

**UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT**

<b>DREW MIZAK, Individually, and on</b>	<b>:</b>	<b>CIVIL ACTION NO. 15-1429</b>
<b>Behalf of all others Similarly Situated, Plaintiffs</b>	<b>:</b>	
	<b>:</b>	
<b>VS.</b>	<b>:</b>	<b>CLASS ACTION</b>
	<b>:</b>	
<b>VOLKSWAGEN GROUP OF AMERICA, INC.,</b>	<b>:</b>	
<b>VOLKSWAGEN OF AMERICA, INC. and</b>	<b>:</b>	<b>JURY TRIAL DEMANDED</b>
<b>VOLKSWAGEN AKTIENGESELLSCHAFT</b>	<b>:</b>	
<b>(D/B/A VOLKSWAGEN GROUP AND/OR</b>	<b>:</b>	
<b>VOLKSWAGEN AG), Defendants</b>	<b>:</b>	<b>SEPTEMBER 30, 2015</b>

**CLASS ACTION COMPLAINT**

Plaintiff Drew Mizak (“Mizak”), individually and on behalf of all others similarly situated alleges the following:

**I. NATURE AND SUMMARY OF THE ACTION**

1. This class action is brought on behalf of hundreds of thousands of consumers who purchased or leased “CleanDiesel” automobiles manufactured and sold by Volkswagen from 2009 through 2015.<sup>1</sup> During this period, Volkswagen marketed the “extreme efficiency” and “ultra-low-sulfur” technology of its automobiles equipped with 2.0L, four-cylinder “CleanDiesel” engines that purportedly met the federal Environmental Protection Agency (“EPA”) emission standards while delivering superior performance and fuel efficiency.

2. Volkswagen aggressively advertised these vehicles as having the “world’s cleanest diesel engines” that supposedly complied with the “most demanding emissions laws.” In various sales brochures, Volkswagen contended that its “[c]lean diesel vehicles meet the strictest EPA standards” while “reduc[ing] sooty emissions by up to 90%,” providing consumers

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<sup>1</sup> Defendants in this action are Volkswagen Group of America, Inc., Volkswagen of America, Inc. and Volkswagen Aktiengesellschaft (d/b/a Volkswagen Group and/or Volkswagen AG (collectively, “Defendants,” “Volkswagen” or the “Company”).

“a fuel-efficient and eco-conscious vehicle.”

3. In response to these and similar claims, sales of Volkswagen’s “CleanDiesel” automobiles soared, reviving interest in an alternative fuel that had all but disappeared by 2004 due to increasingly strict environmental regulations and consumer distaste. Volkswagen gained popularity for these models by claiming its diesel engines were no longer poor-performing polluters but could provide performance and fuel efficiency that were comparable, if not superior, to conventional gasoline engines, all in an eco-friendly package.

4. These qualities, however, came at a significant premium. For a “CleanDiesel” vehicle, Volkswagen charged consumers from \$1,000 to \$7,000 or more over the comparably-equipped gasoline version of the same model. Nevertheless, in its most recently reported sales for August 2015, nearly one-quarter of all Volkswagens sold were equipped with diesel engines.

5. By mid-2014, consumer groups and regulators began questioning Volkswagen’s supposedly revolutionary technology. For more than a year, however, Volkswagen denied cheating on emissions tests.

6. On September 18, 2015, the EPA issued a shocking Notice of Violation (“NOV”) regarding Volkswagen’s use of a “defeat device” to cheat on emissions tests. The EPA’s NOV detailed the EPA’s determination that Volkswagen “manufactured and installed defeat devices” in model year 2009 through 2015 passenger vehicles with 2.0L diesel engines. The “defeat device” – secret, sophisticated software – automatically detected when the vehicles were undergoing emissions testing and engaged the vehicles’ full emissions controls in order to meet regulatory standards. However, at all other times, the defeat device disabled the emissions controls, causing Volkswagen “CleanDiesel” cars to emit as much as 40 times the EPA allowable emission of nitrogen oxides (“NOx”). As Cynthia Giles, Assistant Administrator for

the Office of Enforcement and Compliance Assurance at the EPA, stated: “Using a defeat device in cars to evade clean air standards is illegal and a threat to public health. The EPA ordered Volkswagen to immediately recall all affected vehicles.”

7. Two days later, on September 20, 2015, Volkswagen and its Chief Executive Officer, Martin Winterkorn, issued a public apology admitting to years of deceptive practices and purposely manipulating emissions tests for approximately 500,000 vehicles sold in the United States, stating Volkswagen was “deeply sorry that we have broken the trust of our customers and the public.” The Company also ordered its U.S. dealers to halt sales of all diesel automobiles.

8. On September 22, 2015, Volkswagen admitted that the problem was global and impacted 11 million vehicles worldwide. Regulators in the U.S. and abroad have called for probes of Volkswagen’s deliberate cheating on emissions standards. As Senator Bill Nelson, a leading member of the Senate Commerce, Science and Transportation Committee stated in calling for an investigation of Volkswagen by the Federal Trade Commission, “I am outraged that VW would cheat its customers by deceiving them into buying a car that wasn’t what was advertised.” In this regard, the United States Department of Justice has already started an investigation into the use of defeat devices in Volkswagen’s vehicles, which is ongoing.

9. On September 23, 2015, Winterkorn resigned from his position as Chief Executive Officer in response to the emissions scandal. In connection with that announcement, a member of the board of Volkswagen AG, Stephan Weil, stated “[t]he incident must be cleared up mercilessly, and it must be assured that such things cannot ever happen again,” and that the Company is “very much aware of the scope of this issue, the economic damage and the implications for VW’s reputation.”

10. In light of these facts, Plaintiff now brings this suit on behalf of himself and proposed Nationwide class to obtain damages (both actual and punitive), restitution and to enjoin Volkswagen from continuing to deceive consumers.

### **PARTIES**

11. Plaintiff Drew Mizak (“Mizak”) is a resident and citizen of Plainfield, Connecticut.

12. Defendant Volkswagen Group of America, Inc. is a corporation doing business in all 50 states (including the District of Columbia) and is organized under the laws of the State of New Jersey, with its principal place of business located at 2200 Ferdinand Porsche Drive, Herndon, Virginia.

13. Defendant Volkswagen of America, Inc. is a corporation incorporated in the State of New Jersey, with its principal place of business located at 2200 Ferdinand Porsche Drive, Herndon, Virginia. Based on information and belief, it is an operating unit of Volkswagen Group of America, Inc.

14. Defendant Volkswagen Aktiengesellschaft, doing business as Volkswagen Group and/or Volkswagen AG (“VW AG”), is a corporation organized and existing under the laws of Germany, with its principal place of business located in Wolfsburg, Germany. VW AG is the parent corporation of Volkswagen Group of America, Inc.

15. In October of 2009, Mizak purchased a 2010 model year Volkswagen Jetta TDI from a Volkswagen dealership located in Mystic, Connecticut.

16. In April of 2014, Mizak purchased a 2014 model year Volkswagen Passat TDI from a Volkswagen dealership located in Plainfield, CT.

17. Mizak purchased both cars powered by 2.0L “TDI” turbocharged diesel engines

which contained a defeat device and did so in a transaction where Volkswagen did not disclose material facts related to the vehicle's emission of pollutants far in excess of allowed levels. As a result, Mizak did not receive the benefit of his bargain and overpaid for his vehicle.

18. More specifically, at the time Mizak purchased his vehicles, the vehicles were equipped with a defeat device installed by Volkswagen that permitted the vehicles to pass applicable federal and state emissions tests and obtain unwarranted emissions certifications, including from the EPA. The device controlled emissions from the vehicles during emissions tests, but at all other times the vehicles were in operation they emitted pollutants that significantly exceeded the allowed level of pollutants (including NO<sub>x</sub>), by up to forty times permissible limits in the Clean Air Act.

19. Mizak purchased his vehicles, in whole or in part, due to the CleanDiesel engine system advertised and marketed by Volkswagen as both fuel efficient and environmentally friendly. However, none of the advertisements and marketing materials provided to him, nor representations received by him from Volkswagen or its agents, dealers or other representatives, made any mention or disclosure related to the defeat device that Volkswagen secretly installed on these vehicles. If Volkswagen had disclosed that its class of CleanDiesel vehicles actually emitted up to 40 times (or more) the allowable levels of NO<sub>x</sub> pollutants, Mizak would not have purchased his vehicles or would have paid substantially less for purchasing the vehicles than he did. Mizak has suffered ascertainable losses as a result of Volkswagen's omissions and/or misrepresentations associated with the CleanDiesel engine system, including but not limited to: out-of-pocket loss and future attempted repairs, future additional fuel costs and diminished value of his vehicles. Even if Volkswagen is able to make the vehicles at issue EPA compliant, members of the prospective Classes will still suffer actual harm because once compliant, their

vehicles will no longer perform as they did when purchased or leased and as advertised, necessarily lowering the value of the vehicle.

20. At all times relevant to this action, Volkswagen manufactured, distributed, sold, leased and warranted the Subject Vehicles (defined below) throughout the United States under the Volkswagen and Audi brand names. Volkswagen and/or its agents designed, manufactured and installed the CleanDiesel engine systems in the vehicles at issue, which included the defeat device. Volkswagen also developed and disseminated the owner's manuals and warrant booklets, advertisements and other promotional materials relating to the vehicles containing the defeat device.

## **I. VOLKSWAGEN'S VIOLATIONS OF FEDERAL AND STATE EMISSIONS STANDARDS**

### **A. Company Background**

21. Volkswagen is a German automotive company that manufactures and sells vehicles under the Volkswagen, Audi, Porsche and other brand names with operations in approximately 150 countries, including the United States. In the first half of 2015, Volkswagen surpassed Toyota as the world's largest automaker by sales, selling 5.04 million vehicles in the first six months of the year. By July 2015, Volkswagen ranked eighth on the Fortune Global 500 list of the world's largest companies.

22. Despite Volkswagen's ascension to become the world's largest automaker, a position the Company had long coveted, Volkswagen has struggled in the United States. According to a July 28, 2015, article in USA Today titled "VW Surpasses Toyota as World's Largest Automaker in First Half of 2015," industry experts attribute Volkswagen's comparatively lower sales in the lucrative U.S. market to the brand's lack of "selection" and

“lag[] on quality.” In the 2015 J.D. Power and Associates Initial Quality Study, which examines new vehicles, Volkswagen’s namesake brand ranked 24th out of thirty-three brands sold in the U.S. Accordingly, Volkswagen has focused on making its brand a stronger player in the United States by touting the performance and reliability of its vehicles and the Company’s environmental leadership, while reining in costs and increasing profitability. For example, the Company’s 2013 Annual Report emphasizes at the very beginning of its “Goals and Strategies” section that “Volkswagen intends to become the global economic and environmental leader among automobile manufacturers by 2018” and that “[w]e are focusing in particular on the environmentally friendly orientation and profitability of our vehicle projects.”

**B. The Emissions of Volkswagen Vehicles Are Strictly Regulated Under U.S. Federal and State Laws**

23. The Clean Air Act (“CAA”), enacted in 1970, is a comprehensive federal law that regulates air emissions from stationary and mobile sources. 42 U.S.C. § 7401, *et seq.* (1970). In creating the CAA, Congress determined that “the increasing use of motor vehicles . . . has resulted in mounting dangers to the public health and welfare.” CAA § 101(a)(2), 42 U.S.C. § 7401(a)(2). The CAA and the regulations promulgated thereunder are designed to reduce the emission of NO<sub>x</sub> and other pollutants, thereby protecting human health and the environment.

24. Under the CAA, light-duty vehicles must satisfy emission standards for certain air pollutants, including NO<sub>x</sub>. NO<sub>x</sub> pollution can result in a variety of harmful effects on human health and the environment. NO<sub>x</sub> contributes to nitrogen dioxide, ground-level ozone and fine particulate matter. When humans are exposed to nitrogen dioxide, they may be at a greater risk for serious health dangers, including asthma attacks and other respiratory illness requiring hospitalization. Ozone and particulate matter exposure have been associated with premature death due to respiratory-related or cardiovascular-related effects. Children, the elderly and

people with pre-existing respiratory illness are at an elevated risk for suffering adverse health consequences associated with these pollutants.

25. Under the CAA, vehicle manufacturers are required to certify to the EPA that vehicles sold in the United States meet the applicable federal emissions standards. Through this program, the EPA issues a certificate of conformity (“COC”) to vehicles that are deemed to satisfy applicable emission standards. Every vehicle sold in the United States must be covered by an EPA issued certificate of conformity. These emissions standards are designed to control air pollution. In order to be sold in the United States, a vehicle must be issued a COC by the EPA.

26. To obtain a COC, the manufacturer of a light-duty vehicle must submit a COC application to the EPA for each test group of vehicles that it intends to place into the stream of commerce in the United States. This application must disclose a list of all auxiliary emission control devices (“AECD”) installed on the vehicles.

27. The CAA makes it a violation for “any person to manufacture or sell, or offer to sell, or install, any part or component intended for use with, or as part of, any motor vehicle or motor vehicle engine, where a principal effect of the part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this subchapter, and where the person knows or should know that such part or component is being offered for sale or installed for such use or put to such use.”

28. An AECD is defined as “any element of design which senses temperature, vehicle speed, engine RPM, transmission gear, manifold vacuum, or any other parameter for the purpose of activating, modulating, delaying, or deactivating the operation of any part of the emission

control system.” 40 C.F.R. § 86.1803-01. The COC application must include “a justification for each AECD, the parameters they sense and control, a detailed 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 defeat device.” 40 C.F.R. § 86.1844-01(d)(11).

29. In particular, the CAA defines a “defeat device” as an AECD “that reduces the effectiveness of the emission control system under conditions which may reasonably be expected to be encountered in normal vehicle operation use.” When a defeat device is in place, it can bypass, defeat or render inoperative elements of the vehicle’s emission control system that are put in place to ensure compliance with the CAA. Motor vehicles that are equipped with defeat devices cannot be certified by the EPA.<sup>2</sup>

### **C. Volkswagen’s Marketing Of Its “CleanDiesel” Vehicles**

30. Since 2008, Volkswagen has manufactured and sold a line of diesel-fuel vehicles known as “CleanDiesel.” Vehicles marketed as “CleanDiesel” are powered by the Company’s 2.0L turbo diesel four-cylinder engines. Volkswagen’s advertisements assured customers that its vehicles were the cleanest diesel engines and the most environmentally friendly.

31. Since introducing its 2.0L TDI CleanDiesel engine in 2008, Volkswagen has touted it as a “fantastic power train” that “gives very good fuel economy,” “is also good for the environment because it puts out 25% less greenhouse gas emissions than what a gasoline engine would” and “cuts out the particulate emissions by 90% and the emissions of nitrous oxide are cut by 95%” and is “clean enough to be certified in all 50 states.”<sup>3</sup>

32. “TDI” stands for “Turbocharged Direct Injection.” The TDI engines are

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<sup>2</sup> EPA, Advisory Circular Number 24: Prohibition on use of Emission Control Defeat Device (Dec. 11, 1972).

<sup>3</sup> Statement of Volkswagen Group of America, Inc.’s Chief Operating Officer Mark Barnes, to The Business Insider, October 9, 2009.

turbocharged and directly inject fuel into each cylinder via fuel injectors. With respect to its TDI engines, Volkswagen has stated, “[t]he superior qualities of the 2.0 Liter TDI engine with common rail injection systems are oriented towards future challenges in acoustics, comfort, and exhaust gas after-treatment . . . confirming Volkswagen’s role as a pioneer in diesel technology.”

33. At all relevant times herein, Volkswagen represented that the TDI engine satisfies current emissions standards due to its unique after-treatment system, which features a diesel particulate filter, upstream oxidation catalyst and low and high pressure Exhaust Gas Recirculation (“EGR”). According to Volkswagen, “[t]he most effective measure to reduce nitrous oxides (NO<sub>x</sub>) with an internal combustion engine is by introducing very high exhaust gas recirculation rates into the combustion chamber.”

34. The exhaust chamber of the TDI engine contains four components, each serving a different purpose: 1) oxidation catalytic converter; 2) particulate filter; 3) NO<sub>x</sub> filter; and 4) H<sub>2</sub>S catalytic converter.

35. In order to comply with strict emissions regulations enacted in 2008, many manufacturers of diesel cars began outfitting their vehicles with tanks of a urea-based solution known as “AdBlue.” This solution is thought to reduce emissions of NO<sub>x</sub>. According to Volkswagen, however, its small vehicles powered by the 2.0L TDI engine did not require AdBlue in order to reduce NO<sub>x</sub> emissions. Volkswagen began aggressively marketing its CleanDiesel vehicles beginning no later than the 2009 model year. This marketing strategy was intended to solidify Volkswagen’s market power for diesel powered vehicles in the United States.

36. In fact, in marketing its CleanDiesel vehicles, Volkswagen has relied heavily on its purported compliance with emissions regulations. In 2008, Volkswagen marketed the

CleanDiesel vehicles as having the “world’s cleanest diesel engines” that comply with the world’s “most demanding emissions laws.”

37. Volkswagen brochures distributed to customers and members of the prospective Classes touted that its “Clean diesel vehicles meet the strictest EPA standards in the U.S. Plus, TDI technology helps reduce sooty emissions by up to 90%, giving you a fuel-efficient and eco-conscious vehicle.” As discussed below, the vehicles listed in these brochures – the Volkswagen Jetta TDI, the Volkswagen Jetta SportWagen TDI, the Volkswagen Golf TDI, the Volkswagen Passat TDI, and the Volkswagen Beetle TDI – have all since been found to be grossly noncompliant with EPA standards.

38. In an October 2009 interview with Business Insider, when asked “[w]hat is the advantage of a diesel over a hybrid,” VW of America’s Chief Operating officer, Mark Barnes, stated: “It’s also good for the environment because it puts out 25% less greenhouse gas emissions than what a gasoline engine would. And thanks to the uniqueness of the TDI motor, it cuts out the particulate emissions by 90% and the emissions of nitrous oxide are cut by 95%. So, a very very clean running engine. Clean enough to be certified in all 50 states.”<sup>4</sup>

39. Volkswagen Group’s Jetta and Audi A3 diesels won the 2009 and 2010 Green Car of the Year awards given by auto trade publication Green Car Journal.

40. Throughout the relevant period, Volkswagen repeatedly touted the reduced emissions of its 2.0L TDI clean diesel engines to U.S. consumers. For example, Volkswagen claimed that the system runs on ultra-low-sulfur diesel, helping reduce sooty emissions by up to 90% compared to previous diesel engines.

41. Volkswagen also emphasized the fuel efficiency of the TDI CleanDiesel along

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<sup>4</sup> Gayathri Vaidyanathan, “Volkswagen Preps for a Diesel Revolution,” The Business Insider, Oct. 9, 2009, <http://www.businessinsider.com/volkswagen-preps-for-adiesel-revolution-2009-10>.

with its cleanliness. For example, in a marketing brochure for the 2014 VW Jetta TDI CleanDiesel, Volkswagen not only claimed that the car had a greater range on a single tank of gas than did the Honda Civic Hybrid, Mazda 3, Toyota Prius and Ford Focus SFE, but also claimed that “The Jetta TDI has lower CO2 emissions compared to 90% of other vehicles engines. So every getaway you make will be a cleaner one.”

42. Volkswagen also touted the performance characteristics of the TDI CleanDiesel, claiming that clean emission technology did not sacrifice its 236 lbs/ft of torque and turbocharged clean diesel engine. In a recent 2015 Volkswagen Golf sales brochure, Volkswagen stated “With the 2.0L TDI engine, you’ll appreciate every fuel-efficient mile with the EPA-estimated 45 hwy mpg. But that’s only half the story. Step on the pedal and feel the 236 lb-ft of torque and let the performance tell the other half.”

43. Volkswagen claimed that TDI CleanDiesel models “typically have a higher resale value versus comparable gasoline vehicles.” Volkswagen also touted its CleanDiesel vehicles as a fun-to-drive alternative to other fuel-efficient and environmentally friendly cars, claiming that the diesel cars can achieve hybrid-like fuel mileage, but greater torque and horsepower than hybrid vehicles. Marketing efforts by Volkswagen emphasized the benefits to a consumer of choosing a diesel vehicle over a hybrid.

44. Volkswagen attempted to boost sales of these TDI vehicles through mass-advertisements aimed at the average consumer, by raising awareness of what it called its “TDI CleanDiesel Technology.” Advertisements also praised the fuel efficiency of TDI CleanDiesel engines, along with the higher resale values enjoyed by those models.

45. Sales of Volkswagen TDI CleanDiesel vehicles rose steadily. In 2008, Volkswagen sold 12,000 units of these vehicles in North America. In 2013, Volkswagen sold

100,000 units of these vehicles in North America, a nearly tenfold increase. With a 78% share of the North American diesel automobile market, Volkswagen sold more diesel cars in the United States than every other brand combined.

**D. Volkswagen Charged a Premium for Its “CleanDiesel” Vehicles**

46. As reflected by the table below, Volkswagen charged consumers a substantial premium for its supposedly environmentally-friendly CleanDiesel models. Prices in the chart below represent the price premium over the similar gasoline model.

<b>CLEANDIESEL PRICE PREMIUMS</b>			
<b>MODEL</b>	<b>BASE</b>	<b>MID-LEVEL</b>	<b>TOP-LINE</b>
VW Jetta	\$2,860	\$4,300	\$6,315
VW Beetle	\$4,635	n/a	\$2,640
VW Golf	\$2,950	\$1,000	\$1,000
VW Passat	\$5,755	\$4,700	\$6,855
Audi A3	\$2,805	\$3,095	\$2,925

**E. Volkswagen’s Express Warranties**

47. In connection with the purchase or lease of each one of its new vehicles, Volkswagen provides an express New Vehicle Limited Warranty (“NVLW”) for a period of three years or 36,000 miles, whichever occurs first. This NVLW exists to cover “any repair to correct a manufacturing defect or materials or workmanship.”

48. The CAA requires manufacturers of light-duty vehicles to provide two federal emission control warranties: a “Performance Warranty” and a “Design and Defect Warranty.”

49. The EPA requires vehicle manufacturers to provide a Performance Warranty with respect to the vehicles’ emissions systems. Thus, Volkswagen also provides an express warranty for its vehicles through a Federal Emissions Performance Warranty. The Performance Warranty required by the EPA applies to repairs that are required during the first two years or 24,000 miles, whichever occurs first, when a vehicle fails an emissions test. Under this warranty,

certain major emission control components are covered for the first eight years or 80,000 miles, whichever comes first. These major emission control components subject to the longer warranty include the catalytic converters, the electronic emissions control unit (ECU), and the onboard emissions diagnostic device or computer.<sup>5</sup>

50. The EPA requires vehicle manufacturers to issue Defect Warranties with respect to their vehicles' emissions systems. Thus, Volkswagen also provides an express warranty to its vehicles through a Federal Emissions Control System Defect Warranty. The Design and Defect Warranty required by the EPA covers repair of emission control or emission related parts which fail to function or function improperly due to a defect in materials or workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes first, or, for the major emissions control components, for eight years or 80,000 miles, whichever comes first.<sup>6</sup>

51. As a manufacturer of light-duty vehicles, Volkswagen was required to provide these warranties to purchasers or lessees of its CleanDiesel TDI vehicles.

52. Mizak and the other members of the Nationwide Class experienced defects within the warranty period. Despite the existence of warranties, Volkswagen failed to inform Mizak and the other individuals similarly situated that the vehicles at issue were intentionally designed and manufactured to be out of compliance with applicable state and federal emissions laws, and failed to fix the defective emissions components free of charge.

**F. Volkswagen Failed to Meet Applicable Emissions Standards and Employed a “Defeat Device” to Evade the Standards**

53. Volkswagen knew that its CleanDiesel vehicles could not pass applicable state and federal emissions standards. To evade this difficulty, Volkswagen intentionally installed a

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<sup>5</sup> Environmental Protection Agency, Emissions Warranties for 1995 and Newer Cars and Trucks, available at <http://www3.epa.gov/otaq/regs/im/obd/pubs/420f09048.pdf>.

<sup>6</sup> Id.

defeat device in the engines of its CleanDiesel class of vehicles. Volkswagen perpetrated this misconduct for years, until experiments conducted by a clean air non-profit group and a university alerted state and federal officials to the nefarious scheme. In total, Volkswagen's deceitful practice has impacted approximately 500,000 vehicles in the United States, and 11 million vehicles worldwide.

**1. The International Council for Clean Transportation/West Virginia University Study**

54. The International Council on Clean Transportation ("ICCT") is an independent nonprofit organization founded to provide first-rate, unbiased research and technical and scientific analysis to environmental regulators. According to the ICCT's website ([www.theicct.org](http://www.theicct.org)), its mission is "to improve the environmental performance and energy efficiency of road . . . transportation, in order to benefit public health and mitigate climate change." Peter Mock, the European managing director of the ICCT, and John German, his American counterpart, noted the discrepancies between the performances of Volkswagen CleanDiesel vehicles in Europe compared with the United States. Mock and German then replicated the tests in the United States, and discovered that Volkswagen CleanDiesel vehicles were, in fact, not clean.

55. In late 2013, the ITTC enlisted assistance from the West Virginia University ("WVU"), using equipment provided by the school's Center for Alternative Fuels, Engines and Emissions ("CAFEE"). Using a Portable Emissions Measurement System ("PEMS"), the ICCT and WVU conducted on-road testing of three light-duty diesel vehicles, including a 2012 Volkswagen Jetta and a 2013 Volkswagen Passat, both equipped with a 2.0L TDI CleanDiesel engine. The PEMS testing measured emissions of NOx, carbon monoxide, THC, and carbon dioxide.

56. The results of this experiment, which measured tailpipe emissions over a 1,300 mile journey, were “shocking.”<sup>7</sup> According to German, “[w]e were astounded when we saw the numbers.”<sup>8</sup> The study showed that the Volkswagen vehicles exceeded the U.S. NOx emissions standards by up to 35 times. However, the NOx emissions for these same two vehicles were below the EPA standards when subjected to chassis dynamometer testing performed pursuant state and federal emissions regulations. The ICCT and WVU brought their concerns and the results of their study to the EPA.

## **2. The EPA Investigation and Volkswagen’s Private Admission**

57. The EPA began an investigation into Volkswagen’s CleanDiesel vehicles in May 2014. In conjunction with the investigations, the EPA engaged in discussions with Volkswagen to determine the reason for the high discrepancy between NOx emissions given off by TDI vehicles in the on-road study performed by ICCT and WVU and the passing levels given off by these same vehicles in federally mandated emissions tests.

58. After the EPA began its investigation, Volkswagen initiated testing to replicate the ICCT/WVU testing and attempted to explain away the reasons for the high on-road emissions. In correspondence with the EPA, Volkswagen maintained that the high on-road emissions were due to a software or technical error, or unexpected in-use conditions.

59. In December 2014, Volkswagen released the results of its own investigation to the EPA, and proposed a voluntary recall of nearly 500,000 CleanDiesel cars in December 2014, presumably to implement a software patch and recalibration that Volkswagen claimed would solve the problem. The EPA agreed to this recall, but continued to perform tests to determine

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<sup>7</sup> Jeff Plungis and Dana Hull, “VW’s Emissions Cheating Found by Curious Clean-Air Group,” Bloomberg, Sept. 19, 2015, <http://www.bloomberg.com/news/articles/2015-09-19/volkswagen-emissions-cheating-found-by-curious-clean-air-group>.

<sup>8</sup> Id.

whether a recall would sufficiently address the problem.

60. During meetings between Volkswagen officials and EPA employees, Volkswagen privately admitted, after months of denials and excuses, that “these vehicles were designed and manufactured with a defeat device to bypass, defeat, or render inoperative elements of the vehicles’ emissions control system.”

### **3. The EPA Announces a Notice Of Violation And In-Use Compliance Letter**

61. On September 18, 2015, the EPA issued a NOV against Volkswagen. In its NOV, the EPA revealed that Volkswagen admitted that “it had designed and installed a defeat device in these vehicles in the form of a sophisticated software algorithm that detected when a vehicle was undergoing emissions testing.”

62. According to the EPA NOV, software that Volkswagen admitted to installing “was designed to track the parameters of the federal test procedure and cause emission control systems to underperform when the software determined that the vehicle was not undergoing the federal test procedure.”

63. The EPA announced the initiation of an investigation based on Volkswagen’s alleged actions. As stated by Cynthia Giles, Assistant Administrator for the Office of Enforcement and Compliance Assurance at the EPA: “Using a defeat device in cars to evade clean air standards is illegal and a threat to public health.”<sup>9</sup> Ms. Giles, expressed the gravity of the situation as follows: “These violations are very serious, not only because illegal defeat devices result in excess emissions many times the allowable standard, but also because VW was concealing the facts from the EPA . . . and consumers.” She summed up the sentiments of many

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<sup>9</sup> Press Release, EPA, New York Notify Volkswagen of Clean Air Act Violations (Sept. 18, 2015).

consumers when she said “[w]e expected better from VW.”<sup>10</sup>

64. As detailed in the EPA’s NOV, Defendant Volkswagen installed sophisticated software in Volkswagen and Audi diesel vehicles it sells in the United States. This software, which the EPA officially recognized as a defeat device as defined by the Clean Air Act, is able to detect the conditions when a vehicle is undergoing official emissions testing and engages full emissions controls only while the testing is underway. By measuring such factors as the position of the steering, the vehicle’s speed, and the vehicle’s barometric pressure, the software is able to detect the times at which the vehicle is being subjected to emissions tests. When the vehicle is not undergoing emissions testing, the software does not act to reduce emissions. In other words, while the car is operating on the open road as part of its normal use, the emissions controls are suppressed. This results in cars that meet emissions standards in the laboratory or state testing station, but during normal operation emit nitrogen oxides (NOx) at up to 40 times the standard allowed under United States laws and regulations.

65. According to the EPA NOV, Volkswagen installed its defeat device in the diesel models of at least the following vehicles (the “Subject Vehicles”):

- a. VW Jetta: 2009-2015 Model Years
- b. VW Jetta SportWagen: 2009-2015 Model Years
- c. VW Beetle: 2009-2015 Model Years
- d. VW Beetle Convertible: 2012-2015 Model Years
- e. VW Golf: 2014-2015 Model Years
- f. VW Passat: 2012-2015 Model Years
- g. Audi A3: 2009-2015 Model Years

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<sup>10</sup> Ryan Beene, “VW Faced Ultimatum from EPA,” *Automotive News*, Sept. 20, 2015, <http://www.autonews.com/article/20150920/OEM11/309219947/vw-facedultimatum-from-epa>.

66. Following the EPA's NOV, it was widely reported in the media, including by The Los Angeles Times, The New York Times, CNN, Bloomberg and Reuters, that Volkswagen's use of the defeat device impacts approximately 482,000 Volkswagen and Audi diesel vehicles in the United States.<sup>11</sup> Industry publications also widely covered the revelation, referring to it as a "catastrophe" and stating "[t]here's no other way to describe the allegations from the Environmental Protection Agency that Volkswagen cheated on their emissions tests with nearly a half a million TDI diesel cars."<sup>12</sup>

#### **4. Volkswagen Admits To Using Defeat Devices to Cheat On Emissions Tests And Announces That It Would Suspend Sales Of CleanDiesel Vehicles**

67. On September 20, 2015, Martin Winterkorn, Volkswagen's Chief Executive Officer, issued a public apology concerning the emissions cheating scandal, acknowledging that the Company had "broken the trust of our customers and the public."<sup>13</sup> Winterkorn added that "Volkswagen has ordered an external investigation of this matter" and claimed that it would "do everything necessary in order to reverse the damage this has caused."

68. Winterkorn further stated that "[w]e do not and will not tolerate violations of any kind of our internal rules or of the law." Winterkorn promised that Volkswagen would cooperate fully with the EPA investigation and ordered "an external investigation of this matter."

69. Also on September 20, 2015, a Volkswagen representative declared, "We have

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<sup>11</sup> Coral Davenport and Jack Ewing, "VW is Said to Cheat on Diesel Emissions;" "U.S. to Order Big Recall," New York Times, Sept. 18, 2015, [http://www.nytimes.com/2015/09/19/business/volkswagen-is-ordered-to-recall-nearly-500000-vehicles-over-emissions-software.html?\\_r=0](http://www.nytimes.com/2015/09/19/business/volkswagen-is-ordered-to-recall-nearly-500000-vehicles-over-emissions-software.html?_r=0).

<sup>12</sup> Kalyeena Makortoff, "Volkswagen Stock Drops 20% on U.S. Diesel Recall Probe," CNBC (September 21, 2015), <http://www.cnbc.com/2015/09/21/volkswagen-stock-drops-20-on-US-diesel-recall-probe.html>.

<sup>13</sup> Jack Ewing, "Volkswagen Denied Deception to the E.P.A. for Nearly a Year," New York Times, Sept. 21, 2015, <http://www.houstonchronicle.com/business/article/Volkswagen-denied-deception-to-EPA-for-nearly-a-6520476.php>.

admitted to it to the regulator. It is true. We are actively cooperating with the regulator.”<sup>14</sup>

70. On September 20, 2015, Volkswagen instructed its U.S. dealers to stop selling Subject Vehicles from model years 2015 and 2016.

71. On September 21, 2015, at the New York unveiling of the new Passat, Michael Horn, the head of Volkswagen’s U.S. division, said, “[l]et’s be clear about this. Our company was dishonest. With the EPA, and the California Air Resources Board, with all of you. And in my German words, we have totally screwed up.”

72. Also on September 21, 2015, the German government announced its intention to begin an inquiry to ensure that Volkswagen was complying with all laws on auto emissions.<sup>15</sup>

73. On September 22, 2015, Volkswagen announced that its evasion of emissions standards was not limited to the United States and that as many as eleven million vehicles worldwide could be affected by software allegedly used to cheat emissions tests.

74. Finally, Volkswagen Chief Executive Officer Winterkorn issued a video on September 22, 2015, further apologizing for the Company’s misconduct. In the video message, Winterkorn declared that he was “endlessly sorry” that the Company had squandered worldwide trust in the brand. “Millions of people across the world trust our brands, our cars and our technology . . . I am endlessly sorry that we have disappointed this trust. I apologize in every way to our customers, our authorities and the whole public for the wrongdoing.” He concluded that “manipulation at Volkswagen must never happen again.”<sup>16</sup>

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<sup>14</sup> Kalyeena Makortoff, “Volkswagen Stock Drops 20% on U.S. Diesel Recall Probe,” CNBC (September 21, 2015), <http://www.cnbc.com/2015/09/21/volkswaen-stockdrops-20-on-US-diesel-recall-probe.html>.

<sup>15</sup> Jack Ewing, “Volkswagen Denied Deception to the E.P.A. for Nearly a Year,” New York Times, Sept. 21, 2015, <http://www.houstonchronicle.com/business/article/Volkswagen-denied-deception-to-EPA-for-nearly-a-6520476.php>.

<sup>16</sup> Ryan Beene, “VW faces U.S. criminal probe over diesel emissions violations, report says,”

75. On September 23, 2015, Winterkorn resigned, accepting responsibility for the emissions cheating scandal.

76. Following Volkswagen's startling admissions and apologies, reports surfaced that the United States Department of Justice launched a criminal investigation into Volkswagen's misconduct.

## **II. JURISDICTION**

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

## **III. VENUE**

78. Venue is proper in this District under 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this District. Plaintiff Drew Mizak resides in this District and purchased both his 2009 Jetta and 2014 Passat in this District. Moreover, Volkswagen has marketed, advertised, sold and leased the vehicles containing the defeat device within this District.

## **IV. TOLLING OF THE STATUTE OF LIMITATIONS**

### **A. Discovery Rule Tolling**

79. Members of the potential Classes had no way of knowing about Volkswagen's deception with respect to its CleanDiesel engine system and "defeat device." It took federal EPA

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Automotive News, Sept. 21, 2015,  
<http://www.autonews.com/article/20150921/OEM/150929982/vw-faces-u-s-criminal-probe-over-diesel-emissionsviolations-report>.

and California Air Resources Board investigations to uncover Volkswagen's deception, which involved sophisticated software manipulation on Volkswagen's part. As reported by the Los Angeles Times on September 18, 2015, it took California Air Resources Board testing on a special dynamometer in a laboratory, open road testing using portable equipment, and the use of special testing devised by the Board to uncover Volkswagen's scheme and to detect how software on the engine's electronic control module was deceiving emissions certifications tests. Plainly, Volkswagen was intent on expressly hiding its behavior from regulators and consumers. This is a quintessential case for tolling due to the admitted deceit.

80. Within the time period of any applicable statutes of limitation, Mizak and members of the Nationwide Class could not have discovered through the exercise of reasonable diligence that Volkswagen was concealing the conduct complained of herein and misrepresenting the Company's true position with respect to the emission qualities of its vehicles.

81. Mizak and individuals similarly situated did not discover, and did not know of facts that would have caused a reasonable person to suspect, that Volkswagen did not report information within its knowledge to federal and state authorities, its dealerships, or consumers; nor would a reasonable and diligent investigation have disclosed that Volkswagen had information in its possession about the existence of its sophisticated emissions scheme and that it opted to conceal that information, which was discovered by Mizak only shortly before this action was filed. Nor would such an investigation on the part of Mizak and individuals similarly situated have disclosed that Volkswagen valued profits over compliance with federal and state law, or the trust that Mizak and individuals similarly situated had placed in its misrepresentations, or that Volkswagen actively discouraged its personnel from raising or

disclosing issues with regard to the true quality and quantity of the emissions and the emissions software of its vehicles, or of Volkswagen's emissions scheme.

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

**B. Fraudulent Concealment Tolling**

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

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

**C. Estoppel**

85. Volkswagen was under a continuous duty to disclose to Mizak and the other members of the Nationwide Class the true character, quality and nature of emissions from the vehicles at issue, and of those vehicles' emissions systems, and of the compliance of those systems with applicable federal and state law.

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

87. Volkswagen was also under a continuous duty to disclose to Mizak and other members of the Nationwide Class that it had engaged in the scheme complained of herein to evade federal and state emissions and clean air standards, and that it systematically devalued

compliance with, and deliberately flouted, federal and state law regulating vehicle emissions and clean air.

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

## **V. CLASS ALLEGATIONS**

89. Mizak brings this action under Fed. R. Civ. P. 23(b)(2) and 23(b)(3) on behalf of himself and a nationwide Plaintiff class (the “Nationwide Class”) consisting of all persons or entities in the United States who purchased, leased or owned a Volkswagen or Audi vehicle equipped with a 2.0L TDI CleanDiesel engine.

90. Excluded from the Classes are individuals who have personal injury claims resulting from the “defeat device” in a Subject Vehicle. Also excluded from the Classes are Defendants, their parents, subsidiaries and affiliates; all officers, directors, employees and agents of the Defendants; governmental entities; and any agent or employee of any federal or state government acting in their official capacity. Mizak reserves the right to revise the definition of the Classes based upon subsequently discovered information.

91. Mizak does not know the exact number of Class members because such information is in the exclusive control of Defendants. Upon information and belief, Mizak believes that there are hundreds of thousands of Class members, geographically dispersed throughout Connecticut and the United States, such that joinder of all Class members is impracticable.

92. There are questions of law and fact common to the Classes that predominate over individual issues, including but not limited to the following:

- a. Whether Defendants participated in the conduct alleged herein;

- b. Whether Defendants designed, manufactured, advertised, marketed, distributed, leased, sold or otherwise placed Subject Vehicles into the stream of commerce in the United States;
- c. Whether Defendants designed, manufactured, advertised, marketed, distributed, leased, sold or otherwise placed Subject Vehicles into the stream of commerce in the United States knowing that the Subject Vehicles did not comply with the applicable state and federal emissions standards;
- d. Whether the Volkswagen CleanDiesel engine system contains a defeat device;
- e. Whether Volkswagen knew, or should have known, that the presence of a defeat device in the CleanDiesel vehicles constituted a violation of the CAA and applicable state standards;
- f. Whether the CleanDiesel engine system contained in the Subject Vehicles can be modified to comply with the EPA standards; and whether such modification will result in substantial degradation of performance or efficiency of the Subject Vehicles; and/or a diminution of value of the Subject Vehicles;
- g. Whether Volkswagen was aware that the Subject Vehicles contained a defeat device, and if so, how long Volkswagen was aware;
- h. Whether Volkswagen's conduct violates consumer protection statutes, warranty laws, and other laws as asserted herein;
- i. Whether Mizak and other members of the Nationwide Class overpaid for their lease or purchase of the Subject Vehicles as a result of the defects alleged herein;
- j. Whether Mizak and other members of the Nationwide Class have been harmed by a diminution in value as a result of the defects alleged herein;
- k. Whether Mizak and other members of the Nationwide Class are entitled to equitable relief, including, but not limited to, restitution or injunctive relief; and
- l. Whether Mizak and other members of the Nationwide Class are entitled to damages and other monetary relief, and if so, in what amount.

93. Mizak's claims are typical of the claims of the Classes. As alleged herein, he and other members of the Nationwide Class all sustained damages arising out of the Defendants' same course of unlawful conduct.

94. Mizak is an adequate representative who has selected competent counsel fully

qualified to represent the Classes. Mizak intends to vigorously prosecute this action.

95. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy. In contrast, the interest of members of the Nationwide Class in individually controlling the prosecution of separate actions is not practical.

96. Further, individual litigation creates a potential for inconsistent or contradictory judgments, and increases the delay and expense to all parties and the courts. Moreover, even if the individual Class members could afford to conduct individual litigation, the burden on the court system would be too great. The class device presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

97. Certification is also warranted under Fed. R. Civ. P. 23(b)(2) because Volkswagen has acted or refused to act on grounds generally applicable to the Nationwide Class, thereby making final injunctive relief and declaratory relief appropriate with respect to the Class as a whole.

## **VI. CLAIMS FOR RELIEF**

### **COUNT I VIOLATIONS OF THE MAGNUSON-MOSS WARRANTY ACT, 15 U.S.C. § 2301, et seq. (On Behalf of the Nationwide Class)**

98. Mizak repeats and re-alleges each and every allegation above as if fully set forth herein.

99. This claim is brought by Mizak on behalf of himself and other members of the Nationwide Class.

100. This Court has jurisdiction to decide claims brought under 15 U.S.C. § 2301 by virtue of 28 U.S.C. § 1332 (a)-(d).

101. Mizak is a “consumer” within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(3).

102. Defendants are “supplier[s]” and “warrantor[s]” within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(4)-(5).

103. The Subject Vehicles are “consumer products” within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(1).

104. 15 U.S.C. § 2310(d)(1) provides a cause of action for any consumer who is damaged by the failure of a warrantor to comply with a written or implied warranty.

105. Volkswagen’s express warranties are written warranties within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(6). The Subject Vehicles’ implied warranties are covered under 15 U.S.C. § 2301(7).

106. Volkswagen breached these warranties as described in more detail above. Without limitation, the Subject Vehicles share a common design defect in that they are equipped with a defeat device intended to circumvent applicable state and federal emissions standards and U.S. pollution laws. As a result, the Subject Vehicles emit unsafe levels of dangerous NOx. Volkswagen has admitted that the Subject Vehicles are defective in admissions to the EPA that Volkswagen deliberately installed a defeat device in order to cheat emissions certification tests.

107. Mizak and each of the other members of the Nationwide Class have had direct dealings with either Volkswagen or its agents (dealerships) sufficient to establish privity of contract between Volkswagen, on the one hand, and Mizak and each of the other Nationwide Class members, on the other hand. Nonetheless, privity is not required here because Mizak and each of the other Nationwide Class members are intended third-party beneficiaries of contracts between Volkswagen and its dealers, and specifically, of Volkswagen’s implied warranties. In

such a case as this, the dealers were not intended to be the ultimate consumers of the Subject Vehicles; instead, the warranty agreements were designed for and intended to benefit the consumers only. Thus, the dealers have no rights under the warranty agreements provided with the Subject Vehicles. Finally, privity is also not required because the Subject Vehicles are dangerous instrumentalities due to the defects and nonconformities described above.

108. Affording Volkswagen the opportunity to cure its breach of written warranties would be unnecessary and futile in this case. At the time of sale or lease of each Subject Vehicle, Volkswagen knew of, should have known, or was reckless in not knowing, its misrepresentations concerning the Subject Vehicles' inability to perform as warranted. Despite this, Volkswagen nonetheless failed to rectify the situation and/or disclose the defective design. Under the circumstances, the remedies available under any informal settlement procedure would be inadequate and any requirement that Mizak resort to an informal dispute resolution procedure and/or afford Volkswagen a reasonable opportunity to cure its breach of warranties is excused and thereby deemed satisfied.

109. Mizak and the other members of the Nationwide Class would suffer economic hardship if they returned their Subject Vehicles but did not receive restitution of all payments made by them. Accordingly, Mizak and the other members of the Nationwide Class seek the disgorgement of all payments made to the Defendants following the return of their Subject Vehicles, among other relief.

110. The amount in controversy of Mizak's individual claims meets or exceeds the sum of \$25. The amount in controversy of this action exceeds the sum of \$50,000, exclusive of interest and costs, computed on the basis of all claims to be determined in this lawsuit. Mizak, individually and on behalf of the other Nationwide Class members, seek all damages permitted

by law, including diminution in value of their vehicles, in an amount to be proven at trial.

**COUNT II**  
**BREACH OF CONTRACT**  
**(On Behalf of the Nationwide Class)**

111. Mizak repeats and re-alleges each and every allegation above as if fully set forth herein.

112. This claim is brought by Mizak on behalf of himself and other members of the Nationwide Class.

113. Volkswagen's misrepresentations and omissions alleged herein, including Volkswagen's failure to disclose the existence of the CleanDiesel engine system's defect and/or defective design as alleged herein, and failing to disclose the testing "defeat device," caused Mizak and the other Nationwide Class members purchase or lease their Subject Vehicles. Absent these misrepresentations and omissions, Mizak and the other Nationwide Class members would not have purchased or leased these Subject Vehicles, would not have purchased or leased these Subject Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the CleanDiesel engine system and which were not marketed as including such a system. Accordingly, Mizak and the other Nationwide Class members overpaid for their Subject Vehicles and did not receive the benefit of their bargain.

114. Volkswagen breached contractual obligations by tendering to Mizak and the Nationwide Class vehicles equipped with a defeat device designed to reduce the effectiveness of the vehicle's emission control system, causing the Subject Vehicles to emit pollutants at up to 40 times the EPA emission standards and by misrepresenting or failing to disclose the existence of the CleanDiesel engine system's defect and/or defective design, including information known to

Volkswagen rendering each Subject Vehicle non EPA-compliant, and thus less valuable, than vehicles not equipped with a CleanDiesel engine system.

115. The defeat device present in the Subject Vehicles did not constitute a minor breach, as the existence of the defeat devices caused the Subject Vehicles to emit pollutants at a substantially higher rate than Volkswagen warranted and in violation of federal and state emission standards. As such, Mizak and the Nationwide Class would not have purchased or leased the Subject Vehicles at the price they paid, or at all, had they known of the presence of the defeat device.

116. As a direct and proximate result of Defendants' breach of contract or warranty, Mizak and the Nationwide Class have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

**COUNT III  
FRAUDULENT CONCEALMENT  
AND FRAUDULENT MISREPRESENTATION  
(On Behalf of the Nationwide Class)**

117. Mizak repeats and re-alleges each and every allegation above as if fully set forth herein.

118. This claim is brought by Mizak on behalf of himself and other members of the Nationwide Class.

119. As detailed above, Volkswagen made material omissions and affirmative misrepresentations regarding the Subject Vehicles.

120. Volkswagen knew these representations were false when made.

121. The vehicles Mizak and the Nationwide Class purchased or leased were defective because the vehicles were subject to a defeat device that would reduce the effectiveness of the

Subject Vehicles' emission control system as well as their road performance.

122. Volkswagen had a duty to disclose to the Class members that these vehicles were defective in that the vehicles were subject to a "defeat device" that would reduce the effectiveness of the vehicles' emission control system.

123. Defendants' concealment was material because if it had been disclosed, Mizak and the Nationwide Class would not have purchased or leased the vehicles at the premium price they paid, or would not have purchased or leased the vehicles at all.

124. Similarly, Defendants' representations were material because they were facts that would typically be relied upon by an individual purchasing or leasing an automobile, and in particular, vehicles sold under a Clean Diesel marketing campaign. Volkswagen knew or recklessly disregarded that its representations as to the Subject Vehicles were false and omitted material information. Volkswagen intentionally made the false statements in order to induce Mizak and the Nationwide Class to purchase or lease the Subject Vehicles.

125. Mizak and Nationwide Class members relied upon Defendants' material representations and omissions in purchasing or leasing the Subject Vehicles.

126. As a result of their reliance, Mizak and other members of the Nationwide Class have been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase and/or the diminished value of their vehicles.

127. Volkswagen's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud and in reckless disregard of Mizak's and Nationwide Class members' rights and the representations that Volkswagen made to them, in order to enrich Volkswagen. Volkswagen's conduct warrants an assessment of punitive and other damages in an amount

sufficient to deter such conduct in the future, which amount is to be determined according to proof.

**COUNT IV  
UNJUST ENRICHMENT  
(On Behalf of the Nationwide Class)**

128. Mizak repeats and re-alleges each and every allegation above as if fully set forth herein.

129. This claim is brought by Mizak on behalf of himself and other members of the Nationwide Class.

130. Mizak and the Nationwide Class paid the value of vehicles that have fully operational emission control systems that comply with federal and state emission standards, would not be compromised by the need for repairs, and could be legally operated, but instead were provided with vehicles that are defective, need repairs, and cannot be legally operated.

131. As such, Mizak and other members of the Nationwide Class conferred a windfall upon Volkswagen, which knew of the windfall and has unjustly retained such benefits. Specifically, by extracting a premium over the cost of similar gasoline powered models, Volkswagen was unjustly enriched.

132. As a direct and proximate result of Volkswagen's unjust enrichment, Mizak and the Nationwide Class have suffered and continue to suffer various damages, and seek relief including, but not limited to, restitution of all amounts by which Defendants were enriched through its misconduct.

**COUNT V  
VIOLATIONS OF STATE CONSUMER PROTECTION AND  
UNFAIR COMPETITION STATUTES  
(On Behalf Of the Nationwide Class)**

133. Mizak repeats and re-alleges each and every allegation above as if fully set forth

herein.

134. This claim is brought by Mizak on behalf of himself and other members of the Nationwide Class.

135. Volkswagen engaged in unfair competition or unfair, unconscionable, deceptive, or fraudulent acts or practices with respect to the sale of the Subject Vehicles in violation of consumer protection and unfair competition statutes in every (or nearly every) state, including: Alaska Stat. § 45-50-471, *et seq.*; Ariz. Rev. Stat. § 44-1521, *et seq.*; Arkansas Code § 4-88-101, *et seq.*; Cal. Civ. Code § 1770, *et seq.*, Cal. Bus. & Prof. Code § 17200, *et seq.*, and Cal. Bus. & Prof. Code § 17070; Colo. Rev. Stat. § 6-1-101, *et seq.*; Conn. Gen. Stat. § 42-110a, *et seq.*; 6 Del. Code § 2513, *et seq.* and 6 Del. Code § 2532, *et seq.*; D.C. Code Ann. § 28-3901, *et seq.*, Florida Stat. § 501.201, *et seq.*; Ga. Code Ann. § 10-1-370, *et seq.*; Haw. Rev. Stat. Ann. § 481A-3; Idaho Code § 48-601, *et seq.*; 815 Ill. Comp. Stat. 505/1, *et seq.* and 815 Ill. Comp. Stat. 510/1, *et seq.*; Ind. Code § 24-5-0.5-3; Iowa Code § 714H.1, *et seq.*; Kan. Stat. Ann. § 50-623, *et seq.*; Ky. Rev. Stat. § 367.110, *et seq.*; Me. Rev. Stat. Ann. Tit. 5 § 205-A, *et seq.*; Md. Code Com. Law § 13-101, *et seq.*; Mass. Gen. Laws chapter 93A § 1, *et seq.*; Mich. Comp. Laws § 445.901; Minn. Stat. § 325F.69, *et seq.* and Minn. Stat. § 325D.43, *et seq.*; Mo. Ann. Stat. 407.020; Neb. Rev. Stat. § 87-302 and Neb. Rev. Stat. § 59-1601, *et seq.*; Nev. Rev. Stat. § 598.0903, *et seq.*; New Hampshire Rev. Stat. § 358-A:1, *et seq.*; N.J. Stat. Ann. § 56:8-1, *et seq.*; New Mexico Stat. Ann. § 57-12-1, *et seq.*; N.Y. Gen. Bus. Law § 349, *et seq.*; North Carolina Gen. Stat. § 75-1.1, *et seq.*; N.D. Cent. Code § 51-15-02; Ohio Rev. Code Ann. § 1345.01, *et seq.* and Ohio Rev. Code Ann. § 4165.01, *et seq.*; Okla. Stat. Tit. 15 § 751, *et seq.* and 78 Okla. Stat. Ann. § 51, *et seq.*; Or. Rev. Stat. § 646.605, *et seq.*; 73 Pa. Stat. § 201-1, *et seq.*; Rhode Island Gen. Laws § 6-13.1-1, *et seq.*; S.D. Codified Laws § 37-24-6, *et seq.*; Tex. Bus. & Com.

Code § 17.41, *et seq.*; Utah Code Ann. § 13-11-1, *et seq.*; Vt. Stat. Ann. Tit. 9, § 2451, *et seq.*; Va. Code Ann. 59.1-200, *et seq.*; Rev. Code Wash. Ann. § 19.86.010, *et seq.*; W. Va. Code § 46A-1-101, *et seq.*; Wisc. Stat. § 100.18, *et seq.*; and Wyo. Stat. § 45-12-105, *et seq.*

136. Volkswagen's misrepresentations and omissions regarding the emission compliance of its vehicles as detailed above were likely to deceive a reasonable consumer, and the information would be material to a reasonable consumer.

137. Volkswagen's intentional and purposeful acts, described above, were intended to and did cause Mizak and the Nationwide Class to pay artificially inflated prices for Subject Vehicles purchased or leased in the states (and the District of Columbia) listed above.

138. As a direct and proximate result of Volkswagen's unlawful conduct, Mizak and other Nationwide Class members have been injured in their business and property in that they paid more for the Subject Vehicles than they otherwise would have paid in the absence of Volkswagen's unlawful conduct.

139. All of the wrongful conduct alleged herein occurred in the conduct of Volkswagen's business. Defendants' wrongful conduct is part of a pattern or generalized course of conduct that was perpetrated nationwide.

140. Mizak and other members of the Nationwide Class members are therefore entitled to all appropriate relief as provided for by the laws of the states listed above, including but not limited to, actual damages, injunctive relief, attorneys' fees, and equitable relief, such as restitution and/or disgorgement of all revenues, earnings, profits, compensation, and benefits which may have been obtained by Defendants as a result of their unlawful conduct.

**COUNT VI**  
**VIOLATIONS OF THE CONNECTICUT UNFAIR TRADE PRACTICES ACT**  
**CONN. GEN. STAT. § 42-110A, ET. SEQ.**  
**(On Behalf of the Nationwide Class)**

141. Mizak repeats and re-alleges each and every allegation above as if fully set forth herein.

142. At all relevant times hereto, the Defendants were prohibited by Section 42-110(b) of the Connecticut General Statutes from engaging in unfair deceptive acts or practices in the conduct of their business in the State of Connecticut.

143. The actions of the Defendants constitute a violation of the Connecticut Unfair Trade Practices Act, Conn. Gen. Stats. Section 42-110a, *et seq.*, in that such actions were immoral, unethical, oppressive, unscrupulous, offend public policy, and caused substantial injury to consumers, including the Plaintiffs and Connecticut Class members, and were done with reckless indifference to the rights of the Plaintiffs and Connecticut Class members. These actions include that:

- a. As detailed above, Volkswagen made material omissions concerning the “defeat device” and affirmative misrepresentations concerning fuel economy and the beneficial impact to the environment regarding the Subject Vehicles. Volkswagen knew these representations were false when made.
- b. Volkswagen’s intentional and purposeful acts, described above, were intended to and did cause Plaintiff and the Class to pay artificially inflated prices for Subject Vehicles purchased or leased.

144. The actions of the Defendants as described in this complaint caused the Plaintiff and Connecticut Class members to suffer actual and ascertainable injuries, damages, loss of money and property.

145. Pursuant to Section 42-110g(c) of the Connecticut General Statutes, a copy of this complaint has been mailed to the Attorney General and the Commissioner of Consumer Protection of the State of Connecticut.

## VII. REQUEST FOR RELIEF

**WHEREFORE**, Plaintiff, individually and on behalf of members of the Nationwide Class, respectfully request that the Court enter judgment in their favor and against Volkswagen, as follows:

- A. Certification of the proposed Nationwide Class;
- B. An order temporarily and permanently enjoining Volkswagen from continuing the unlawful, deceptive, fraudulent, and unfair business practices alleged in this Complaint;
- C. Injunctive relief in the form of a recall or free replacement program and equitable relief including disgorgement and restitution of payments made by the Classes to Volkswagen;
- D. Compensatory damages; punitive damages, including costs;
- E. An order requiring Volkswagen to pay both pre- and post-judgment interest on any amounts awarded;
- F. Attorneys' fees; and
- G. Such other or further relief as may be appropriate.

PLAINTIFF,

By \_\_\_\_\_ /s/\_\_\_\_\_  
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