

**UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF NEW JERSEY**

**MICHAEL G. CRISTON, on Behalf of
Himself and All Others Similarly Situated,**

Plaintiff,

v.

**VOLKSWAGEN GROUP OF AMERICA,
INC.,**

Defendant.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiff, Michael G. Criston, by and through undersigned counsel, on behalf of himself and all persons similarly situated, complains and alleges as follows:

NATURE OF THE CASE

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

2. From at least 2009 through the present, Volkswagen has marketed certain diesel vehicles as environmentally-friendly “CleanDiesels” (collectively, “the Affected Vehicles”). Volkswagen has touted its “CleanDiesel” vehicles as not only compliant with mandatory federal emissions standards under the Clean Air Act (“CAA”), 42 U.S.C. §§ 7401-7671q, but as possessing a superior combination of low-environmental impact and performance, which Volkswagen used to justify a price premium.

3. Volkswagen's claims of low-environmental impact and performance, or even minimum compliance with federal emissions standards, were false. On September 18, 2015, the EPA issued a Notice of Violation ("NOV") to Volkswagen declaring that Volkswagen "manufactured and installed defeat devices in certain model year 2009 through 2015 diesel light-weight duty vehicles[.]" *See* Ex. A. "These defeat devices bypass, defeat, or render inoperative elements of the vehicles' emission control system that exist to comply with [Clean Air Act ("CAA"), 42 U.S.C. §§ 7401-7671q] emission standards. Therefore, [Volkswagen] violated section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B)." *Id.*

4. In other words, Volkswagen installed software "that sense when the vehicle was being tested for compliance with EPA emissions standards," and caused a fraudulent, compliant result to be registered. *Id.* In reality, the Affected Vehicles were not compliant with EPA emissions standards at all. For instance, the Affected Vehicles' emissions of nitrogen oxides ("NOx") are actually up to **40 times higher** than EPA-compliant levels. *Id.*

5. As a result of Volkswagen's unfair, deceptive, and/or fraudulent misrepresentations or omissions, hundreds of thousands of unsuspecting consumers purchased or leased – at a premium – an Affected Vehicle that did not comply with federal emissions requirements. Plaintiff is one such consumer. Had Plaintiff and other Class members known that Volkswagen fraudulently employed a "defeat device" to fake EPA emissions test results at the time they purchased or leased an Affected Vehicle, they would not have purchased or leased those vehicles, or would have paid substantially less for the vehicles than they did. Even if Volkswagen initiates a recall (which it has not yet done), Plaintiff and other Class members will be required to spend greater sums on fuel and will not obtain the represented efficiency or performance characteristics of their purchased or leased vehicles. Not only that, but the Affected Vehicles certainly will be worth less in the aftermarket due to the decrease in efficiency and performance.

JURISDICTION AND VENUE

6. This Court has original jurisdiction of this action under the Class Action Fairness Act of 2005. Pursuant to 28 U.S.C. §§ 1332(d), this Court has original jurisdiction because the aggregate claims of the putative Class exceed \$5 million, exclusive of interest and costs, and at least one of the members of the proposed classes is a citizen of a different state than Volkswagen. This Court also has jurisdiction pursuant to 15 U.S.C. § 2301 by virtue of 28 U.S.C. § 2301(3).

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

THE PARTIES

8. Plaintiff, Michael G. Criston, is a resident and citizen of Delaware County, Pennsylvania.

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

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

COMMON FACTUAL ALLEGATIONS

A. Overview of Federal Emissions Requirements

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

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

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

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

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

A. Volkswagen's Deceptive Scheme To Flout Federal Emissions Requirements

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

17. Because these “green” Affected Vehicles featured supposedly unique or superior efficiency and performance characteristics, Volkswagen charged a premium for these vehicles over comparable models that did not share these purported characteristics. And, of course, Volkswagen represented that all of the Affected Vehicles were certified in accordance with EPA emissions standards.

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

B. Plaintiff Falls Victim to Volkswagen's Scheme

19. Plaintiff, Mr. Michael G. Criston, purchased a 2009 Jetta Sportswagen TDI in or about May 2009.

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

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

22. Plaintiff purchased his vehicle, at least in part, because of the “CleanDiesel” system represented by Volkswagen. Shortly before his purchase, Plaintiff had reviewed television and/or internet advertisements or related materials, which on information and belief Volkswagen caused to be made, that underscored the cleanliness, eco-friendliness, efficiency, and performance of the engine system in the vehicle he ultimately purchased. Nothing available to Plaintiff suggested that Volkswagen had surreptitiously installed a defeat device to circumvent federal emissions requirements, or disclosed that the vehicle actually emitted up to 40 times the permitted levels of certain pollutants. Plaintiff would not have purchased the vehicle, or would have paid less for it, had he known these facts. As a result of Volkswagen’s deceptive misrepresentations or omissions, Plaintiff has suffered an ascertainable loss.

FRAUDULENT CONCEALMENT AND TOLLING

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

24. For instance, Volkswagen was under a duty imposed by federal law to disclose to Plaintiff and other Class members the true nature, character, and quality of emissions from the Affected Vehicles, and compliance status with federal emissions requirements. Volkswagen did not disclose these true facts to Plaintiff and other Class members, or the EPA. Indeed, Plaintiff and other members of the Class did not know, nor had any way to know through the exercise of reasonable diligence, about Volkswagen’s wrongful conduct as alleged herein until the EPA

disclosed its investigation on or about September 18, 2015, which up until that point had been non-public.

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

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

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

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

CLASS ALLEGATIONS

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

30. The proposed classes are defined as:

National Class. All persons in the United States who, from at least 2009 through the present, purchased or leased an Affected Vehicle. Affected Vehicles include MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY2009-2015 VW Golf, MY2014-2015 VW Passat; and MY 2009-2015 Audi A3.

Pennsylvania Statue Subclass. All persons in the Commonwealth of Pennsylvania who, from at least 2009 through the present, purchased or leased an Affected Vehicle. Affected Vehicles include MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY2009-2015 VW Golf, MY2014-2015 VW Passat; and MY 2009-2015 Audi A3.

The National Class and the Pennsylvania State Subclass are collectively referred to as the “Classes.”

31. Plaintiff reserves the right to modify or amend the definition of the proposed Classes before the Court determines whether certification is appropriate.

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

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

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

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

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

- a. Volkswagen unlawfully, falsely, deceptively, or misleadingly represented that the Affected Vehicles complied with CAA and EPA emissions requirements;
- b. Volkswagen installed defeat devices in the Affected Vehicles in violation of federal law;
- c. The Affected Vehicles did not meet CAA and EPA emissions requirements;
- d. Volkswagen unlawfully, falsely, deceptively, or misleadingly induced Class members into purchasing or leasing an Affected Vehicle based on misrepresentations and false promises;
- e. Volkswagen wrongfully omitted its installation or use of a defeat device to mask the Affected Vehicles' emissions;
- f. To the extent applicable, whether and how long Volkswagen fraudulently concealed its past and ongoing wrongful conduct from Plaintiff and other members of the Classes;
- g. Volkswagen was unjustly enriched through the company's actions; and

h. Whether Volkswagen violated consumer protection and other state law.

37. Other questions of law and fact common to the Classes include:

i. The proper method or methods by which to measure damages; and

j. The declaratory and injunctive relief to which the Classes are entitled.

38. Plaintiff's claims are typical of the claims of other Class members, in that they arise out of the same wrongful conduct and the same or substantially similar unconscionable conduct by Volkswagen. Plaintiff has suffered the harm alleged and has no interests antagonistic to the interests of any other Class member.

39. Plaintiff is committed to the vigorous prosecution of this action and has retained competent counsel experienced in the prosecution of class actions and, in particular, class actions on behalf of consumers. Accordingly, Plaintiff is an adequate representative and will fairly and adequately protect the interests of the Classes.

40. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Since the amount of each individual Class member's claim is small relative to the complexity of the litigation, and due to the financial resources of Volkswagen, no Class member could afford to seek legal redress individually for the claims alleged herein. Therefore, absent a class action, the Class members will continue to suffer losses and Volkswagen's misconduct will proceed without remedy.

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

COUNT ONE
Fraud and Fraudulent Inducement
(On Behalf of the National Class)

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

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

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

45. Volkswagen's misrepresentations or omissions were material and a substantial factor in Plaintiff's and Class members' purchasing or leasing Affected Vehicles.

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

47. But for these misrepresentations (or omissions), Plaintiff and Class members would not have purchased or leased Affected Vehicles, and/or would have purchased or leased them at cheaper prices.

48. Plaintiff and Class members were justified in relying on Volkswagen's misrepresentations. The same or substantively identical misrepresentations were communicated, and/or the same or substantively identical omissions were not communicated, to each Class

member, including through promotional materials prepared and disseminated by Volkswagen. To the extent applicable, reliance can be presumed in these circumstances.

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

COUNT TWO
Negligent Misrepresentation and Omission
(On Behalf of the National Class)

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

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

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

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

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

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

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

57. Volkswagen's misrepresentations or omissions were material and a substantial factor in Plaintiff's and Class members' purchasing or leasing Affected Vehicles.

58. But for these misrepresentations (or omissions), Plaintiff and Class members would not have purchased or leased Affected Vehicles, and/or would have purchased or leased them at cheaper prices.

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

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

COUNT THREE
Breach of Contract
(On Behalf of the National Class)

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

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

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

64. Volkswagen materially breached these contracts by, inter alia, selling or leasing Plaintiff and the other members of the National Class defective or non-conforming Affected Vehicles and by misrepresenting or failing to disclose the existence of the "defeat device" and/or defective design, including information known to Volkswagen rendering each Affected Vehicle

less safe and emissions compliant, and thus less valuable, than vehicles not equipped with CleanDiesel engine systems and “defeat devices.”

65. Plaintiff and the National Class are entitled to recover all damages proximately caused by Volkswagen’s breach, including compensatory, incidental, and consequential damages, and pre- and post-judgment interest. Damages may be quantified on a classwide basis. Also, or in the alternative, Plaintiff and the National Class are entitled to restitution, disgorgement, rescission, and similar equitable relief. Any provisions in the sales and lease agreements to the contrary are unconscionable, severable, voidable, and/or void.

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

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

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

69. Plaintiff and the National Class have sustained damages as a result of Volkswagen's breach of the sales and lease agreements and the covenant of good faith and fair dealing under each sales and lease agreement.

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

COUNT FOUR
Breach of Express Warranty
(On Behalf of the National Class)

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

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

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

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

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

COUNT FIVE
Breach of Implied Warranty
(On Behalf of the National Class)

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

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

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

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

COUNT SIX
Breach of Magnuson-Moss Warranty Act
(On Behalf of the National Class)

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

81. This Court has jurisdiction to decide claims brought under 15 U.S.C. § 2301 by virtue of 28 U.S.C. § 2301(3).

82. Volkswagen's Affected Vehicles are a "consumer product," as that term is defined in 15 U.S.C. § 2301(1).

83. Plaintiffs and other Class members are "consumers," as that term is defined in 15 U.S.C. § 2301(3).

84. Volkswagen is a "warrantor" and "supplier" as those terms are defined in 15 U.S.C. § 2301(4) and (5).

85. 15 U.S.C. § 2310(d)(1) provides a cause of action for any consumer who is damaged by the failure of a warrantor to comply with an implied warranty.

86. Volkswagen provided Plaintiff and other Class members with “implied warranties,” as that term is defined in 15 U.S.C. § 2301(7).

87. Volkswagen has breached these implied warranties as described above. Without limitation, Volkswagen’s Affected Vehicles are defective as alleged herein, which resulted in the problems and failures also described above.

88. By Volkswagen’s conduct as described herein, including Volkswagen’s knowledge of the defects inherent in the vehicles and its action, and inaction, in the face of the knowledge, Volkswagen has failed to comply with its obligations under its written and implied promises, warranties, and representations.

89. In its capacity as a warrantor, and by the conduct described herein, any attempts by Volkswagen to limit the implied warranties in a manner that would exclude coverage of the defective software and systems is unconscionable and any such effort to disclaim, or otherwise limit, liability for the defective the software and supporting systems is null and void.

90. All jurisdictional prerequisites have been satisfied.

91. Plaintiffs and members of the National Class are in privity with Volkswagen in that they purchased the Affected Vehicles (including the software in question) from Volkswagen or its agents.

92. As a result of Volkswagen’s breach of implied warranties, Plaintiff and other Class members are entitled to revoke their acceptance of the vehicles, obtain damages and equitable relief, and obtain costs pursuant to 15 U.S.C. §2310.

COUNT SEVEN
Unjust Enrichment
(On Behalf of the National Class)

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

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

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

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

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

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

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

100. Plaintiff and members of the National Class have no adequate remedy at law.

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

COUNT EIGHT
Negligence Per Se
(On Behalf of the National Class)

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

103. Volkswagen owed a duty to Plaintiff and the National Class to obtain proper emissions certifications under the CAA and EPA regulations promulgated thereunder.

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

105. As a direct and proximate result of Volkswagen's conduct as alleged herein, Plaintiff and other members of the National Class have sustained damages.

COUNT NINE
Pennsylvania's Unfair Trade Practices and Consumer Protection Law
(On Behalf of the Pennsylvania State Subclass)

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

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

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

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

a. "Using deceptive representations . . . in connection with goods or services," see 73 P.S. § 201-2(4)(iv);

b. “Failing to comply with the terms of any written guarantee . . . ,” see 73 P.S. § 201-2(4)(xiv); and

c. “Engaging in any other fraudulent or deceptive conduct which creates a likelihood or confusion or of misunderstanding,” see 73 P.S. § 201-2(4)(xxi).

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

111. Pursuant to 73 P.S. § 201-9.2, et seq., Plaintiff and members of the Pennsylvania State Subclass purchased or leased Affected Vehicles primarily for personal, family or household purposes that did not comply with federal emissions requirements, or did not possess the advertised efficiency and performance characteristics.

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

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

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

115. A causal relationship exists between Volkswagen’s unlawful conduct and the ascertainable losses suffered by Plaintiff and the Pennsylvania State Subclass.

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

PRAYER FOR RELIEF

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

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

Dated: September 22, 2015

Respectfully submitted,

/s/ Ruben Honik

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