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13 **Pro Hac Vice Applications to be Submitted*

14
15 UNITED STATES DISTRICT COURT
16 FOR THE CENTRAL DISTRICT OF CALIFORNIA
17

18 AMY BERGRUD, on behalf of
19 herself and all others similarly
situated,

20 Plaintiff,

21 v.

22 VOLKSWAGEN GROUP OF
23 AMERICA, INC.; MICHAEL
HORN, and DOES 1 through 10,
inclusive,

24 Defendants.
25

Case No.: 2:15-cv-07629

CLASS ACTION COMPLAINT

1. FRAUD

2. BREACH OF CONTRACT

DEMAND FOR JURY TRIAL

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1 Plaintiff Amy Bergrud, on behalf of herself and on behalf of all others similarly
2 situated (*i.e.*, the members of the Plaintiff Class described and defined within this Class
3 Action Complaint), herein alleges as follows:

4 **I**
5 **OVERVIEW**

6 1. On the evening of Thursday, September 17, 2015, at approximately 8:00
7 p.m., Plaintiff drove her new Volkswagen Passat 2.0L diesel vehicle off the VW
8 dealership lot after handing over a check for \$31,714.06. This was Plaintiff's first new
9 vehicle purchase in over nine years. Plaintiff selected the 2015 Volkswagen Passat 2.0L
10 diesel after extensively researching the performance characteristics, fuel economy, and
11 environmental impact of numerous competing vehicle makes and models, and concluding
12 that the "clean burning" Volkswagen Passat met her environmental and economics
13 consumer needs.

14 2. Less than 12 hours after driving her new Volkswagen home from
15 Volkswagen of Orange, the Environmental Protection Agency ("EPA") and the
16 California Air Resources Board ("CARB") issued press releases disclosing to the public
17 for the first time that two weeks previously, on September 3, 2015, Defendant
18 Volkswagen Group of America, under the leadership of Defendant Michael Horn,
19 admitted to EPA and CARB regulators that, for more than seven years, it had been
20 importing into the United States and distributing hundreds of thousands of its purportedly
21 "clean diesel" with a software algorithm embedded in the engine control module, the sole
22 purpose of which was to detect when a federally mandated emissions test was being
23 conducted and to cause the vehicles' emissions system to switch to an operating mode
24 that would enable the vehicle to appear to pass the federal and state clean air emissions
25 standards. The engine control module would command the emissions system to run in
26 this mode ONLY when the engine control module determined that the vehicle was being
27 operated under the testing conditions for the federally mandated emissions testing. At all
28 other time times, the engine control module would command the emissions system to

1 operate in such a way that the clean diesel vehicles would, in fact, emit up to 40 times the
2 quantity of nitrogen oxides allowed for by federal and state emissions standards.

3 3. This September 3, 2015, admission by Defendant Volkswagen Group of
4 America was the result of an investigation started more than a year before by EPA and
5 CARB regulators.

6 4. On Monday, September 21, 2015, at the launch event for the 2016
7 Volkswagen Passat, Defendant Volkswagen Group of America's chief executive officer,
8 Defendant Michael Horn, made this admission: "Our company was dishonest with the
9 EPA and the California Air Resources Board, and with all of you and in my German
10 words, we have totally screwed up." Defendant Horn further stated: "We have to make
11 things right with the government, the public, our customers, our employees and also very
12 important, our dealers."

13 5. On this same day, Plaintiff wrote to both Volkswagen of Orange and
14 Defendant Horn of Defendant Volkswagen Group of America demanding the rescission
15 of her purchase agreement for the 2015 Volkswagen Passat she had paid for, and taken
16 delivery of, 12 hours before the public disclosure of Volkswagen's fraud, and well after
17 Mr. Horn and Defendant Volkswagen Group of America knew of the fraud. Plaintiff was
18 told by Volkswagen of Orange that there was nothing they could do at the moment, and
19 Defendants Volkswagen Group of America and Michael Horn did not respond at all.

20 6. For years, Defendant Volkswagen Group of America has misrepresented its
21 VW and Audi diesel engine as being "good for the environment because it puts 25% less
22 greenhouse gas emissions than what a gasoline engine would, . . . cuts out the particulate
23 emissions by 90% and the emissions of nitrous oxide are cut by 95%, . . . [and is] clean
24 enough to be certified in all 50 states." (Statement of Volkswagen Group of America,
25 Inc.'s Chief Operating Officer Mark Barnes, to The Business Insider, October 9, 2009.)

26 7. Since January 2014, Defendant Michael Horn has been the president and
27 chief executive officer of Defendant Volkswagen Group of America, Inc., and as such,
28

1 was responsible for, and directly oversaw, its operations, including representations made
2 to the public and the regulatory agencies.

3 8. However, Plaintiff brings this action on behalf of herself and other like who
4 purchased or leased a Volkswagen or Audi diesel vehicle after Defendants Volkswagen
5 Group of America and Michael Horn actually knew, or should have known, that its diesel
6 vehicle were equipped with a defeat device designed to circumvent state and federal
7 environmental protection laws, but who were not informed of that fact or of the fact that
8 vehicles were not in compliance with state and federal laws.

9 9. Plaintiff seeks the rescission of her sale contract, as well as the sale and lease
10 contracts entered in to by the Class Members, and an award of compensatory and
11 punitive damages.

12 II

13 JURISDICTION AND VENUE

14 10. This Court has diversity jurisdiction over this action under 28 U.S.C.
15 § 1332(a) and (d) because the amount in controversy for the Class exceeds \$5,000,000
16 and Plaintiff and other putative class members are citizens of a different state than
17 Defendant.

18 11. This Court has personal jurisdiction over Plaintiff because Plaintiff resides
19 in Los Angeles County, California, and submits to the Court's jurisdiction. This Court
20 has personal jurisdiction over Defendant Volkswagen Group of America because it
21 conducted and continues to conduct substantial business in the District; its Test Center is
22 located in Ventura County, California, its Design Center is located in Los Angeles
23 County, California, its Western Regional Headquarters is located in Los Angeles County,
24 California, and its Parts Distribution Center is located in San Bernardino County,
25 California; and because it has committed the acts and omissions complained of herein in
26 the District, including the marketing and leasing of a 2015 Volkswagen Passat 2.0L to
27 Plaintiff in the District. This Court has personal jurisdiction over Defendant Michael
28 Horn because he conducts substantial business in Los Angeles, California.

1 12. Venue as to Defendants is proper in this judicial district under 28 U.S.C
2 § 1391 because Defendants sell a substantial number of automobiles in this District, has
3 dealerships in this District, maintains and operates a Test Center, Design Center, Western
4 Regional Headquarters, and Parts Distribution Center within this District, and many of
5 Defendants' acts complained of herein occurred within this District, including the
6 marketing and leasing of a 2013 Volkswagen Passat 2.0L vehicle to Plaintiff in the
7 District.

8 **III**
9 **PARTIES**

10 **A. Plaintiff Amy Bergrud**

11 13. Plaintiff Amy Bergrud is a resident and citizen of Los Angeles, California.
12 Plaintiff entered into a contract for a 2015 Volkswagen Passat SE TDI on September 13,
13 2015, and completed the purchase by paying cash and taking delivery of the vehicle on
14 September 17, 2015, from Volkswagen of Orange, located in Orange, California.

15 **B. Defendant Volkswagen Group of America**

16 14. Defendant Volkswagen Group of America is an automobile design,
17 manufacturing, distribution, and/or service corporation doing business within the United
18 States. Furthermore, Defendant designs, develops, manufactures, distributes, markets,
19 sells, leases, warrants, services, and repairs passenger vehicles, including the Class
20 Vehicles.

21 15. Based on information and belief, Defendant Volkswagen Group of America,
22 Inc., is a corporation which is incorporated in the state of New Jersey, with its principal
23 place of business located at 2200 Ferdinand Porsche Drive, Herndon, Virginia.
24 Defendant Volkswagen Group of America, Inc., owns and operates the Test Center
25 California ("TCC"), located in Oxnard, California. According to Defendant Volkswagen
26 Group of America's 2013 Corporate Social Responsibility Report: "As the largest
27 technical center of its kind for the Volkswagen Group outside of Germany, the TCC
28 plays a pivotal role in the product development food chain, acting as the final stop for

1 many products before they are approved for production. Work at the TCC is focused on
2 powertrain product development, governmental compliance and field quality testing. The
3 TCC has more than 50 engineers and technology experts working in a 65,500-square-foot
4 LEED-certified facility.” Based on this, Plaintiff believes that many of Defendant’s acts
5 complained of herein occurred within this District.

6 **C. Defendant Michael Horn**

7 16. Defendant Michael Horn has been, and continues to be, the CEO and
8 President of Defendant Volkswagen Group of America, Inc., since January 2014.

9 17. The true names and capacities of Defendants sued herein as DOES 1 through
10 10, inclusive, are currently unknown to Plaintiff, who therefore sues such Defendants by
11 such fictitious names. Each of the Defendants designated herein as a DOE is legally
12 responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek
13 leave of Court to amend this Complaint to reflect the true names and capacities of the
14 Defendants designated herein as DOES when such identities become known.

15 18. Based upon information and belief, Plaintiff alleges that at all times
16 mentioned herein, each and every Defendant was acting as an agent and/or employee of
17 each of the other Defendants, and at all times mentioned was acting within the course and
18 scope of said agency and/or employment with the full knowledge, permission, and
19 consent of each of the other Defendants. In addition, each of the acts and/or omissions of
20 each Defendant alleged herein were made known to, and ratified by, each of the other
21 Defendants.

22 **IV**

23 **FACTUAL ALLEGATIONS**

24 **A. Plaintiff’s Purchase of a 2015 Volkswagen Passat SE TDI Clean Diesel**

25 19. Plaintiff Amy Bergrud signed a sale agreement for the purchase of a new
26 2015 Volkswagen Passat SE TDI for \$31, 714.06 from Volkswagen of Orange, on
27 September 13, 2015, in Orange, California. On September 17, 2015, at approximately
28

1 8:00 p.m., after tendering a check for the full amount of the purchase price, Plaintiff took
2 delivery of the vehicle.

3 20. Plaintiff Bergrud had last purchased a vehicle more than nine years before
4 and had been delaying the purchase of a new vehicle until she could afford to pay cash
5 for it.

6 21. Prior to the selection of the Volkswagen Passat, Plaintiff had conducted
7 extensive research on this and other vehicle makes and models. Fuel emissions and fuel
8 mileage were very important to Plaintiff in this decision to buy a new vehicle. Plaintiff
9 became very educated on the TDI clean diesel and observed numerous advertisements,
10 marketing brochures and website pages, car magazine articles, and dealer statements
11 touting the TDI clean diesel as having great performance and fuel efficiency with the
12 impressive vehicle specifications represented, while also being one of the most
13 environmentally clean vehicles available in the market. Plaintiff was also seriously
14 considering the Mazda 6, but opted for the Volkswagen Passat because of its
15 performance, fuel economy, and the representations by Defendant that the vehicle was a
16 “clean diesel” that complied with state and federal emission standards.

17 22. Based on the representations made by Defendant Volkswagen Group of
18 America in its marketing and sales materials, Plaintiff reasonably understood that the
19 2015 Volkswagen Passat SE TDI clean diesel complied with federal clean air standards
20 and possessed the performance, fuel efficiency, and emissions characteristics advertised.

21 23. At no time prior to Plaintiff’s purchase of the 2015 Volkswagen Passat SE
22 TDI did Defendants inform Plaintiff that her vehicle had been designed and manufactured
23 with a defeat device that caused the vehicle to emit up to 40 times the quantity of
24 nitrogen oxides allowed by federal clean air standards when operated under normal
25 driving conditions.

26 24. At no time prior to Plaintiff’s purchase of the 2015 Volkswagen Passat SE
27 TDI clean diesel did Defendants inform Plaintiff that her vehicle would not possess
28

1 performance and/or fuel efficiency characteristics it was represented to have if it were to
2 comply with federal clean air standards.

3 25. At no time prior to Plaintiff's purchase of the 2015 Volkswagen Passat SE
4 TDI clean diesel did Defendants inform Plaintiff that it had admitted to EPA and CARB
5 regulators the existence of the defeat device in its clean diesel vehicles.

6 26. If she had been informed that the 2015 Volkswagen Passat SE TDI clean
7 diesel was equipped with a defeat device that caused it to emit up to 40 times the amount
8 of nitrogen oxides permitted by the federal clean air standards, she would not have
9 purchased the vehicle.

10 **B. Defendants' Knowledge of the Defeat Device on Its Clean Diesel Vehicles**

11 **1. The International Council for Clean Transportation/University of West**
12 **Virginia Study Is Published on May 15, 2014**

13 27. In early 2014, the Center for Alternative Fuels, Engines and Emissions
14 ("CAFEE") at West Virginia University ("WVU") was contracted by the International
15 Council on Clean Transportation to conduct in-use testing of three light-duty diesel
16 vehicles, using a portable emissions measurement systems ("PEMS") over test routes in
17 the state of California. These vehicles had all been certified as compliant with EPA Tier
18 2-Bin 5 and CARB LEV-II ULEV emission standards. In addition, two of the three
19 vehicles were also selected for chassis dynamometer testing at CARB's El Monte,
20 Facility. Gaseous emissions of nitrogen oxides, carbon monoxide, THC, and carbon
21 dioxide were measured using the PEMS.

22 28. Two of the test vehicles were a 2012 Volkswagen Jetta and a 2013
23 Volkswagen Passat equipped with a 2.0L TDI Clean Diesel engine, one with a Lean-NOx
24 trap system and the other with a urea-based Selective Catalytic Reduction ("SCR")
25 system.

26 29. Based on their testing, the real world NOx emissions of the two Volkswagen
27 vehicles were found to exceed the EPA Tier 2-Bin 5 standard by factors of 15 to 35 and 5
28

1 to 20, respectively. However, the NOx emissions for these same two vehicles were
2 below the EPA Tier 2-Bin 5 standard during the chassis dynamometer testing.

3 30. WVU CAFEE published the results of its study on May 15, 2014

4 **2. The EPA and CARB Investigations**

5 31. CARB regulators alerted EPA regulators to the results of the testing and then
6 both agencies opened investigations and begin discussions with Defendant Volkswagen
7 Group of America, asking Defendant to explain the reason for the high NOx emissions
8 measured under real world driving conditions in the WVU study, but complaint
9 emissions under the dynamometer testing.

10 32. Over the course of the year following the publication of the WVU study,
11 Defendant Volkswagen Group of America purportedly initiated testing to replicate the
12 WVU testing and identify the technical reasons for the high on-road emissions. During
13 this time, Defendant continued to assert to CARB and the EPA that the increased
14 emissions from these vehicles could be attributed to various technical issues and
15 unexpected in-use conditions, and criticized regulators for the methods used in the study
16 and claimed that regulators did not understand the issues.

17 33. In April 2015, Defendant Volkswagen Group of America announced to
18 regulators that it would conduct a voluntary software recall to recalibrate the emissions
19 systems in certain 2010-2014 diesel vehicles. Defendant asserted that the recall would
20 include approximately 500,000 vehicles (approximately 50,000 of which were in
21 California) and would fix, among other things, the real world driving emissions.

22 34. Both the EPA and CARB agreed that Volkswagen Group of America could
23 implement this recall, but cautioned that they would perform confirmatory testing to
24 ensure that the recall adequately addressed the issue.

25 35. CARB, in coordination with the EPA, began confirmatory testing to
26 determine the efficacy of the recall, including both in the laboratory on required
27 certification cycles and over-the-road using PEMS. The over-the-road testing revealed
28 the recall calibration did reduce emissions to some degree, but that NOx emissions were

1 still significantly higher than expected. Defendant continued to assert that the problem
2 was with the testers, not with the vehicles.

3 36. CARB then broadened its testing to pinpoint the exact technical nature of the
4 test vehicles' poor performances, and to investigate why the onboard diagnostic system
5 was not detecting the increased emissions. To do this, CARB developed a special
6 dynamometer cycle consisting of driving the phase 2 portion of the FTP repeatedly. This
7 special cycle revealed that NOx emissions would rise throughout the cycle, resulting in
8 uncontrolled NOx emissions.

9 37. CARB regulators then started examining vehicle software and determined
10 that a subroutine, or parallel set of instructions, was secretly being sent by the computer
11 to what seems to be emission controls.

12 38. CARB shared its findings with the EPA and Defendant Volkswagen Group
13 of America on July 8, 2015, and conducted several technical meetings with Volkswagen
14 Group of America representatives. The EPA and CARB concluded that none of the
15 potential technical issues suggested by VW Group of America explained the higher test
16 results consistently confirmed during CARB's testing.

17 39. Based on information and belief, the statements, representations and actions
18 taken by Defendant Volkswagen Group of America in response to the EPA and CARB
19 investigation were with the actual or imputed knowledge of Defendant Michael Horn,
20 and for any statements, representations and actions not expressly known, those actions
21 were later ratified by Defendant Michael Horn.

22 **3. Volkswagen Group of America's Admits the Existence of Defeat Devices**
23 **in Its Clean Diesel Vehicles to State and Federal Regulators on**
24 **September 3, 2015**

25 40. Given the results of CARB's post-recall confirmatory testing and Defendant
26 Volkswagen Group of America's inability to explain why it's TDI Clean Diesel engines
27 were emitting nitrogen oxides in excess of the EPA's Tier 2-Bin 5 and CARB's LEV-II
28 standards, the EPA and CARB made it clear that they would not approve certificates of

1 conformity for Defendant’s 2016 model year diesel vehicles until VW Group of America
2 could adequately explain the anomalous emissions and ensure the agencies that the 2016
3 model year vehicle would not have similar issues.

4 41. On September 3, 2015, in a formal presentation to CARB and EPA
5 regulators, senior Volkswagen engineers admitted that from 2009 through 2015 it had
6 designed, manufactured, and installed a defeat device for the purpose of bypassing,
7 defeating, or rendering inoperative elements of its diesel vehicles’ emission control
8 system.

9 42. Specifically, this defeat device was a software algorithm installed in the
10 engine control module (ECM) that was designed to sense when the vehicle was being
11 tested for compliance with EPA emissions standards, based on various inputs, including
12 the position of the steering wheel, vehicle speed, the duration of the engine’s operation,
13 and barometric pressure. These inputs directly tracked the federal test procedure used for
14 emission testing for EPA certification purposes.

15 43. When the software algorithm detected that EPA emission testing was being
16 conducted, the ECM ran software which produced compliant emission results under an
17 ECM calibration that Defendant refers to as the “dyno calibration.” The term “dyno”
18 refers to the equipment used in EPA emissions testing called a dynamometer. At all other
19 times during normal vehicle operation, the software algorithm an ECM calibration that
20 Defendant referred to as “road calibration” which reduced the effectiveness of the
21 emission control system, specifically the Gen 1, Gen 2, and Gen 3 NOx converter
22 technologies. As a result, emissions of NOx increased by a factor of 10 to 40 times
23 above the EPA and CARB compliant levels, under real-world operating conditions.

24 44. The Clean Air act makes it illegal “for any person to manufacture or sell, or
25 offer to sell, or install, any part or component intended for use with, or as part of, any
26 motor vehicle or motor vehicle engine, where a principal effect of the part or component
27 is to bypass, defeat, or render inoperative any device or element of design installed on or
28

1 in a motor vehicle or motor vehicle engine in compliance with regulations under this
2 subchapter.” 42 U.S.C. § 7522(A)(3)(B); 40 C.F.R. § 86.1854-12(a)(3)(ii).

3 45. Based on information and belief, Plaintiff alleges that Defendant
4 Volkswagen Group of America and Defendant Michael Horn had actual knowledge of
5 the existence of a defeat device in its diesel vehicles on or before September 3, 2015, yet
6 continued to market and sell the vehicles under the fraudulent pretense that such vehicles
7 were certified to comply with all state and federal environmental laws and to possess the
8 performance and fuel economy characteristics as advertised.

9 46. Based on information and belief, Plaintiff alleges that Defendants knowingly
10 and willfully sold the Class Vehicles knowing such vehicles did not comply with EPA
11 and CARB emissions regulations and that if such vehicles were designed and
12 manufactured to comply with such emissions regulations, they would not have the fuel
13 efficiency and performance characteristics that Defendant marketed and represented them
14 to have.

15 47. As a result of their investigations and Defendant Volkswagen Group of
16 America’s admissions, both the EPA and CARB issued Notices of Violation to
17 Defendant finding that it violated “42 U.S.C. § 7522(a)(1), each time it sold, offered for
18 sale, introduced into commerce, delivered for introduction into commerce, or imported
19 (or caused any of the foregoing with respect to) one of the hundreds of thousands of new
20 motor vehicles within [the designated] test groups.” Additionally, they found Defendant
21 to have violated 42 U.S.C. § 7522(a)(3)(B) each time it manufactured and installed into
22 these vehicles an ECM equipped with a defeat device.

23 //

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1 48. The Notices of Violation applied to the following vehicles equipped with the
2 2.0L TDI clean diesel engine (hereinafter referred to as the “Class Vehicles”):

3 Model Year	4 Make and Model(s)
5 2009	6 VW Jetta, VW Jetta Sportwagen
7 2010	8 VW Jetta, VW Jetta Sportwagen
9 2011	10 VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3
11 2012	12 VW Beetle, VW Beetle Convertible, VW Golf, VW 13 Jetta, VW Jetta Sportwagen, Audi A3, VW Passat
14 2013	15 VW Beetle, VW Beetle Convertible, VW Golf, VW 16 Jetta, VW Jetta Sportwagen, Audi A3, VW Passat
17 2014	18 VW Beetle, VW Beetle Convertible, VW Golf, VW 19 Jetta, VW Jetta Sportwagen, Audi A3, VW Passat
20 2015	21 VW Beetle, VW Beetle Convertible, VW Golf, VW 22 Jetta, VW Jetta Sportwagen, Audi A3, VW Passat

23 49. Nevertheless, based on information and belief, under the authority and
24 direction of Defendant Michael Horn, Defendant Volkswagen Group of America
25 continued to distribute and sell these non-compliant vehicles long after it had learned of
26 the existence of the defeat device intended to circumvent state and federal regulatory
27 laws.

28 V

CLASS ACTION ALLEGATIONS

29 50. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil
30 Procedure 23(a), (b)(2), and (b)(3) on behalf of the following class:

31 **All persons or entities in the United States who purchased**
32 **or leased a Volkswagen or Audi vehicle equipped with a**
33 **2.0L TDI Clean Diesel engine after Defendants knew, or**
34 **should have known, of the existence of the defeat device**
35 **designed and manufactured in the Class Vehicles (the**
36 **“Nationwide Class”).**

37 51. Alternatively, Plaintiff proposes the following state-specific sub-class:
38

1 **All persons or entities who reside in the state of California**
2 **that own or lease a Volkswagen or Audi vehicle equipped**
3 **with a 2.0L TDI Clean Diesel engine after Defendants knew,**
4 **or should have known, of the existence of the defeat device**
5 **designed and manufactured in the Class Vehicles (the**
6 **“California Class”).**

7 52. Excluded from the above class are Defendants, their employees, co-
8 conspirators, officers, directors, legal representatives, heirs, successors and wholly or
9 partly own subsidiaries or affiliated companies; class counsel and their employees; and
10 the judicial officers and their immediate family members and associated court staff
11 assigned to this case, and all persons within the third degree of relationship to any such
12 persons.

13 53. Certification of Plaintiff’s claims for class-wide treatment is appropriate
14 because Plaintiff can prove the elements of her claims on a class-wide basis using the
15 same evidence as would be used to prove those elements in individual actions alleging
16 the same claim.

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

19 55. **Numerosity of the Class (Federal Rule of Civil Procedure 23(a)(1))** – The
20 members of the Class are so numerous that their individual joinder is impracticable.
21 Plaintiff is informed and believes that there are hundreds of thousands purchasers in the
22 class. Inasmuch as the class members may be identified through business records
23 regularly maintained by Defendants and their employees and agents, and through the
24 media, the number and identities of class members can be ascertained. Members of the
25 Class can be notified of the pending action by e-mail, mail, and supplemented by
26 published notice, if necessary.

27 56. **Commonality and Predominance (Federal Rule of Civil Procedure**
28 **23(a)(2)** – There are questions of law and fact common to the Class. These questions

1 predominate over any questions affecting only individual class members. These common
2 legal and factual issues include, but are not limited to:

- 3 a. Whether Defendants engaged in the conduct alleged herein;
- 4 b. Whether Defendants designed, advertised, marketed, distributed, leased,
5 sold, or otherwise placed Class Vehicles into the stream of commerce in
6 the United States;
- 7 c. Whether Defendants designed, manufactured, marketed, distributed,
8 leased, sold or otherwise placed Class Vehicles into the stream of
9 commerce in the United States knowing that the Class Vehicles did not
10 comply with applicable federal and state emissions standards;
- 11 d. When did Defendants first learn of the existence of a defeat device in its
12 diesel vehicles;
- 13 e. Whether Defendants knew or should have known that the defeat device
14 violated the Clean Air Act;
- 15 f. Whether Defendants intentionally concealed from consumers that the
16 Class Vehicles did not comply with federal and state emissions standards;
- 17 g. Whether Defendants misrepresented to purchasers and lessees of the
18 Class Vehicles that such vehicles were in compliance with federal and
19 state emissions standards;
- 20 h. Whether Defendant Volkswagen Group of America breached the express
21 terms of its contracts with purchasers and lessees when it included a
22 defeat device in the ECM of the Class Vehicles;
- 23 i. Whether Defendant Volkswagen Group of America breached the
24 covenant of good faith and fair dealing by including a defeat device in
25 the ECM of the Class Vehicles;
- 26 j. Whether Defendants willfully concealed from purchasers and lessees of
27 the Class Vehicles that it designed and manufactured an illegal defeat
28 device in the Class Vehicles;

- 1 k. Whether Plaintiff and the other Class members have been harmed by the
- 2 fraud alleged herein;
- 3 l. Whether Defendants were unjustly enriched by its deceptive practices;
- 4 m. Whether Defendant Michael Horn ratified the conduct of the other
- 5 Defendants;
- 6 n. Whether Plaintiff and members of the class are entitled to equitable relief
- 7 in the form of rescission of the purchase agreement or other injunctive
- 8 relief and, if so, in what amount.

9 57. **Typicality (Federal Rule of Civil Procedure 23(a)(3))** – The claims of the
10 representative Plaintiff are typical of the claims of each member of the Class. Plaintiff,
11 like all other members of the Class, has sustained damages arising from Defendant’s
12 violations of the laws, as alleged herein. The representative Plaintiff and the members of
13 the Class were and are similarly or identically harmed by the same unlawful, deceptive,
14 unfair, systematic, and pervasive pattern of misconduct engaged in by Defendants.

15 58. **Adequacy (Federal Rule of Civil Procedure 23(a)(4))** – The representative
16 Plaintiff will fairly and adequately represent and protect the interests of the Class
17 members and has retained counsel who are experienced and competent trial lawyers in
18 complex litigation and class action litigation. There are no material conflicts between the
19 claims of the representative Plaintiff and the members of the Class that would make class
20 certification inappropriate. Counsel for the Class will vigorously assert the claims of all
21 Class members.

22 59. **Superiority (Federal Rule of Civil Procedure 23(b)(3))** – This suit may be
23 maintained as a class action under Federal Rule of Civil Procedure 23(b)(3), because
24 questions of law and fact common to the Class predominate over the questions affecting
25 only individual members of the Class and a class action is superior to other available
26 means for the fair and efficient adjudication of this dispute. The damages suffered by
27 individual class members are small compared to the burden and expense of individual
28 prosecution of the complex and extensive litigation needed to address Defendants’

1 conduct. Further, it would be virtually impossible for the members of the Class to
2 individually redress effectively the wrongs done to them. Even if Class members
3 themselves could afford such individual litigation, the court system could not. In
4 addition, individualized litigation increases the delay and expense to all parties and to the
5 court system resulting from complex legal and factual issues of the case. Individualized
6 litigation also presents a potential for inconsistent or contradictory judgments. By
7 contrast, the class action device presents far fewer management difficulties; allows the
8 hearing of claims which might otherwise go unaddressed because of the relative expense
9 of bringing individual lawsuits; and provides the benefits of single adjudication,
10 economies of scale, and comprehensive supervision by a single court.

11 60. The Class Plaintiff contemplates the eventual issuance of notice to the
12 proposed Class members setting forth the subject and nature of the instant action. Upon
13 information and belief, Defendants' own business records and electronic media can be
14 utilized for the contemplated notices. To the extent that any further notices may be
15 required, the Class Plaintiff would contemplate the use of additional media and/or
16 mailings.

17 61. This action is properly maintained as a Class Action pursuant to Rule 23(b)
18 of the Federal Rules of Civil Procedure, in that:

19 a. Without class certification and determination of declaratory, injunctive,
20 statutory and other legal questions within the class format, prosecution of separate actions
21 by individual members of the Class will create the risk of:

22 i. Inconsistent or varying adjudications with respect to individual
23 members of the Class which would establish incompatible standards of conduct for the
24 parties opposing the Class; or

25 ii. Adjudication with respect to individual members of the Class
26 which would as a practical matter be dispositive of the interests of the other members not
27 parties to the adjudication or substantially impair or impede their ability to protect their
28 interests;

1 b. The parties opposing the Class have acted or refused to act on grounds
2 generally applicable to each member of the Class, thereby making appropriate final
3 injunctive or corresponding declaratory relief with respect to the Class as a whole; or

4 c. Common questions of law and fact exist as to the members of the Class
5 and predominate over any questions affecting only individual members, and a Class
6 Action is superior to other available methods of the fair and efficient adjudication of the
7 controversy, including consideration of:

- 8 i. The interests of the members of the Class in individually
9 controlling the prosecution or defense of separate actions;
- 10 ii. The extent and nature of any litigation concerning controversy
11 already commenced by or against members of the Class;
- 12 iii. The desirability or undesirability of concentrating the litigation
13 of the claims in the particular forum;
- 14 iv. The difficulties likely to be encountered in the management of a
15 Class Action.

16 **VI**
17 **VIOLATIONS ALLEGED**

18 62. Plaintiff alleges the following violations on behalf of the Nationwide Class
19 or, alternatively, the California Sub-Class.

20 **FIRST CAUSE OF ACTION**
21 **FRAUD BY CONCEALMENT**

22 **(Against Defendants Volkswagen Group of America and Michael Horn)**

23 63. Plaintiff incorporates by reference all allegations of the preceding
24 paragraphs as though fully set forth herein.

25 64. Plaintiff brings this claim on behalf of herself and on behalf of the members
26 of the Nationwide Class or, alternatively, the California Sub-Class.

27 65. The misrepresentations, nondisclosure, and/or concealment of material facts
28 made by Defendant Volkswagen Group of America to Plaintiff and the members of the

1 Class, as set forth above, were known, or through reasonable care should have been
2 known, by Defendants to be false and material and were intended by Defendants to
3 mislead Plaintiff and the members of the Class.

4 66. Defendant Volkswagen Group of America had a duty to disclose these
5 safety, quality, functionality, and reliability issues because it consistently marketed their
6 Class Vehicles as possessing certain performance and fuel economy characteristics and as
7 being in compliance with all applicable federal and state emissions standards. Defendant
8 marketed the Class Vehicles as being “clean diesel.” Once it made representations to the
9 public about safety, quality, functionality, and reliability, as well as about the
10 performance and fuel economy characteristics of the “clean diesel” vehicles in particular,
11 Defendant was under a duty to disclose these omitted facts, because where one does
12 speak one must speak the whole truth and not conceal any facts which materially qualify
13 those facts stated. One who volunteers information must be truthful, and the telling of a
14 half-truth calculated to deceive is fraud.

15 67. In addition, Defendant Volkswagen Group of America had a duty to disclose
16 these omitted material facts because they were known and/or accessible only to
17 Defendant which had superior knowledge and access to the facts, and Defendant knew
18 they were not known to or reasonably discoverable by Plaintiff and the other Class
19 Members. These concealed and omitted facts were material because they directly impact
20 the safety, quality, functionality, reliability, and value of the Class Vehicles.

21 68. Defendant Volkswagen Group of America actively concealed and/or
22 suppressed these material facts, in whole or in part, with the intent to induce Plaintiff and
23 the other Class Members to purchase or lease Class Vehicles at a higher price for the
24 Class Vehicles, which did not match the Class Vehicles’ true value.

25 69. Each of the misrepresentations, statements, omissions or actions listed above
26 by Defendant Volkswagen Group of America, were taken by employees of Defendant
27 Volkswagen Group of America under the direction, supervision and control of Defendant
28

1 Michael Horn, and he either directly or indirectly authorized those actions, or later
2 ratified those actions.

3 70. Plaintiff and the Class Members were unaware of these omitted material
4 facts that were actively concealed and/or suppressed, in whole or in part, by Defendants
5 with the intent to induce Plaintiff and the other Class Members to purchase or lease the
6 Class Vehicles at a higher price for the Class Vehicles, which did not match the Class
7 Vehicles' true value.

8 71. If Plaintiff and other Class Members had known these material facts, they
9 would not have acted as they did. Plaintiff's and the other Class Members' actions were
10 justified. Defendants were in exclusive control of the material facts and such facts were
11 not known to the public, Plaintiff, or the Class Members.

12 72. As a result of the conduct of Defendant, Plaintiff and the Class Members
13 have been damaged because the value of Plaintiff's and the Class Members' Class
14 Vehicles have diminished as a result of Defendants' fraudulent concealment of its scheme
15 to circumvent federal and state emissions standards, which has harmed the Volkswagen
16 and Audi brand names associated with the Class Vehicles.

17 73. Furthermore, based on information and belief, Plaintiff anticipates that if and
18 when Defendants are compelled to bring the Class Vehicles into compliance with state
19 and federal emissions standards, as indicated by the Notices of Violations issued by the
20 EPA and CARB, the Class Vehicles will no longer possess the performance and/or fuel
21 economy characteristics they were represented to possess at the time of sale or lease.

22 74. Accordingly, Defendants are liable to Plaintiff and the Class Members for
23 damages in an amount to be proven at trial.

24 75. In addition to such damages, Plaintiff seeks punitive or exemplary damages
25 pursuant to California Civil Code § 3294 in that Defendants engaged in "an intentional
26 misrepresentation, deceit, or concealment of a material fact known to the defendant[s]
27 with the intention on the part of the defendant[s] of thereby depriving a person of
28 property or legal rights or otherwise causing injury."

1 76. Defendants wantonly, maliciously, oppressively deliberately, with intent to
2 defraud, and in reckless disregard of Plaintiff's and the Class Members' rights engaged in
3 a systematic and intentional scheme to defraud consumers and state and federal regulators
4 by circumventing the laws of the United States, state of California, and other states, by
5 designing a defeat device in the form of a software algorithm whose sole purpose was to
6 make it appear that the Class Vehicles complied with federal and state emissions
7 standards when, in fact, they exceeded such standards by as much as 40 times.
8 Furthermore, remarkably, Defendants continued to sell their diesel vehicles to consumers,
9 such as Plaintiff, even after they admitted the existence of the defeat device to state and
10 federal regulators.

11 77. Based on information and belief, Plaintiff alleges that Defendants engaged in
12 a course of conduct to ensure that employees, dealers, and agents did not reveal this
13 scheme to regulators or consumers in order to facilitate its fraudulent scheme and
14 enhance Defendant's reputation and that of the Class Vehicles in order to sell more
15 vehicles and to sell those vehicles at an inflated price.

16 78. Defendant's conduct warrants an assessment of punitive damages in an
17 amount sufficient to deter such conduct in the future, which amount is to be determined
18 according to proof.

19 **SECOND CAUSE OF ACTION**

20 **BREACH OF CONTRACT**

21 **(Against Defendant Volkswagen Group of America Only)**

22 79. Plaintiff incorporates by reference all allegations of the preceding
23 paragraphs as though fully set forth herein.

24 80. Plaintiff brings this claim on behalf of herself and on behalf of the members
25 of the National Class or, alternatively, the California Sub-Class.

26 81. Plaintiff and each of the Class Members entered into contracts for the
27 purchase or lease of a Class Vehicle.
28

1 82. By continuing to market, distribute, and sell and/or lease Class Vehicles for
2 Defendant Volkswagen Group of America knew, or in the exercise of reasonable
3 diligence should have known, of the existence of the defeat device in the Class Vehicles,
4 Defendant caused Plaintiff and the other Class Members to make their purchases or
5 leases of the Class Vehicles. Absent Defendant's fraudulent misrepresentations and
6 omissions, Plaintiff and the other Class Members would not have purchased or leased the
7 Class Vehicles or would not have purchased the Class Vehicles for the prices they paid.

8 83. Because Defendant fraudulently sold the Class Vehicles as being in
9 compliance with state and federal environmental laws, when Defendant knew that the
10 Class Vehicles were not in compliance with such laws, Plaintiff and Class Members
11 overpaid for their Class Vehicles and did not get the benefit of their bargain.

12 84. Each and every sale of a Class Vehicle constitutes a contract between
13 Defendant and the purchaser or lessee. Defendant breached these contracts by selling or
14 leasing Class vehicles Plaintiff and the Class Members when it knew, or in the exercise of
15 reasonable diligence should have known, that the Class Vehicles were equipped with
16 defeat devices and were not in compliance with state and federal environmental laws,
17 thus rendering such vehicles less valuable than vehicles not equipped with diesel engines
18 with defeat devices.

19 85. Plaintiff and the Class Members have performed all conditions, covenants,
20 and promises required by each of them on their part to be performed in accordance with
21 the terms and conditions of the contract

22 86. Defendant breached the contract and the implied covenant of good faith and
23 fair dealing by, inter alia, equipping the Class Vehicles with emissions standards that
24 included defeat devices that were not in compliance with federal and state emissions
25 standards.

26 87. As a direct and proximate result of Defendant's breach of contract Plaintiff
27 and the other Class Members have been damaged in an amount to be proven at trial,
28

1 which shall include, but is not limited to, all compensatory damages, incidental and
2 consequential damages, and other damages allowed by law.

3 88. In addition, Defendant's fraudulent misrepresentation and omissions
4 regarding the existence of the defeat device and non-compliance of the Class Vehicles
5 with state and federal environmental laws related to material fact upon which Plaintiff
6 and the Class Members relied in consenting to the contract. Therefore, Plaintiff and the
7 Class Members seek rescission of the sale and lease contracts for the Class Vehicles.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff and the Class pray for judgment as follows:

- 10 1. For an order certifying this action as a class action;
- 11 2. For an order appointing Plaintiff as representative of the Class and her
12 counsel of record as Class counsel;
- 13 3. For an award of actual, general, special, incidental, statutory,
14 compensatory and consequential damages on claims for fraud and
15 breach of contract and in an amount to be proven at trial;
- 16 4. For an award of exemplary and punitive damages in an amount to be
17 proven at trial;
- 18 5. For an order of rescission of the purchase and lease contracts for the
19 Class Vehicles and requiring Defendant Volkswagen Group of
20 America to disgorge, restore, and return all monies wrongfully
21 obtained together with interest calculated at the maximum legal rate;
- 22 6. For an order enjoining the wrongful conduct alleged herein;
- 23 7. For costs;

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- 1 8. For interest;
- 2 9. For such other relief as the Court deems just and proper.

3
4 DATED: September 29, 2015.

MCCUNEWRIGHT, LLP

5
6 BY: /s/ Richard D. McCune
7 Richard D. McCune
8 Attorney for Plaintiff and the Putative
9 Class

10 **DEMAND FOR JURY TRIAL**

11 Plaintiff hereby demands a jury trial for all claims so triable.

12 DATED: September 29, 2015.

MCCUNEWRIGHT, LLP

13
14 BY: /s/ Richard D. McCune
15 Richard D. McCune
16 Attorney for Plaintiff and the Putative
17 Class