2 models, Volkswagen announced that an internal investigation revealed “unexplained
3 inconsistencies” with the carbon-dioxide output of 800,000 of its gasoline-powered vehicles.⁷¹

4 124. On November 22, 2015, after almost three weeks of denying the EPA’s allegations
5 contained in the Second NOV, Audi finally admitted that defeat device software was installed in
6 all of its Class Vehicles. Specifically, Audi stated that it had failed to disclose three auxiliary
7 emissions control devices in its 3.0-liter diesel engines to U.S. regulators, and further admitted:
8 “One of them is regarded as a defeat device according to applicable U.S. law. Specifically, this is
9 the software for the temperature conditioning of the exhaust-gas cleaning system.”⁷² This
10 admission came almost three months after Volkswagen’s initial, more limited *mea culpa*.

11 125. Still, despite the admissions and apologies that followed each time a Volkswagen
12 lie was exposed, it became apparent that Volkswagen was not ready to fully accept responsibility
13 for its actions. Indeed, merely one month after Volkswagen admitted to the findings in the
14 Second NOV, Hans-Gerd Bode, Volkswagen’s Group Communications Chief, told a group of
15 reporters: “I can assure you that we certainly did not, at any point, knowingly lie to you. . . . We
16 have always tried to give you the information which corresponded to the latest level of our own
17 knowledge at the time.”⁷³

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

23 _____
24 ⁷¹ Benedikt Kammel, *VW Emissions Issues Spread to Gasoline Cars*, Bloomberg (Nov. 3, 2015),
25 <http://www.bloomberg.com/news/articles/2015-11-03/volkswagen-emissions-woes-deepen-as-800-000-more-cars-affected>.

26 ⁷² *Statement on Audi’s discussions with the US environmental authorities EPA and CARB*,
27 Volkswagen AG (Nov. 23, 2015),
28 http://www.volkswagenag.com/content/vwcorp/info_center/en/news/2015/11/epa.html.

⁷³ Andreas Cremer, *Das Auto’ no more: Volkswagen plans image offensive*, Reuters (Dec. 22,
2014), <http://www.reuters.com/article/us-volkswagen-emissions-communications-i-idUSKBN0U514L20151222>.

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

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

7 Frankly spoken, it was a technical problem. We made a default, we
8 had a . . . not the right interpretation of the American law. And we
9 had some targets for our technical engineers, and they solved this
10 problem and reached targets with some software solutions which
11 haven't been compatible to the American law. That is the thing.
12 And the other question you mentioned—it was an ethical problem?
13 I cannot understand why you say that. . . . We didn't lie. We didn't
14 understand the question first. And then we worked since 2014 to
15 solve the problem.⁷⁴

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

19 129. As an alternative tactic, during defendant Horn's Congressional hearing on
20 October 8, 2015, Horn testified that the installation of the defeat device in certain Volkswagen
21 diesel vehicles was the work of "a couple of software engineers who put this in for whatever
22 reason."⁷⁵ Horn's explanation is not only contrary to prior admissions, but entirely implausible.

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

⁷⁴ Sonari Ginton, 'We Didn't Lie,' *Volkswagen CEO Says Of Emissions Scandal*, NPR (Jan. 11, 2016), <http://www.npr.org/sections/thetwo-way/2016/01/11/462682378/we-didnt-lie-volkswagen-ceo-says-of-emissions-scandal>.

⁷⁵ Paul A. Eisenstein, *Could Rogue Software Engineers Be Behind VW Emissions Cheating?*, NBC News (Oct. 9, 2015), <http://www.nbcnews.com/business/autos/could-rogue-software-engineers-be-behind-vw-emissions-cheating-n441451>.

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

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

14 132. On October 17, 2015, Reuters reported that anonymous insiders, including a
15 Volkswagen manager and a U.S. official close to the government's investigation of the company,
16 claimed that Volkswagen made several modifications to its emissions defeat device software over
17 the seven years the company has admitted to cheating.⁷⁶ Such incremental updates to the
18 software, which were made to accommodate new generations of engines during that timeframe,
19 evidences a larger group of employees making an ongoing effort to continue their deception.

20 133. As discussed above, on January 22, 2016, Germany's *Sueddeutsche Zeitung*
21 newspaper reported that Volkswagen's development of defeat device software to cheat diesel
22 emissions tests was an "open secret" in its engineering development department. Staff members
23 in engine development have stated that they felt pressure from the top of Volkswagen's corporate
24 hierarchy to find a cost-effective solution to develop clean diesel engines to increase U.S. market
25

26
27 ⁷⁶ Andreas Cremer, *et al.*, *VW made several defeat devices to cheat emissions tests: sources*,
28 Reuters (Oct. 17, 2015), <http://www.reuters.com/article/us-volkswagen-emissions-software-idUSKCN0SB0PU20151017>.

1 share. Rather than concede that such engines could not be built (*i.e.*, were “impossible” as R&D
2 chief Hatz once proclaimed), the development team decided to push ahead with manipulation.⁷⁷

3 134. Quoting documents from Volkswagen’s internal investigation, which included
4 testimony from a staff member who took part in the fraud, the German newspaper said: “Within
5 the company there was a culture of ‘we can do everything’, so to say something cannot be done,
6 was not acceptable. . . . Instead of coming clean to the management board that it cannot be done,
7 it was decided to commit fraud.”⁷⁸ The newspaper further reported that staff in Volkswagen’s
8 engine development department took comfort from the fact that regulators would not be able to
9 detect the fraud using conventional examination techniques.

10 135. The role of Volkswagen’s top management in the fraud has recently come under
11 increased scrutiny after reports have emerged that Winterkorn was aware that Volkswagen was
12 rigging emissions tests on its vehicles more than a year before the scandal emerged, yet did
13 nothing to stop the practice.⁷⁹

14 136. According to German newspaper *Bild-Zeitung*, Winterkorn and other high-level
15 Volkswagen managers were warned by a senior executive about the risk of a U.S. investigation
16 into the use of the defeat devices back in May 2014.⁸⁰ The newspaper reported that the warning
17 came in the form of a letter from Bernd Gottweis, an employee known internally as the “fire-
18 fighter,” who led a team called the “Product Safety Taskforce,” which concentrated on crisis
19 prevention and management. The letter, which was uncovered by the internal investigation
20 carried out on Volkswagen’s order, stated: “There is no well-founded explanation for the
21 dramatically higher NOX emissions that can be given to the authorities. It is to be suspected, that
22 the authorities will examine the VW systems to see whether Volkswagen has installed engine
23 management software (a so-called Defeat Device).”

24 _____
25 ⁷⁷ Georgina Prodhan, *Volkswagen probe finds manipulation was open secret in department:*
26 *newspaper*, Reuters (Jan. 23, 2016), <http://www.reuters.com/article/us-volkswagen-emissions-investigation-idUSKCN0V02E7>.

27 ⁷⁸ *Id.*

28 ⁷⁹ Geoffrey Smith, *VW’s ex-CEO Winterkorn ‘Knew About Defeat Device in Early 2014,’* Fortune (Feb. 15, 2016), <http://fortune.com/2016/02/15/vw-ceo-winterkorn-defeat-device/>.

⁸⁰ *Id.*

1 137. The newspaper also reported that a senior Volkswagen manager had admitted the
2 true level of emissions to a CARB official on August 5, 2015, over a month before the EPA
3 issued the First NOV I, and that Volkswagen brand chief Herbert Diess had convened meetings
4 on August 24th and August 25th to discuss how to react to the scandal that was about to break.⁸¹

5 138. The letter, of which *Bild-Zeitung* claims to have a copy, is the second leak
6 suggesting that knowledge of the emissions problems and use of the defeat devices extended far
7 higher, far earlier, than Volkswagen has admitted. Indeed, the German magazine *Manager* has
8 reported that Volkswagen's management had already discussed the issue in the spring of 2014 in
9 reference to a letter received from the EPA.⁸² The revelations from these reports directly
10 contradict arguments made by Winterkorn and Horn that they were unaware of the use of defeat
11 devices applied specifically to circumvent U.S. regulations.

12 139. At a December 10, 2015, press conference, during which Volkswagen discussed
13 preliminary results of their internal investigation, executives summed up the state of affairs, and
14 admitted that Volkswagen had installed defeat devices to take shortcuts around engineering
15 challenges. Faced with “[s]trict and significantly toughening NO_x limits,” Volkswagen knew
16 those “NO_x limits could not be met with [their] technological design” for lean NO_x traps so
17 instead they dealt with the problem by installing defeat devices on those Class Vehicles. The
18 Class Vehicles with urea treatments faced a separate problem: the urea tanks were too small for
19 consumers to maintain urea levels at standard intervals. Volkswagen also took shortcuts around
20 these engineering challenges by implementing a defeat device to reduce urea consumption and
21 illegally stretch the capacity of its urea tanks outside of test conditions. Volkswagen concluded
22 this presentation by implicitly acknowledging the toxicity of its corporate culture, as Volkswagen
23 announced it would establish a “new mindset” among Volkswagen leadership that has “[m]ore
24 capacity for criticism.”⁸³

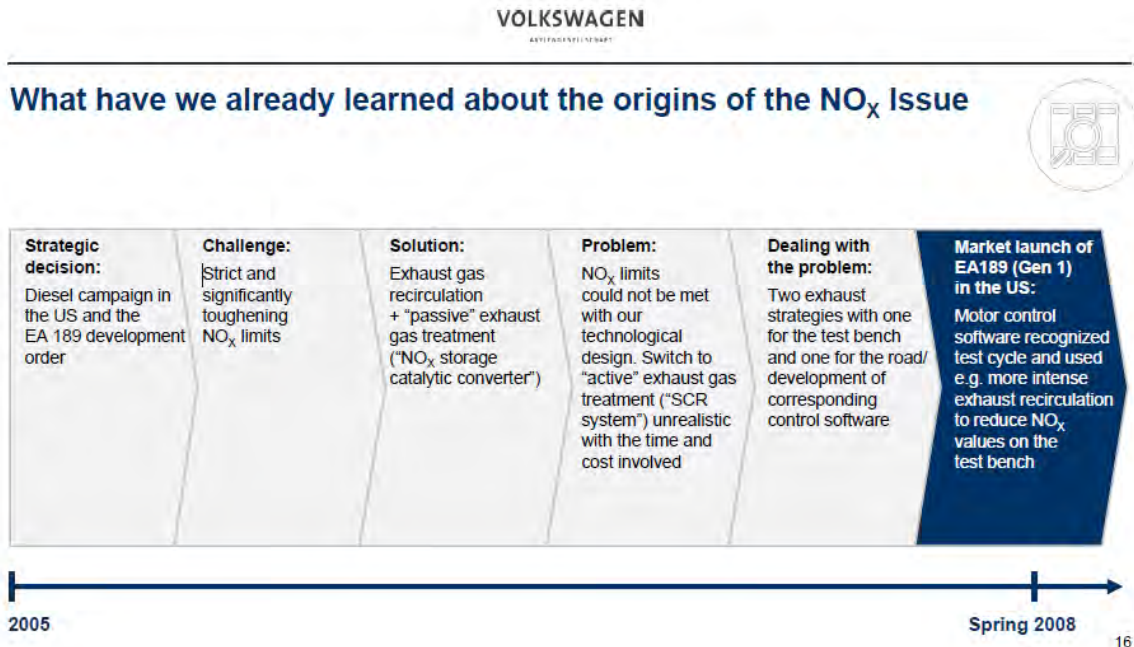
25 ⁸¹ *Id.*

26 ⁸² *Id.*

27 ⁸³ *Volkswagen AG, The Volkswagen Group is moving ahead: Investigation, customer solutions,*
28 *realignment*, Volkswagen AG (Dec. 10, 2015),
[http://www.volkswagenag.com/content/vwcorp/info_center/en/talks_and_presentations/2015/12/
Presentation_MUE_POE.bin.html/binarystorageitem/file/2015_12_10_Pr%C3%A4sentation+PK](http://www.volkswagenag.com/content/vwcorp/info_center/en/talks_and_presentations/2015/12/Presentation_MUE_POE.bin.html/binarystorageitem/file/2015_12_10_Pr%C3%A4sentation+PK)

Footnote continued on next page

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



Footnote continued from previous page
[Final ENG.pdf](#).

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

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

4 142. On November 8, 2015, Volkswagen announced a “goodwill package” to owners of
5 Class Vehicles subject to the First NOV, but not the Second NOV.⁸⁴ The “goodwill package”
6 consisted of a \$500 Volkswagen Prepaid Visa Loyalty Card, a \$500 Volkswagen Dealership
7 Card, and 24-hour Roadside Assistance for three years. Volkswagen is on record that this
8 package is provided to consumers “without any strings attached,” and disavowed any attempt to
9 claim offset for this “goodwill.” U.S. Senators Richard Blumenthal and Edward J. Markey
10 decried the program as “insultingly inadequate” and “a fig leaf attempting to hide the true depths
11 of Volkswagen’s deception.” Volkswagen has since expanded the “goodwill package” to owners
12 of 3.0-liter TDI Touareg models; however, the remaining vehicles at issue in the Second NOV are
13 still excluded.

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

16 Due to far stricter nitrogen oxide limits in the United States, it is a
17 greater technical challenge to retrofit the vehicles such that all
18 applicable emissions limits can be met with one and the same
19 emissions strategy. . . . To this end, Volkswagen is cooperating
20 closely with the United States Environmental Protection Agency
21 and the California Air Resources Board.⁸⁵

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

26 ⁸⁴ Joseph White, *et al.*, *Volkswagen Offers U.S. Diesel Owners \$1,000 in Credit Cards*, Reuters
(Nov. 9, 2015), <http://www.reuters.com/article/2015/11/09/volkswagen-emissionsid-idUSL1N1341ET20151109#eARbZZJFyIQvGmG1.99>.

27 ⁸⁵ Jay Ramey, *VW chairman Poetsch: Company ‘tolerated breaches of rules,’* Autoweek
28 (Dec. 10, 2015), <http://autoweek.com/article/vw-diesel-scandal/vw-chairman-poetsch-company-tolerated-breaches-rules>.

1 configuration.”⁸⁶ Following the rejection, CARB Chair Mary D. Nichols released the following
2 statement:

3 Volkswagen made a decision to cheat on emissions tests and then
4 tried to cover it up. They continued and compounded the lie and
5 when they were caught they tried to deny it. The result is thousands
6 of tons of nitrogen oxide that have harmed the health of
7 Californians. They need to make it right. Today’s action is a step in
8 the direction of assuring that will happen.⁸⁷

9 Shortly thereafter, the EPA issued a statement of its own backing CARB’s decision not to
10 approve Volkswagen’s recall plans.⁸⁸

11 **G. Volkswagen Caused Billions of Dollars in Harm to U.S. Consumers**

12 145. Volkswagen’s illegal scheme duped hundreds of thousands of U.S. consumers into
13 buying Class Vehicles that never should have left the factory, let alone been sold, at a cost of
14 billions of dollars. Similarly, automobile dealers like Plaintiffs and the Class members were
15 duped into acquiring scores of Class Vehicles for the purpose of resale to equally unwitting
16 consumers.

17 146. In addition, Volkswagen charged premiums of several thousands of dollars for the
18 Class Vehicles, as compared to non-diesel vehicles. Using recent pricing figures, it has been
19 estimated that Volkswagen charged premiums of from 7 to 27 percent for its 2.0-liter diesel
20 models.⁸⁹ For example, the non-diesel 2015 Passat started at \$21,340, while the “clean” diesel
21 fetched at least \$27,100.⁹⁰ Though the “clean” diesel model achieves greater mileage, the
22 premium—some \$5,755—would buy enough gas to drive the non-diesel model approximately
23 88,000 miles at current gas prices.⁹¹ Automobile dealers like Plaintiffs and the Class Members

24 ⁸⁶ Ashlee Kieler, *California Rejects VW Proposal To Fix Emissions-Cheating Vehicles*,
25 *Consumerist* (Jan. 12, 2016), <http://consumerist.com/2016/01/12/california-rejects-vw-proposal-to-fix-emissions-cheating-vehicles/>.

26 ⁸⁷ *Id.*

27 ⁸⁸ *Id.*

28 ⁸⁹ Kyle Stock, *Volkswagen’s Other Diesel Ruse: Premium Pricing*, *Bloomberg* (Sept. 23, 2015),
<http://www.bloomberg.com/news/articles/2015-09-23/volkswagen-s-other-diesel-ruse-premium-pricing>.

⁹⁰ *Id.*

⁹¹ *Id.*

1 were willing to pay such a premium because of the Volkswagen vehicles' popularity with
2 American consumers.

3 147. 133. Automobile dealer Class Members purchased the Class Vehicles only
4 because Volkswagen fraudulently obtained COCs from the EPA to illegally introduce them into
5 the U.S. stream of commerce. In addition, Volkswagen engaged in a false and misleading
6 advertising campaign that the Clean Diesel engine system was an environmentally friendly, fuel
7 efficient, and low emission vehicle with high performance. Plaintiffs and the Class Members
8 acquired the Class Vehicles based on these claims, and were harmed as the cars were neither legal
9 nor clean.

10 148. While Volkswagen once claimed that these vehicles would have "a higher resale
11 value versus comparable gasoline vehicles,"⁹² the cars are, in fact, now virtually unsellable and
12 subject to a recall for the indefinite future. With the revelations of Volkswagen's fraud, the Class
13 Vehicles have decreased sharply in value. Within several weeks of the announcement of
14 Volkswagen's emissions fraud, the value of the Class Vehicles plummeted by nearly 16%.⁹³ In
15 fact, VW, Audi, and Porsche have halted all sales of the Class Vehicles, new or used, so that even
16 dealers are stuck with tainted, stigmatized, and unsellable Class Vehicles.

17 149. Volkswagen cannot fix the Class Vehicles without degrading their performance,
18 including horsepower and/or efficiency. As a result, even if Volkswagen is able to make the
19 Class Vehicles compliant, Class Members will nonetheless suffer actual harm and damages
20 because their vehicles will no longer perform as promised. Car buyers, now aware of the defeat
21 device scandal, are no longer willing to pay a premium for Volkswagen's discredited technology.
22 This has resulted in a diminution in value of every Class Vehicle in the Class Members'
23 inventory.

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26 ⁹² See Audi of America, TDI® clean diesel (2015),
<http://drivedigitalgroup.com/Dealer/classicaudi/brochures/tdi.pdf>.

27 ⁹³ See Ryan Beene, *Used VW diesel prices nosedive as fix remains unclear*, Autoweek (Oct. 26,
28 2015), <http://autoweek.com/article/vw-diesel-scandal/used-vw-diesels-prices-nosedive-while-waiting-repair-news>.

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

4 159. Any otherwise-applicable statutes of limitation have therefore been tolled by
5 Defendants' exclusive knowledge and Volkswagen's active concealment of the facts alleged
6 herein.

7 **Estoppel**

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

14 161. Plaintiffs and Class members reasonably relied upon Volkswagen's knowing and
15 affirmative misrepresentations and/or active concealment of these facts.

16 162. Based on the foregoing, Defendants are estopped from relying on any statutes of
17 limitation in defense of this action.

18 **PLAINTIFFS' FACTS**

19 163. Plaintiff A to Z acquired one of the Class Vehicles, a 2012 VW Jetta TDI, on July
20 1, 2015. A to Z purchased the vehicle at auction for \$10,715, and incurred additional costs
21 including inspection fees, auction fees, delivery fees, maintenance and repair costs, and
22 advertising costs totaling \$1,615.00, for a total investment in the vehicle of \$12,330.00. A to Z
23 expected to sell the vehicle for \$13,995.00, and advertised the vehicle for sale on its lot and on the
24 internet. After news of the defeat device scandal, A to Z dropped the list price four times in
25 increments of \$500 each, and ultimately sold the vehicle on November 23, 2015, for \$11,995, an
26 out-of-pocket loss of \$335.00 and additional expected lost profits of 1,665.00.

27 164. Plaintiff MSI acquired one of the Class Vehicles, a 2013 VW Jetta TDI, on July
28 29, 2015. MSI purchased the vehicle at auction for \$10,575.00, and incurred additional costs

1 including auction fees, delivery fees, maintenance and repair costs, and advertising costs totaling
 2 \$6,815.00, for a total investment in the vehicle of \$17,390.00. Prior to purchasing the Class
 3 Vehicle, MSI's owner, Abdulrahman Al Dachach, had seen television commercials touting the
 4 benefits of VW's clean diesel engines. According to Al Dachach, "Customers liked VW's clean
 5 diesels because of the good gas mileage and they were cleaner for the environment than other
 6 diesels." MSI expected to sell the vehicle for \$19,500.00, and advertised the vehicle for sale on
 7 its lot and also on various websites. MSI has not been able to sell the vehicle to date.

CLASS ACTION ALLEGATIONS

9 165. Plaintiffs bring this lawsuit as a class action pursuant to Federal Rules of Civil
 10 Procedure 23(a); (b)(1); (b)(2); (b)(3); and/or (c)(4), on behalf of themselves and all others
 11 similarly situated as members of the following Independent Automobile Dealership Reseller
 12 Class (the "Class").

13 166. This action concerns the following Class Vehicles:

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

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

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27 167. The proposed Class is defined as the :
28

Independent Automobile Dealership Reseller Class

All automobile dealers in the United States with one or more previously owned VW Class Vehicles in inventory as of September 18, 2015, and/or previously owned Audi or Porsche Class Vehicles in inventory as of November 2, 2015.⁹⁴

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

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

170. This action has been brought and may be properly maintained on behalf of each of the Classes proposed herein under Federal Rule of Civil Procedure 23 and satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of its provisions.

Numerosity and Ascertainability

171. Although the exact number of Class Members is uncertain, there is no doubt that the number is great enough that joinder is impracticable. Hundreds of automobile dealers have one or more of the Class Vehicles in inventory, and thus are Class Members within the proposed class definition. The disposition of the claims of these Class Members in a single action will provide substantial benefits to all parties and to the Court. Class Members are readily identifiable

⁹⁴ September 18, 2015, is the date the EPA and the California Air Resources Board revealed to the public the existence and nature of Defendants' defeat device scheme with respect to VW brand Class Vehicles. On November 2, 2015, the existence of the defeat device scheme with respect to Audi and Porsche brand Class Vehicles became public knowledge as well.

1 from Volkswagen's internal records and from state vehicle registration records such as those
2 compiled by independent vendor R.L Polk & Company.

3 **Typicality**

4 172. 152. The claims of the representative Plaintiffs are typical of the claims of the
5 Class in that the representative Plaintiffs, like all Class Members, acquired a Class Vehicle prior
6 to September 18, 2015, when the defeat device scandal was revealed to the public. The
7 representative Plaintiffs, like all Class Members, have been damaged by Defendants' misconduct
8 in that they have incurred losses relating to the Class Vehicles. Furthermore, the factual bases of
9 Defendants' misconduct are common to all Class Members and represent a common thread of
10 misconduct resulting in injury to all Class Members.

11 **Adequate Representation**

12 173. Plaintiffs are members of the Nationwide and State Classes and will fairly and
13 adequately represent and protect the interests of the Classes. Plaintiffs have retained, and this
14 Court has appointed, counsel with substantial experience in prosecuting consumer class actions,
15 including actions involving defective products generally, and defective automobile systems and
16 parts specifically. Plaintiffs and their counsel are committed to vigorously prosecuting this action
17 on behalf of the Classes and have the financial resources to do so. Neither Plaintiffs nor their
18 counsel have interests adverse to those of the Classes.

19 **Predominance of Common Questions**

20 174. There are numerous questions of law and fact common to Plaintiffs and Class
21 members that predominate over any question affecting only individual Class members. The
22 answers to these common questions will advance the adjudication or resolution of the litigation as
23 to all Class members. These common legal and factual questions include:

- 24 a. whether Defendants designed, manufactured, advertised,
25 marketed, distributed, leased, sold, or otherwise placed the
26 Class Vehicles into the stream, of commerce in the United
27 States;
28 b. whether the Class Vehicles contained a defeat device and
emitted unlawful levels of pollutants under normal
operation;

- 1 c. whether Defendants knew or should have known about the
- 2 defeat device and emission levels in the Class Vehicles;
- 3 d. whether the true nature of the Class Vehicles' performance,
- 4 emissions levels, fuel economy, and the inclusion of the
- 5 defeat device constitute material facts that reasonable
- 6 consumers would have considered in deciding whether to
- 7 purchase a Class Vehicle;
- 8 e. whether Class members overpaid for their Class Vehicles;
- 9 f. whether Defendants made material misrepresentations
- 10 regarding the Class Vehicles.
- 11 g. whether Defendants had a duty to disclose the true nature of
- 12 the Class Vehicles to Plaintiffs and Class members;
- 13 h. whether Defendants omitted, actively concealed and/or
- 14 failed to disclose material facts about the Class Vehicles;
- 15 i. whether Defendants concealment of the true nature of the
- 16 Class Vehicles would have induced a reasonable consumer
- 17 to act to their detriment by purchasing and/or leasing the
- 18 Class Vehicles;
- 19 j. whether the Class Vehicles can be made to comply with
- 20 EPA and state emission standard without substantially
- 21 degrading their performance and/or efficiency;
- 22 k. whether Bosch supplied the defeat device to Volkswagen
- 23 with the knowledge that Volkswagen would use them in
- 24 production of Class Vehicles;
- 25 l. whether Bosch knew that using the defeat devices in
- 26 production Class Vehicles constituted criminal activity in
- 27 violation of both state and federal laws ;
- 28 m. whether Bosch acted in concert with Volkswagen and aided
- and abetted Volkswagen's fraud;
- n. whether Defendants' conduct violated RICO, fraud, and
- negligence laws, among others laws, as alleged herein;
- o. whether Plaintiffs and Class members are entitled to a
- declaratory judgment;
- p. whether Plaintiffs and Class members are entitled to
- equitable relief, including, but not limited to, a preliminary
- and/or permanent injunction; and
- q. whether Plaintiffs and Class members are entitled to
- damages and other monetary relief, and, if so, in what
- amount.

Superiority

1
2 175. Defendants' scheme treated Class members as a Class to be uniformly deceived.
3 A class action is superior to all other available methods for the fair and efficient adjudication of
4 this controversy. Plaintiffs and Class members have all suffered and will continue to suffer
5 economic harm and damage as a result of Defendants' unlawful and wrongful conduct, which was
6 directed toward Class members and the public as a whole, rather than specifically or uniquely
7 against any individual Class members.

8 176. Defendants have acted in a uniform manner with respect to the Plaintiffs and Class
9 members. Absent a class action, most Class members would likely find the cost of litigating their
10 claims prohibitively high and would therefore have no effective remedy at law. Because of the
11 relatively small size of the individual Class members' claims, it is likely that only a few Class
12 members could afford to seek legal redress for Defendants' misconduct. Absent a class action,
13 Class members will continue to incur damages, and Defendants' misconduct will continue
14 without effective remedy.

15 177. Class treatment in this Court, as a court with original jurisdiction over the Class
16 claims and as an MDL Transferee Court under 28 U.S. § 1407, will conserve the resources of the
17 courts and the litigants, and will promote consistency and efficiency of adjudication by providing
18 common answers to the common questions of knowledge, conduct, duty and breach, that
19 predominate in this action.

20 178. Classwide declaratory, equitable, and injunctive relief is appropriate under
21 Rule 23(b)(1) and/or (b)(2) because Defendants have acted on grounds that apply generally to the
22 class, and inconsistent adjudications with respect to the Defendants' liability would establish
23 incompatible standards and substantially impair or impede the ability of Class members to protect
24 their interests. Classwide relief and Court supervision under Rule 23 assures fair, consistent, and
25 equitable treatment and protection of all Class members, and uniformity and consistency in
26 Defendants' discharge of their duties to perform corrective action regarding the Class Vehicles.

CLAIMS FOR RELIEF

**FIRST CLAIM FOR RELIEF:
Violation of 18 U.S.C. § 1962(c)-(d)
The Racketeer Influenced And Corrupt Organizations Act (“RICO”)**

179. Plaintiffs incorporate by reference each preceding paragraph as though fully set forth herein.

180. Plaintiffs bring this Count on behalf of the Class against the following Defendants: VW AG, Audi AG, Porsche AG, Winterkorn, Müller, Horn, Stadler, and Bosch (inclusively, for purpose of this Count, the “RICO Defendants”).

181. Volkswagen conducts its business – legitimate and illegitimate – through various affiliates and subsidiaries, each of which is a separate legal entity. Bosch also conducts its business, both legitimate and illegitimate, through hundreds of subsidiaries and affiliates.⁹⁵ At all relevant times, the RICO Defendants have been “persons” under 18 U.S.C. § 1961(3) because they are capable of holding, and do hold, “a legal or beneficial interest in property.”

182. Section 1962(c) makes it “unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise’s affairs through a pattern of racketeering activity.” 18 U.S.C. §1962(c).

183. Section 1962(d) makes it unlawful for “any person to conspire to violate” Section 1962(c), among other provisions. *See* 18 U.S.C. §1962(d).

184. For many years, the RICO Defendants aggressively sought to increase their sales of the Class Vehicles in an effort to bolster their revenues, augment profits, and increase their market share of the diesel vehicle market. Finding it impossible to achieve their ambitious goals lawfully, however, the RICO Defendants resorted to cheating through their fraudulent scheme and conspiracy. The illegal scheme was hatched overseas by VW AG, Audi AG, and/or Porsche AG (“the German Volkswagen Defendants”), brought to U.S. shores by and through the vehicles of VW America, Audi America, and Porsche America (collectively, the “American Volkswagen

⁹⁵http://www.bosch.com/en/com/bosch_group/business_sectors_divisions/business_sectors_divisions_2.php (last visited on Feb. 20, 2016).

1 Defendants”), and executed with the complicity of Bosch. In particular, the RICO Defendants,
2 along with other entities and individuals, were employed by or associated with, and conducted or
3 participated in the affairs of, one or several RICO enterprises (defined below and referred to
4 collectively as the “Defeat Device RICO Enterprise”), whose purpose was to deceive regulators
5 and the driving public into believing that the Class Vehicles were compliant with emission
6 standards, “clean,” and “environmentally friendly” so as to increase revenues and minimize losses
7 from the design, manufacture, distribution and sale of the Class Vehicles and the defeat devices
8 installed therein. As a direct result of their fraudulent scheme and common course of conduct,
9 Defendants were able to extract revenues of billions of dollars from Plaintiffs and the Class. As
10 explained in detail below, the RICO Defendants’ misconduct violated Sections 1962(c) and (d).

11 **A. Description of the Defeat Device RICO Enterprise**

12 185. In an effort to expand its global reach, market share, and standardized marketing
13 and sales in the U.S., VW AG, a publicly-traded German company, formed VW America, a
14 separate New Jersey company, which is headquartered in Virginia. VW America is not publicly
15 traded and thus has no SEC reporting obligations, but it does have reporting obligations,
16 protections and responsibilities unique to the State of New Jersey. VW AG also controls Audi
17 AG and Porsche AG which, in turn, formed separate U.S. subsidiaries that are not publicly traded
18 – Audi America and Porsche America, respectively – to market and sell the Class Vehicles
19 throughout the U.S. At all relevant times, VW AG maintained tight control over the design,
20 manufacture, and testing of the Class Vehicles.

21 186. At all relevant times, the RICO Defendants, along with other individuals and
22 entities, including unknown third parties involved in the design, manufacture, testing, and sale of
23 the Class Vehicles, operated an association-in-fact enterprise, which was formed for the purpose
24 of fraudulently obtaining COCs from the EPA (and EOs from CARB) in order to import and sell
25 the Class Vehicles containing the defeat device throughout the U.S., and through which they
26 conducted a pattern of racketeering activity under 18 U.S.C. §1961(4).

27 187. Alternatively, each of the American Volkswagen Defendants constitutes a single
28 legal entity “enterprise” within the meaning of 18 U.S.C. §1961(4), through which the RICO

1 Defendants conducted their pattern of racketeering activity in the U.S. Specifically, VW America
 2 is the entity through which Volkswagen applied for, and obtained, the EPA COCs for the VW-
 3 and Audi-branded Class Vehicles with material misrepresentations and omissions about their
 4 specifications in order to introduce them into the U.S. stream of commerce. Similarly, Porsche
 5 America is the entity through which Volkswagen applied for, and obtained, the EPA COCs for
 6 the Porsche-branded Class Vehicles with material misrepresentations and omissions about their
 7 specifications in order to introduce them into the U.S. stream of commerce. And, on information
 8 and belief, the German Volkswagen Defendants and Individual Volkswagen Defendants
 9 (Winterkorn, Müller, Horn, and Stadler) used each of the American Volkswagen Defendants to
 10 distribute and sell the illegal Class Vehicles throughout the U.S. Finally, Bosch participated,
 11 either directly or indirectly, in the conduct of the enterprise's affairs by customizing and
 12 supplying components for the defeat devices. The American Volkswagen Defendants' separate
 13 legal statuses facilitated the fraudulent scheme and provided a hoped-for shield from liability for
 14 the RICO Defendants and their co-conspirators. The enterprises, alleged in this and the previous
 15 paragraph, are referred to collectively as the "Defeat Device RICO Enterprise."

16 188. At all relevant times, the Defeat Device RICO Enterprise constituted a single
 17 "enterprise" or multiple enterprises within the meaning of 18 U.S.C. §1961(4), as legal entities, as
 18 well as individuals and legal entities associated-in-fact for the common purpose of engaging in
 19 RICO Defendants' profit-making scheme.

20 189. On information and belief, the association-in-fact Defeat Device RICO Enterprise
 21 consisted of the following entities and individuals.

22 **1. The Volkswagen Entity Defendants**

23 190. Each Volkswagen Entity Defendant is a distinct legal entity, but they are all
 24 controlled (directly or indirectly) by Defendant VW AG.⁹⁶ Specifically, Audi AG is a majority-
 25 owned subsidiary of VW AG. Audi America is also a subsidiary of VW AG. Porsche AG is a
 26

27 ⁹⁶ http://www.volkswagenag.com/content/vwcorp/content/en/brands_and_products.html;
 28 [http://www.volkswagenag.com/content/vwcorp/info_center/en/publications/2015/03/Y_2014_e.bi
 n.html/binarystorageitem/file/GB+2014_e.pdf](http://www.volkswagenag.com/content/vwcorp/info_center/en/publications/2015/03/Y_2014_e.bin.html/binarystorageitem/file/GB+2014_e.pdf)

1 wholly-owned subsidiary of VW AG, and Porsche America is, in turn, a wholly-owned subsidiary
2 of Porsche AG.

3 191. As noted previously, in 2007, the Volkswagen RICO Defendants made it their
4 mission to become the dominant automotive manufacturing conglomerate in the world. At the
5 time they articulated this goal, however, Volkswagen was struggling to retain its foothold in the
6 U.S. market. The strategy of wooing customers with premium products was not paying off, and
7 VW America's costly plant in Chattanooga, Tennessee was "woefully underutilized."⁹⁷

8 192. In response to these obstacles, VW AG and its leader at the time, Defendant
9 Winterkorn, set in motion an ambitious plan to triple Volkswagen's sales in the U.S. The
10 linchpin of this strategy was increasing sales of "diesel-powered cars . . . [and] promising high
11 mileage and low emissions without sacrificing performance."⁹⁸

12 193. Additionally, to achieve their lofty sales goals, the Volkswagen RICO Defendants
13 made a business-driven decision to move away from the original selective catalytic reduction
14 ("SCR") emission control systems they had previously used in their vehicles and focused instead
15 on a less expensive and easier to maintain lean NO_x trap system.⁹⁹ Critically, however, the NO_x
16 trap technology that the Volkswagen RICO Defendants implemented could not effectively reduce
17 the Class Vehicles' toxic NO_x emissions to lawful levels under normal operating conditions.

18 194. Accordingly, working with the other members of the Defeat Device RICO
19 Enterprise, including Bosch, the Volkswagen RICO Defendants devised a scheme to illegally
20 circumvent the U.S.'s stringent emissions standards by incorporating a "defeat device" into the
21 Class Vehicles' Electronic Diesel Control Units. Employing this technology, Defendants

22
23 ⁹⁷ Anton Watts. *VW Drama: Why Piech Wants Winterkorn Out-and What the Future May Hold*.
Car and Driver (Apr. 16, 2015).

24 ⁹⁸ Danny Kim, Aaron Danny Hakim, Aaron Kessler, and Jack Ewing, "As Volkswagen Pushed to
Be No. 1, Ambitions Fueled a Scandal," *New York Times* (Sept. 26, 2015).

25 ⁹⁹ The term "NO_x trap" refers to any device whose purpose is to reduce the oxides of nitrogen.
26 See https://en.wikipedia.org/wiki/NOx_adsorber. However, the term here is used as a shorthand,
27 informal reference to the emissions control system developed by the Volkswagen Defendants as
28 an alternative to the SCR system. Unlike the NO_x trap, SCR systems require vehicles to carry an
onboard tank of an exhaust additive, often urea crystals in mineralized water, that has to be
refilled every 10,000 miles at a cost of around \$300. Additionally, SCR systems also increase the
vehicles' initial purchase price.

1 fraudulently obtained COCs (and EOs) for the Class Vehicles even though they emit unlawful
2 levels of toxic pollutants into the atmosphere during normal operating conditions.¹⁰⁰

3 195. Moreover, in order to profit from the scheme and increase their sales according to
4 plan, the Volkswagen RICO Defendants falsely marketed the Class Vehicles as not only
5 compliant but “*clean*” and “*environmentally friendly*” vehicles.¹⁰¹

6 196. In sum, as part of their effort to become the dominant automotive manufacturing
7 conglomerate in the world, the Volkswagen RICO Defendants controlled and directed an eight-
8 year-long enterprise with the common purpose of deceiving regulators and the public through lies
9 and deception to increase their market shares and profits, and minimize losses.

10 **2. The Volkswagen Entity Defendants’ Directors, Officers, and Engineers**

11 197. Volkswagen’s leaders—including the Individual Defendants (Winterkorn, Müller,
12 Horn, and Stadler) and their unnamed co-conspirators—Ulrich Hackenberg (“Hackenberg”),
13 Frank Tuch (“Tuch”), Wolfgang Hatz (“Hatz”), Scott Keogh (“Keogh”), and Detlev von Platen
14 (“von Platen”)—played pivotal roles in the Defeat Device RICO Enterprise’s unlawful scheme,
15 common course of conduct, and conspiracy.

16 **a. Martin Winterkorn**

17 198. Defendant Winterkorn took the helm of VW AG in 2007 and was the chief
18 architect of Volkswagen’s strategy to triple sales in the U.S. market by relying more heavily on
19 “clean” diesel vehicles.¹⁰²

20 199. Winterkorn quickly realized his strategy could not succeed if Volkswagen relied
21 on the same SCR technology that they had used up until then. Winterkorn instead advocated an
22 alternative course of action that enabled Volkswagen to cut costs and offer the public lower-
23 priced diesel vehicles. To that end, he appointed Hackenberg and Hatz, two former Audi
24

25 ¹⁰⁰ *Id.*

26 ¹⁰¹ See Jad Mouawad & Sydney Ember, *VW’s Pitch to Americans Relied on Fun and Fantasy*,
27 New York Times (Sept. 27, 2015), <http://nytimes.com/2015/09/28/business/media/vws-pitch-to-americans-relied-on-fun-and-fantasy.html?ref=business>.

28 ¹⁰² *Volkswagen AG, TDI: U.S. Market Success*, Clean Diesel Delivers (March, 2015),
http://cleandieseldelivers.com/media/Douglas-Skorupski-VWoA_DTF_March2015.pdf.

1 engineers and unnamed co-conspiring members of the Defeat Device RICO Enterprise, to lead
2 the research and development facet of the “clean” diesel project.

3 200. Nevertheless, despite Hackenberg and Hatz’s efforts, the technological hurdles
4 were too formidable, and a lawful alternative could not apparently be found. Although Defendant
5 Winterkorn was routinely apprised of these obvious technical setbacks, he continued to pursue the
6 aggressive cost-cutting, profit driven plan he had originally envisioned. In so doing, he set into
7 motion the fraudulent scheme to defraud regulators and consumers, and ultimately reseller
8 dealers.

9 201. On information and belief, Winterkorn knew or recklessly disregarded that the
10 Class Vehicles utilized defeat devices in order to evade federal and state emission standards.

11 **b. Matthias Müller**

12 202. Defendant Müller has worked at Volkswagen for nearly his entire life, starting as
13 an Audi toolmaker and climbing the corporate ladder to become VW’s Head of Product
14 Management in 2007, and later, became the CEO of Porsche AG in October 2010. As CEO of
15 Porsche AG, Müller was a trusted “longtime lieutenant of Mr. Winterkorn,”¹⁰³ and grew sales and
16 profits at Porsche AG dramatically.

17 203. During Müller’s reign over Porsche AG, he oversaw the release of the Porsche
18 Cayenne Diesels discovered by the EPA to be equipped with defeat devices.

19 204. Further, after the revelation of Volkswagen’s fraud, Müller was appointed CEO of
20 VW AG on September 25, 2015. He is suspected to be a protégé of VW AG’s former CEO
21 Ferdinand Piëch, whom some blame for propagating the Volkswagen culture that ultimately led
22 to the defeat device conspiracy alleged herein.¹⁰⁴

23 205. On information and belief, Müller knew or recklessly disregarded that the Class
24 Vehicles utilized defeat devices to evade federal and state vehicle emissions standards.

25
26 ¹⁰³ Danny Hakim and Jack Ewing, *Matthias Müller, in the Driver’s Seat at Volkswagen*, New
27 York Times (Oct. 1, 2015), [http://www.nytimes.com/2015/10/02/business/international/matthias-](http://www.nytimes.com/2015/10/02/business/international/matthias-muller-in-the-drivers-seat-at-volkswagen.html)
[muller-in-the-drivers-seat-at-volkswagen.html](http://www.nytimes.com/2015/10/02/business/international/matthias-muller-in-the-drivers-seat-at-volkswagen.html).

28 ¹⁰⁴ Victor Luckerson, *5 things to know about Volkswagen’s new CEO Matthias Müller*, Fortune
(Sept. 25, 2015), <http://fortune.com/2015/09/25/volkswagen-ceo-muller/>.

1 **e. Scott Keogh**

2 212. Since June 2012, unnamed co-conspirator Keogh has served as President of Audi
3 America, after a six period as the Chief Marketing Officer of Audi America. His primary
4 missions was “rallying the company’s internal and external constituencies to focus on Audi goals
5 for further expansion in the U.S. market,”¹⁰⁶ as promulgated by Winterkorn.

6 213. After the revelation of Volkswagen’s fraud, Keogh publicly apologized for Audi
7 America’s involvement in the defeat device scandal¹⁰⁷ and agreed to return “Green Car of the
8 Year” awards,¹⁰⁸ though he continues to tout the future of Audi diesel vehicles in the U.S.¹⁰⁹

9 214. On information and belief, Keogh knew or recklessly disregarded that the Class
10 Vehicles utilized defeat devices in order to evade federal and state vehicle emissions standards.

11 **f. Detlev von Platen**

12 215. In 1997, unnamed co-conspirator von Platen joined Porsche AG, managing the
13 Porsche brand in France. Over the following decade, von Platen climbed the ranks at Porsche to
14 assume the position of President and CEO of Porsche America on April 1, 2008.

15 216. As President and CEO of Porsche America, von Platen was charged with
16 implementing Winterkorn’s vision for the Porsche brand in the U.S., as he had oversight
17 “responsibility for the importation and distribution of Porsche cars in North America.”¹¹⁰ Porsche
18 America was expected to contribute to Winterkorn’s lofty sales goals, bolstered by the
19 introduction of “clean” diesel engines for the Porsche Cayenne and increasing sales from 26,035
20 to a record 47,007 sales in 2014.

21
22 ¹⁰⁶ *Scott Keogh*, AUDI USA (last visited Feb. 27, 2016),
23 <https://www.audiusa.com/newsroom/corporate/executive-team/scott-keogh>.

24 ¹⁰⁷ Michael Walker, *L.A. Auto Show: VW, Porsche, Audi Execs Address Diesel Emissions*
Scandal, THE HOLLYWOOD REPORTER (Nov. 20, 2015),
25 <http://www.hollywoodreporter.com/news/vw-porsche-audi-exec-apologize-842581>.

26 ¹⁰⁸ Jackie Wattles, *Volkswagen stripped of two 'Green Car of the Year' titles*, CNN MONEY (Oct.
27 1, 2015), <http://money.cnn.com/2015/10/01/news/companies/volkswagen-green-car-of-year-awards-rescinded/>.

28 ¹⁰⁹ Mike Duff, *Audi Chief Thinks Diesel Has a Future in the U.S.*, CAR AND DRIVER (Jan. 19,
2016), <http://blog.caranddriver.com/audi-chief-thinks-diesel-has-a-future-in-the-u-s/>.

¹¹⁰ *President and Chief Executive Officer - PCNA, Inc.*, PORSCHE CARS NORTH AMERICA (last
visited Feb. 7, 2016), http://press.porsche.com/more_about/executives/pcna/platen.php.

1 bring the Volkswagen Defendants “forward in the USA.”¹¹³ Volkswagen’s in-house magazine
 2 reported that Tuch and Winterkorn worked closely to honor that pledge, meeting “every Monday
 3 to discuss quality issues, often taking test drives in vehicles manufactured by the company.” In
 4 his role as head of quality assurance, Tuch was also intimately familiar with Volkswagen, Audi,
 5 and Porsche engines and transmissions. Among his duties was “the development and production
 6 of components such as engines, transmissions, seats and suspension parts” for small, compact,
 7 midsize, and full size product lines, including all the Class Vehicles.¹¹⁴

8 222. Significantly, Tuch also oversaw “36 laboratory locations throughout the world in
 9 terms of training and auditing and also finds staff to fill laboratory manager positions,” including
 10 the Volkswagen Defendants’ laboratories in the United States, which were primarily responsible
 11 for emissions testing of the Class Vehicles.¹¹⁵

12 223. On information and belief, Tuch knew or recklessly disregarded that the Class
 13 Vehicles used defeat devices to evade federal and state vehicle emissions standards.

14 **i. Wolfgang Hatz**

15 224. Unnamed co-conspirator Hatz directed engine development for the Porsche, Audi
 16 and Volkswagen brands. In this role, he supervised the development of the engines and
 17 transmissions for the Class Vehicles issue and had intimate knowledge of their technical details.

18 225. On information and belief, Hatz knew or recklessly disregarded that the Class
 19 Vehicles used defeat devices to evade federal and state vehicle emissions standards.

20 **3. The Bosch Defendants**

21 226. As explained above, Bosch developed EDC Unit 17, the emissions control system
 22 and software that provided the basis for the defeat device, and sold it to Volkswagen.¹¹⁶

23
 24
 25 ¹¹³ <http://www.marketwatch.com/story/volkswagen-suspends-quality-control-chief-2015-10-20-84855452>

26 ¹¹⁴ Jack Ewing. “Volkswagen Suspends 5th Executive in Emissions Scandal,” The New York
 Times (Oct. 20, 2015).

27 ¹¹⁵ http://www.volkswagen-larriere.de/en/what_we_do/corporate_divisions/quality_assurance.html

28 ¹¹⁶ http://www.bosch-presse.de/presseforum/details.htm?txtID=7421&tk_id=108

1 227. Defendant Denner has been Chairman and CEO of Bosch since July 2012, after
2 decades of working in Bosch's Engine ECU Development division, managing the development
3 and sale of automotive engine computers, such as the EDC units that Volkswagen used as defeat
4 devices. Denner fostered Bosch's relationship with key corporate partners, such as Volkswagen,
5 which brought in billions of dollars in annual revenue for Bosch.

6 228. Using EDC Unit 17, Bosch worked with Volkswagen to develop and implement a
7 specific and unique set of software algorithms to surreptitiously evade emissions regulations. To
8 that end, Bosch and Volkswagen equipped EDC Unit 17 in the Class Vehicles with unique
9 software code to detect when it was undergoing emissions testing, as described above.¹¹⁷

10 229. Bosch was well aware that the EDC Unit 17 could be, and indeed was, used by
11 Volkswagen to cheat on emissions testing. Indeed, Bosch, seeking to absolve itself of liability,
12 sent a letter to Volkswagen AG in 2007, stating that Class Vehicles *could not be lawfully*
13 *operated* if the emissions controls were disabled.¹¹⁸

14 230. Indeed, notwithstanding their knowledge that the Class Vehicles *could not be*
15 *lawfully operated* if the emissions controls were disabled, Bosch, cementing their position as a
16 leading supplier of diesel emissions equipment, continued to sell approximately *eleven million*
17 EDC Unit 17s to Volkswagen over an eight year period.¹¹⁹

18 231. Bosch's continued sale of EDC Unit 17 to the Volkswagen Defendants is
19 remarkable considering that:

- 20 a. Bosch manufactured, tested and sold EDC Unit 17
21 emissions control systems to various other diesel vehicle
22 manufacturers, *none* of which was modified with a defeat
23 device software that allowed vehicles to automatically
24 activate or disable the emissions control systems depending
25 on operating conditions.¹²⁰ Bosch could not plausibly
26 believe that the "defeat device" on the Class Vehicles was
27 necessary for any legitimate purpose;

28 ¹¹⁷ <http://blog.caranddriver.com/epa-investigating-bosch-over-vw-diesel-cheater-software>

¹¹⁸ <http://jalopnik.com/feds-are-now-investigating-volkswagen-supplier-bosch-ov-1743624448>

¹¹⁹ <http://blog.caranddriver.com/epa-investigating-bosch-over-vw-diesel-cheater-software>

¹²⁰ <http://www.inautonews.com/vw-diesel-scandal-bosch-software-cleared-of-wrongdoings-by-epa>

- 1 b. None of the varied emissions control systems that Bosch
2 tested, manufactured and sold to other diesel vehicle
3 manufacturers relied on the same NO_x trap technology that
4 Volkswagen was utilizing. Indeed, Volkswagen's
5 competitors, including reputable and technologically-
6 sophisticated brands like Mercedes-Benz and BMW,
7 continued using the more expensive SCR technology;¹²¹ and
- 8 c. Absent extraordinary engineering breakthroughs, the EDC
9 Unit 17 presented a practical impossibility.

10 232. Bosch (including Denner) knew or recklessly disregarded that Volkswagen had *not*
11 actually engineered a revolutionary alternative to the SCR systems that enabled the Class
12 Vehicles to maintain their performance, fuel efficiency, reduce emissions, *and* reduce costs.¹²²
13 Instead, Bosch knew or recklessly disregarded that the Class Vehicles utilized Bosh's component
14 parts as defeat devices in order to evade federal and state vehicle emissions standards.

15 **B. The Defeat Device RICO Enterprise Sought to Increase Defendants' Profits
16 and Revenues**

17 233. The Defeat Device RICO Enterprise began approximately in 2007, with VW AG's
18 decision to produce the illegal Class Vehicles. The Defeat Device RICO Enterprise continued
19 without interruption for eight years, as Volkswagen continued to install Bosch EDC Unit 17's in
20 the Class Vehicles. It was not until September 2015 that the Defeat Device RICO Enterprise
21 began to unravel, when U.S. regulators finally uncovered the fraudulent scheme.

22 234. At all relevant times, the Defeat Device RICO Enterprise: (a) had an existence
23 separate and distinct from each RICO Defendant; (b) was separate and distinct from the pattern of
24 racketeering in which the RICO Defendants engaged; and (c) was an ongoing and continuing
25 organization consisting of legal entities, including the Volkswagen Defendants, their network of
26 dealerships, the Individual Defendants, Bosch, and other entities and individuals associated for

27 ¹²¹ <http://www.nytimes.com/2015/09/27/business/as-vw-pushed-to-be-no-1-ambitions-fueled-a-scandal.html? r=0>

28 ¹²² Sophisticated entities like the Bosch Defendants were also likely aware that Wolfgang Bernhard, a former high-level executive with Mercedes-Benz with a reputation for implementing cost-cutting measures, had been removed from the "clean" diesel project at Volkswagen AG shortly before the Volkswagen Defendants abandoned the SCR systems and inexplicably developed what was purportedly an even cheaper technology. *See*, <http://www.foxbusiness.com/features/2015/10/05/vw-emissions-probe-zeroes-in-on-two-engineers.html>

1 the common purpose of designing, manufacturing, distributing, testing, and selling the Class
2 Vehicles to Plaintiffs and the Class through fraudulent COCs, false emissions tests, deceptive and
3 misleading sales tactics and materials, and deriving profits and revenues from those activities.
4 Each member of the Defeat Device RICO Enterprise shared in the bounty generated by the
5 enterprise, *i.e.*, by sharing the benefit derived from increased sales revenue generated by the
6 scheme to defraud Class members nationwide.¹²³

7 235. The Defeat Device RICO Enterprise functioned by selling vehicles to the
8 consuming public. Many of these products are legitimate, including vehicles that do not contain
9 defeat devices. However, the RICO Defendants and their co-conspirators, through their illegal
10 Enterprise, engaged in a pattern of racketeering activity, which involves a fraudulent scheme to
11 increase revenue for Defendants and the other entities and individuals associated-in-fact with the
12 Enterprise's activities through the illegal scheme to sell the Class Vehicles.

13 236. The Defeat Device RICO Enterprise engaged in, and its activities affected
14 interstate and foreign commerce, because it involved commercial activities across state
15 boundaries, such as the marketing, promotion, advertisement and sale or lease of the Class
16 Vehicles throughout the country, and the receipt of monies from the sale of the same.

17 237. Within the Defeat Device RICO Enterprise, there was a common communication
18 network by which co-conspirators shared information on a regular basis. The Defeat Device
19 RICO Enterprise used this common communication network for the purpose of manufacturing,
20 marketing, testing, and selling the Class Vehicles to the general public nationwide.

21 238. Each participant in the Defeat Device RICO Enterprise had a systematic linkage to
22 each other through corporate ties, contractual relationships, financial ties, and continuing
23 coordination of activities. Through the Defeat Device RICO Enterprise, the RICO Defendants
24 functioned as a continuing unit with the purpose of furthering the illegal scheme and their
25 common purposes of increasing their revenues and market share, and minimizing losses.

26 ¹²³ The Volkswagen Defendants sold more Class Vehicles by utilizing an emissions control
27 system that was cheaper than SCRs, all the while charging consumers a premium for purportedly
28 "clean," "environmentally friendly" and "fuel efficient" Class Vehicles. Bosch, in turn, sold
more EDC Units because the Volkswagen Defendants manufactured and sold more Class
Vehicles.

1 239. The RICO Defendants participated in the operation and management of the Defeat
2 Device RICO Enterprise by directing its affairs, as described herein. While the RICO Defendants
3 participated in, and are members of, the enterprise, they have a separate existence from the
4 enterprise, including distinct legal statuses, different offices and roles, bank accounts, officers,
5 directors, employees, individual personhood, reporting requirements, and financial statements.

6 240. The Volkswagen RICO Defendants exerted substantial control over the Defeat
7 Device RICO Enterprise, and participated in the affairs of the Defeat Device RICO Enterprise by:

- 8 a. transitioning their diesel vehicle design away from an effective SCR emissions
9 control system and adopt instead the ineffective NO_x trap technology that
10 generates high levels of toxic pollutants;
- 11 b. designing the Class Vehicles with defeat devices;
- 12 c. failing to correct or disable the defeat devices when warned;
- 13 d. manufacturing, distributing, and selling the Class Vehicles that emitted greater
14 pollution than allowable under the applicable regulations;
- 15 e. misrepresenting and omitting (or causing such misrepresentations and
16 omissions to be made) vehicle specifications on COC applications;
- 17 f. introducing the Class Vehicles into the stream of U.S. commerce without a
18 valid EPA COC;
- 19 g. concealing the existence of the defeat devices and the unlawfully high
20 emissions from regulators and the public;
- 21 h. persisting in the manufacturing, distribution, and sale of the Class Vehicles
22 even after questions were raised about the emissions testing and discrepancies
23 concerning the same;
- 24 i. misleading government regulators as to the nature of the defeat devices and the
25 defects in the Class Vehicles;
- 26 j. misleading the driving public as to the nature of the defeat devices and the
27 defects in the Class Vehicles;
- 28

- 1 k. designing and distributing marketing materials that misrepresented and
- 2 concealed the defect in the vehicles;
- 3 l. otherwise misrepresenting or concealing the defective nature of the Class
- 4 Vehicles from the public and regulators;
- 5 m. illegally selling and/or distributing the Class Vehicles;
- 6 n. collecting revenues and profits from the sale of such products; and
- 7 o. ensuring that the other RICO Defendants and unnamed co-conspirators
- 8 complied with the fraudulent scheme.

9 241. Bosch also participated in, operated and/or directed the Defeat Device RICO
10 Enterprise. Bosch participated in the fraudulent scheme by manufacturing, installing, testing,
11 modifying, and supplying the EDC Unit 17 to include a “defeat device” in the Class Vehicles.
12 Additionally, Bosch continuously cooperated with the Volkswagen Defendants to ensure EDC
13 Unit 17 was fully integrated into the Class Vehicles. Finally, Bosch participated by concealing
14 the truth about the Class Vehicles and collecting the revenues and profits from the same.

15 242. Without the RICO Defendants’ willing participation, including Bosch’s provision
16 of the component parts for the defeat devices contained in the Class Vehicles, the Defeat Device
17 RICO Enterprise’s scheme and common course of conduct would not have been successful.

18 243. The RICO Defendants directed and controlled the ongoing organization necessary
19 to implement the scheme at meetings and through communications of which Plaintiffs cannot
20 fully know at present, because such information lies in the Defendants’ and others’ hands.

21 **C. Mail and Wire Fraud**

22 244. To carry out, or attempt to carry out the scheme to defraud, the RICO Defendants,
23 each of whom is a person associated-in-fact with the Defeat Device RICO Enterprise, did
24 knowingly conduct or participate, directly or indirectly, in the conduct of the affairs of the Defeat
25 Device RICO Enterprise through a pattern of racketeering activity within the meaning of 18
26 U.S.C. §§1961(1), 1961(5) and 1962(c), and which employed the use of the mail and wire
27 facilities, in violation of 18 U.S.C. §1341 (mail fraud) and §1343 (wire fraud).

1 245. Specifically, the RICO Defendants have committed, conspired to commit, and/or
2 aided and abetted in the commission of, at least two predicate acts of racketeering activity (*i.e.*,
3 violations of 18 U.S.C. §§1341 and 1343), within the past ten years. The multiple acts of
4 racketeering activity which the RICO Defendants committed, or aided or abetted in the
5 commission of, were related to each other, posed a threat of continued racketeering activity, and
6 therefore constitute a “pattern of racketeering activity.” The racketeering activity was made
7 possible by the RICO Defendants’ regular use of the facilities, services, distribution channels, and
8 employees of the Defeat Device RICO Enterprise. The RICO Defendants participated in the
9 scheme to defraud by using mail, telephone and the Internet to transmit mailings and wires in
10 interstate or foreign commerce.

11 246. The RICO Defendants used, directed the use of, and/or caused to be used,
12 thousands of interstate mail and wire communications in service of their scheme through virtually
13 uniform misrepresentations, concealments and material omissions.

14 247. In devising and executing the illegal scheme, the RICO Defendants devised and
15 knowingly carried out a material scheme and/or artifice to defraud Plaintiffs and the Class or to
16 obtain money from Plaintiffs and the Class by means of materially false or fraudulent pretenses,
17 representations, promises, or omissions of material facts. For the purpose of executing the illegal
18 scheme, the RICO Defendants committed these racketeering acts, which number in the thousands,
19 intentionally and knowingly with the specific intent to advance the illegal scheme.

20 248. The RICO Defendants’ predicate acts of racketeering (18 U.S.C. §1961(1))
21 include, but are not limited to:

- 22 a. Mail Fraud: The RICO Defendants violated 18 U.S.C.
23 §1341 by sending or receiving, or by causing to be sent
24 and/or received, materials via U.S. mail or commercial
25 interstate carriers for the purpose of executing the unlawful
26 scheme to design, manufacture, market, and sell the Class
27 Vehicles by means of false pretenses, misrepresentations,
28 promises, and omissions.
- b. Wire Fraud: The RICO Defendants violated 18 U.S.C.
§1343 by transmitting and/or receiving, or by causing to be
transmitted and/or received, materials by wire for the
purpose of executing the unlawful scheme to defraud and

1 obtain money on false pretenses, misrepresentations,
2 promises, and omissions.

3 249. The RICO Defendants' use of the mails and wires include, but are not limited to,
4 the transmission, delivery, or shipment of the following by the RICO Defendants or third parties
5 that were foreseeably caused to be sent as a result of Defendants' illegal scheme:

- 6 a. the Class Vehicles themselves;
- 7 b. component parts for the defeat devices;
- 8 c. essential hardware for the Class Vehicles;
- 9 d. falsified emission tests;
- 10 e. fraudulent applications for EPA COCs and CARB EOs;
- 11 f. fraudulently-obtained EPA COCs and CARB EOs;
- 12 g. vehicle registrations and plates as a result of the fraudulently-obtained EPA
13 COCs and CARB EOs;
- 14 h. documents and communications that facilitated the falsified emission tests;
- 15 i. false or misleading communications intended to lull the public and regulators
16 from discovering the defeat devices and/or other auxiliary devices;
- 17 j. sales and marketing materials, including advertising, websites, product
18 packaging, brochures, and labeling, which misrepresented and concealed the
19 true nature of the Class Vehicles;
- 20 k. documents intended to facilitate the manufacture and sale of the Class
21 Vehicles, including bills of lading, invoices, shipping records, reports and
22 correspondence;
- 23 l. documents to process and receive payment for the Class Vehicles by
24 unsuspecting Class members, including invoices and receipts;
- 25 m. payments to Bosch;
- 26 n. millions of dollars in compensation to the Individual Defendants;
- 27 o. deposits of proceeds; and
- 28 p. other documents and things, including electronic communications.

1 250. The RICO Defendants also used the internet and other electronic facilities to carry
2 out the scheme and conceal the ongoing fraudulent activities. Specifically, the American
3 Volkswagen Defendants, under the direction and control of the German Volkswagen and
4 Individual Volkswagen Defendants, made misrepresentations about the Class Vehicles on their
5 websites, YouTube, and through ads online, all of which were intended to mislead regulators and
6 the public about the fuel efficiency, emissions standards, and other performance metrics.

7 251. The RICO Defendants also communicated by U.S. mail, by interstate facsimile,
8 and by interstate electronic mail with various other affiliates, regional offices, divisions,
9 dealerships and other third-party entities in furtherance of the scheme.

10 252. The mail and wire transmissions described herein were made in furtherance of
11 Defendants' scheme and common course of conduct to deceive regulators and consumers and lure
12 consumers and reseller dealers into purchasing the Class Vehicles, which Defendants knew or
13 recklessly disregarded as emitting illegal amounts of pollution, despite their advertising campaign
14 that the Class Vehicles were "clean" diesel cars.

15 253. Many of the precise dates of the fraudulent uses of the U.S. mail and interstate
16 wire facilities have been deliberately hidden, and cannot be alleged without access to Defendants'
17 books and records. However, Plaintiffs have described the types of, and in some instances,
18 occasions on which the predicate acts of mail and/or wire fraud occurred. They include
19 thousands of communications to perpetuate and maintain the scheme, including the things and
20 documents described in the preceding paragraphs.

21 254. The RICO Defendants have not undertaken the practices described herein in
22 isolation, but as part of a common scheme and conspiracy. In violation of 18 U.S.C. §1962(d),
23 the RICO Defendants conspired to violate 18 U.S.C. §1962(c), as described herein. Various other
24 persons, firms and corporations, including third-party entities and individuals not named as
25 defendants in this Complaint, have participated as co-conspirators with the RICO Defendants in
26 these offenses and have performed acts in furtherance of the conspiracy to increase or maintain
27 revenues, increase market share, and/or minimize losses for the Defendants and their unnamed
28 co-conspirators throughout the illegal scheme and common course of conduct.

1 255. The RICO Defendants aided and abetted others in the violations of the above laws,
2 thereby rendering them indictable as principals in the 18 U.S.C. §§1341 and 1343 offenses.

3 256. To achieve their common goals, the RICO Defendants hid from the general public
4 the unlawfulness and emission dangers of the Class Vehicles and obfuscated the true nature of the
5 defect even after regulators raised concerns. The RICO Defendants suppressed and/or ignored
6 warnings from third parties, whistleblowers, and governmental entities about the discrepancies in
7 emissions testing and the defeat devices present in the Class Vehicles.

8 257. The RICO Defendants and each member of the conspiracy, with knowledge and
9 intent, have agreed to the overall objectives of the conspiracy and participated in the common
10 course of conduct to commit acts of fraud and indecency in designing, manufacturing,
11 distributing, marketing, testing, and/or selling the Class Vehicles (and the defeat devices
12 contained therein).

13 258. Indeed, for the conspiracy to succeed, each of the RICO Defendants and their co-
14 conspirators had to agree to implement and use the similar devices and fraudulent tactics against
15 their intended targets.

16 259. The RICO Defendants knew and intended that government regulators, as well as
17 Plaintiffs and Class members, would rely on the material misrepresentations and omissions made
18 by them and the American Volkswagen Defendants about the Class Vehicles. The RICO
19 Defendants knew and intended that consumers and reseller dealers would incur costs as a result.
20 As fully alleged herein, Plaintiffs, along with hundreds other automobile dealers, relied upon
21 Defendants' representations and omissions that were made or caused by them. Plaintiffs' reliance
22 is made obvious by the fact that they purchased illegal vehicles that never should have been
23 introduced into the U.S. stream of commerce and whose worth has now plummeted since the
24 scheme was revealed. In addition, the EPA and regulators relied on the misrepresentations and
25 material omissions made or caused to be made by the RICO Defendants; otherwise Volkswagen
26 could not have obtained valid COCs and EOs to sell the Class Vehicles.

27 260. As described herein, the RICO Defendants engaged in a pattern of related and
28 continuous predicate acts for years. The predicate acts constituted a variety of unlawful activities,

1 each conducted with the common purpose of obtaining significant monies and revenues from
2 Plaintiffs and Class members based on their misrepresentations and omissions, while providing
3 Class Vehicles that were worth significantly less than the purchase price paid. The predicate acts
4 also had the same or similar results, participants, victims, and methods of commission. The
5 predicate acts were related and not isolated events.

6 261. The predicate acts all had the purpose of generating significant revenue and profits
7 for the RICO Defendants at the expense of Plaintiffs and Class members. The predicate acts were
8 committed or caused to be committed by the RICO Defendants through their participation in the
9 Defeat Device RICO Enterprise and in furtherance of its fraudulent scheme, and were interrelated
10 in that they involved obtaining Plaintiffs' and Class members' funds and avoiding the expenses
11 associated with remediating the Class Vehicles.

12 262. During the design, manufacture, testing, marketing and sale of the Class Vehicles,
13 the RICO Defendants shared technical, marketing, and financial information that revealed the
14 existence of the defeat devices contained therein. Nevertheless, the RICO Defendants shared and
15 disseminated information that deliberately misrepresented the Class Vehicles as legal, "clean,"
16 "environmentally friendly," and "fuel efficient."

17 263. By reason of, and as a result of the conduct of the RICO Defendants, and in
18 particular, their pattern of racketeering activity, Plaintiffs and Class members have been injured in
19 their business and/or property in multiple ways, including but not limited to:

- 20 a. Purchase or lease of an illegal, defective Class Vehicle;
- 21 b. Overpayment for a Class Vehicle, in that Plaintiffs and Class members
22 believed they were paying for a vehicle that met certain emission and fuel
23 efficiency standards and obtained a vehicle that was anything but;
- 24 c. The value of the Class Vehicles has diminished, thus reducing their resale
25 value;
- 26 d. Other out-of-pocket and loss-of-use expenses;
- 27 e. Payment for alternative transportation; and
- 28 f. Loss of employment due to lack of transportation.

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Respectfully submitted,

2 LIEFF CABRASER HEIMANN &
3 BERNSTEIN, LLP

4 By: /s/ Elizabeth J. Cabraser
5 Elizabeth J. Cabraser

6 Elizabeth J. Cabraser
7 LIEFF CABRASER HEIMANN &
8 BERNSTEIN, LLP
9 275 Battery Street, 29th Floor
10 San Francisco, CA 94111-3339
11 Telephone: 415.956.1000
12 Facsimile: 415.956.1008
13 E-mail: ecabraser@lchb.com

Plaintiffs' Lead Counsel

12 Benjamin L. Bailey
13 BAILEY GLASSER LLP
14 209 Capitol Street
15 Charleston, WV 25301
16 Telephone: 304.345.6555
Facsimile: 304.342.1110
E-mail: Bbailey@baileyglasser.com

Steve W. Berman
HAGENS BERMAN
1918 8th Avenue, Suite 3300
Seattle, WA 98101
Telephone: 206.623.7292
Facsimile: 206.623.0594
E-mail: steve@hbslaw.com

17 David Boies
18 BOIES, SCHILLER & FLEXNER LLP
19 333 Main Street
20 Armonk, NY 10504
21 Telephone: 914.749.8200
22 Facsimile: 914.749.8300
23 E-mail: dboies@bsflp.com

David Seabold Casey, Jr.
CASEY GERRY SCHENK FRANCAVILLA
BLATT & PENFIELD, LLP
110 Laurel St.
San Diego, CA 92101-1486
Telephone: 619.238.1811
Facsimile: 619.544.9232
E-mail: dcasey@cglaw.com

22 James E. Cecchi
23 CARELLA, BYRNE, CECCHI, OLSTEIN,
24 BRODY & AGNELLO P.C.
25 5 Becker Farm Road
26 Roseland, New Jersey 07068-1739
27 Telephone: 973.994.1700
28 Facsimile: 973.994.1744
E-mail: jcecchi@carellabyrne.com

Roxanne Barton Conlin
ROXANNE CONLIN & ASSOCIATES, P.C.
319 Seventh St., Suite 600
Des Moines, IA 50309
Telephone: 515.283.1111
Facsimile: 515.282.0477
E-mail: roxlaw@aol.com

1 Jayne Conroy
2 SIMMONS HANLY CONROY LLC
3 112 Madison Avenue
4 New York, New York 10016-7416
5 Telephone: 212.784.6400
6 Facsimile: 212.213.5949
7 E-mail: jconroy@simmonsfirm.com

8 Robin L. Greenwald
9 WEITZ & LUXENBERG P.C.
10 700 Broadway
11 New York, NY 10003
12 Telephone: 212.558.5500
13 Facsimile: 212.344.5461
14 E-mail: rgreenwald@weitzlux.com

15 Michael Everett Heygood
16 HEYGOOD, ORR & PEARSON
17 6363 North State Highway 161, Suite 450
18 Irving, Texas 75038
19 Telephone: 214.237.9001
20 Facsimile: 214.237.9002
21 E-mail: Michael@hop-law.com

22 W. Daniel "Dee" Miles III
23 BEASLEY ALLEN LAW FIRM
24 218 Commerce St.
25 Montgomery, AL 36104
26 Telephone: 800.898.2034
27 Facsimile: 334.954.7555
28 E-mail: dee.miles@beasleyallen.com

Joseph F. Rice
MOTLEY RICE, LLC
28 Bridgeside Blvd.
Mount Pleasant, SC 29464
Telephone: 843.216.9000
Facsimile: 843.216.9450
E-mail: jrice@motleyrice.com

Lynn Lincoln Sarko
KELLER ROHRBACK L.L.P.
1201 3rd Avenue, Suite 3200
Seattle, Washington 98101-3052
Telephone: 206.623.1900
Facsimile: 206.623.3384
E-mail: lsarko@kellerrohrback.com

Paul J. Geller
ROBBINS GELLER RUDMAN & DOWD LLP
120 East Palmetto Park Road, Suite 500
Boca Raton, FL 33432
Telephone: 561.750.3000
Facsimile: 561.750.3364
E-mail: pgeller@rgrdlaw.com

Michael D. Hausfeld
HAUSFELD
1700 K Street, NW, Suite 650
Washington, DC, 20006
Telephone: 202.540.7200
Facsimile: 202.540.7201
E-mail: mhausfeld@hausfeld.com

Adam J. Levitt
GRANT & EISENHOFER P.A.
30 N. LaSalle Street
Chicago, IL 60602
Telephone: 312.610.5400
Facsimile: 312.214.0001
E-mail: alevitt@gelaw.com

Frank Mario Pitre
COTCHETT PITRE & MCCARTHY LLP
840 Malcolm Road, Suite 200
Burlingame, CA 94010
Telephone: 650.697.6000
Facsimile: 650.697.0577
E-mail: fpitre@cpmlegal.com

Rosemary M. Rivas
FINKELSTEIN THOMPSON LLP
One California Street, Suite 900
San Francisco, CA 94111
Telephone: 415.398.8700
Facsimile: 415.398.8704
E-mail: rrivas@finkelsteinthompson.com

Christopher A. Seeger
SEEGER WEISS LLP
77 Water Street
New York, New York 10005-4401
Telephone: 212.584.0700
Facsimile: 212.584.0799
E-mail: cseeger@seegerweiss.com

1 J. Gerard Stranch IV
2 BRANSTETTER, STRANCH &
3 JENNINGS, PLLC
4 223 Rosa L. Parks Avenue, Suite 200
5 Nashville, TN 37203
6 Telephone: 615.254.8801
7 Facsimile: 615.250.3937
8 E-mail: gerards@bsjfirm.com

Roland K. Tellis
BARON & BUDD, P.C.
15910 Ventura Boulevard, Suite 1600
Encino, CA 91436
Telephone: 818.839.2320
Facsimile: 818.986.9698
E-mail: trellis@baronbudd.com

6 Lesley Elizabeth Weaver
7 BLOCK & LEVITON LLP
8 155 Federal Street, Suite 400
9 Boston, MA 02110
10 Telephone: 617.398.5600
11 Facsimile: 617.507.6020
12 E-mail: lweaver@blockesq.com

Plaintiffs' Steering Committee

1
2
3
4
5
6
7
8
9
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11
12
13
14
15
16
17
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