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14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 SAN FRANCISCO DIVISION

17 DAVID FIOL, on behalf of himself and all
18 others similarly situated,

19 Plaintiffs,

20 v.

21 VOLKSWAGEN GROUP OF AMERICA,
22 INC., a New Jersey Corporation,

23 Defendant.

Case No.

CLASS ACTION

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

TABLE OF CONTENTS

Page

I. FACTUAL ALLEGATIONS 1

II. JURISDICTION 4

III. VENUE..... 4

IV. PARTIES 4

 A. Plaintiff David Fiol..... 4

 B. Defendant 5

V. TOLLING OF THE STATUTE OF LIMITATIONS 6

VI. CLASS ALLEGATIONS 8

VII. VIOLATIONS ALLEGED 11

 A. Claims Brought on Behalf of the Nationwide Class 11

COUNT I FRAUD BY CONCEALMENT..... 11

 B. Claims Brought on Behalf of the California Subclass..... 15

COUNT I VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW (CAL. BUS. & PROF. CODE §§ 17200, ET SEQ.)..... 15

COUNT II VIOLATION OF CALIFORNIA CONSUMERS LEGAL REMEDIES ACT (CAL. CIV. CODE §§ 1750, ET SEQ.)..... 16

COUNT III VIOLATION OF CALIFORNIA FALSE ADVERTISING LAW (CAL. BUS. & PROF. CODE §§ 17500, ET SEQ.)..... 18

COUNT IV BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY (CAL. COM. CODE § 2314)..... 19

COUNT V BREACH OF CONTRACT (BASED ON CALIFORNIA LAW)..... 20

COUNT VI FRAUD BY CONCEALMENT (BASED ON CALIFORNIA LAW)..... 21

COUNT VII VIOLATION OF SONG-BEVERLY CONSUMER WARRANTY ACT FOR BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY (CAL. CIV. CODE §§ 1791.1 & 1792)..... 25

REQUEST FOR RELIEF..... 27

DEMAND FOR JURY TRIAL 27

1 Plaintiff David Fiol (“Plaintiff”), individually and on behalf of all others similarly situated
2 (the “Class”), allege the following:

3 **I. FACTUAL ALLEGATIONS**

4 1. The United States Government, through the Environmental Protection Agency, has
5 passed and enforced laws designed to protect United States citizens from pollution and in particular,
6 certain chemicals and agents known to cause disease in humans. Automobile manufacturers must
7 abide by these US laws and must adhere to EPA rules and regulations. This case arises because
8 Defendant Volkswagen Group of America (“Volkswagen”) purposeful and intentionally breached
9 the laws of the United States and the rules and regulations of the EPA by selling in the United States
10 vehicles manufactured by its affiliates Volkswagen AG and Audi AG that purposefully evaded
11 federal and state laws. As stated by Cynthia Giles, Assistant Administrator for the Office of
12 Enforcement and Compliance Assurance at the EPA: “Using a defeat device in cars to evade clean
13 air standards is illegal and a threat to public health.” Yet that is exactly what Volkswagen did in its
14 2009-20015 Volkswagen and Audi diesel vehicles.¹

15 2. As detailed in the EPA’s Notice of Violation (“NOV”), sophisticated software in the
16 Volkswagen and Audi diesel vehicles sold by Defendant Volkswagen in the United States detects
17 when the vehicle is undergoing official emissions testing and turns full emissions controls on only
18 during the test. But otherwise, that is at all other times that the vehicle is running, the emissions
19 controls are suppressed. This results in cars that meet emissions standards in the laboratory or state
20 testing station, but during normal operation emit nitrogen oxides (NOx) at up to 40 times the
21 standard allowed under United States laws and regulations. The software produced and used by
22 Volkswagen is a “defeat device” as defined by the Clean Air Act.

23 3. NOx pollution contributes to nitrogen dioxide, ground-level ozone, and fine
24 particulate matter. Exposure to these pollutants has been linked with serious health dangers,
25 including asthma attacks and other respiratory illness serious enough to send people to the hospital.
26 Ozone and particulate matter exposure have been associated with premature death due to

27 ¹ See Sept. 18, 2015 EPA News Release.

1 respiratory-related or cardiovascular-related effects. Children, the elderly, and people with pre-
2 existing respiratory illness are at acute risk of health effects from these pollutants.

3 4. The Clean Air Act has strict emissions standards for vehicles and it requires vehicle
4 manufacturers to certify to EPA that the vehicles sold in the United States meet applicable federal
5 emissions standards to control air pollution. Every vehicle sold in the United States must be
6 covered by an EPA issued certificate of conformity. Under federal law, cars equipped with defeat
7 devices, which reduce the effectiveness of emissions control system during normal driving
8 conditions, cannot be certified. By manufacturing and selling cars with defeat devices that allowed
9 for higher levels of emissions that were certified to EPA, Volkswagen violated the Clean Air Act,
10 defrauded its customers, and engaged in unfair competition under state and federal law.

11 5. According the EPA NOV, Volkswagen installed its “defeat device” in at least the
12 following diesel models of its vehicles (the “Affected Vehicles”): MY 2009-2015 VW Jetta; MY
13 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2014-2015 VW Passat; and MY 2009-2015
14 Audi A3. Discovery may reveal that additional vehicle models and model years are properly
15 included as Affected Vehicles.

16 6. Volkswagen has charged a substantial premium for the Affected Vehicles, ironically
17 marketed by Volkswagen as “CleanDiesel.” For example, for the 2015 Volkswagen Jetta, the base
18 S model has a starting MSRP of \$18,780. The base TDI S CleanDiesel, however, has a starting
19 MSRP of \$21,640, a price premium of \$2,860. The CleanDiesel premium for the highest trim Jetta
20 model is substantially higher: The highest level gas Jetta SE has a starting MSRP of \$20,095, while
21 the CleanDiesel TDI SEL MSRP is \$26,410, a staggering \$6,315 premium.

22 7. These premiums occur across all of the vehicles in which Volkswagen installed its
23 “defeat device” for emissions testing. The table below sets forth the price premium for each base,
24 mid-level and top-line trim for each affected model:
25
26
27
28

CleanDiesel Price Premiums

Model	Base	Mid-level	Top-line
<i>VW Jetta</i>	\$2,860	\$4,300	\$6,315
<i>VW Beetle</i>	\$4,635	n/a	\$2,640
<i>VW Golf</i>	\$2,950	\$1,000	\$1,000
<i>VW Passat</i>	\$5,755	\$4,750	\$6,855
<i>Audi A3</i>	\$2,805	\$3,095	\$2,925

8. Volkswagen has been ordered by the EPA to recall the Affected Vehicles and repair them so that they comply with EPA emissions requirements at all times during normal operation. However, Volkswagen will not be able to make the Affected Vehicles comply with emissions standards without substantially degrading their performance characteristics, including their horsepower and their efficiency. As a result, even if Volkswagen is able to make Class members' Affected Vehicles EPA compliant, Class members will nonetheless suffer actual harm and damages because their vehicles will no longer perform as they did when purchased and as advertised. This will necessarily result in a diminution in value of every Affected Vehicle and it will cause owners of Affected Vehicles to pay more for fuel while using their affected vehicles.

9. As a result of Volkswagen's unfair, deceptive, and/or fraudulent business practices, and its failure to disclose that under normal operating conditions the Affected Vehicles emit 40 times the allowed levels, owners and/or lessees of the Affected Vehicles have suffered losses in money and/or property. Had Plaintiff and Class members known of the "defeat device" at the time they purchased or leased their Affected Vehicles, they would not have purchased or leased those vehicles, or would have paid substantially less for the vehicles than they did. Moreover, when and if Volkswagen recalls the Affected Vehicles and degrades the CleanDiesel engine performance in order to make the Affected Vehicles compliant with EPA standards, Plaintiff and Class members will be required to spend additional sums on fuel and will not obtain the performance characteristics

1 of their vehicles when purchased. Moreover, affected vehicles will necessarily be worth less in the
2 marketplace because of their decrease in performance and efficiency.

3 10. Plaintiff brings this action individually and on behalf of all other current and former
4 owners or lessees of Affected Vehicles. Plaintiff seeks damages, injunctive relief, and equitable
5 relief for the conduct of Volkswagen related to the “defeat device,” as alleged in this complaint.

6 **II. JURISDICTION**

7 11. This Court has jurisdiction pursuant to the Class Action Fairness Act of 2005, 28
8 U.S.C. § 1332(d), because the proposed Class consists of 100 or more members; the amount in
9 controversy exceeds \$5,000,000, exclusive of costs and interest; and minimal diversity exists. This
10 Court also has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

11 **III. VENUE**

12 12. Venue is proper in this District under 28 U.S.C. § 1391 because a substantial part of
13 the events or omissions giving rise to Plaintiff’s claims occurred in this District. Plaintiff Fiol
14 resides in this District, purchased his Affected Vehicle in this District, and Volkswagen has
15 marketed, advertised, sold, and leased the Affected Vehicles within this District.

16 **IV. PARTIES**

17 **A. Plaintiff David Fiol**

18 13. Plaintiff David Fiol is an individual residing in Novato, Marin County, California. In
19 the fall of 2011, Plaintiff purchased a new 2012 Volkswagen Jetta Sportswagon CleanDiesel from
20 Stevens Creek Volkswagen, an authorized Volkswagen dealer in San Jose, California. Plaintiff
21 purchased, and still owns, this vehicle. Unknown to Plaintiff, at the time he purchased his vehicle,
22 it was equipped with an emissions control “defeat device” which caused his vehicle to get an undue
23 EPA certification and pass emissions tests, but at all other times emit 40 times the allowed level of
24 pollutants, including NOx. The use of the “defeat device” by Volkswagen has caused Plaintiff out-
25 of-pocket loss, future attempted repairs, and diminished value of his vehicle. Volkswagen knew
26 about and purposefully used the “defeat device,” but did not disclose the “defeat device” and its
27 effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his
28

1 vehicle complied with United States emissions standards, was properly EPA certified, and would
2 retain all of its operating characteristics throughout its useful life.

3 14. Plaintiff selected and ultimately purchased his vehicle, in part, because of the
4 “CleanDiesel” system, as represented through advertisements and representations made by
5 Volkswagen. Specifically, prior to his purchase of the vehicle, Plaintiff viewed television
6 advertisements regarding the CleanDiesel and a representative of Stevens Creek Volkswagen made
7 verbal representations about the CleanDiesel system to Plaintiff. He recalls that the advertisements
8 and representations touted the cleanliness of the engine system for the environment and the
9 efficiency and power/performance of the engine system. None of the advertisements reviewed or
10 representations received by Plaintiff contained any disclosure relating to the “defeat device” or that
11 Volkswagen had purposefully falsified its certification of EPA compliance. Had Volkswagen
12 disclosed that the CleanDiesel in his vehicle actually emitted 40 times the permitted levels of
13 pollutants, including NOx, he would not have purchased his vehicle with the CleanDiesel engine, or
14 would have paid less for the vehicle.

15 15. Plaintiff has suffered an ascertainable loss as a result of Volkswagen’s omissions
16 and/or misrepresentations associated with the CleanDiesel engine system, including but not limited
17 to, out-of-pocket loss and future attempted repairs, future additional fuel costs, and diminished
18 value of his vehicle.

19 16. Neither Volkswagen nor any of its agents, dealers, or other representatives informed
20 Plaintiff of the existence of the “defeat device” and/or defective design of the CleanDiesel engine
21 prior to purchase.

22 **B. Defendant**

23 17. Volkswagen Group of America, Inc. (“Volkswagen”) is a corporation doing business
24 in all 50 states (including the District of Columbia) and is organized under the laws of the State of
25 New Jersey, with its principal place of business located at 2200 Ferdinand Porsche Dr., Herndon,
26 Virginia 20171. At all times relevant to this action, Volkswagen manufactured, distributed, sold,
27 leased, and warranted the Affected Vehicles under the Volkswagen and Audi brand names
28 throughout the United States. Volkswagen and/or its agents designed, manufactured, and installed

1 the CleanDiesel engine systems in the Affected Vehicles, which included the “defeat device.”
2 Volkswagen also developed and disseminated the owner’s manuals and warranty booklets,
3 advertisements, and other promotional materials relating to the Affected Vehicles.

4 **V. TOLLING OF THE STATUTE OF LIMITATIONS**

5 **A. Discovery Rule Tolling**

6 18. Class Members had no way of knowing about Volkswagen’s deception with respect
7 to its CleanDiesel engine system and “defeat device.” It took federal EPA and California Air
8 Resources Board investigations to uncover Volkswagen’s deception, which involved sophisticated
9 software manipulation on Volkswagen’s part. As reported by the *Los Angeles Times* on September
10 18, 2015, it took California Air Resources Board testing on a special dynamometer in a laboratory,
11 open road testing using portable equipment, and the use of special testing devised by the Board to
12 uncover Volkswagen’s scheme and to detect how software on the engine’s electronic control
13 module was deceiving emissions certifications tests. Plainly, Volkswagen was intent on expressly
14 hiding its behavior from regulators and consumers. This is the quintessential case for tolling.

15 19. Within the time period of any applicable statutes of limitation, Plaintiff and members
16 of the proposed classes could not have discovered through the exercise of reasonable diligence that
17 Volkswagen was concealing the conduct complained of herein and misrepresenting the Company’s
18 true position with respect to the emissions qualities of its vehicles.

19 20. Plaintiff and the other Class Members did not discover, and did not know of facts
20 that would have caused a reasonable person to suspect, that Volkswagen did not report information
21 within its knowledge to federal and state authorities, its dealerships, or consumers; nor would a
22 reasonable and diligent investigation have disclosed that Volkswagen had information in its
23 possession about the existence of its sophisticated emissions scheme and that it opted to conceal that
24 information, which was discovered by Plaintiff only shortly before this action was filed. Nor in any
25 event would such an investigation on the part of Plaintiff and other Class members have disclosed
26 that Volkswagen valued profits over compliance with federal and state law, or the trust that Plaintiff
27 and other Class members had placed in its representations, or that, necessarily, Volkswagen actively
28

1 discouraged its personnel from raising or disclosing issues with regard to the true quality and
2 quantity of the emissions, and the emissions software, of its vehicles, or of Volkswagen's emissions
3 scheme.

4 21. For these reasons, all applicable statutes of limitation have been tolled by operation
5 of the discovery rule with respect to claims as to all vehicles identified herein.

6 **B. Fraudulent Concealment Tolling**

7 22. All applicable statutes of limitation have also been tolled by Volkswagen's knowing
8 and active fraudulent concealment and denial of the facts alleged herein throughout the time period
9 relevant to this action.

10 23. Instead of disclosing its emissions scheme, or that the quality and quantity of
11 emissions from the subject vehicles were far worse than represented, and of its disregard of federal
12 and state law, Volkswagen falsely represented that its vehicles complied with federal and state
13 emissions standards, and that it was a reputable manufacturer whose representations could be
14 trusted.

15 **C. Estoppel**

16 24. Volkswagen was under a continuous duty to disclose to Plaintiff and the other Class
17 members the true character, quality, and nature of emissions from the vehicles at issue, and of those
18 vehicles' emissions systems, and of the compliance of those systems with applicable federal and
19 state law.

20 25. Volkswagen knowingly, affirmatively, and actively concealed the true nature,
21 quality, and character of the emissions systems, and the emissions, of the vehicles at issue.

22 26. Volkswagen was also under a continuous duty to disclose to Plaintiff and Class
23 members that it had engaged in the scheme complained of herein to evade federal and state
24 emissions and clean air standards, and that it systematically devalued compliance with, and
25 deliberately flouted, federal and state law regulating vehicle emissions and clean air.

26 27. Based on the foregoing, Volkswagen is estopped from relying on any statutes of
27 limitations in defense of this action.

28

1 **VI. CLASS ALLEGATIONS**

2 28. Plaintiff brings this action on behalf of himself and as a class action, pursuant to the
3 provisions of Rules 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure on behalf of the
4 following class and subclass (collectively, the “Classes”):

5 **The Nationwide Class**

6 All persons or entities in the United States who are current or former owners and/or lessees
7 of an “Affected Vehicle.” Affected Vehicles include, without limitation: MY 2009-2015
8 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2014-2015 VW
9 Passat; and MY 2009-2015 Audi A3.

10 **The California Subclass**

11 All persons or entities in the state of California who are current or former owners and/or
12 lessees of an “Affected Vehicle.” Affected Vehicles include, without limitation: MY 2009-
13 2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2014-2015 VW
14 Passat; and MY 2009-2015 Audi A3.

15 29. Excluded from the Class are individuals who have personal injury claims resulting from the
16 “defeat device” in the CleanDiesel system. Also excluded from the Class are Volkswagen and its
17 subsidiaries and affiliates; all persons who make a timely election to be excluded from the Class;
18 governmental entities; and the judge to whom this case is assigned and his/her immediate family.
19 Plaintiff reserves the right to revise the Class definition based upon information learned through
20 discovery.

21 30. Certification of Plaintiff’s claims for class-wide treatment is appropriate because
22 Plaintiff can prove the elements of their claims on a class-wide basis using the same evidence as
23 would be used to prove those elements in individual actions alleging the same claim.

24 31. This action has been brought and may be properly maintained on behalf of each of
25 the Classes proposed herein under Federal Rule of Civil Procedure 23.

26 32. Numerosity. Federal Rule of Civil Procedure 23(a)(1): The members of the Classes
27 are so numerous and geographically dispersed that individual joinder of all Class members is
28 impracticable. While Plaintiff is informed and believes that there are not less than hundreds of

1 thousands of members of the Class, the precise number of Class members is unknown to Plaintiff,
2 but may be ascertained from Volkswagen's books and records. Class members may be notified of
3 the pendency of this action by recognized, Court-approved notice dissemination methods, which
4 may include U.S. mail, electronic mail, Internet postings, and/or published notice.

5 33. Commonality and Predominance: Federal Rule of Civil Procedure 23(a)(2) and
6 23(b)(3): This action involves common questions of law and fact, which predominate over any
7 questions affecting individual Class members, including, without limitation:

- 8 a) Whether Volkswagen engaged in the conduct alleged herein;
- 9 b) Whether Volkswagen designed, advertised, marketed, distributed, leased,
10 sold, or otherwise placed Affected Vehicles into the stream of commerce in
11 the United States;
- 12 c) Whether the CleanDiesel engine system in the Affected Vehicles contains a
13 defect in that it does not comply with US EPA requirements;
- 14 d) Whether the CleanDiesel engine systems in Affected Vehicles can be made to
15 comply with EPA standards without substantially degrading the performance
16 and/or efficiency of the Affected Vehicles;
- 17 e) Whether Volkswagen knew about the "defeat device" and, if so, how long
18 Volkswagen has known;
- 19 f) Whether Volkswagen designed, manufactured, marketed, and distributed
20 Affected Vehicles with a "defeat device";
- 21 g) Whether Volkswagen's conduct violates consumer protection statutes,
22 warranty laws, and other laws as asserted herein;
- 23 h) Whether Plaintiff and the other Class members overpaid for their Affected
24 Vehicles;
- 25 k) Whether Plaintiff and the other Class members are entitled to equitable relief,
26 including, but not limited to, restitution or injunctive relief; and
- 27 l) Whether Plaintiff and the other Class members are entitled to damages and
28 other monetary relief and, if so, in what amount.

1 34. Typicality: Federal Rule of Civil Procedure 23(a)(3): Plaintiff’s claims are typical of
2 the other Class members’ claims because, among other things, all Class members were comparably
3 injured through Volkswagen’s wrongful conduct as described above.

4 35. Adequacy: Federal Rule of Civil Procedure 23(a)(4): Plaintiff is an adequate Class
5 representative because his interests do not conflict with the interests of the other members of the
6 Classes he seeks to represent; Plaintiff has retained counsel competent and experienced in complex
7 class action litigation; and Plaintiff intends to prosecute this action vigorously. The Classes’
8 interests will be fairly and adequately protected by Plaintiff and his counsel.

9 36. Declaratory and Injunctive Relief: Federal Rule of Civil Procedure 23(b)(2):
10 Volkswagen has acted or refused to act on grounds generally applicable to Plaintiff and the other
11 members of the Classes, thereby making appropriate final injunctive relief and declaratory relief, as
12 described below, with respect to the Class as a whole.

13 37. Superiority: Federal Rule of Civil Procedure 23(b)(3): A class action is superior to
14 any other available means for the fair and efficient adjudication of this controversy, and no unusual
15 difficulties are likely to be encountered in the management of this class action. The damages or
16 other financial detriment suffered by Plaintiff and the other Class members are relatively small
17 compared to the burden and expense that would be required to individually litigate their claims
18 against Volkswagen, so it would be impracticable for Nationwide and California Subclass members
19 to individually seek redress for Volkswagen’s wrongful conduct. Even if Class members could
20 afford individual litigation, the court system could not. Individualized litigation creates a potential
21 for inconsistent or contradictory judgments, and increases the delay and expense to all parties and
22 the court system. By contrast, the class action device presents far fewer management difficulties,
23 and provides the benefits of single adjudication, economy of scale, and comprehensive supervision
24 by a single court.

VII. VIOLATIONS ALLEGED

A. Claims Brought on Behalf of the Nationwide Class

**COUNT I
FRAUD BY CONCEALMENT**

38. Plaintiff realleges and incorporates by reference all paragraphs as though fully set forth herein.

39. This claim is brought on behalf of the Nationwide Class.

40. Volkswagen intentionally concealed and suppressed material facts concerning the quality of the Affected Vehicles. As alleged in this complaint, notwithstanding references in the very model names of the subject vehicles as “Clean Diesel,” or to their engines as “TDI Clean Diesel” engines, Volkswagen engaged in a secret scheme to evade federal and state vehicle emissions standards by installing software designed to conceal its vehicles’ emissions of the pollutant nitrogen oxide, which contributes to the creation of ozone and smog. The software installed on the vehicles at issue was designed nefariously to kick-in during emissions certification testing, such that the vehicles would show far lower emissions than when actually operating on the road. The result was what Volkswagen intended: vehicles passed emissions certifications by way of deliberately induced false readings. Reportedly, Volkswagen’s deliberate, secret scheme resulted in noxious emissions from these vehicles at 40 times applicable standards.

41. Plaintiff and Nationwide Class members reasonably relied upon Volkswagen’s false representations. They had no way of knowing that Volkswagen’s representations were false and gravely misleading. As alleged herein, Volkswagen employed extremely sophisticated methods of deception. Plaintiff and Nationwide Class members did not, and could not, unravel Volkswagen’s deception on their own.

42. Volkswagen concealed and suppressed material facts concerning what is evidently the true culture of Volkswagen—one characterized by an emphasis on profits and sales above compliance with federal and state clean air law, and emissions regulations that are meant to protect the public and consumers. It also emphasized profits and sales about the trust that Plaintiff and Nationwide Class members placed in its representations. As one customer, Priya Shah, put it in a

1 quotation cited by the *Los Angeles Times* in a September 18, 2015 article, “It’s just a blatant
2 disregard and intentional manipulation of the system. That’s just a whole other level of not only
3 lying to the government, but also lying to your consumer. People buy diesel cars from Volkswagen
4 because they feel they are clean diesel cars.” In the words of Ms. Shah, which no doubt reflect the
5 sentiments of all other “clean” diesel vehicle buyers, “I don’t want to be spewing noxious gases into
6 the environment.”

7 43. Necessarily, Volkswagen also took steps to ensure that its employees did not reveal
8 the details of its scheme to regulators or consumers, including Plaintiff and Nationwide Class
9 members. Volkswagen did so in order to boost the reputations of its vehicles and to falsely assure
10 purchasers and lessors of its vehicles, including certified previously owned vehicles, that
11 Volkswagen is a reputable manufacturer that complies with applicable law, including federal and
12 state clean air law and emissions regulations, and that its vehicles likewise comply with applicable
13 law and regulations. Volkswagen’s false representations were material to consumers, both because
14 they concerned the quality of the affected vehicles, including their compliance with applicable
15 federal and state law and regulations regarding clean air and emissions, and also because the
16 representations played a significant role in the value of the vehicles. As Volkswagen well knew, its
17 customers, including Plaintiff and Nationwide Class members, highly valued that the vehicles they
18 were purchasing or leasing were *clean* diesel cars, and they paid accordingly.

19 44. Volkswagen had a duty to disclose the emissions scheme it engaged in with respect
20 to the vehicles at issue because knowledge of the scheme and its details were known and/or
21 accessible only to Volkswagen, because Volkswagen had exclusive knowledge as to
22 implementation and maintenance of its scheme, and because Volkswagen knew the facts were not
23 known to or reasonably discoverable by Plaintiff or Nationwide Class members. Volkswagen also
24 had a duty to disclose because it made general affirmative representations about the qualities of its
25 vehicles with respect to emissions standards, starting with references to them as *clean* diesel cars, or
26 cars with *clean* diesel engines, which were misleading, deceptive, and incomplete without the
27 disclosure of the additional facts set forth above regarding its emissions scheme, the actual
28 emissions of its vehicles, its actual philosophy with respect to compliance with federal and state

1 clean air law and emissions regulations, and its actual practices with respect to the vehicles at issue.
2 Having volunteered to provide information to Plaintiff, Volkswagen had the duty to disclose not just
3 the partial truth, but the entire truth. These omitted and concealed facts were material because they
4 directly impact the value of the Affected Vehicles purchased or leased by Plaintiff and Nationwide
5 Class members. Whether a manufacturer's products comply with federal and state clean air law and
6 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance
7 or non-compliance, are material concerns to a consumer, including with respect to the emissions
8 certifications testing their vehicles must pass. Volkswagen represented to Plaintiff and Nationwide
9 Class members that they were purchasing *clean* diesel vehicles, and certification testing appeared to
10 confirm this—except that, secretly, Volkswagen had subverted the testing process thoroughly.

11 45. Volkswagen actively concealed and/or suppressed these material facts, in whole or in
12 part, to pad and protect its profits and to avoid the perception that its vehicles did not or could not
13 comply with federal and state laws governing clean air and emissions, which perception would hurt
14 the brand's image and cost Volkswagen money, and it did so at the expense of Plaintiff and
15 Nationwide Class members.

16 46. On information and belief, Volkswagen has still not made full and adequate
17 disclosures, and continues to defraud Plaintiff and Nationwide Class members by concealing
18 material information regarding the emissions qualities of its referenced vehicles and its emissions
19 scheme.

20 47. Plaintiff and Nationwide Class members were unaware of the omitted material facts
21 referenced herein, and they would not have acted as they did if they had known of the concealed
22 and/or suppressed facts, in that they would not have purchased purportedly "clean" diesel cars
23 manufactured by Volkswagen, and/or would not have continued to drive their heavily polluting
24 vehicles, or would have taken other affirmative steps in light of the information concealed from
25 them. Plaintiff's and Nationwide Class Members' actions were justified. Volkswagen was in
26 exclusive control of the material facts, and such facts were not known to the public, Plaintiff, or
27 Nationwide Class members.

28

1 48. Because of the concealment and/or suppression of the facts, Plaintiff and Nationwide
2 Class members have sustained damage because they own vehicles that are diminished in value as a
3 result of Volkswagen's concealment of the true quality and quantity of those vehicles' emissions
4 and Volkswagen's failure to timely disclose the actual emissions qualities and quantities of
5 hundreds of thousands of Volkswagen- and Audi-branded vehicles and the serious issues
6 engendered by Volkswagen's corporate policies. Had Plaintiff and Nationwide Class members been
7 aware of Volkswagen's emissions schemes with regard to the vehicles at issue, and the company's
8 callous disregard for compliance with applicable federal and state law and regulations, Plaintiff and
9 Class members who purchased or leased new or certified previously owned vehicles would have
10 paid less for their vehicles or would not have purchased or leased them at all.

11 49. The value of Plaintiff's and Nationwide Class Members' vehicles has diminished as
12 a result of Volkswagen's fraudulent concealment of its emissions scheme, which has greatly
13 tarnished the Volkswagen and Audi brand names attached to Plaintiff's and Nationwide Class
14 members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected
15 Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

16 50. Accordingly, Volkswagen is liable to Plaintiff and Nationwide Class members for
17 damages in an amount to be proven at trial.

18 51. Volkswagen's acts were done wantonly, maliciously, oppressively, deliberately, with
19 intent to defraud, and in reckless disregard of Plaintiff's and Nationwide Class members' rights and
20 the representations that Volkswagen made to them, in order to enrich Volkswagen. Volkswagen's
21 conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct
22 in the future, which amount is to be determined according to proof.

23 52. Plaintiff pleads this count pursuant to the law of Virginia, where Volkswagen has its
24 American headquarters, on behalf of all members of the Nationwide Class. As necessary, and in the
25 alternative, Plaintiff stands ready to plead sub-classes, based on the residences at pertinent times of
26 members of the Nationwide Class, to allege fraudulent concealment under the laws of states other
27 than Virginia.

28

1 **B. Claims Brought on Behalf of the California Subclass**

2 **COUNT I**
3 **VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW**
4 **(CAL. BUS. & PROF. CODE §§ 17200, *et seq.*)**

5 53. Plaintiff incorporates by reference all preceding allegations as though fully set forth
6 herein.

7 54. Plaintiff brings this Count on behalf of the California Subclass.

8 55. California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200, *et*
9 *seq.*, proscribes acts of unfair competition, including "any unlawful, unfair or fraudulent business
10 act or practice and unfair, deceptive, untrue or misleading advertising."

11 56. Volkswagen's conduct, as described herein, was and is in violation of the UCL.
12 Volkswagen's conduct violates the UCL in at least the following ways:

- 13 i. By knowingly and intentionally concealing from Plaintiff and the other
14 California Subclass members that the Affected Vehicles suffer from a design
15 defect while obtaining money from Plaintiff and the Class;
- 16 ii. By marketing Affected Vehicles as possessing functional and defect-free,
17 EPA compliant CleanDiesel engine systems;
- 18 iii. By purposefully installing an illegal "defeat device" in the Affected Vehicles
19 to fraudulently obtain EPA certification and cause Affected Vehicles to pass
20 emissions tests when in truth and fact they did not pass such tests;
- 21 iv. By violating federal laws, including the Clean Air Act; and
- 22 vi. By violating other California laws, including California laws governing
23 vehicle emissions and emission testing requirements.

24 57. Volkswagen's misrepresentations and omissions alleged herein caused Plaintiff and
25 the other California Subclass members to make their purchases or leases of their Affected Vehicles.
26 Absent those misrepresentations and omissions, Plaintiff and the other California Subclass members
27 would not have purchased or leased these vehicles, would not have purchased or leased these
28 Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive

1 alternative vehicles that did not contain CleanDiesel engine systems that failed to comply with EPA
2 and California emissions standards.

3 58. Accordingly, Plaintiff and the other California Subclass members have suffered
4 injury in fact including lost money or property as a result of Volkswagen's misrepresentations and
5 omissions.

6 59. Plaintiff seeks to enjoin further unlawful, unfair, and/or fraudulent acts or practices
7 by Volkswagen under Cal. Bus. & Prof. Code § 17200.

8 60. Plaintiff requests that this Court enter such orders or judgments as may be necessary
9 to enjoin Volkswagen from continuing its unfair, unlawful, and/or deceptive practices and to restore
10 to Plaintiff and members of the Class any money it acquired by unfair competition, including
11 restitution and/or restitutionary disgorgement, as provided in Cal. Bus. & Prof. Code § 17203 and
12 Cal. Civ. Code § 3345; and for such other relief set forth below.

13 **COUNT II**
14 **VIOLATION OF CALIFORNIA CONSUMERS LEGAL REMEDIES ACT**
(CAL. CIV. CODE §§ 1750, *et seq.*)

15 61. Plaintiff incorporates by reference all preceding allegations as though fully set forth
16 herein.

17 62. Plaintiff brings this Count on behalf of the California Subclass.

18 63. California's Consumers Legal Remedies Act ("CLRA"), Cal. Civ. Code §§ 1750, *et*
19 *seq.*, proscribes "unfair methods of competition and unfair or deceptive acts or practices undertaken
20 by any person in a transaction intended to result or which results in the sale or lease of goods or
21 services to any consumer."

22 64. The Affected Vehicles are "goods" as defined in Cal. Civ. Code § 1761(a).

23 65. Plaintiff and the other California Subclass members are "consumers" as defined in
24 Cal. Civ. Code § 1761(d), and Plaintiff, the other California Subclass members, and Volkswagen are
25 "persons" as defined in Cal. Civ. Code § 1761(c).

26 66. As alleged above, Volkswagen made numerous representations concerning the
27 benefits, efficiency, performance and safety features of CleanDiesel engine systems that were
28 misleading.

1 67. In purchasing or leasing the Affected Vehicles, Plaintiff and the other California
2 Subclass members were deceived by Volkswagen's failure to disclose that the Affected Vehicles
3 were equipped with defective CleanDiesel engine systems that failed EPA and California emissions
4 standards.

5 68. Volkswagen's conduct, as described hereinabove, was and is in violation of the
6 CLRA. Volkswagen's conduct violates at least the following enumerated CLRA provisions:

- 7 i. Cal. Civ. Code § 1770(a)(5): Representing that goods have characteristics,
8 uses, and benefits which they do not have;
- 9 ii. Cal. Civ. Code § 1770(a)(7): Representing that goods are of a particular
10 standard, quality, or grade, if they are of another;
- 11 iii. Cal. Civ. Code § 1770(a)(9): Advertising goods with intent not to sell them as
12 advertised; and
- 13 iv. Cal. Civ. Code § 1770(a)(16): Representing that goods have been supplied in
14 accordance with a previous representation when they have not.

15 69. Plaintiff and the other California Subclass members have suffered injury in fact and
16 actual damages resulting from Volkswagen's material omissions and misrepresentations because
17 they paid an inflated purchase or lease price for the Affected Vehicles and because they stand to pay
18 additional fuel costs if and when their Affected Vehicles are made to comply with emissions
19 standards.

20 70. Volkswagen knew, should have known, or was reckless in not knowing of the
21 defective design and/or manufacture of the CleanDiesel engine systems, and that the Affected
22 Vehicles were not suitable for their intended use.

23 71. The facts concealed and omitted by Volkswagen to Plaintiff and the other California
24 Subclass members are material in that a reasonable consumer would have considered them to be
25 important in deciding whether to purchase or lease the Affected Vehicles or pay a lower price. Had
26 Plaintiff and the other California Subclass members known about the defective nature of the
27 Affected Vehicles, they would not have purchased or leased the Affected Vehicles or would not
28 have paid the prices they paid.

1 or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiffs and
2 the other California Subclass members would not have purchased or leased these Affected Vehicles,
3 would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would
4 have purchased or leased less expensive alternative vehicles that did not contain the CleanDiesel
5 engine system and the “defeat device.” Accordingly, Plaintiff and the other California Subclass
6 members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

7 94. Each and every sale or lease of a Affected Vehicle constitutes a contract between
8 Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing
9 Plaintiff and the other California Subclass members defective Affected Vehicles and by
10 misrepresenting or failing to disclose the existence of the “defeat device” and/or defective design,
11 including information known to Volkswagen rendering each Affected Vehicle less safe and
12 emissions compliant, and thus less valuable, than vehicles not equipped with CleanDiesel engine
13 systems and “defeat devices.”

14 95. As a direct and proximate result of Volkswagen’s breach of contract, Plaintiff and
15 the California Subclass have been damaged in an amount to be proven at trial, which shall include,
16 but is not limited to, all compensatory damages, incidental and consequential damages, and other
17 damages allowed by law.

18 **COUNT VI**
19 **FRAUD BY CONCEALMENT**
20 **(BASED ON CALIFORNIA LAW)**

21 96. Plaintiff realleges and incorporates by reference all paragraphs as though fully set
22 forth herein.

23 97. This claim is brought on behalf of California Subclass members who are
24 California residents.

25 98. Volkswagen intentionally concealed and suppressed material facts concerning the
26 quality of the Affected Vehicles. As alleged in this complaint, notwithstanding references in the
27 very model names of the subject vehicles as “Clean Diesel,” or to their engines as “TDI Clean
28 Diesel” engines, Volkswagen engaged in a secret scheme to evade federal and state vehicle
emissions standards by installing software designed to conceal its vehicles’ emissions of the

1 pollutant nitrogen oxide, which contributes to the creation of ozone and smog. The software
2 installed on the vehicles at issue was designed nefariously to kick-in during emissions certification
3 testing, such that the vehicles would show far lower emissions than when actually operating on the
4 road. The result was what Volkswagen intended: vehicles passed emissions certifications by way of
5 deliberately induced false readings. Reportedly, Volkswagen's deliberate, secret scheme resulted in
6 noxious emissions from these vehicles at 40 times applicable standards.

7 99. Plaintiff and California Subclass members reasonably relied upon Volkswagen's
8 false representations. They had no way of knowing that Volkswagen's representations were false
9 and gravely misleading. As alleged herein, Volkswagen employed extremely sophisticated methods
10 of deception. Plaintiff and California Subclass members did not, and could not, unravel
11 Volkswagen's deception on their own.

12 100. Volkswagen concealed and suppressed material facts concerning what is evidently
13 the true culture of Volkswagen—one characterized by an emphasis on profits and sales above
14 compliance with federal and state clean air law, and emissions regulations that are meant to protect
15 the public and consumers. It also emphasized profits and sales about the trust that Plaintiff and
16 California Subclass members placed in its representations. As one customer, Priya Shah, put it in a
17 quotation cited by the *Los Angeles Times* in a September 15, 2015 article, "It's just a blatant
18 disregard and intentional manipulation of the system. That's just a whole other level of not only
19 lying to the government, but also lying to your consumer. People buy diesel cars from Volkswagen
20 because they feel they are clean diesel cars." As Ms. Shah put it, "I don't want to be spewing
21 noxious gases into the environment."

22 101. Necessarily, Volkswagen also took steps to ensure that its employees did not reveal
23 the details of its scheme to regulators or consumers, including Plaintiff and California Subclass
24 Members. Volkswagen did so in order to boost the reputations of its vehicles and to falsely assure
25 purchasers and lessors of its vehicles, including certified previously owned vehicles, that
26 Volkswagen is a reputable manufacturer that complies with applicable law, including federal and
27 state clean air law and emissions regulations, and that its vehicles likewise comply with applicable
28 law and regulations. Volkswagen's false representations were material to consumers, both because

1 they concerned the quality of the affected vehicles, including their compliance with applicable
2 federal and state law and regulations regarding clean air and emissions, and also because the
3 representations played a significant role in the value of the vehicles. As Volkswagen well knew, its
4 customers, including Plaintiff and California Subclass Members, highly valued that the vehicles
5 they were purchasing or leasing were *clean* diesel cars, and they paid accordingly.

6 102. Volkswagen had a duty to disclose the emissions scheme it engaged in with respect
7 to the Affected Vehicles because knowledge of the scheme and its details were known and/or
8 accessible only to Volkswagen, because Volkswagen had exclusive knowledge as to
9 implementation and maintenance of its scheme, and because Volkswagen knew the facts were not
10 known to or reasonably discoverable by Plaintiff or California Subclass Members. Volkswagen
11 also had a duty to disclose because it made general affirmative representations about the qualities of
12 its vehicles with respect to emissions standards, starting with references to them as *clean* diesel cars,
13 or cars with *clean* diesel engines, which were misleading, deceptive, and incomplete without the
14 disclosure of the additional facts set forth above regarding its emissions scheme, the actual
15 emissions of its vehicles, its actual philosophy with respect to compliance with federal and state
16 clean air law and emissions regulations, and its actual practices with respect to the vehicles at issue.
17 Having volunteered to provide information to Plaintiff, Volkswagen had the duty to disclose not just
18 the partial truth, but the entire truth. These omitted and concealed facts were material because they
19 directly impact the value of the Affected Vehicles purchased or leased by Plaintiff and California
20 Subclass members. Whether a manufacturer's products comply with federal and state clean air law
21 and emissions regulations, and whether that manufacturer tells the truth with respect to such
22 compliance or non-compliance, are material concerns to a consumer, including with respect to the
23 emissions certifications testing their vehicles must pass. Volkswagen represented to Plaintiff and
24 California Subclass members that they were purchasing *clean* diesel vehicles, and certification
25 testing appeared to confirm this—except that, secretly, Volkswagen had subverted the testing
26 process thoroughly.

27 103. Volkswagen actively concealed and/or suppressed these material facts, in whole or in
28 part, to pad and protect its profits and to avoid the perception that its vehicles did not or could not

1 comply with federal and state laws governing clean air and emissions, which perception would hurt
2 the brand's image and cost Volkswagen money, and it did so at the expense of Plaintiff and
3 California Subclass members.

4 104. On information and belief, Volkswagen has still not made full and adequate
5 disclosures, and continues to defraud Plaintiff and California Subclass members by concealing
6 material information regarding the emissions qualities of its referenced vehicles and its emissions
7 scheme.

8 105. Plaintiff and California Subclass members were unaware of the omitted material
9 facts referenced herein, and they would not have acted as they did if they had known of the
10 concealed and/or suppressed facts, in that they would not have purchased purportedly "clean" diesel
11 cars manufactured by Volkswagen, and/or would not have continued to drive their heavily polluting
12 vehicles, or would have taken other affirmative steps in light of the information concealed from
13 them. Plaintiff's and California Subclass Members' actions were justified. Volkswagen was in
14 exclusive control of the material facts, and such facts were not known to the public, Plaintiff, or
15 California Subclass Members.

16 106. Because of the concealment and/or suppression of the facts, Plaintiff and California
17 Subclass members have sustained damage because they own vehicles that are diminished in value as
18 a result of Volkswagen's concealment of the true quality and quantity of those vehicles' emissions
19 and Volkswagen's failure to timely disclose the actual emissions qualities and quantities of millions
20 of Volkswagen- and Audi-branded vehicles and the serious issues engendered by Volkswagen's
21 corporate policies. Had Plaintiff and California Subclass members been aware of Volkswagen's
22 emissions schemes with regard to the vehicles at issue, and the company's callous disregard for
23 compliance with applicable federal and state law and regulations, Plaintiff and California Subclass
24 members who purchased or leased new or certified previously owned vehicles would have paid less
25 for their vehicles or would not have purchased or leased them at all.

26 107. The value of Plaintiff's and California Subclass Members' vehicles has diminished
27 as a result of Volkswagen's fraudulent concealment of its emissions scheme, which has greatly
28 tarnished the Volkswagen and Audi brand names attached to Plaintiff's and California Subclass

1 members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected
2 Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

3 108. Accordingly, Volkswagen is liable to Plaintiff and California Subclass members for
4 damages in an amount to be proven at trial.

5 109. Volkswagen's acts were done wantonly, maliciously, oppressively, deliberately, with
6 intent to defraud, and in reckless disregard of Plaintiff' and California Subclass members' rights and
7 the representations that Volkswagen made to them, in order to enrich Volkswagen. Volkswagen's
8 conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct
9 in the future, which amount is to be determined according to proof.

10 110. Plaintiff pleads this count pursuant to the law of California on behalf of all members
11 of the California Subclass.

12 **COUNT VII**
13 **VIOLATION OF SONG-BEVERLY CONSUMER WARRANTY ACT FOR**
14 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
(CAL. CIV. CODE §§ 1791.1 & 1792)

15 111. Plaintiff incorporates by reference all preceding allegations as though fully set forth
16 herein.

17 112. Plaintiff brings this Count on behalf of the California Subclass.

18 113. Plaintiff and the other Class members who purchased or leased the Affected Vehicles
19 in California are "buyers" within the meaning of Cal. Civ. Code § 1791(b).

20 114. The Affected Vehicles are "consumer goods" within the meaning of Cal. Civ. Code
21 § 1791(a).

22 115. Volkswagen is a "manufacturer" of the Affected Vehicles within the meaning of Cal.
23 Civ. Code § 1791(j).

24 116. Volkswagen impliedly warranted to Plaintiff and the other Class members that its
25 Affected Vehicles were "merchantable" within the meaning of Cal. Civ. Code §§ 1791.1(a) & 1792,
26 however, the Affected Vehicles do not have the quality that a buyer would reasonably expect.

27 117. Cal. Civ. Code § 1791.1(a) states:
28

1 “Implied warranty of merchantability” or “implied warranty that goods are
2 merchantable” means that the consumer goods meet each of the following:

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

8 118. The Affected Vehicles would not pass without objection in the automotive trade
9 because of they do not pass EPA and state law emissions regulations.

10 119. Because of the “defeat device” falsely causes Affected Vehicles to obtain EPA
11 certification and pass emissions tests when in fact they omit 40 times the permitted level of NOx,
12 they are not safe to drive and thus not fit for ordinary purposes.

13 120. The Affected Vehicles are not adequately labeled because the labeling fails to
14 disclose the “defeat device” that causes emissions systems of the Affected Vehicles to become
15 inoperative during normal use.

16 121. Volkswagen breached the implied warranty of merchantability by manufacturing and
17 selling Affected Vehicles containing the “defeat device.” Furthermore, Volkswagen’s fraudulent
18 use of the “defeat device” has caused Plaintiff and the other Class members to not receive the
19 benefit of their bargain and have caused Affected Vehicles to depreciate in value.

20 122. As a direct and proximate result of Volkswagen’s breach of the implied warranty of
21 merchantability, Plaintiff and the other Class members received goods whose dangerous and
22 dysfunctional condition substantially impairs their value to Plaintiff and the other Class members.
23 Plaintiff and the other Class members have been damaged as a result of the diminished value of
24 Volkswagen’s products, the products’ malfunctioning, and the nonuse of their Affected Vehicles.

25 123. Pursuant to Cal. Civ. Code §§ 1791.1(d) & 1794, Plaintiff and the other Class
26 members are entitled to damages and other legal and equitable relief including, at their election, the
27 purchase price of their Affected Vehicles, or the overpayment or diminution in value of their
28 Affected Vehicles.

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