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

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

MDL No. 2672 CRB (JSC)

13 This document relates to:
14 *Carriage Chevrolet, Inc. v. Volkswagen Group*
of America, Inc., et al., Case No. 3:16-cv-
15 *00296*
16 *Brown Daub Chevrolet of Nazareth, Inc. v.*
Volkswagen Group of America, Inc., et al.,
17 *Case No. 3:15-cv-06245*
18 *Eagle Auto Mall Corp. v. Volkswagen Group of*
America, Inc., Case No. 3:15-cv-05923
19 *Saturn SW Florida LLC et al. v. Volkswagen*
Group of America, Inc. et al., Case No.
20 *3:15-cv-05959*
21 *Windham Motor Co. Inc. v. Volkswagen Group*
of America, Inc., et al., Case No. 3:16-cv-
22 *00310*

**CONSOLIDATED AMENDED
COMPETITOR DEALERSHIP CLASS
ACTION COMPLAINT**
JURY TRIAL DEMANDED

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1 Plaintiffs Carriage Chevrolet, Inc., Brown Daub Chevrolet of Nazareth, Inc., Eagle Auto
2 Mall Corp., Saturn SW Florida LLC, Bill Branch Chevrolet, Inc., and Windham Motor Company
3 (collectively, “Competitor Dealer Plaintiffs”), individually and on behalf of a class of all others
4 similarly situated (the “Competitor Dealer Class”), for their Consolidated Competitor Dealership
5 Class Action Complaint against (1) the Defendants collectively known as “Volkswagen”:
6 Volkswagen Aktiengesellschaft (“VW AG”), Volkswagen Group of America, Inc. (“VW
7 America”) (together, “VW”), Audi Aktiengesellschaft (“Audi AG”), Audi of America, LLC
8 (“Audi America”) (together, “Audi”), Dr. Ing. h.c. F. Porsche Aktiengesellschaft (“Porsche AG”),
9 Porsche Cars North America, Inc. (“Porsche America”) (together, “Porsche”), Martin Winterkorn
10 (“Winterkorn”), Matthias Müller (“Müller”), Michael Horn (“Horn”), and Rupert Stadler
11 (“Stadler”); and (2) the Defendants collectively known as “Bosch”: Robert Bosch GmbH, Robert
12 Bosch, LLC, and Volkmar Denner (together, “Bosch”).¹ Plaintiffs allege the following based
13 upon information and belief, the investigation of counsel, and personal knowledge as to the
14 allegations pertaining to themselves.

15 **INTRODUCTION**

16 1. This case arises out of one of the most brazen corporate crimes in history, a
17 cautionary tale about winning at any cost. Volkswagen cheated its way to the top of the
18 automotive food chain and spared no victim along the way, targeting its customers, U.S. and
19 foreign regulators, and even the very air we breathe. The linchpin of Volkswagen’s fraudulent
20 scheme was the deliberate use of a “defeat device,” a secretly embedded software algorithm that,
21 as Defendants have since admitted, was designed and installed to cheat emission tests, thereby
22 fooling the Environmental Protection Agency (“EPA”), among other regulators, into approving
23 for sale hundreds of thousands of non-compliant cars (the “Class Vehicles”). For years,
24 Volkswagen got away with it, and the Class Vehicles were sold at record numbers into our stream
25 of commerce. Once on the roads, these cars spewed millions of pounds of harmful nitrogen oxide

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 (“NOX”) pollutants into our air at a rate of up to 40 times the legal limit. All the while,
2 Volkswagen pitched itself to the American public as the world’s foremost innovator of “clean”
3 diesel technology, duping hundreds of thousands of environmentally conscious consumers who
4 were willing to pay a premium for “clean” diesel vehicles, and cheating the Competitor Dealer
5 Plaintiffs and the Competitor Dealer Class members who sold cars that were actually clean and
6 fuel-efficient, and whose vehicles would otherwise have been selected by the consumers
7 Volkswagen duped into purchasing the Class Vehicles.

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

17 3. Volkswagen not only programmed its vehicles to cheat on emissions tests, it used
18 fraud and misrepresentation to sell them. Repeatedly (and falsely) touting the Class Vehicles as
19 environmentally friendly and fuel efficient, and insisting (falsely) that these advantages could be
20 coupled with spectacular performance, Volkswagen systematically misrepresented to the general
21 public the nature and quality of the Class Vehicles, in order to influence consumers to purchase
22 the Class Vehicles, to the detriment of sellers of competing vehicle, including the Competitor
23 Dealer Plaintiffs and the members of the Competitor Dealer Class.

24 4. Volkswagen promised low-emission, environmentally friendly vehicles, with high
25 fuel economy and exceptional performance, and consumers bought them in record numbers. In
26

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

1 fact, Volkswagen has sold more diesel cars in the U.S. than every other automaker combined.³
 2 From 2009 to 2015, Volkswagen sold and/or leased approximately 580,000 dirty diesels that its
 3 defeat device disguised as clean. In doing so, Volkswagen secretly turned the most
 4 environmentally conscious consumers into some of the biggest polluters on the road – and
 5 charged them a premium in the process.

6 5. In so doing, Volkswagen diverted sales from vehicles that truly offered low
 7 emissions and that truly were fuel efficient, to the detriment of the dealers selling those
 8 competing vehicles. The environmentally conscious consumers who paid a premium for the
 9 Class Vehicles would have purchased different, competing vehicles had they known the truth.

10 6. Instead, there are over half a million cars on American roads with illegal emission
 11 systems that never should have left the factory, and would not have, but for Volkswagen’s
 12 fraudulently obtained EPA Certificates of Conformity (“COCs”). The profits Volkswagen earned
 13 on these vehicles rightfully belongs to the Competitor Dealer Plaintiffs and the members of the
 14 class they seek to represent. Since the revelation of Volkswagen’s scheme, the Department of
 15 Justice (“DOJ”) has filed a complaint alleging numerous violations of the Clean Air Act
 16 (“CAA”), state attorneys general have announced investigations and filed lawsuits concerning
 17 Volkswagen’s fraudulent scheme, and countless other government entities have launched criminal
 18 and civil investigations around the globe.

19 7. The Class Vehicles include the following:

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

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

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

8. The Competitor Dealer Plaintiffs, individually and on behalf of all others similarly situated, now seek an award of damages caused by Defendants' false representations, disgorgement of Defendants' profits earned through their false representations, an injunction prohibiting Defendants from further engaging in false representations and further relief set forth below.

JURISDICTION AND VENUE

9. This Consolidated Amended Competitor Dealership Class Action Complaint Automobile Dealer Class Complaint amends the above-captioned actions, and is also filed as a Consolidated Class Action Complaint on behalf of the competitor dealership Plaintiffs in the MDL No. 2672 proceedings, pursuant to Pretrial Order No. 7 therein.

10. This Court has jurisdiction over this action pursuant to the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1332(d), because at least one Class member is of diverse citizenship from one Defendant, there are more than 100 Class members, and the aggregate amount in controversy exceeds \$5,000,000, exclusive of interest and costs. Subject-matter jurisdiction also arises under 28 U.S.C. § 1331 and 15 U.S.C. § 1121, in that the claims of the Competitor Dealer Plaintiffs arise under the laws of the United States, specifically under the Lanham Act, 15 U.S.C. 1125. The Court has personal jurisdiction over Defendants pursuant to 18 U.S.C. §§ 1965(b) and (d), and Cal. Code Civ. P. § 410.10, and supplemental jurisdiction over the state-law claims pursuant to 28 U.S.C. § 1367.

11. Venue is proper in each of the districts in which these cases have been filed in that a substantial part of the events or omissions giving rise to the claim occurred in each such district.

PARTIES

A. Individual and Representative Plaintiffs

12. Plaintiff CARRIAGE CHEVROLET, INC., (“Carriage Chevrolet”) is a corporation organized and existing under the laws of the State of Tennessee, with its principal place of business in Lincoln County, Tennessee. Carriage Chevrolet is a car dealership that marketed and sold vehicles that competed with the Class Vehicles, including the 2014 and 2015 Chevrolet Cruze Diesel.

13. Plaintiff BROWN DAUB CHEVROLET OF NAZARETH, INC., (“Brown Daub”) is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, with its principal place of business at 819 Nazareth Pike, Nazareth, Pennsylvania. Brown Daub is a car dealership that marketed and sold vehicles that competed with the Class Vehicles, including the 2014 and 2015 Chevrolet Cruze Diesel.

14. Plaintiff EAGLE AUTO MALL CORP. (“Eagle Auto”) is a corporation existing under the laws of the State of New York, with its principal place of business in Suffolk County, New York. Eagle Auto is a car dealership that marketed and sold vehicles that competed with the Class Vehicles, including the 2014 and 2015 Chevrolet Cruze Diesel, as well as Mazda and Kia vehicles.

15. Plaintiff SATURN SOUTHWEST FLORIDA LLC (“Saturn SW Florida”) is a limited liability company organized and existing under the laws of the State of Michigan with its principal place of business in the State of Florida and its sole shareholder a Florida corporation. Saturn SW Florida operated a car dealership that, in the period 2002-2010, marketed and sold vehicles that competed with the Class Vehicles, including one or more Saturn models.

16. Plaintiff BILL BRANCH CHEVROLET, INC. D/B/A VICTORY LAYNE CHEVROLET (“Victory Layne”) is a corporation organized and existing under the laws of the State of Florida with its principal place of business in Fort Myers, Florida. Victory Layne is a car dealership that marketed and sold vehicles that competed with the Class Vehicles, including the 2014 and 2015 Chevrolet Cruze Diesel.

1 17. Plaintiff WINDHAM MOTOR COMPANY, INC., (“Windham”) is a corporation
2 organized and existing under the laws of the State of Alabama, with its principal place of business
3 in Marengo County, Alabama. Windham is a car dealership that marketed and sold vehicles that
4 competed with the Class Vehicles, including the 2014 and 2015 Chevrolet Cruze Diesel.

5 **B. Defendants**

6 **1. Volkswagen AG**

7 18. Volkswagen AG (“VW AG”) is a German corporation with its principal place of
8 business in Wolfsburg, Germany. VW AG is one of the largest automobile manufacturers in the
9 world, and is in the business of designing, developing, manufacturing, and selling automobiles.
10 VW AG is the parent corporation of VW America, Audi AG, and Porsche AG. According to VW
11 AG, it sold 10.14 million cars worldwide in 2014 – including 6.12 million VW-branded cars, 1.74
12 million Audi-Branded cars, and 189,849 Porsche-branded cars. Combined with other brands,
13 VW AG boasts a 12.9% share of the worldwide passenger car market. VW AG’s sales revenue in
14 2014 totaled €202 billion (approximately \$221 billion) and sales revenue in 2013 totaled €197
15 billion (approximately \$215 billion). At €2.7 billion (approximately \$13.9 billion), VW AG
16 generated its highest ever operating profit in fiscal year 2014, beating the previous record set in
17 2013 by €1.0 billion (approximately \$1.1 billion).

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

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

24 20. Volkswagen Group of America, Inc. (“VW America”) is a New Jersey corporation
25 with its principal place of business located at 2200 Ferdinand Porsche Drive, Herndon, Virginia
26 20171. VW America is a wholly-owned subsidiary of Volkswagen AG, and it engages in
27 business, including the advertising, marketing and sale of Volkswagen automobiles, in all 50
28

1 states. In 2014 alone, VW America sold 552,729 vehicles from its 1,018 dealer locations in all 50
2 states, including 95,240 TDI® “clean” diesel vehicles.

3 **3. Audi AG**

4 21. Audi AG (“Audi AG”) is a German corporation with its principal place of business
5 in Ingolstadt, Germany. Audi AG is the parent of Audi of America, LLC and a subsidiary of the
6 Audi Group, which is a wholly-owned subsidiary of VW AG. Audi AG designs, develops,
7 manufacturers, and sells luxury automobiles. According to Audi AG, the Audi Group sold 1.74
8 million cars worldwide in 2014, with sales revenues in 2014 totaling €3.8 billion (approximately
9 \$58.5 billion). Audi AG’s operating profit in fiscal year 2014 was €1.15 billion (approximately
10 \$5.63 billion).

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

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

17 23. Audi of America, LLC (“Audi America”) is a Delaware limited liability company
18 with its principal place of business located at 2200 Ferdinand Porsche Drive, Herndon, Virginia
19 20171. Audi America is a wholly-owned U.S. subsidiary of Audi AG, and it engages in business,
20 including the advertising, marketing and sale of Audi automobiles, in all 50 states.

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

22 24. Dr. Ing. h.c. F. Porsche AG (“Porsche AG”) is a German corporation with its
23 principal place of business located in Stuttgart, Germany. Porsche AG designs, develops,
24 manufacturers, and sells luxury automobiles. Porsche AG is a wholly-owned subsidiary of VW
25 AG. According to Porsche AG, it sold 187,208 cars worldwide in 2014, with sales revenues in
26 2014 totaling €7.2 billion (approximately \$18.8 billion). Porsche AG’s operating profit in fiscal
27 year 2014 was €2.79 billion (\$2.97 billion).
28

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

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

7 26. Porsche Cars North America, Inc. (“Porsche America”) is a Delaware corporation
8 with its principal place of business located at 1 Porsche Drive, Atlanta, Georgia 30354. Porsche
9 America is a wholly-owned U.S. subsidiary of Porsche AG, and it engages in business, including
10 the advertising, marketing and sale of Porsche automobiles, in all 50 states. According to Porsche
11 AG, 2014 represented its best annual results in Porsche history in the U.S., with 47, 007
12 automobiles delivered. Porsche America now maintains a network of 189 dealers nationwide.

13 **7. Martin Winterkorn**

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

1 **8. Michael Horn**

2 28. Michael Horn is a resident of Virginia. Horn is President and CEO of VW
3 America. Horn received compensation from the illegal scheme and course of conduct based on
4 the revenues and profits from the Class Vehicles, and Volkswagen's increased market share.
5 Horn approved, authorized, directed, ratified, and/or participated in the acts complained of herein.
6 Horn has admitted that he was aware of the vehicles' emissions non-compliance since at least
7 2014.

8 **9. Robert Bosch GmbH**

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

14 **10. Robert Bosch, LLC**

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

20 **11. Volkmar Denner**

21 31. Volkmar Denner is a resident of Germany. Denner has been the Chairman CEO of
22 Robert Bosch GmbH since July 1, 2012. Denner contemporaneously holds the position of Chief
23 Technology Officer. Denner joined Bosch in 1986, and has held numerous positions within the
24 company, including, Director of ECU Development, Vice-President of Sales and Development,
25 Semiconductors and Electronic Control Units division, and President of Automotive Electronics
26 division. In 2006, Denner became a member of Robert Bosch GmbH's Board of Management
27 and was later responsible for research and advance engineering, product planning, and technology
28 coordination across the company's three business sectors from July 2010 until his appointment as

1 CEO. Denner received millions of dollars from the illegal scheme and course of conduct based
2 on the revenues and profits from the sale of defeat devices to Volkswagen. Denner approved,
3 authorized, directed, ratified, and/or participated in the acts complained of herein. Denner is
4 subject to the personal jurisdiction of this Court because he has availed himself of the laws of the
5 United States through his management and control over Robert Bosch, LLC as well as his direct
6 participation in the design, manufacture, distribution, testing, and/or sale of hundreds of
7 thousands of defeat devices installed in the Class Vehicles.

8 **COMMON FACTUAL ALLEGATIONS**

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

10 32. Volkswagen's illegal scheme was born out of greed and ambition to dominate the
11 global automotive market at any cost. By Volkswagen's own admissions, the seeds for the
12 scandal were planted in 2005, as Volkswagen was repositioning its fleet in light of tightening
13 emission regulations in our country with "a strategic decision to launch a large-scale promotion of
14 diesel vehicles in the United States in 2005."⁴ While other automakers focused on hybrid or
15 hydrogen-fueled vehicles, Volkswagen pivoted toward "clean" diesel technology as its primary
16 strategy to reach the growing market of environmentally-conscious consumers.

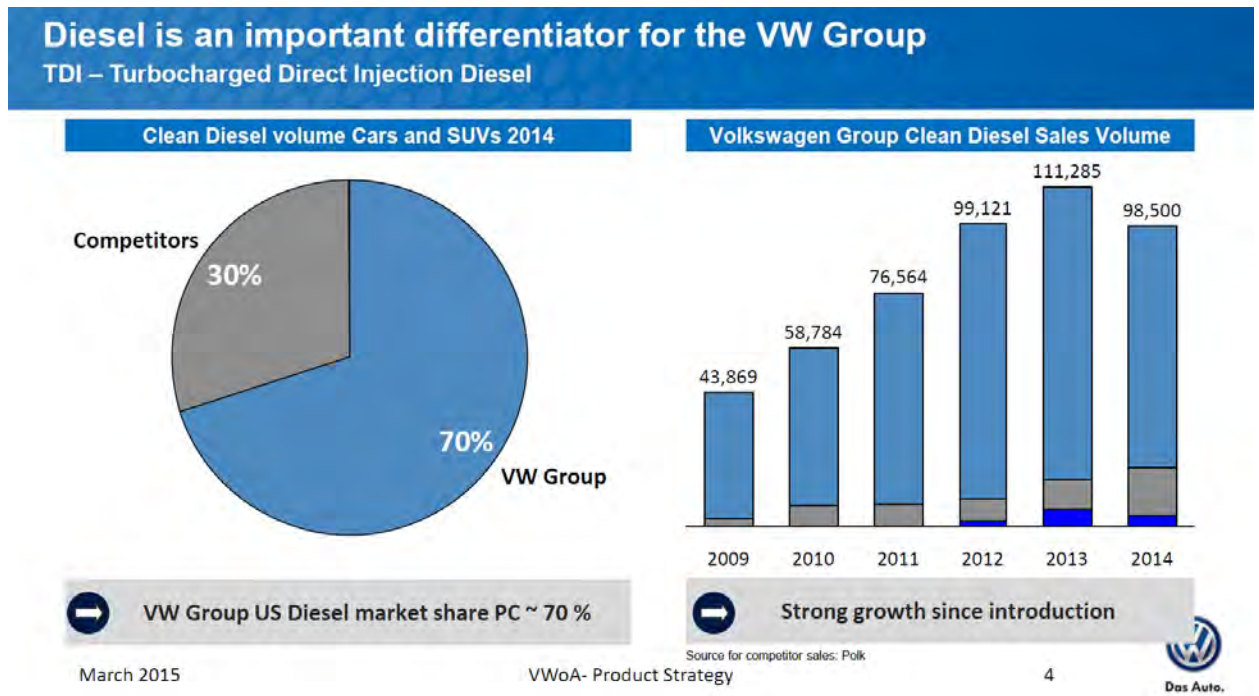
17 33. In 2004, the second generation Toyota Prius became an explosive success, tripling
18 global sales from years prior and changing environmentally-friendly vehicles from a niche market
19 to a standard consumer option. Although it was the first mainstream hybrid vehicle, the Prius was
20 widely viewed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

22 34. Volkswagen took note of the success and sought to achieve the same (or better)
23 efficiency benchmarks as the Prius, but in a "fun-to-drive," high-performance vehicle. This was
24 to be achieved with a supposedly remarkable breakthrough in diesel technology: the EA 189 TDI
25 engine. TDI, short for "turbocharged diesel injection," was the culmination of millions of dollars
26

27 ⁴ *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 in research and development, and was heralded as the critical factor that would be responsible for
 2 Volkswagen’s growth and success in the U.S.

3 35. In 2007, defendant Winterkorn left his position at Audi to become VW AG’s CEO.
 4 Winterkorn set goals for Volkswagen to become a world leader in automobile manufacturing.
 5 This included a target of tripling U.S. sales to at least 800,000 vehicles by 2018.⁵ At the time,
 6 diesel-engine vehicles made up just 5% of the U.S. car market, and Winterkorn recognized this as
 7 the perfect opportunity to expand Volkswagen’s market share. As shown below in a VW
 8 America presentation touting the success of “clean diesel,” this strategy was employed with great
 9 success:⁶



21 36. To expand its diesel market penetration in the U.S., Volkswagen needed to
 22 overcome the stigmas associated with diesel vehicles. Foremost among these was the consumer
 23 perception that diesel engines emit thick, toxic smoke full of dangerous and destructive
 24 pollutants, relegated to the smog-filled cities of the past. Volkswagen claimed to have solved all

26 ⁵ 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 ⁶ *Volkswagen AG, TDI: U.S. Market Success, Clean Diesel Delivers* (March, 2015),
http://cleandieseldelivers.com/media/Douglas-Skorupski-VWoA_DTF_March2015.pdf.

1 of these environmental problems with the new EA 189 engine, which it aggressively marketed as
2 the clean, green alternative to hybrid engines, such as those in the Prius.

3 37. Behind the scenes, however, Volkswagen realized internally that it was not
4 possible to roll out these so-called “clean” diesel vehicles within its self-imposed budgets and
5 engineering constraints. To get the job done, Winterkorn appointed two engineers with whom he
6 had worked closely at Audi (Ulrich Hackenberg and Wolfgang Hatz) to head up R&D and engine
7 development for this project. These two engineers were the chief developers of the TDI engine.⁷
8 Their primary mandate from management was to develop a diesel engine that maintained the
9 performance of traditional gasoline engines with reduced CO₂ emissions and fuel consumption,
10 all while meeting the strict NO_x emission standards in the U.S. Winterkorn also relied upon and
11 worked closely with Frank Tuch, VW’s head of quality assurance, who was intimately familiar
12 with the engines and transmissions across all Volkswagen brands.

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

18 39. Diesel fuel is traditionally denser than gasoline, and the syrupy fuel contains
19 longer hydrocarbon chains, which tends to produce a more efficient vehicle. In fact, diesel
20 engines can convert over 45% of fuel energy into useful mechanical energy, whereas gasoline
21 engines convert only 30% of fuel into energy.⁸ To make use of this dense diesel fuel, diesel
22 engines combine high temperatures and high compression to produce a pressure-cooker of
23 mechanical energy, as opposed to a spark ignition in the typical gasoline engine. Though more
24 efficient, diesel engines come with their own set of challenges, as highly-compressed diesel

25 ⁷ 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 ⁸ *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 emissions can include high levels of NO_x and particulate matter (“PM”), or soot. NO_x emissions
2 can be reduced by adjusting the compression and temperature, but that in turn produces PM, a
3 similarly-undesirable hydrocarbon-based emission.

4 40. Diesel engines thus operate according to this trade-off between NO_x and PM, and
5 for the EPA to designate a diesel car as a “clean” vehicle, it must produce *both* low PM and low
6 NO_x. In 2000, the EPA announced stricter emission standards requiring all diesel models starting
7 in 2007 to produce drastically less NO_x than years prior.

8 41. These strict emission standards posed a serious challenge to Volkswagen’s
9 engineers. In fact, during a 2007 demonstration in San Francisco, engine R&D chief Hatz
10 lamented presciently that “[Volkswagen] can do quite a bit and we will do a bit, but ‘impossible’
11 we cannot do. . . . From my point of view, the CARB is not realistic . . . I see it as nearly
12 impossible for [Volkswagen].”⁹

13 42. But it was of utmost importance for Volkswagen to achieve (or at least appear to
14 achieve) this “impossible” goal, for it could not legally sell a single vehicle that failed comply
15 with the governmental emission regulations. Before introducing a Class Vehicle into the U.S.
16 stream of commerce (or causing the same), Volkswagen was required to first apply for, and
17 obtain, an EPA-administered COC, certifying that the vehicle comported with the emission
18 standards for pollutants enumerated in 40 C.F.R. §§ 86.1811-04, 86.1811-09, and 86.1811-10.
19 The CAA expressly prohibits automakers, like Volkswagen, from introducing a new vehicle into
20 the stream of commerce without a valid EPA COC. *See* 42 U.S.C. § 7522(a)(1). Moreover,
21 vehicles must be accurately described in the COC application “in all material respects” to be
22 deemed covered by a valid COC. *See* 40 C.F.R. §§ 86.1848-10(c)(6). California’s emission
23 standards were even more stringent than those of the EPA. California’s regulator, CARB,
24

25 ⁹ Danny Hakim, *et al.*, *VW Executive Had a Pivotal Role as Car Maker Struggled With*
26 *Emissions*, N.Y. Times (Dec. 21, 2015),
27 [http://www.nytimes.com/2015/12/22/business/international/vw-executive-had-a-pivotal-role-as-](http://www.nytimes.com/2015/12/22/business/international/vw-executive-had-a-pivotal-role-as-car-maker-struggled-with-emissions.html?mtref=undefined&gwh=7E46E42F7CCC3D687AEC40DFB2CFA8BA&gwt=pa)
28 [car-maker-struggled-with-](http://www.nytimes.com/2015/12/22/business/international/vw-executive-had-a-pivotal-role-as-car-maker-struggled-with-emissions.html?mtref=undefined&gwh=7E46E42F7CCC3D687AEC40DFB2CFA8BA&gwt=pa)
[emissions.html?mtref=undefined&gwh=7E46E42F7CCC3D687AEC40DFB2CFA8BA&gwt=pa](http://www.nytimes.com/2015/12/22/business/international/vw-executive-had-a-pivotal-role-as-car-maker-struggled-with-emissions.html?mtref=undefined&gwh=7E46E42F7CCC3D687AEC40DFB2CFA8BA&gwt=pa)
[y.](http://www.nytimes.com/2015/12/22/business/international/vw-executive-had-a-pivotal-role-as-car-maker-struggled-with-emissions.html?mtref=undefined&gwh=7E46E42F7CCC3D687AEC40DFB2CFA8BA&gwt=pa)

1 requires a similar application from automakers to obtain an EO, confirming compliance with
2 California's emission regulations, before allowing the vehicle onto California's roads.

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

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

11 45. In 2006, Wolfgang Bernhard, then a top executive at VW AG (and former Daimler
12 executive), advocated for the SCR and championed a technology-sharing agreement with
13 Mercedes-Benz and BMW to jointly develop a SCR emission control system utilizing urea— a
14 post-combustion emission suppressant that, when injected into the exhaust stream, converts NO_x
15 into harmless nitrogen and oxygen molecules. This SCR system was generically known as a
16 "Diesel Exhaust Fluid" system and marketed as "Bluetec" by Mercedes and "AdBlue" by
17 Volkswagen and other German vehicle manufacturers. But the solution was expensive, costing
18 \$350 per vehicle.

19 46. Hatz initially supported this solution as well, stating publicly at the Detroit Auto
20 Show in early 2007 that "Bluetec technology allows us to demonstrate Audi's commitment to
21 always being at the very forefront of diesel technology."¹⁰ He withdrew his support, however, as
22 Volkswagen's leadership balked at the \$350 per-vehicle cost of the SCR system. Bernhard
23 ultimately lost the internal battle at Volkswagen and resigned

24 47. Hatz remained and was tasked with implementing the alternative, lower-cost
25 strategy: NO_x traps. This technology involved the storage of NO_x emissions in a catalyst
26 substrate during vehicle operation. Once that substrate filled up, the system burned off the stored
27 NO_x by pumping an extra burst of fuel into the cylinders, most of which passed through to the

28 ¹⁰ *Id.*

1 converter, where it then converts the NO_x into nitrogen and oxygen. This method was cheaper
2 and easier to implement than the SCR system. It was less effective at reducing emissions,
3 however, and resulted in lower fuel efficiency—one of the key elements that necessary to execute
4 Volkswagen’s ambitious sales goals. Accordingly, this option, too, was unacceptable.

5 48. But at Volkswagen, failure was not an option. According to many sources
6 (including journalists, industry insiders, and Volkswagen whistleblowers), Volkswagen’s top
7 brass directed its engineers to find a way to meet emission standards despite tight budgetary and
8 technical constraints, or suffer the consequences. VW AG’s former CEO, Ferdinand Piëch,
9 created “a culture where performance was driven by fear and intimidation,” and his leadership
10 was characterized as “a reign of terror.”¹¹ Employees were told, “[y]ou will sell diesels in the
11 U.S., and you will not fail. Do it, or I’ll find somebody who will.”¹² Piëch was infamous for
12 firing subordinates who failed to meet his exacting standards: “Stories are legion in the industry
13 about Volkswagen engineers and executives shaking in their boots prior to presentations before
14 Piech, knowing that if he was displeased, they might be fired instantly.”¹³ And so it seems, out of
15 self-preservation, the defeat device scandal was born.

16 **B. Defendants’ “Defeat Device” Scheme**

17 49. Volkswagen engineers had to find a solution to the “impossible” problem of
18 passing stricter emission standards while maintaining performance and fuel efficiency, all while
19 hamstrung by cost-cutting measures. And it had to be done fast, because the new diesel vehicles
20 were scheduled for imminent release in the U.S.

21 50. Ultimately, time ran out, and Volkswagen executives and engineers were either
22 unable or unwilling to devise a solution within the constraints of the law and their self-imposed
23 cost-cutting measures. So instead of being honest (and risk being summarily fired), they and
24 others conspired to cheat by installing a “defeat device” in the new diesel vehicles so that those

25 ¹¹ Bob Lutz, *One Man Established the Culture That Led to VW’s Emissions Scandal*, Road &
26 Track (Nov. 4, 2015), <http://www.roadandtrack.com/car-culture/a27197/bob-lutz-vw-diesel-fiasco/>.

27 ¹² *Id.*

28 ¹³ 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/>.

1 vehicles could “pass” the EPA and CARB emission testing, Volkswagen could obtain COCs and
2 EOs to sell the vehicles, and make its sales targets throughout the U.S and in California.

3 51. It became clear that the TDI engine could not meet U.S. emission regulations when
4 the launch of the Jetta TDI “clean” diesel, initially scheduled for 2007, had to be delayed after
5 initial emission testing failed.¹⁴ The prospect of failure was unacceptable, so Volkswagen
6 decided to cheat instead. It has been reported that the decision to cheat the EPA, CARB, and
7 countless other regulators worldwide was an “open secret” in Volkswagen’s engine development
8 department,¹⁵ as it was necessary for the “EA 189 engine to pass U.S. diesel emissions limits
9 within the budget and time frame allotted.”¹⁶

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

15 ... EDC17 ... controls every parameter that is important for
16 effective, low-emission combustion.

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

23 ¹⁴ *VW delays Jetta TDI diesel into the US*, Clean MPG (last visited Feb. 8, 2016),
24 <http://www.cleanmpg.com/community/index.php?threads/7254/>.

25 ¹⁵ Georgina Prodhon, *Volkswagen probe finds manipulation was open secret in department*,
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 ¹⁶ 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 ¹⁷ See February 28, 2006 Bosch press release, “The brain of diesel injection: New Bosch EDC17
engine management system,” <http://www.bosch->

Footnote continued on next page

1 53. EDC Unit 17 was widely used throughout the automotive industry, including by
2 BMW and Mercedes, to operate modern clean diesel engines. Bosch worked with each vehicle
3 manufacturer that utilized EDC Unit 17 to create a unique set of specifications and software code
4 to manage the vehicle's engine operation.

5 54. With respect to the Class Vehicles, however, EDC Unit 17 was also used enable
6 Volkswagen to surreptitiously evade emissions regulations. Bosch and Volkswagen worked
7 together to develop and implement a specific set of software algorithms for implementation in the
8 Class Vehicles, which enabled Volkswagen to adjust fuel levels, exhaust gas recirculation, air
9 pressure levels, and even urea injection rates (for applicable vehicles).¹⁸ When carmakers test
10 their vehicles against EPA emission standards, they install their cars on dynamometers (large
11 rollers) and then perform a series of specific maneuvers prescribed by federal regulations.
12 Bosch's EDC Unit 17 gave Volkswagen the power to detect test scenarios by monitoring vehicle
13 speed, acceleration, engine operation, air pressure and even the position of the steering wheel.
14 When the defeat device's algorithm detected that the vehicle was on a dynamometer (and
15 therefore undergoing an emission test), the defeat device downgraded its engine's power and
16 performance, thereby reducing emissions back to legal levels. Once the emission test was
17 complete, the engine would return to full power, and consequently, spew the full amount of
18 illegal NO_x emissions out on the road.¹⁹ This process is illustrated in the following diagram:

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Footnote continued from previous page

25 presse.de/presseforum/details.htm?txtID=2603&locale=en

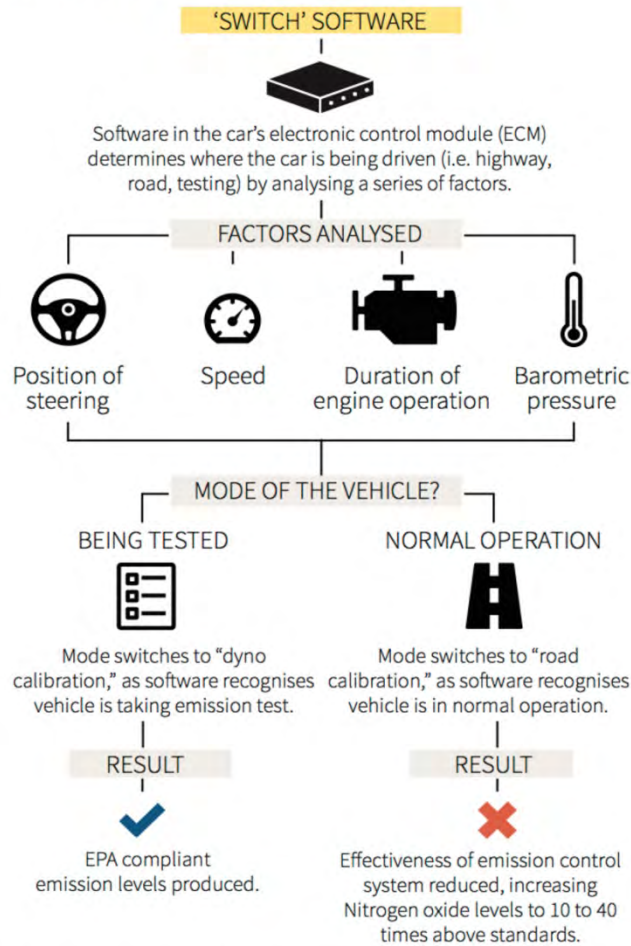
26 ¹⁸ See, e.g., *Engine management*, Bosch Auto Parts (last visited February 8, 2016),

27 http://de.bosch-automotive.com/en/parts_and_accessories/motor_and_sytems/diesel/engine_management_2/engine_control_unit_1.

28 ¹⁹ Russell Hotten, *Volkswagen: The scandal explained*, BBC (Dec. 10, 2015),

<http://www.bbc.com/news/business-34324772>.

How Volkswagen's defeat device works



Source: U.S. Environmental Protection Agency

J. Wang, 22/09/2015

REUTERS

55. 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 56. 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 57. 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 58. 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.²⁰ Bosch was well aware that Volkswagen was using its

27 ²⁰ 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,²¹ 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 59. 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.²² 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.²³

14 60. 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 ²¹ *VW scandal: Company warned over test cheating years ago*, BBC (Sept. 27, 2015),
27 <http://www.bbc.com/news/business-34373637>.

28 ²² 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>.

²³ 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 61. 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 62. 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.²⁴
12 Volkswagen branded and advertised this purportedly revolutionary technology to American
13 consumers as “CleanDiesel” TDI technology.

14 63. 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 64. 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.²⁵ 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 ²⁴ 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 ²⁵ 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.”²⁶

4 65. 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.”²⁷

10 66. 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.²⁸

22 67. 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
them run for five minutes and after they are done, we take them off
and the older diesel product (not a VW diesel) has a round sooty
spot on that coffee filter. Ours is very clean. In fact they actually

²⁶ *Supra* note 2.

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

²⁸ Gayathri Vaidyanathan, *Volkswagen: Our Diesel Cars Whup The Prius And Other Hybrids*, Business Insider (Oct. 9, 2009), <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.²⁹

3 68. 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.”³⁰ 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 69. 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 70. Some advertisements, for example, specifically emphasized the low emissions and
16 eco-friendliness of the vehicles:

26 ²⁹ *Id.*

27 ³⁰ 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.



71. 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.



72. 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.

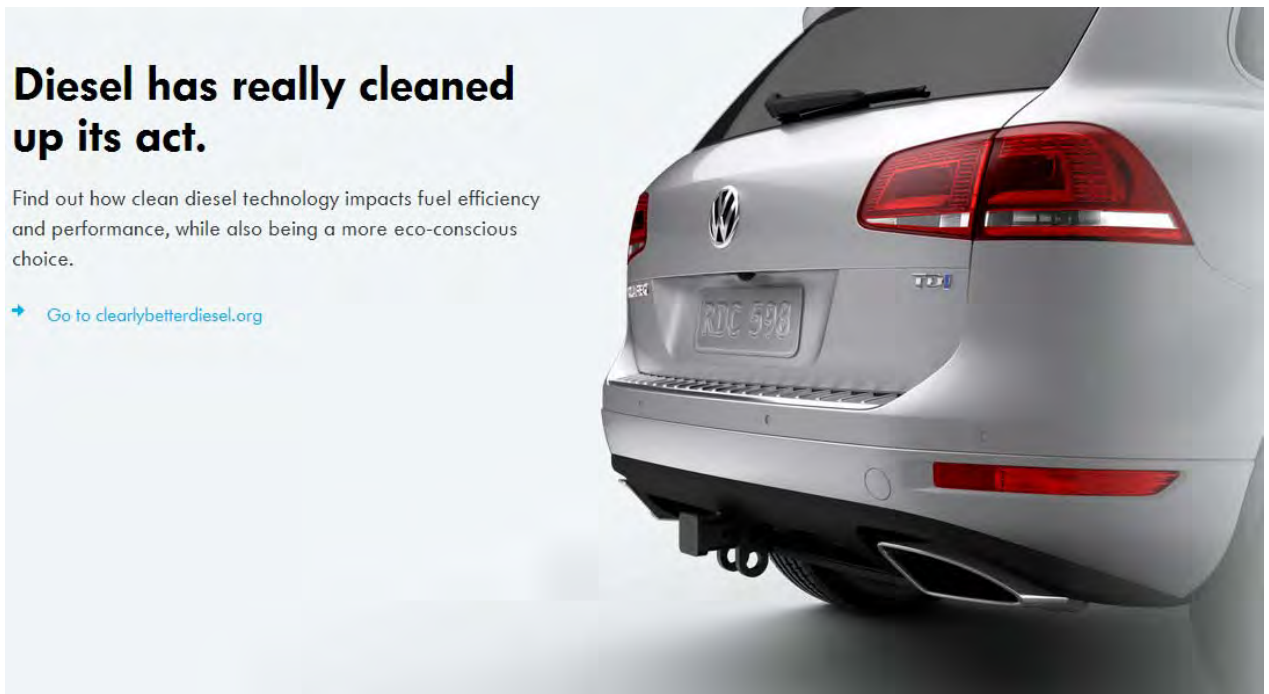
Stinky, smoky, and sluggish. Those old diesel realities no longer apply. Enter TDI Clean Diesel. Ultra-low-sulfur fuel, direct injection technology, and extreme efficiency. We've ushered in a new era of diesel.

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

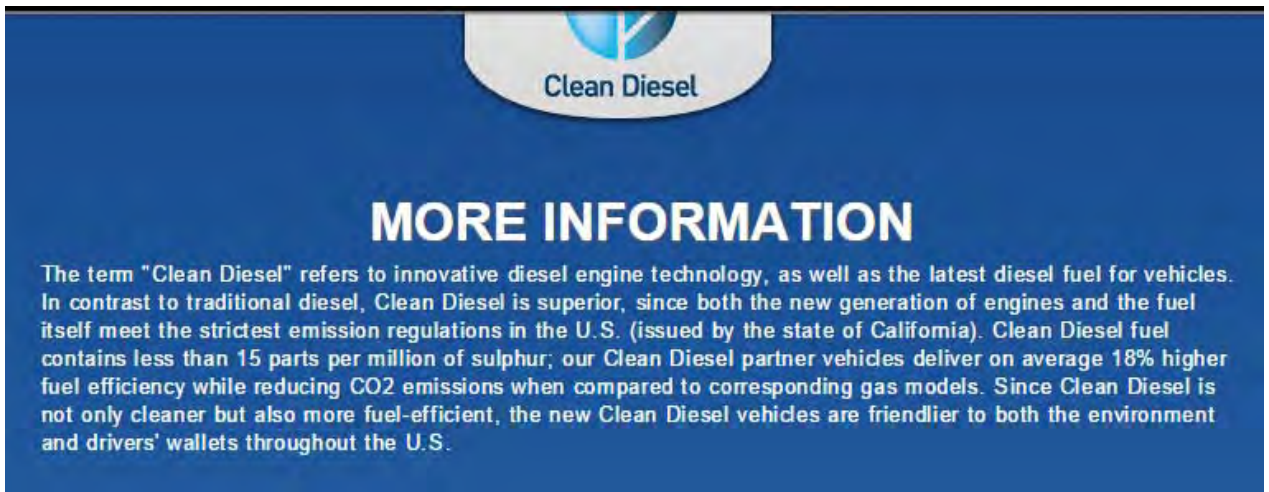
[View key fuel efficiency info ?](#)



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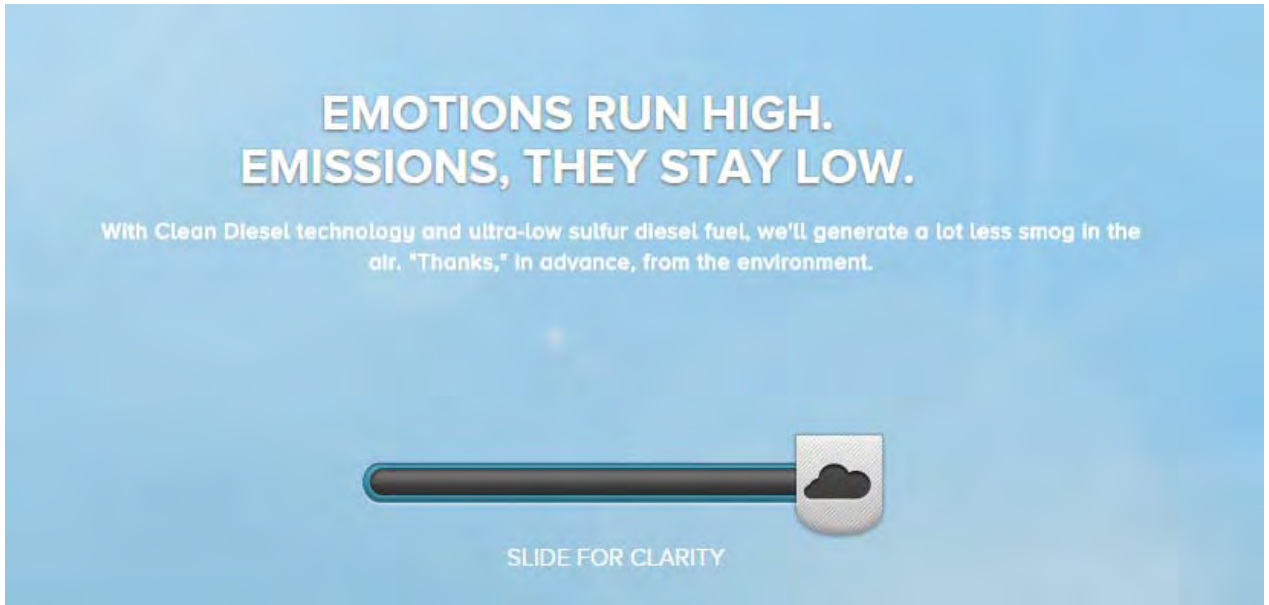


73. In addition, VW directed consumers to the www.clearlybetterdiesel.org website, which partnered with affiliates Audi and Porsche, as well as Bosch, Mercedes, and BMW. This website touted the benefits of newly developed diesel technology as “clean” and environmentally friendly. Although it has been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



74. 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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75. 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.

76. 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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77. 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:



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



1 79. 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 80. 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.³¹
16 (Emphasis added.)

17 81. 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.³² (Emphasis added.)

26 82. 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.

 ...

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

32 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."³⁵

6 85. 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.*³⁶ (Emphasis added.)

22 86. 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.³⁷ (Emphasis added.)

26 87. 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.*³⁸ (Emphasis added.)

29 88. 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.*³⁹ (Emphasis added.)

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

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

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

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

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

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

89. 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 90. 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 91. 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 92. 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.

27
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12 93. 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 94. 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.***⁴⁰
26 (Emphasis added.)

27
28 ⁴⁰ Brochure: 2011 Audi A3, <http://www.slideshare.net/MichiganCarSales/2011-audi-a3-detroit-mi-fred-lavery-company>.

1 95. 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.***⁴¹
(Emphasis added.)

11 96. 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.***⁴² (Emphasis added.)

19 3. Porsche's False and Misleading Advertisements

20 97. 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 ⁴¹ 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>.

⁴² Brochure: 2016 Audi A8, <http://pa.motorwebs.com/audi/brochure/a8.pdf>.

1 98. 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 99. 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.”⁴³ 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.”⁴⁴ The brochure even touted its “low
23 emissions” on a page entitled: “A cleaner diesel. Exhaust technologies.”⁴⁵ Porsche described the
24 exhaust system and stated that its exhaust technologies “help to ensure the reduction of harmful
25

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27 ⁴³ Brochure: 2012 Cayenne Diesel, <https://static.beepi.com/Brochures/17053.pdf>.

28 ⁴⁴ *Id.*

⁴⁵ *Id.*

1 pollutants into the environment and make the Cayenne diesel compliant with U.S. emission
2 standards.”⁴⁶ 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**

6 100. 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.⁴⁷

10 101. 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.⁴⁸ 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 2013.⁴⁹ This
16 largely accounted for VW America’s sales growth to over 400,000 sales in 2013, nearly double
17 the sales in 2007.⁵⁰ Likewise, the Class Vehicles contributed significantly to Audi’s growth from
18 93,506 sales in 2007 to 182,011 in 2014.⁵¹

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

21 ⁴⁶ *Id.*

22 ⁴⁷ 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 ⁴⁸ 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 ⁴⁹ *Supra* note 7.

⁵⁰ *Volkswagen Reports December 2013 and Year-End Results*, Volkswagen (Jan. 3, 2014),
<http://media.vw.com/release/592/>.

⁵¹ *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>.

1 103. 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.⁵² 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 2010.⁵³

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

7 104. 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.⁵⁴

13 105. 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.

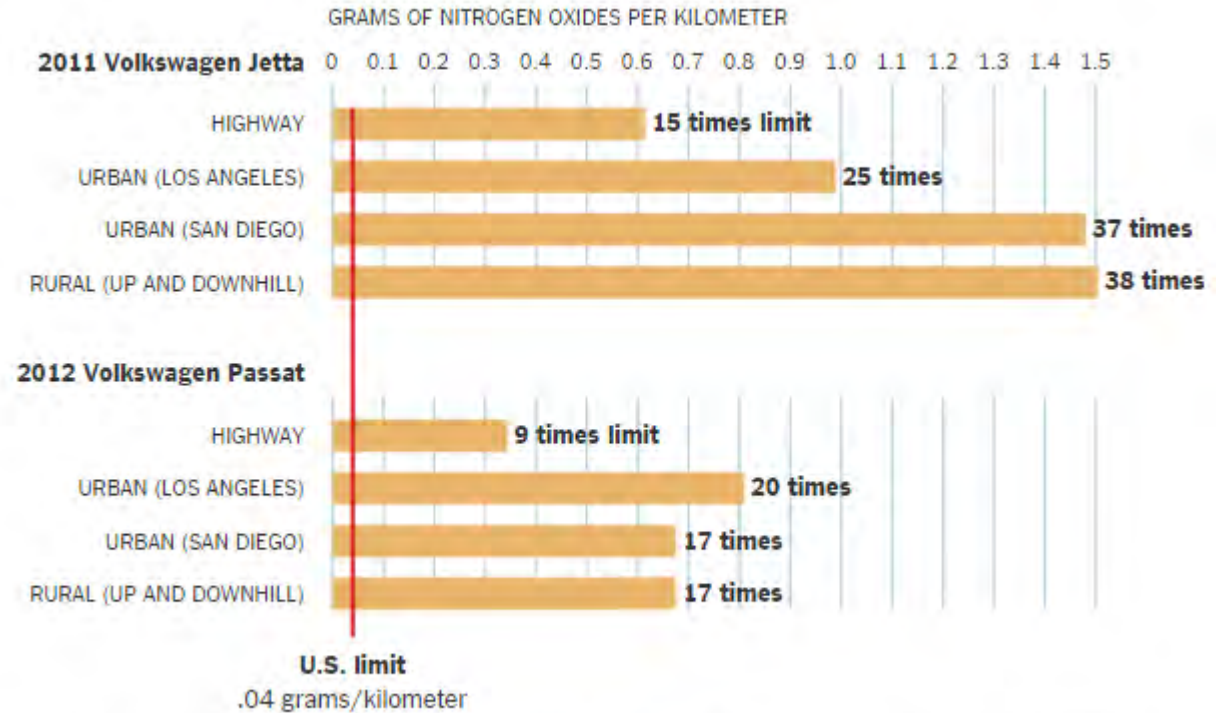
19 106. Shockingly, the study showed that, contrary to testing lab results, real world
20 driving of Volkswagen “clean” diesel vehicles produced levels of NO_x up to 40 times higher than
21 legal limits promulgated by the EPA and CARB:

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23
24 ⁵² 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 ⁵³ *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 ⁵⁴ 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).

1 **Average emissions of nitrogen oxides in on-road testing**



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

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

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

1 109. 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**

6 110. 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.

11 111. 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.

16 112. 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.⁵⁵

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 ⁵⁵ 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.⁵⁶

5 113. 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.⁵⁷ Volkswagen continued to sell its 3.0-
 7 liter diesel models, despite containing similar, but not-yet-disclosed defeat devices.

8 114. 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.”⁵⁸

11 115. 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.⁵⁹ (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.

21 116. 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.⁶⁰

25 ⁵⁶ 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 ⁵⁷ 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 ⁵⁸ 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 ⁵⁹ 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>.

⁶⁰ 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

1 117. 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.”⁶¹

6 118. 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.”⁶²

12 119. 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.⁶³

21 120. 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-chief-martin-winterkorn-quits-emissions-scandal/).

27 ⁶¹ 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/).

29 ⁶² *Id.*

30 ⁶³ *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.”⁶⁴ 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.”⁶⁵

4 121. 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.⁶⁶ 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.

12 122. 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.”⁶⁷

17 123. 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.⁶⁸

23 ⁶⁴ *Supra* note 1.

24 ⁶⁵ *Id.*

25 ⁶⁶ 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 ⁶⁷ 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>.

⁶⁸ 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>.

1 124. 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.⁶⁹

4 125. 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.”⁷⁰ This
10 admission came almost three months after Volkswagen’s initial, more limited *mea culpa*.

11 126. 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.”⁷¹

18 127. 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 ⁶⁹ 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 ⁷⁰ *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.

⁷¹ 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.

3 128. 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.⁷²

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

15 130. As an alternative tactic, during defendant Horn's Congressional hearing on
16 October 8, 2015, Horn testified that the installation of the defeat device in certain Volkswagen
17 diesel vehicles was the work of "a couple of software engineers who put this in for whatever
18 reason."⁷³ Horn's explanation is not only contrary to prior admissions, but entirely implausible.

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

25 ⁷² Sonari Ginton, 'We Didn't Lie,' *Volkswagen CEO Says Of Emissions Scandal*, NPR (Jan. 11,
26 2016), <http://www.npr.org/sections/thetwo-way/2016/01/11/462682378/we-didnt-lie-volkswagen-ceo-says-of-emissions-scandal>.

27 ⁷³ Paul A. Eisenstein, *Could Rogue Software Engineers Be Behind VW Emissions Cheating?*,
28 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.

7 132. 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.

14 133. 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.⁷⁴ 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.

20 134. 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 ⁷⁴ 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.⁷⁵

3 135. 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.”⁷⁶ 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.

10 136. 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.⁷⁷

14 137. 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 2014.⁷⁸ 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 ⁷⁵ 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 ⁷⁶ *Id.*

28 ⁷⁷ 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/>.

⁷⁸ *Id.*

1 138. 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.⁷⁹

5 139. 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.⁸⁰ 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.

12 140. 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.”⁸¹

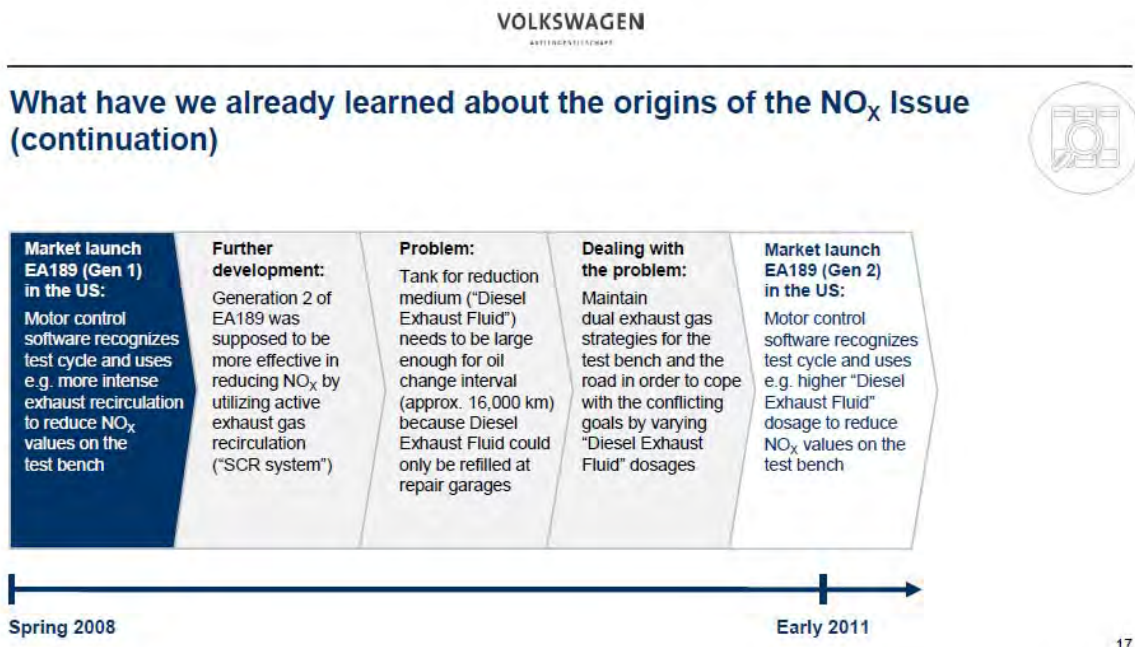
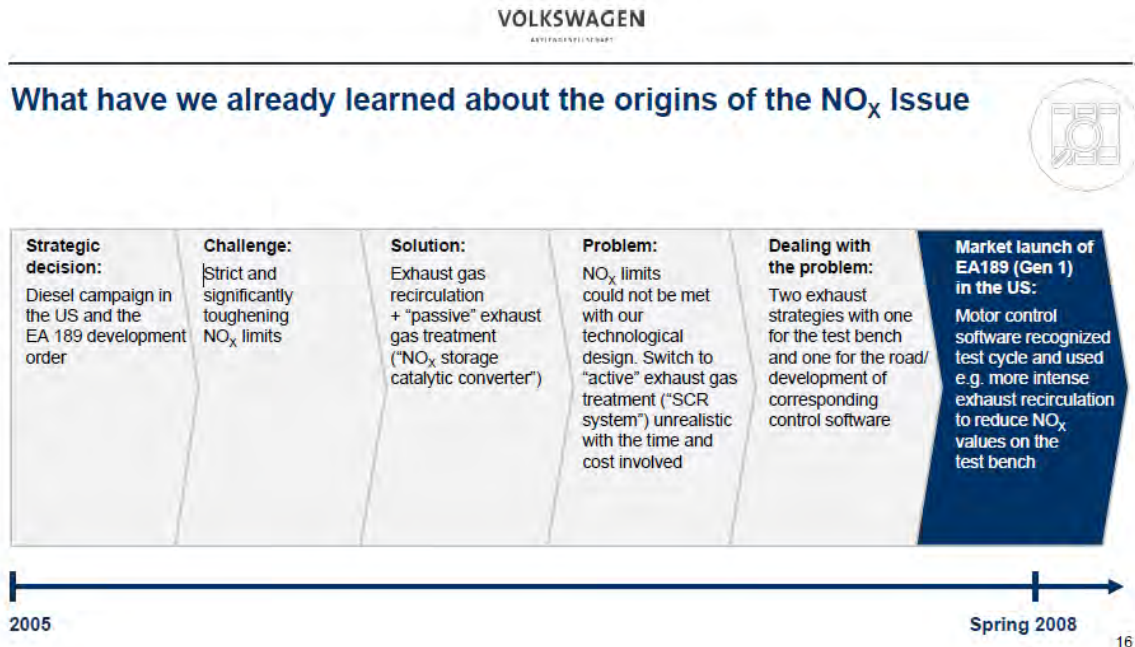
25 ⁷⁹ *Id.*

26 ⁸⁰ *Id.*

27 ⁸¹ *Volkswagen AG, The Volkswagen Group is moving ahead: Investigation, customer solutions,*
realignment, Volkswagen AG (Dec. 10, 2015),
28 [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

141. 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:



F. Defendants' Conduct Harmed Competitor Dealers

134. Defendants identified and targeted competing vehicles from whom it sought to

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

1 (and did) take market share through its fraudulent promotion of the Class Vehicles. Competing
2 vehicles, whether identified by Defendants as such or not, included fuel efficient vehicles, like the
3 Toyota Prius, that were already on the market at the time Defendants began marketing the Class
4 Vehicles, as well as competing fuel efficient and/or diesel vehicles that came on the market
5 during the period that Defendants were marketing the Class Vehicles.

6 135. Beginning in 2013, Chevrolet dealers began marketing the Chevrolet Cruze Diesel
7 in competition with the Class Vehicles.

8 136. In fact, industry reports regularly recognized the Cruze Diesel as a competitor of
9 the Volkswagen Jetta TDI:

10 The 2014 Chevrolet Cruze Diesel went on sale almost a year ago, the first diesel
11 passenger car sold by General Motors in 28 years.

12 Hopes were high for the Cruze with the European turbodiesel engine, which effectively
13 competed with the long-established Volkswagen Jetta TDI, the only other mainstream compact
14 sedan fitted with a diesel.

15 137. Moreover, in the same brochure that touted the Jetta TDI as “run[ning] cleaner
16 with lower CO2 emissions than 90% of other vehicles,” Volkswagen specifically compared the
17 Jetta TDI with the Honda Civic Hybrid, the Mazda3, the Toyota Prius, and the Ford Focus SFE.

18 138. Defendants’ internal marketing documents, as well as industry data and
19 information, and/or other sources, no doubt identify other vehicles as competitors of the Class
20 Vehicles.

21 139. By falsely or negligently representing the superior performance, clean emissions,
22 and high mileage of the Class Vehicles in its commercial advertising, Volkswagen misrepresented
23 the nature, characteristics, and qualities of their goods.

24 140. Each and every one of the Class Vehicles sold in the United States represents a lost
25 sale of a competing vehicle that could actually deliver the fuel efficiency and clean emissions that
26 Defendants falsely promised and that buyers were seeking.

27 141. Among other things, Defendants’ false representations have caused injury to the
28 Competitor Dealer Plaintiffs’ commercial interest in sales. Specifically, Defendants’ conduct

1 negatively affected the price and sales of the Cruze Diesel, the Honda Civic Hybrid, the Mazda3,
2 Toyota Prius, the Ford Focus SFE, and the other car models identified by Defendants, or by
3 industry data and information and/or other sources, as competitors with the Class Vehicles,
4 thereby damaging the Competitor Dealer Plaintiffs and the members of the Competitor Dealer
5 Class. The Competitor Dealer Plaintiffs and the members of the Competitor Dealer Class have
6 also been injured and continue to suffer injury though, among other things, increased expenses,
7 and loss of goodwill in the diesel vehicle marketplace.

8 142. To the extent that Competitor Dealer Plaintiffs and/or members of the Competitor Dealer
9 Class may have at any time acquired one or more of the Class Vehicles in trade, they may have
10 suffered additional damages as well.

11 **TOLLING OF THE STATUTE OF LIMITATIONS**

12 **A. Discovery Rule**

13 142. The causes of action alleged herein did not accrue until the Competitor Dealer
14 Plaintiffs and the members of the Competitor Dealer Class discovered that the Class Vehicles
15 were equipped with the defeat devices and were not delivering the low emissions that were
16 advertised by Defendants, and that, in such low emissions were delivered, the Class Vehicles
17 would not deliver the performance or other features advertised by Defendants.

18 143. The Competitor Dealer Plaintiffs and the members of the Competitor Dealer Class
19 had no realistic ability to discover the presence of the defeat devices, or to otherwise learn of the
20 fraud, until it was discovered by the EPA and the CARB and revealed to the public on September
21 18, 2015. Indeed, the whole purpose of the defeat devices was to conceal that the Class Vehicles'
22 emissions actually exceeded amounts allowed by the CAA and applicable state laws. The EPA
23 and the CARB uncovered the software manipulation only through sophisticated, costly
24 investigation employing expertise, tools, and techniques scarcely available to the Competitor
25 Dealer Plaintiffs and the members of the Competitor Dealer Class. Put simply, no amount of
26 diligence by the Competitor Dealer Plaintiffs and the members of the Competitor Dealer Class
27 would have been sufficient to uncover Defendant' scheme.
28

1 144. The causes of action alleged herein did not accrue until the Competitor Dealer
2 Plaintiffs and the members of the Competitor Dealer Class discovered that the Class Vehicles
3 were equipped with the defeat devices and were not delivering the low emissions that were
4 advertised by Defendants, and that, if such low emissions were delivered, the Class Vehicles
5 would not deliver the performance or other features advertised by Defendants.

6 145. The Competitor Dealer Plaintiffs and the members of the Competitor Dealer Class
7 had no realistic ability to discover the presence of the defeat devices, or to otherwise learn of the
8 fraud, until it was discovered by the EPA and the CARB and revealed to the public on September
9 18, 2015. Indeed, the whole purpose of the defeat devices was to conceal that the Class Vehicles'
10 emissions actually exceeded amounts allowed by the CAA and applicable state laws. The EPA
11 and the CARB uncovered the software manipulation only through sophisticated, costly
12 investigation employing expertise, tools, and techniques scarcely available to the Competitor
13 Dealer Plaintiffs and the members of the Competitor Dealer Class. Put simply, no amount of
14 diligence by the Competitor Dealer Plaintiffs and the members of the Competitor Dealer Class
15 would have been sufficient to uncover Defendant' scheme.

16 **B. Fraudulent Concealment**

17 146. All applicable statutes of limitation have also been tolled by Defendants' knowing
18 and active fraudulent concealment and denial of the facts alleged herein.

19 147. Defendants have known of the defeat devices installed in the Class Vehicles since
20 at least 2009 when they began installing them, and have intentionally concealed from or failed to
21 notify the Competitor Dealer Plaintiffs and the members of the Competitor Dealer Class, and the
22 public of the defeat devices and the true emissions and performance of the Class Vehicles.

23 148. The defeat device is a complicated software algorithm designed only to detect
24 emissions testing conditions in order to selectively initiate the full emissions controls and trick the
25 emissions test. The defeat device could only have been installed intentionally by the Defendants,
26 and the only purpose of the code is to deceive regulators, consumers, and the public.

27 149. Despite knowing about the defeat device and unlawful emissions, Defendants did
28 not acknowledge the problem until after the EPA issued its NOV on September 18, 2015.

1 from the Competitor Dealer Class are any individuals or organizations who, at the time of class
2 certification, have settled the claims asserted in this action.

3 156. Plaintiff Carriage Chevrolet also brings this action under Rules 23 (a), (b)(2), and
4 (b)(3) of the Federal Rules of Civil Procedure on behalf of a Tennessee Subclass consisting of all
5 members of the Competitor Dealer Class who marketed and sold competing vehicles in the State
6 of Tennessee during the relevant time period.

7 157. Plaintiff Brown Daub also brings this action under Rules 23 (a), (b) (2), and (b)(3)
8 of the Federal Rules of Civil Procedure on behalf of a Pennsylvania Subclass consisting of all
9 members of the Competitor Dealer Class who marketed and sold competing vehicles in the
10 Commonwealth of Pennsylvania during the relevant time period.

11 158. Plaintiff Eagle Auto also brings this action under Rules 23 (a), (b)(2), and (b)(3) of
12 the Federal Rules of Civil Procedure on behalf of a New York Subclass consisting of all members
13 of the Competitor Dealer Class who marketed and sold competing vehicles in the State of New
14 York during the relevant time period..

15 159. Plaintiffs Saturn SW Florida and Victory Layne also bring this action under Rules
16 23 (a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure on behalf of a Florida Subclass
17 consisting of all members of the Competitor Dealer Class who marketed and sold competing
18 vehicles in the State of Florida during the relevant time period..

19 160. Plaintiff Windham also brings this action under Rules 23 (a), (b)(2), and (b)(3) of
20 the Federal Rules of Civil Procedure on behalf of an Alabama Subclass consisting of all members
21 of the Competitor Diesel Class who marketed and sold competing vehicles in the State of
22 Alabama during the relevant time period..

23 161. This action has been brought and may be properly maintained on behalf of the
24 class and the subclasses proposed herein under Federal Rule of Civil Procedure 23.

25 162. The members of the Competitor Dealer Class and the Tennessee, Pennsylvania,
26 New York, Florida, and Alabama Subclasses are readily identifiable and ascertainable from
27 public and industry records.
28

1 163. The members of the Competitor Dealer Class are so numerous and geographically
2 dispersed that individual joinder of all class members is impracticable, in that there are tens of
3 thousands of car dealers throughout the United States that sold vehicles that competed with the
4 Class Vehicles.

5 164. Class members may be notified of the pendency of this action by recognized,
6 court-approved notice dissemination methods, which may include U.S. mail, electronic mail,
7 Internet postings, and/or published notice.

8 165. Certification of the Competitor Dealer Plaintiffs' claims for class-wide treatment is
9 appropriate because Plaintiffs can prove the elements of their claims on a class-wide basis using
10 the same evidence as would be used to prove those elements in individual actions alleging the
11 same claim.

12 166. This action involves common questions of law and fact, which predominate over
13 any questions affecting individual Class members, including, without limitation:

- 14 a. Whether Defendants deliberately or negligently designed and installed the above-
15 described "defeat devices" in the Class Vehicles;
- 16 b. Whether Defendants deliberately or negligently concealed the existence of the
17 "defeat devices" in the Class Vehicles;
- 18 c. Whether Defendants falsely represented the performance capabilities of the Class
19 Vehicles;
- 20 d. Whether Defendants falsely represented the emissions qualities of the Class
21 Vehicles;
- 22 e. Whether Defendants falsely represented the legal compliance of the Class
23 Vehicles;
- 24 f. Whether Defendants used in commerce false or misleading descriptions of fact,
25 and/or false or misleading representations fact, which misrepresented, and were
26 likely to cause and/or did cause confusion and mistake or to deceive, the fuel
27 economy, performance and emissions standards of the Class Vehicles;
- 28

- 1 g. Whether Defendants' false statement and misrepresentations in commercial
- 2 advertising or promotion misrepresented the nature, characteristics, or qualities of
- 3 the Class Vehicles;
- 4 h. Whether Defendants' false statements and misrepresentations in commercial
- 5 advertising or promotion were literally false;
- 6 i. Whether Defendants' false statements and misrepresentations in commercial
- 7 advertising or promotion were likely to, and did, deceive or confuse consumers;
- 8 j. Whether Defendants' false statements and misrepresentations in commercial
- 9 advertising or promotion for the Class Vehicles were material;
- 10 k. Whether Defendants' misrepresentations caused consumers to purchase the Class
- 11 Vehicles instead of vehicles sold by Plaintiff and Class members;
- 12 l. Whether Defendants' conduct as described here in violated the Lanham Act;
- 13 m. Whether Defendants' conduct as described constituted unfair competition and/or
- 14 deceptive acts or practices under the laws of Tennessee, Pennsylvania, New York,
- 15 Florida, and Alabama.

16 167. Competitor Dealer Plaintiffs claims are typical of the claims of the other class
17 member because all members of the class, like the Competitor Dealer Plaintiffs, were in the
18 business of selling cars that competed with the Class Vehicles and thus suffered injury from
19 Defendants' false statements and misrepresentations about those vehicles.

20 168. The claims of each Competitor Dealer Plaintiff are also typical of the claims of the
21 other members of the subclass that each Competitor Dealer Plaintiff seeks to represent because all
22 members of each subclass were in the business of selling cars that competed with the Class
23 Vehicles within the same state as the respective Competitor Dealer Plaintiff seeking to represent
24 that subclass.

25 169. Competitor Dealer Plaintiffs are adequate class representatives because their
26 interests do not conflict with the interests of the other members of the class they seek to represent;
27 they are represented by counsel competent and experienced in complex class action litigation; and
28 they intend to prosecute this action vigorously. The interests of the Competitor Dealer Class will

1 be fairly and adequately protected by the Competitor Dealer Plaintiffs, their counsel, and by the
2 Plaintiffs' Steering Committee appointed by this Court.

3 170. This action is suitable for certification under Federal Rule of Civil Procedure
4 23(b)(2) because Volkswagen has acted or refused to act on grounds generally applicable to the
5 Competitor Dealer Plaintiffs and the other members of the Competitor Dealer Class, thereby
6 making appropriate final injunctive relief and declaratory relief, as described below, with respect
7 to the Competitor Dealer Class as a whole., and with respect to each subclass as a whole.

8 171. This action is also suitable for certification under Federal Rule of Civil Procedure
9 23(b)(3) because, as noted above, the common questions predominate over any individual issues,
10 a class action is superior to any other available means for the fair and efficient adjudication of this
11 controversy, and no unusual difficulties are likely to be encountered in the management of this
12 class action. In particular, the damages or other financial detriment suffered by each Competitor
13 Dealer Plaintiff and each of the members of the Competitor Dealer Class are relatively small
14 compared to the burden and expense that would be required to individually litigate their claims
15 against Volkswagen, so it would be impracticable for the members of the class to seek redress
16 individually for Defendants' wrongful conduct. Even if Class members could afford individual
17 litigation, the court system could not. Individualized litigation creates a potential for inconsistent
18 or contradictory judgments, and increases the delay and expense to all parties and the court
19 system. By contrast, the class action device presents far fewer management difficulties, and
20 provides the benefits of single adjudication, economy of scale, and comprehensive supervision by
21 a single court.

22 **CLAIMS FOR RELIEF**

23 **FIRST CLAIM FOR RELIEF:**
24 **VIOLATION OF THE LANHAM ACT**
(On behalf of the Competitor Dealer Plaintiffs and the Competitor Dealer Class)

25 172. Competitor Dealer Plaintiffs repeat, re-allege, and incorporate by reference each
26 and every paragraph alleged in this Complaint as if fully set forth herein.

27 173. The Lanham Act provides in pertinent part:
28

1 (1) Any person who, on or in connection with any goods or
2 services, or any container for goods, uses in commerce any word,
3 term, name, symbol, or device, or any combination thereof, or any
false designation of origin, false or misleading description of fact,
or false or misleading representation of fact, which—

4 (B) In commercial advertising or promotion, misrepresents
5 the nature, characteristics, qualities, or geographic origin of
6 his or her or another person's goods, services, or
commercial activities,

7 Shall be liable in a civil action by any person who believes
8 that he or she is or is likely to be damaged by such act.

9 15 U.S.C. § 1125(a) (emphasis added).

10 174. As described herein, Defendants used in commerce false or misleading
11 descriptions of fact, and/or false or misleading representations fact, which misrepresented, and
12 were likely to cause and/or did cause confusion and mistake or to deceive, the fuel economy,
performance and emissions standards of the Class Vehicles.

13 175. Defendants' false statement and misrepresentations in commercial advertising or
14 promotion misrepresented the nature, characteristics, or qualities of the Class Vehicles.

15 176. Defendants' false statements and misrepresentations in commercial advertising or
16 promotion were literally false because, with the "defeat device" turned off, the vehicles in
17 question were not "clean," did not reduce emissions, did not produce lower emissions than
18 gasoline engines, and did not meet emissions standards; moreover, with the "defeat device" on,
19 the vehicles did not perform, nor achieve the fuel efficiencies, as described.

20 177. Defendants' false statements and misrepresentations in commercial advertising or
21 promotion were likely to, and did, deceive or confuse consumers by creating the impression that
22 the vehicles in question were "clean," and that they dramatically reduced emissions, produced
23 lower emissions than gasoline engines or competing vehicles, met emissions standards, and
24 simultaneously delivered high performance and fuel efficiency as well.

25 178. Defendants' false statements and misrepresentations in commercial advertising or
26 promotion for the Class Vehicles were material in that they pertained to an inherent quality or
27 characteristic of the vehicles described and were intended to, likely to, and in fact did, influence
28 consumers' purchasing decisions.

1 179. Defendants' representations were distributed in interstate commerce and have
2 appeared widely in interstate commerce in the form of various Volkswagen advertising and
3 promotional materials, including but not limited to, website materials, television commercials,
4 print advertisements, and product brochures. These commercial advertisements have all
5 misrepresented the fuel economy, performance and emissions standards of the Class Vehicles.

6 180. The Class Vehicles themselves, which were the subject of Defendants' advertising
7 and promotion, travelled and were disseminated in interstate commerce.

8 181. Defendants had an economic motivation for making the representations, as it was
9 in Defendants' economic interest to remain competitive in the marketplace and to sell the Class
10 Vehicles.

11 182. Defendants' false representations were targeted at the marketplace and general
12 purchasing public in order to influence consumers to purchase their diesel automobiles to the
13 detriment of the Competitor Dealer Plaintiffs and the members of the Competitor Dealer Class.

14 183. Defendants' conduct was willful.

15 184. The Competitor Dealer Plaintiffs and the other members of the Competitor Dealer
16 Class have and continue to be damaged by Defendants' misrepresentations. The Competitor
17 Dealer Plaintiffs and the Competitor Dealer Class members were injured and continue to suffer
18 injury to, among other things, lost sales, price erosion, increased expenses, and loss of goodwill in
19 the diesel vehicle marketplace. Those economic injuries are likely to continue in the future.

20 185. By reason of the foregoing, Defendants are liable to the Competitor Dealer
21 Plaintiffs and the members of the Competitor Dealer Class for actual damages as a result of
22 Defendants' violations of the Lanham Act in an amount to be proved at trial, as well as for
23 disgorgement of Defendants' profits resulting from the sales of the Class Vehicles in the United
24 States; treble damages due to the extraordinary circumstances of Defendants' misrepresentations;
25 and reasonable attorneys' fees.

1 501.201, et. seq., makes “[u]nfair methods of competition, unconscionable acts or practices, and
2 unfair or deceptive acts or practices in the conduct of any trade or commerce” unlawful.

3 230. Defendants’ conduct described herein in the State of Florida constituted unfair
4 methods of competition, unconscionable acts, and unfair and deceptive practices in the conduct of
5 trade or commerce within the State of Florida.

6 231. Plaintiffs Saturn SW Florida and Victory Layne, and the members of the Florida
7 Subclass have suffered a loss as a result of Defendants’ violation of FDUPTA in the State of
8 Florida. That loss includes lost sales, price erosion, increased expenses, and loss of goodwill in
9 the diesel vehicle marketplace.

10 232. By reason of the foregoing, Defendants are liable to Saturn SW Florida and
11 Victory Layne and the members of the Florida Subclass for actual damages resulting from
12 Defendants’ unfair trade practices in violation of FDUPTA in an amount to be proved at trial,
13 along with attorneys’ fees and court costs.

14 **NINTH CLAIM FOR RELIEF:**
15 **UNFAIR COMPETITION UNDER FLORIDA LAW**
16 **(On behalf of Saturn SW Florida and Victory Layne and the members of the Florida**
17 **Subclass)**

18 233. Plaintiffs Saturn SW Florida and Victory Layne repeat, re-allege, and incorporate
19 by reference each and every paragraph alleged in this Complaint as if fully set forth herein.

20 234. Under Florida law, a party may assert a common law claim for unfair competition
21 when a competitor engages in deceptive or fraudulent conduct and there is a likelihood of
22 consumer confusion. The Florida common law of unfair competition is an umbrella for all causes
23 of action arising out of business conduct which is contrary to honest practice in industrial or
24 commercial matters.

25 235. Defendants’ conduct as described herein constituted deceptive or fraudulent
26 conduct in Florida within the meaning of Florida law.

27 236. Defendants’ conduct as described herein was likely to, and in fact did, cause
28 consumer confusion in Florida as to the nature and quality of the Class Vehicles.

237. Plaintiffs Saturn SW Florida and Victory Layne and the members of the Florida

1 Subclass competed with Volkswagen for the same pool of customers.

2 238. Plaintiffs Saturn SW Florida and Victory Layne, and the members of the Florida
3 Subclass have suffered a loss as a result of Defendants' unfair competition in the State of Florida.
4 That loss includes lost sales, price erosion, increased expenses, and loss of goodwill in the diesel
5 vehicle marketplace.

6 239. By reason of the foregoing, Defendants are liable to Saturn SW Florida and
7 Victory Layne and the members of the Florida Subclass for damages resulting from Defendants'
8 unfair competition in an amount to be proved at trial.

9 **TENTH CLAIM FOR RELIEF:**
10 **UNFAIR COMPETITION UNDER ALABAMA LAW**
11 **(On behalf of Windham and the Alabama Subclass)**

12 240. Plaintiff Windham repeats, re-alleges, and incorporates by reference each and
13 every paragraph alleged in this Complaint as if fully set forth herein.

14 241. Alabama law recognizes that a misrepresentation or concealment that is sufficient
15 to convey a false impression to the public mind and is calculated to mislead and deceive the
16 ordinary purchaser in the exercise of ordinary care constitutes unfair competition.

17 242. As described herein, Defendants made false or misleading descriptions of fact,
18 and/or false or misleading representations fact, which misrepresented, and were likely to cause
19 and/or did cause a false impression or were calculated to mislead and deceive ordinary purchasers
20 in the exercise of ordinary care, the fuel economy, performance, and emissions standards of the
21 Class Vehicles. Such descriptions and/or false or misleading representations were made in
22 Alabama.

23 243. As described herein, Defendants concealed facts, which were likely to cause
24 and/or did cause a false impression or were calculated to mislead and deceive ordinary purchasers
25 in Alabama in the exercise of ordinary care, regarding the fuel economy, performance, and
26 emissions standards of the Class Vehicles.

27 244. Plaintiff Windham and the members of the Alabama Subclass competed with
28 Defendants for the same pool of customers in Alabama.

245. Plaintiff Windham and the members of the Alabama Subclass have suffered a loss

1 as a result of Defendants' unfair competition in the State of Alabama. That loss includes lost
2 sales, price erosion, increased expenses, and loss of goodwill in the diesel vehicle marketplace.

3 246. By reason of the foregoing, Defendants are liable to Windham and the members of
4 the Alabama Subclass for damages resulting from Defendants' unfair competition in an amount to
5 be proved at trial.

6 **PRAYER FOR RELIEF**

7 WHEREFORE the Competitor Dealer Plaintiff, individually and on behalf of the
8 Competitor Dealer Class, s respectfully request that the Court enter judgment in their favor and
9 against Defendants, as follows:

10 A. Certifying the Competitor Dealer Class and the Tennessee, Pennsylvania, New
11 York, Florida, and Alabama Subclasses as described above; appointing Carriage Chevrolet,
12 Brown Daub, Eagle Auto, Saturn SW Florida, Victory Layne, and Windham as class and subclass
13 representatives; and appointing class counsel;

14 B. Awarding actual damages for all harm caused by Defendants' wrongful conduct;

15 C. Awarding treble damages for all harm caused by Defendants' wrongful conduct;

16 D. Awarding punitive damages for Defendants' tortious conduct;

17 E. Ordering Defendants to disgorge their profits earned as a result of their wrongful
18 conduct;

19 F. Temporarily and permanently enjoining Defendants from continuing the unlawful,
20 deceptive, fraudulent, and unfair business practices alleged in this Complaint;

21 G. Imposing a constructive trust;

22 H. Awarding both pre- and post-judgment interest on any amounts awarded;

23 I. Awarding costs and attorneys' fees; and

24 J. Providing for such other or further relief as may be appropriate.

25 **DEMAND FOR JURY TRIAL**

26 Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs demand a trial by jury of any
27 and all issues in this action so triable of right.

1 Dated: February 22, 2016

Respectfully submitted,

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Plaintiffs' Steering Committee

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