

MLG AUTOMOTIVE LAW, APLC

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Gregg A. Klein

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

GREGG A. KLEIN, individually, and
on behalf of all others similarly
situated,

Plaintiffs,
vs.

VOLKSWAGEN GROUP OF
AMERICA, INC., a New Jersey
Corporation; and DOES 1 to 100,
inclusive,

Defendants.

Case No.

**CLASS ACTION COMPLAINT
FOR DAMAGES AND
EQUITABLE RELIEF**

JURY TRIAL DEMANDED

1 Plaintiff Gregg A. Klein, by his attorneys, files this Class Action
2 Complaint, for himself and all others similarly situated against Volkswagen Group
3 of America, Inc. (“VW” or “Defendant”). Plaintiff alleges, on information and
4 belief, except for information based on personal knowledge, which allegations are
5 likely to have evidentiary support after further investigation and discovery, as
6 follows:

7
8 **I.**

9 **INTRODUCTION**

10
11 1. VW markets and sells numerous models of vehicles in the United
12 States including the 2009-2015 VW Jetta; 2009-2014; VW Jetta Sportwagen;
13 2010-2015 VW Golf; 2010-2015 Audi A3; 2012-2015 VW Beetle; 2012-2015
14 VW Beetle Convertible; 2012-2015 VW Passat; 2015 VW Golf Sportwagen (the
15 “Affected Vehicles”).

16
17 2. This case involves Defendant VW’s conscious decision to market,
18 sell, and distribute vehicles equipped with a concealed “defeat device” to
19 circumvent Environmental Protection Agency (EPA) emissions requirements
20 during official testing of the vehicle, while emitting up to 40 times more than the
21 allowable levels of certain pollutants during normal operation.

22
23 3. On September 18, 2015, the EPA issued a Notice of Violation (NOV)
24 alerting the public of the defeat devices installed in the Affected Vehicles, and
25 their resulting EPA violations during operation. Moreover, the EPA directed
26 Defendant to recall nearly half a million vehicles.

1 6. Plaintiff learned of the defeat devices that caused vehicles to operate
2 in violation of EPA standards in late September, 2015. Had he known about the
3 defect, he would not have purchased this vehicle, would not have paid a premium
4 price, and would not have retained the vehicle.

5
6 7. Plaintiff has standing to assert all of the claims set forth herein, as he
7 suffered an injury in fact and a loss of money or property as a result of
8 Defendant's conduct. Plaintiff's 2014 VW Passat is one of the Affected Vehicles,
9 and Plaintiff expects to receive a recall notice for his vehicle.

10
11 8. Defendant is a New Jersey corporation with its principal place of
12 business in Herndon, Virginia.

13
14 9. Defendant and its subsidiaries, affiliates, and other related entities,
15 and its respective employees were the agents, servants and employees of
16 Defendant, and each was acting within the purpose and scope of that agency and
17 employment.

18
19 10. Whenever reference is made to any act by Defendant or its
20 subsidiaries, affiliates, and other related entities, such allegation shall be deemed
21 to mean that the principals, officers, directors, employees, agents, and/or
22 representatives of Defendant committed, knew of, performed, authorized, ratified
23 and/or directed that act or transaction for Defendant while engaged in the scope of
24 their duties.

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III.

JURISDICTION AND VENUE

11. This Court has jurisdiction over the subject matter presented by this Complaint because it is a class action arising under 28 U.S.C. § 1332(d), which, under the Class Action Fairness Act of 2005 (“CAFA”), Pub. L. No. 109-2, 119 Stat. 4 (2005), explicitly provides for the original jurisdiction of the federal courts of any class action in which any member of the class is a citizen of a state different from any defendant, and in which the matter in controversy exceeds in the aggregate the sum of \$5,000,000, exclusive of interest and costs. Plaintiff alleges that the total claims of individual Class Members are in excess of \$5,000,000 in the aggregate, exclusive of interest and costs, as required by 28 U.S.C. § 1332(d)(2).

12. This Court has personal jurisdiction over Defendant, because Defendant engaged in significant business throughout the State of California thus providing the State of California with general jurisdiction.

13. Venue in this District is proper under 28 U.S.C. § 1391(b) because Defendant, as a corporation, is deemed to reside in any district in which it is subject to personal jurisdiction. Moreover, because Defendant has failed to identify a California principal place of business in their Statement of Information filed with the California Secretary of State as required by California Corporations Code § 2105, venue is proper in this County and judicial district.

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IV.

FACTUAL ALLEGATIONS

14. The Clean Air Act (CAA) and the regulations promulgated thereunder aim to protect the environment and the health of United States citizens by reducing emissions of nitrogen oxides (NO_x) and other pollutants from mobile sources of air pollution, including ozone (smog). Breathing ozone can trigger a variety of health problems including chest pain, coughing, throat irritation, and congestion. Breathing ozone can also worsen bronchitis, emphysema, and asthma, and children are at the greatest risk of experiencing negative health impacts from exposure to ozone. The Environmental Protection Agency (EPA) was created to regulate and enforce the regulations promulgated by the CAA.

15. Automobile manufacturers must adhere to the EPA and abide by the rules and regulations of the CAA. The EPA administers a certification program to ensure that every vehicle introduced into United States commerce satisfies applicable emissions standards. Under this program, a vehicle manufacturer submits an application to the EPA, the EPA confirms the vehicle's compliance with applicable emissions standards, then issues a certificate of conformity (COC), thereby approving the introduction of a vehicle into United States commerce. As part of the COC application, the manufacturer must disclose a list of all auxiliary emission control devices (AECDs) installed on the vehicle, as well as a justification of each AECD that results in a reduction in effectiveness of the emission control system and a rationale for why it is not a defect device.

16. Emissions standards, test procedures, and compliance provisions for light-duty motor vehicles are set forth at 40 C.F.R. Part 86 and CAA section 203, 42 U.S.C. § 7522, respectively. Light-duty vehicles must also satisfy emission

1 standards for certain air pollutants, including NOx, as set forth in 40 C.F.R. §
2 86.1811-04.

3
4 17. This case arises because Defendant purposefully and intentionally
5 breached the laws of the United States and the rules and regulations of the CAA
6 and EPA by circumventing emissions requirements during EPA testing to
7 fraudulently procure COC and introduce light-weight vehicles in commerce that,
8 while operating in regular driving, emit 10 to 40 times more emissions than
9 allowable by law.

10
11 18. In May 2014 the West Virginia University's Center for Alternative
12 Fuels, Engines & Emissions published results of a study commissioned by the
13 International Council on Clean Transportation that found significantly higher in-
14 use emissions from two light duty diesel vehicles (a 2012 Jetta and a 2013 Passat).
15 Unsurprisingly, the study results caught the attention of the California Air
16 Resources Board (CARB) and the EPA. CARB and the EPA contacted VW for
17 an explanation, and VW made a "smoke-screen" assertion that the increased
18 emission were attributable to various technical issues and unexpected in-use
19 conditions. All along, VW knew none of the technical issues they asserted were
20 responsible for the problem, however in December 2014, they nonetheless issued
21 a voluntary recall of 2014-2015 VW Beetle, Jetta, Passat and 2015 Golf and GTI
22 to seemingly "address the issue."

23
24 19. Meanwhile, CARB and the EPA conducted follow up testing to
25 pinpoint the exact technical nature of the vehicles poor performance and
26 investigate why the vehicles' onboard diagnostic system was not detecting
27 increased emission. None of the technical issues suggested by VW explained the
28

1 higher test results consistently confirmed by CARB and the EPA’s additional
2 testing.

3
4 20. When no viable explanation for the increased emissions became
5 apparent, CARB and the EPA advised VW they would not approve COCs for
6 VW’s 2016 model year diesel vehicles until VW could adequately explain and
7 address the anomalous emissions. VW then admitted it had designed and installed
8 a “defeat device” in these vehicles in the form of a sophisticated software
9 algorithm that detected when a vehicle was undergoing emissions testing.
10 Specifically, the defeat device activates full emissions controls only when an the
11 vehicle is undergoing official emissions testing. At all other times of operation,
12 the emissions controls are suppressed. As a result, during normal operation the
13 vehicles emit nitrogen oxides (NO_x) at up to 40 times the standard allowed under
14 United States law.

15
16 21. Given their strategic and purposeful design, VW knew that the defeat
17 devices bypass, defeat, or render inoperative elements of the vehicle design
18 related to compliance with the CAA emission standards. Additionally, the defeat
19 devices are AECDs that were neither described nor justified in the applicable
20 COC applications and are illegal defeat devices. As a result, each vehicle with a
21 defeat device does not conform in a material respect to the vehicle specifications
22 described in the corresponding COC application.

23
24 22. On September 18, 2015, the EPA issued a Notice of Violation (NOV)
25 to Defendants for violation of the Clean Air Act (CAA), 42 U.S.C. §§ 7401-
26 7671q, and its implementing regulations. The NOV asserted that VW violated
27 CAA section 203(a)(1), 42 U.S.C. § 7522(a)(1) each time it sold, offered for sale,
28 introduced into commerce, delivered for introduction into commerce, or imported

1 these vehicles any motor vehicle equipped with the defeat device. Additionally,
2 VW violated CAA section 203(a)(3)(B), 42 U.S.C. § 7522(a)(3)(B) each time it
3 manufactured a vehicle that was installed with the defeat device.

4
5 23. The NOV identified the following Affected Vehicles¹ as equipped
6 with an auxiliary emission control device (AECD) that bypass, defeat, or render
7 inoperative elements of the vehicles' emission control system that exist to comply
8 with CAA emission standards, the "defeat device": 2009-2015 VW Jetta; 2009-
9 2014 VW Jetta Sportwagen; 2010-2015 VW Golf; 2010-2015 Audi A3; 2012-
10 2015 VW Beetle; 2012-2015 VW Beetle Convertible; 2012-2015 VW Passat;
11 2015 VW Golf Sportwagen.

12
13 24. The EPA directed VW to recall and repair Affected Vehicles so that
14 they comply with EPA and CAA emission requirements at all times of operation.

15
16 25. While VW has not yet identified how it will fix the problem, it is
17 anticipated that they will not be able to make the Affected Vehicles comply with
18 emission standards without substantially degrading their performance
19 characteristics, including their horsepower and efficiency.

20
21 26. As a result, Class Members will suffer actual harm and damages
22 including but not limited to:

23
24 a. Class Members have paid premium prices for vehicles
25 marketed as "CleanDiesel" when in fact the Affected Vehicles emitted up to 40
26 times more pollutants than allowable by law during normal operation;

27
28 ¹ At this time, Plaintiff is not informed of any additional vehicles equipped with the defect device, however discovery may reveal there are additional Affected Vehicles.

The Nationwide Class

1
2
3 All persons who purchased or leased the following
4 vehicles sold by Defendant in the United States other
5 than for resale or distribution: 2009-2015 VW Jetta;
6 2009-2014 VW Jetta Sportwagen; 2010-2015 VW Golf;
7 2010-2015 Audi A3; 2012-2015 VW Beetle; 2012-2015
8 VW Beetle Convertible; 2012-2015 VW Passat; 2015
9 VW Golf Sportwagen. This Class definition may be
10 supplemented or extended to include other VW vehicles
11 which are the subject of a defeat device recall by VW
12 after the filing of this Complaint. Excluded from the
13 Class are officers and directors of Defendant, members
14 of the immediate families of the officers and directors of
15 Defendant, and the legal representatives, heirs,
16 successors and assigns and any entity in which they have
17 or have had a controlling interest in Defendant.

The California Subclass

15 All persons who purchased or leased the following
16 vehicles sold by Defendant in California other than for
17 resale or distribution: 2009-2015 VW Jetta; 2009-2014
18 VW Jetta Sportwagen; 2010-2015 VW Golf; 2010-2015
19 Audi A3; 2012-2015 VW Beetle; 2012-2015 VW Beetle
20 Convertible; 2012-2015 VW Passat; 2015 VW Golf
21 Sportwagen. This Class definition may be supplemented
22 or extended to include other VW vehicles which are the
23 subject of a defeat device recall by VW after the filing
24 of this Complaint. Excluded from the Class are officers
25 and directors of Defendant, members of the immediate
26 families of the officers and directors of Defendant, and
27 the legal representatives, heirs, successors and assigns
28 and any entity in which they have or have had a
controlling interest in Defendant

29. Defendant's representation, practices, and omissions were applied uniformly to all Members of the Class during the Class Period, so that the

1 questions of law and fact are common to all Members of the Class. All Members
2 of the Class were and are similarly affected by having been exposed to the
3 misrepresentations, purchased or leased and used the Subject Vehicles for their
4 intended and foreseeable purpose, and the relief sought is for the benefit of
5 Plaintiff and Members of the Class.

6
7 30. The Classes are so numerous that joinder of all Members would be
8 impractical. Moreover, because there are 482,000 Affected Vehicles, joinder is
9 likewise impossible.

10
11 31. Questions of law and fact common to each Class Member exist that
12 predominate over questions affecting only individual Members, including, *inter*
13 *alia*:

14
15 a. Whether VW engaged in the conduct alleged herein;

16
17 b. Whether VW designed, advertised, marketed, distributed,
18 leased, sold, or otherwise placed Affected Vehicles into the stream of commerce
19 in the United States;

20
21 c. Whether vehicles equipped with the defeat device in Affected
22 Vehicles comply with EPA requirements;

23
24 d. Whether vehicles equipped with the defeat device can be made
25 to comply with EPA standards without substantially degrading the performance
26 and/or efficiency of the Affected Vehicles;

1 e. Whether WV knew about the defeat device and, if so, for how
2 long;

3
4 f. Whether VW designed, manufactured, marketed, and
5 distributed Affected Vehicles with a defeat device;

6
7 g. Whether VW's conduct violates consumer protection statutes,
8 warranty laws, and other laws as asserted herein;

9
10 h. Whether Plaintiff and the other Class members overpaid for
11 their Affected Vehicles;

12
13 i. Whether Plaintiff and the other Class members are entitled to
14 equitable relief, including but not limited to, restitution or injunctive relief; and

15
16 j. Whether Plaintiff and the other Class member are entitled to
17 damages and other monetary relief and, if so, in what amount.

18
19 32. The claims asserted by Plaintiff are typical of the claims of the Class
20 Members, as his claims arise from the same course of conduct by Defendant and
21 the relief sought is common. Plaintiff, like all Class Members, was exposed to
22 Defendant's misrepresentations and suffered an injury.

23
24 33. Plaintiff will fairly and adequately represent and protect the interests
25 of the Class Members. Plaintiff has retained counsel competent and experienced
26 in both consumer protection and class action litigation.

27
28

1 34. Certification of this class action is appropriate under F.R.C.P. 23(b)
2 because the above questions of law or fact common to the respective Members of
3 the Classes predominate over questions of law or fact affecting only individual
4 Members. This predominance makes class litigation superior to any other method
5 available for the fair and efficient adjudication of these claims.

6
7 35. Absent a class action, it would be highly unlikely that Plaintiff or any
8 other Class Members could protect their own interests because the cost of
9 litigation through individual lawsuits would exceed any expected recovery.

10
11 36. Certification is also appropriate because Defendant has acted or
12 refused to act on grounds applicable to the Class, making appropriate final
13 injunctive relief with respect to the Class as a whole.

14
15 37. Further, given the large number of purchasers and lessees of the
16 Affected Vehicles, allowing individual actions to proceed in lieu of a class action
17 would risk yielding inconsistent and conflicting adjudications.

18
19 38. A class action is a fair and appropriate method for the adjudication of
20 this controversy, in that it will permit many claims to be resolved in a single
21 forum simultaneously, efficiently, and without the unnecessary hardship that
22 would result from the prosecution of numerous individual actions and the
23 duplication of discovery, effort, expense and burden on the courts that such
24 individual actions would engender.

25
26 39. The benefits of proceeding as a class action, including providing a
27 method for obtaining redress for claims that would not be practical to pursue
28

1 individually, outweigh any difficulties that might be argued regarding the
2 management of this class action.

3
4 **COUNT I**

5 **Breach of Express and Implied Warranty**

6 **(By Nation wise Class)**

7
8 40. Plaintiff repeats every allegation contained in the paragraphs above
9 and incorporates such allegations by reference. Plaintiff brings this cause of
10 action on behalf of himself and the Nationwide Class.

11
12 41. Plaintiff and other members of the Class formed a contract with VW
13 when they purchased or leased an Affected Vehicle based on the promises and
14 affirmations of fact made by Defendant on the Affected Vehicles that the Affected
15 Vehicles operated within EPA and CAA emissions standards during all times of
16 operation.

17
18 42. Plaintiff and Members of the Class were exposed to, and acted in
19 positive and material response to, these promises and affirmations of fact, in
20 purchasing or leasing the Affected Vehicles at premium prices. These
21 representations constitute express warranties that became part of the basis of the
22 bargain.

23
24 43. Such representations also created implied warranties that the
25 Affected Vehicles conformed to such representations and would pass without
26 objection in the trade or industry.

1 44. All conditions precedent to seeking liability under this claim for
2 breach of express and implied warranty have been performed by or on behalf of
3 Plaintiff.

4
5 45. VW breached the terms of these express and implied agreements and
6 warranties by providing Affected Vehicles that did not conform with the promised
7 benefits, as described above, and instead by providing Affected Vehicles
8 containing illegal AECD defeat devices that caused the emission control system to
9 underperform during normal operation, in violation of EPA and CAA emission
10 standards.

11
12 46. Because of VW's systematic breach of warranties, Plaintiff and other
13 Members of the Class have been damaged in an amount necessary to compensate
14 them for not receiving the benefit of their bargain.

15
16 **COUNT II**

17 **Fraud – Concealment**

18 **(By Nationwide Class)**

19
20 47. Plaintiff repeats every allegation contained in the paragraphs above
21 and incorporates such allegations by reference. Plaintiff brings this cause of
22 action on behalf of himself and the Nationwide Class.

23
24 48. On September 18, 2015, the EPA issued a Notice of Violation to VW
25 as a result of their investigation of defeat devices manufactured by and installed in
26 a class of 2009-2015 diesel light-duty vehicles equipped with 2.0 liter engines.
27 This investigation found that the Affected Vehicles contained an illegal AECD
28

1 defeat device that caused the emission control system to underperform during
2 normal operation, in violation of EPA and CAA emission standards.

3
4 49. In making the decision to install defeat devices in nearly 500,000
5 vehicles, VW manufactured, marketed and sold vehicles advertised as
6 “CleanDiesel” at premium prices that concealed both the actual emissions
7 produced by the vehicles during normal operation and the existence of the defeat
8 device itself. Additionally, VW created a threat to public health by allowing
9 vehicles to emit harmful pollutants into the atmosphere at up to 40 times above
10 EPA limits required by law.

11
12 50. VW intentionally failed to disclose and actively concealed the
13 presence of the defeat devices installed in the Affected Vehicles, and the actual
14 emissions produced by the Affected Vehicles during normal operation. Until they
15 admitted the presence of the defeat devices to the EPA in late September 2015,
16 this fact was only known to VW.

17
18 51. Plaintiff and Class Members could not, in the exercise of ordinary
19 care, have discovered that the defeat devices were installed in the Affected
20 Vehicles. Moreover, Plaintiff and Class Members could not, in the exercise of
21 ordinary care, have discovered the actual emissions produced by the Affected
22 Vehicles during normal operation.

23
24 52. VW intended to deceive Plaintiff and the Class Members by
25 concealing material facts that a reasonable person would have considered to be
26 important.

1 53. VW actively concealed and failed to disclose the existence of the
2 defeat devices contained in the Affected Vehicles and the actual emissions
3 produced by the Affected Vehicles during normal operation with the intent to
4 deceive Plaintiff and the Class Members. Plaintiff and the Class Members
5 justifiably reasonably relied on VW's deception to their detriment, paying
6 premium prices for vehicles that did not conform to disclosed specifications.

7
8 54. VW had a duty to Plaintiff and the Class Members to disclose the
9 existence of the defeat devices in, and the actual emissions produced by, the
10 Affected Vehicles because:

11
12 a. VW was in a superior position to know the true state of facts
13 about the existence of the defeat devices in, and the actual emissions produced by,
14 the Affected Vehicles;

15
16 b. Plaintiff and Class Members could not reasonably have been
17 expected to learn or discover the existence of the defeat devices in, and the actual
18 emissions produced by, their Affected Vehicles;

19
20 c. Defendant knew that Plaintiff and Class Members could not
21 reasonably have been expected to learn about or discover the existence of the
22 defeat devices in, and the actual emissions produced by, the Affected Vehicles.

23
24 55. VW continued to conceal the existence of the defeat devices installed
25 in Affected Vehicles and the actual emissions produced by Affected Vehicles for
26 years, and are only now revealing the existence of the device and the result
27 therefrom in response to the EPA's investigation.

28

1 60. VW engaged in unlawful business practices when they concealed
2 defeat devices in the Affected Vehicles. The violations of these laws serve as
3 predicate violations of both the “unlawful” prong and the “fraudulent” prong of
4 the California Business & Professions Code § 17200, *et seq.*

5
6 61. VW engaged in unfair, deceptive, untrue or misleading advertising
7 because they marketed the Affected Vehicles as “CleanDiesel” knowing that the
8 Affected Vehicles were equipped with defeat devices and could not perform
9 lawfully within EPA emissions standards.

10
11 62. Despite knowing that the Affected Vehicles contained an unlawful
12 defeat device, VW willfully concealed the existence of the device and the actual
13 emissions produced during normal operation from the EPA, the public, and
14 owners of Affected Vehicles.

15
16 63. In knowing that the Affected Vehicles contained an unlawful defeat
17 device and could not perform lawfully within the EPA emissions standards, VW
18 has knowingly and intentionally concealed material facts.

19
20 64. VW had a duty to Plaintiff and the Class Members to disclose the
21 existence of the defeat devices in Affected Vehicles and the actual emissions
22 produced during normal operation because:

23
24 a. VW was in a superior position to know the true state of facts
25 about the existence of the defeat devices contained in the Affected Vehicles and
26 the actual emissions produced during normal operation;

27
28

1 b. Plaintiff and Class Members could not reasonably have been
2 expected to learn or discover that their vehicle contained a defeat device or the
3 actual emissions that were being produced by their vehicle during normal
4 operation;

5
6 c. Defendant knew that Plaintiff and Class Members could not
7 reasonably have been expected to learn about or discover the defeat device or the
8 actual emissions produced during normal operation.

9
10 65. The facts concealed by VW are material in that a reasonable person
11 would have considered them to be important in deciding whether or not to
12 purchase or lease a diesel light-weight vehicle, or to pay less for them. Had
13 Plaintiff and/or the Class been informed of the defeat device installed in the
14 Affected Vehicles, they would not have purchased and/or leased the vehicles, or
15 would not have paid as much for them.

16
17 66. VW had an improper motive — profit and performance before lawful
18 operation within EPA standards — in its acts related to the manufacturing,
19 advertising, marketing, promotion and sale of the Affected Vehicles.

20
21 67. VW's deceptive practices occurred repeatedly in their trade or
22 business and were deceptively concealed from Plaintiff, other Members of the
23 Class, and the general public, such that they could not reasonably determine the
24 presence of the defeat device prior to purchasing or leasing the Subject Vehicles.

25
26 68. VW committed unfair business acts and/or practices by engaging in
27 extensive national marketing and advertising to promote and sell the Affected
28

1 Vehicles with disclosed specifications knowing that the Affected Vehicles were
2 not operating within lawful emissions standards.

3
4 69. VW engaged in deceptive business acts or practices by concealing
5 and failing to disclose, to the consumers targeted by and exposed to VW's
6 advertising and promotional campaign that the Affected Vehicles were not
7 operating within lawful emissions standards.

8
9 70. These deceptive acts and practices had a capacity, tendency, and/or
10 likelihood to deceive or confuse reasonable consumers into believing the Affected
11 Vehicles performed to disclosed specifications while lawfully operating with
12 emission standards when the Affected Vehicles not compliant with emissions
13 standards.

14
15 71. As one of the purchasers of the Affected Vehicles who, as alleged
16 above, were exposed to the misrepresentations and would not have paid the prices
17 they did, if at all, if the true facts had been disclosed to them, Plaintiff has
18 standing and is entitled to seek all available remedies under the UCL.

19
20 72. Under California Business & Professions Code § 17203, as a result of
21 VW's violations of the UCL, Plaintiff and Class Members are entitled to
22 injunctive relief, restitution for out-of-pocket expenses, and an order disgorging
23 from Defendant and restoring to Members of the Class all monies that may have
24 been acquired by Defendant because of such unfair, deceptive and/or unlawful
25 business acts or practices.

26
27 73. Under California Civil Code § 3287(a), Plaintiff and Class Members
28 are further entitled to pre-judgment interest as a direct and proximate result of

1 VW's wrongful conduct. The amount on which interest is applied is a sum certain
2 and capable of calculation in an amount according to proof.

3
4 **COUNT IV**

5 **Violation of the Consumers Legal Remedies Act, Cal. Bus. & Prof. Code §**
6 **17500, *et seq.***

7 **(By California Subclass)**
8

9 74. Plaintiff repeats every allegation contained in the paragraphs above
10 and incorporates such allegations by reference. Plaintiff brings this cause of
11 action on behalf of herself and the California Subclass.

12
13 75. This Cause of Action is brought pursuant to the California's
14 Consumers Legal Remedies Act ("CLRA"), Cal. Civ. Code §§ 1750, *et seq.*

15
16 76. The Affected Vehicles are "goods" as defined in Cal. Civ. Code §
17 1761(a).

18
19 77. Plaintiff and the Class Members are "consumers" as defined in Cal.
20 Civ. Code § 1761(d), and Plaintiff, Class Members, and VW are "persons" as
21 defined in Cal. Civ. Code § 1761(c).

22
23 78. VW made numerous representations concerning the vehicles
24 specifications that were misleading, including marketing and advertising the
25 Affected Vehicles as "CleanDiesel" when they actually produced emissions at up
26 to 40 times greater than legal limits during normal operation.
27
28

1 79. In purchasing or leasing the Affected Vehicles, Plaintiff and Class
2 Member were deceived by VW's failure to disclose that the Affected Vehicles
3 were equipped with defeat devices that caused them to operate in violation of EPA
4 emission standards.

5
6 80. VW violated California Civil Code §1770(a) (5) by representing that
7 goods have characteristics and benefits which they do not have. Specifically, VW
8 marketed the Affected Vehicles as "CleanDiesel" despite the fact they emit up to
9 40 times more than the allowable level of pollutants during normal operation and
10 were in fact not "clean" or "environmentally friends" as their marketing
11 suggested.

12
13 81. VW violated California Civil Code §1770(a) (7) by representing that
14 goods are of a particular standard, quality, or grade, if they are another.
15 Specifically, VW marketed the Affected Vehicles as "CleanDiesel" but instead the
16 Affected Vehicles emit up to 40 times more than the allowable level of pollutants
17 during normal operation. Additionally, VW installed defeat devices to conceal the
18 actual emissions produced so that consumers could not determine the standard,
19 quality and grade of the Affected Vehicles.

20
21 82. VW violated California Civil Code §1770(a) (9) by advertising goods
22 with the intent not to sell them as advertised. Specifically, VW marketed the
23 Affected Vehicles as "CleanDiesel" but instead sold Affected Vehicles that emit
24 up to 40 times more than the allowable level of pollutants during normal
25 operation.

26
27 83. VW violated California Civil Code §1770(a) (16) by representing
28 that goods have been supplied in accordance with a previous representation when

1 they have not. Specifically, VW supplied vehicles equipped with a defeat device
2 to conceal the actual emission produced during normal operation while
3 represented and marketed the Affected Vehicles as “CleanDiesel.”
4

5 84. As a direct and proximate result of Defendant’s unlawful, unfair, and
6 deceptive business practices in violation of California Civil Code Cal. Civ. Code §
7 1750 *et seq.*, Plaintiffs the Class Members have suffered and continue to suffer
8 harm by Defendant’s conduct. Defendant’s conduct presents a continuing threat
9 of harm to the public in that, among other things, Defendant will continue to
10 mislead consumers by selling vehicles that are not of the particular characteristics,
11 standard, quality, and/or grade represented by Defendant to consumers.
12 Furthermore, Defendant’s conduct presents a continuing threat of harm to the
13 public in that Defendant will continue to make false representations to consumers
14 that Defendant has sold the vehicle in accordance to Defendant’s prior
15 representations to such consumers, when in fact Defendant has not actually done
16 so.
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18 85. Plaintiff and Class Members are entitled to equitable and monetary
19 relief and attorney’s fees under the CLRA.
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1 **PRAYER FOR RELIEF**

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3 **WHEREFORE**, Plaintiff, for himself and all others similarly situated,
4 prays for relief against Defendant, jointly and severally under each Count in this
5 Complaint as follows:

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7 1. For an order certifying the Nationwide Class and California Subclass,
8 and appointing Plaintiff's counsel as Counsel for both Classes;

9
10 2. For an award of equitable relief as follows:

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12 a. An order enjoining VW from continuing to engage, use, or
13 employ any unlawful, unfair and/or deceptive business acts or practices and from
14 refusing to engage in a corrective advertising campaign; and

15
16 b. An order awarding restitution for out-of-pocket expenses and
17 economic harm and disgorging and restoring all monies that may have been
18 acquired by VW because of such acts and/or practices;

19
20 3. For an award of damages as permitted by law;

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22 4. For an award of punitive damages for VW's malicious, oppressive
23 and deliberate fraud, as permitted by law;

24
25 5. For an award of attorneys' fees under, *inter alia*, Cal. Code Civ.
26 Proc. § 1021.5 and Cal. Civ. Code §§ 1750, *et seq.*;

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28 6. For pre- and post-judgment interest on any amounts awarded;

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7. For an award of costs; and

8. For an Order providing such further relief as may be found just and proper.

MLG AUTOMOTIVE LAW, APLC

Dated: September 25, 2015 By: /s/ Kathryn J. Harvey
Jonathan A. Michaels, Esq.
Kathryn J. Harvey, Esq.
Kianna C. Parviz, Esq.
Attorneys for Plaintiff,
Gregg A. Klein

JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues so triable.

MLG AUTOMOTIVE LAW, APLC

Dated: September 25, 2015 By: /s/ Kathryn J. Harvey
Jonathan A. Michaels, Esq.
Kathryn J. Harvey, Esq.
Kianna C. Parviz, Esq.
Attorneys for Plaintiff,
Gregg A. Klein

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