

**COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION _____
CIVIL ACTION NO. 16-CI-_____**

COMMONWEALTH OF KENTUCKY
ex rel. **ANDY BESHEAR, ATTORNEY GENERAL**

PLAINTIFF

v.

**VOLKSWAGEN GROUP OF AMERICA, INC.,
d/b/a or a/k/a Volkswagen of America, Inc.,
a New Jersey Corporation,**

Serve: Corporation Service Company
421 West Main Street
Frankfort, Kentucky 40601

and

Hon. Ian Ceresney
Herzfeld & Rubin, P.C.
125 Broad Street
New York, New York 10004
Counsel for Volkswagen Group of America, Inc.
(by agreement)

and

**VOLKSWAGEN AKTIENGESELLSCHAFT,
d/b/a or a/k/a VOLKSWAGEN AG and/or
d/b/a or a/k/a VOLKSWAGEN GROUP, a German corporation,**

Serve: Corporation Service Company
421 West Main Street
Frankfort, Kentucky 40601

and

Hon. Ian Ceresney
Herzfeld & Rubin, P.C.
125 Broad Street
New York, New York 10004
Counsel for Volkswagen Aktiengesellschaft
(by agreement)

and

**AUDI OF AMERICA, LLC,
a Delaware limited liability company,**

Serve: Corporation Service Company
421 West Main Street
Frankfort, Kentucky 40601

and

Hon. Ian Ceresney
Herzfeld & Rubin, P.C.
125 Broad Street
New York, New York 10004
Counsel for Audi of America, LLC
(by agreement)

**AUDI AKTIENGESELLSCHAFT,
d/b/a or a/k/a AUDI AG,
a German corporation,**

Serve: Corporation Service Company
421 West Main Street
Frankfort, Kentucky 40601

and

Hon. Ian Ceresney
Herzfeld & Rubin, P.C.
125 Broad Street
New York, New York 10004
Counsel for Audi Aktiengesellschaft
(by agreement)

and

**PORSCHE CARS NORTH AMERICA, INC.,
a Delaware corporation,**

Serve: CT Corporation System
306 West Main Street, Suite 512
Frankfort, KY 40601

and

**DR. ING. H.C.F.
PORSCHE AG d/b/a PORSCHE AG, a German corporation**

DEFENDANTS

Serve: CT Corporation System
306 West Main Street, Suite 512
Frankfort, KY 40601
(per KRS 454.210)

*** **

COMPLAINT

*** **

Comes the Plaintiff, Commonwealth of Kentucky *ex rel.* Attorney General Andy Beshear (“Plaintiff” or “Commonwealth”), and brings this cause of action against the Defendants, Volkswagen Group of America, Inc. d/b/a or a/k/a Volkswagen of America, Inc., Volkswagen Aktiengesellschaft d/b/a or a/k/a Volkswagen AG and/or d/b/a or a/k/a Volkswagen Group, Audi of America, LLC, Audi Aktiengesellschaft d/b/a or a/k/a Audi AG, Porsche Cars North America, Inc., and DR. ING. H.C.F. Porsche AG d/b/a, Porsche AG (collectively, “the Defendants”), for the willful violation of: the Kentucky Consumer Protection Act, and all other equitable claims under Kentucky common law. The Commonwealth seeks statutory civil penalties, injunctive relief, restitution or other relief to Kentucky consumers as the Court deems appropriate, all damages, including punitive damages under KRS 411.184, and any and all such other relief this Court deems just and proper.

INTRODUCTION

1. The Plaintiff, the Commonwealth of Kentucky *ex rel.* Attorney General Andy Beshear, brings this action as Andy Beshear is the duly-elected Attorney General of Kentucky and, under KRS 15.020, is the chief law officer of the Commonwealth and all of its departments, commissions, agencies and political subdivisions, and is being duly authorized by the Kentucky Constitution, statute and the common law, including his *parens patriae* authority, to enforce and

administer Kentucky law, and to bring actions on behalf of the citizens of the Commonwealth, including, but not limited to: the Kentucky Consumer Protection Act, KRS 367.110, *et seq.*; claims to prevent or remedy damage to the environment or where activities complained of may have a substantial impact upon the environment of the Commonwealth, including under the common law; and equitable claims under the common law. *See* Ky. Const. § 91; KRS 15.020; KRS 15.255.

2. This case arises from the Defendants' willful, knowing, deliberate, unfair, false, misleading, fraudulent and deceptive design, manufacture, importation, delivery, representation, promotion, advertisement, marketing, distribution, offer for sale or lease, sale, lease, and warranting of certain of their Turbocharged Direct Injection ("TDI®") diesel-engine automobiles ("Deceptive Vehicles") containing hidden "defeat devices" each in the form of a sophisticated software algorithm that the Defendants specifically engineered, designed, developed, manufactured, and installed in the Deceptive Vehicles to intentionally thwart and evade emissions control testing for harmful pollutants. The Defendants engineered, designed, developed, manufactured and installed these defeat devices in the Deceptive Vehicles so that those vehicles would meet emission requirements when undergoing official emission inspection and maintenance testing, in order to receive a certificate of conformity allowing the Deceptive Vehicles to be offered for sale or lease, sold, or leased in the United States, including Kentucky. However, the defeat devices deactivate the emissions controls for the Deceptive Vehicles when those vehicles are not undergoing official emission inspection and maintenance testing, causing those vehicles to have increased fuel economy, but to operate in violation of emissions standards. As a result, the Deceptive Vehicles emit nitrogen oxides (NOx) by a factor of up to (40) times above allowable emissions limits.

3. In spite of and knowing this, the Defendants represented, advertised, promoted, marketed, manufactured, distributed, offered for sale or lease, sold, and leased the Deceptive Vehicles as “clean diesel” vehicles and as clean enough to be certified in all fifty (50) states, including Kentucky. The Defendants claimed their “clean diesel” engines confirmed their role as pioneers in diesel technology, and that their “clean diesel” technology was a breakthrough and a technological marvel. The Defendants made these representations to all Kentucky consumers, and to all American consumers, through their massive promotional, advertising, and marketing, campaigns wholly based on lies – all while concealing the existence of the defeat devices that made the Deceptive Vehicles do the opposite of what the Defendants represented.

4. The Defendants engineered, designed, developed, manufactured and installed the defeat devices in approximately 580,000 Deceptive Vehicles of model years 2009-2015 with 2.0-liter TD1® diesel engines and of model years 2009-2016 with 3.0-liter TD1® diesel engines that were sold or leased to consumers. The Defendants concealed the existence of and their knowledge of these defeat devices on the Deceptive Vehicles in the United States until 2015. Thus, the Defendants willfully violated Kentucky law, on a daily basis, for more than seven (7) years.

5. The Commonwealth seeks civil penalties against the Defendants pursuant to KRS 367.990 for the Defendants’ willful use of unfair, false, misleading, or deceptive acts or practices relative to their unfair, false, misleading, fraudulent and deceptive design, manufacture, importation, delivery, representation, promotion, advertisement, marketing, distribution, offer for sale or lease, sale, or lease of the Deceptive Vehicles to consumers throughout Kentucky, in violation of KRS 367.170.

6. The Commonwealth seeks an injunction pursuant to KRS 367.190 against future

unfair, false, misleading, or deceptive acts or practices by the Defendants of their vehicles and products, made in relation to the unfair, false, misleading, fraudulent and deceptive design, manufacture, importation, delivery, representation, promotion, advertisement, marketing, distribution and sale of their vehicles in Kentucky.

7. The Commonwealth seeks an Order providing additional relief for harm suffered by Kentucky consumers, and any equitable orders the Court deems appropriate, pursuant to KRS 367.200.

8. The Commonwealth seeks all remedies, including damages, or other equitable relief, against the Defendants for the Defendants' unjust enrichment resulting from their wrongful conduct, including punitive damages under KRS 411.184.

9. The Commonwealth seeks all remedies, including damages, or other equitable relief, against the Defendants for committing common law fraud, actual and constructive, against Kentucky and Kentucky citizens, including punitive damages under KRS 411.184.

10. The Commonwealth seeks all remedies, including damages, or other equitable relief, against the Defendants for their creation of and continual perpetuation of a public nuisance through their wrongful conduct, including punitive damages under KRS 411.184, and an Order requiring the Defendants to abate the public nuisance.

11. The Commonwealth seeks an injunction against the Defendants under common law equitable estoppel, and asks that the Defendants be required to fully assume and fulfill the payment obligations of Kentucky citizens who purchased or leased the Deceptive Vehicles.

12. The Commonwealth brings this action exclusively under the laws of the Commonwealth of Kentucky. The Commonwealth does not assert any federal claims and to the extent that any claim or factual assertion the Commonwealth sets forth herein may be construed

to state any claim under federal law, the Commonwealth expressly and undeniably disavows and disclaims such claim.

13. The claims asserted herein are brought solely by the Commonwealth and are wholly independent of any claims that individual consumers may have against the Defendants.

JURISDICTION & VENUE

14. This Court has jurisdiction over this action pursuant to KRS 367.190 because Defendants have committed acts and practices declared to be unlawful by KRS 367.170 in the Commonwealth of Kentucky.

15. This Court has jurisdiction over the Defendants pursuant to KRS 454.210 because, at all times material to this complaint, the Defendants transacted business in the Commonwealth of Kentucky by representing, advertising, soliciting, promoting, marketing, offering for sale or lease, selling, leasing, and/or distributing vehicles, including the Deceptive Vehicles, to dealerships and ultimately to consumers in the Commonwealth of Kentucky.

16. This Court has jurisdiction over this action because the claims the Commonwealth sets forth arise under the statutes and common law of Kentucky, as lawfully brought by Attorney General Andy Beshear, pursuant to KRS 367.110, *et seq.*, KRS 15.020, KRS 15.255, and pursuant to his common law authority.

17. Venue in this Court is proper under KRS 367.190 because the Defendants' acts, practices, and conduct occurred in Franklin County, Kentucky. *See* KRS 452.460; KRS 367.190.

PARTIES

18. The Plaintiff, the Commonwealth of Kentucky *ex rel.* Andy Beshear, brings this action as Andy Beshear is the duly-elected Attorney General of Kentucky and, under KRS 15.020, the chief law officer of the Commonwealth and all of its departments, commissions,

agencies and political subdivisions. Attorney General Andy Beshear is duly authorized by the Kentucky Constitution, statute and the common law, including his *parens patriae* authority, to enforce and administer Kentucky law, and to bring actions on behalf of the citizens of the Commonwealth, including, but not limited to: the Kentucky Consumer Protection Act, KRS 367.110, *et seq.*; claims to prevent or remedy damage to the environment or where activities complained of may have a substantial impact upon the environment of the Commonwealth, including under the common law; and equitable claims under the common law. *See* Ky. Const. § 91; KRS 15.020; KRS 15.255; KRS 446.070.

Volkswagen of Group of America

19. The Defendant, Volkswagen Group of America, Inc., d/b/a or a/k/a Volkswagen of America, Inc. (“Volkswagen America”), is a corporation organized under the laws of the State of New Jersey, with its principal place of business located at 2200 Ferdinand Porsche Drive, Herndon, Virginia.

20. Volkswagen America is a wholly-owned subsidiary of the Defendant, Volkswagen AG.

21. Volkswagen America is authorized to do business in Kentucky, and at all times relevant to this action was authorized to do business and did do business in Kentucky, including the representation, advertising, promotion, marketing, offering for sale, selling and leasing of Volkswagen automobiles, and is subject to the jurisdiction of this Court.

22. Volkswagen America has a dealership, and at all times relevant to this action did have a dealership, engaged in the representation, advertising, promotion, marketing, offering for sale or lease, sale, and lease of automobiles in Kentucky. Volkswagen America currently has four (4) dealerships in Kentucky engaged in the advertising, promotion, marketing, offering for

sale or lease, sale, and lease of automobiles.

23. In 2014, Volkswagen America sold 552,729 automobiles in the United States, including 95,240 TDI® “clean diesel” Deceptive Vehicles, from its 1,018 dealer locations in all fifty (50) states.

Volkswagen Aktiengesellschaft

24. Volkswagen Aktiengesellschaft, doing business as or also known as Volkswagen AG and/or doing business as or also known as Volkswagen Group (“Volkswagen AG” or “Volkswagen”), is a foreign corporation organized under the laws of the Republic of Germany, with its principal place of business in Wolfsburg, Germany.

25. Volkswagen AG is the parent corporation of Audi AG and Volkswagen Group of America, Inc.

26. Volkswagen AG, in person or through its agent, does business in Kentucky, and at all times relevant to this action did business in Kentucky, including the representation, advertising, promotion, marketing, designing, development, manufacturing, offering for sale or lease, sale, and lease of Volkswagen automobiles, and Volkswagen AG engages in a persistent course of conduct in Kentucky.

27. Volkswagen AG derives revenues from its products and goods sold, used, or consumed in Kentucky, or from its services rendered in Kentucky.

28. Volkswagen AG is subject to the jurisdiction of this Court pursuant to the Kentucky Long-Arm Statute, KRS 454.210.

29. Volkswagen AG engineered, designed, developed, manufactured, and installed defeat devices on certain vehicles of certain makes and models and model years equipped with a 2.0-liter TDI® diesel engine and exported those certain vehicles with the knowledge and

understanding that they would be sold throughout the United States and in Kentucky.

Audi of America

30. The Defendant, Audi of America, LLC (“Audi America”) is a limited liability company organized under the laws of the State of Delaware, with its principal place of business at 2200 Ferdinand Porsche Drive, Herndon, Virginia 20171.

31. Audi America is a wholly-owned subsidiary of the Defendant, Audi AG, and is an operating unit of the Defendant, Volkswagen Group of America, Inc.

32. Audi America is authorized to do business and does do business in Kentucky, and at all times relevant to this action was authorized to do business and did do business in Kentucky, including the representation, advertising, promotion, marketing, offering for sale or lease, sale, and lease of Audi automobiles, and Audi America is subject to the jurisdiction of this Court.

33. Audi America has a dealership, and at all times relevant to this action did have a dealership, engaged in the representation, advertising, promotion, marketing, offering for sale, sale, and lease of automobiles in Kentucky. Audi America currently has two (2) dealerships in Kentucky engaged in the advertising, promotion, marketing, offering for sale, sale and lease of automobiles.

34. In 2014, Audi America sold 182,011 automobiles in the United States.

Audi Aktiengesellschaft

35. The Defendant, Audi Aktiengesellschaft, doing business as or also known as Audi AG (“Audi AG”), is a corporation organized under the laws of the Republic of Germany, with its principal place of business in Ingolstadt, Germany.

36. Audi AG is the parent corporation the Defendant, Audi of America, LLC, and is a subsidiary of the Audi Group, which is a wholly-owned subsidiary of the Defendant,

Volkswagen AG. Volkswagen AG owns 99.55% of the stock of Audi AG.

37. Audi AG, in person or through its agent, does business in Kentucky, and at all times relevant to this action did business in Kentucky, including the representation, advertising, promotion, marketing, designing, development, manufacturing, offering for sale, sale, and lease of Audi automobiles, and Audi AG engages in a persistent course of conduct in Kentucky.

38. Audi AG derives revenues from its products and goods sold, used, or consumer in Kentucky, or from its services rendered in Kentucky.

39. Audi AG is subject to the jurisdiction of this Court pursuant to the Kentucky Long-Arm Statute, KRS 454.210.

40. Audi AG engineered, designed, developed, manufactured, and installed defeat devices on certain vehicles of certain makes and models and model years equipped with a 2.0-liter TDI® diesel engine, and on certain vehicles of certain makes and models and model years equipped with a 3.0-liter TDI® diesel engine, and exported those certain vehicles with the knowledge and understanding that they would be sold throughout the United States and in Kentucky.

41. Porsche Cars North America

42. The Defendant, Porsche Cars North America, Inc., (“Porsche Cars North America”), is a corporation organized under the laws of the State of Delaware, with its principal place of business at One Porsche Drive, Atlanta, Georgia 30354.

43. Porsche Cars North America is a wholly-owned subsidiary of the Defendant, Porsche AG.

44. Porsche Cars North America is the exclusive importer of Porsche automobiles for the United States.

45. Porsche Cars North America was and is authorized to do business in Kentucky, and at all times relevant to this action was authorized to do business and did do business in Kentucky, including the representation, advertising, promotion, marketing, offering for sale or lease, sale, and lease of Porsche automobiles, and is subject to the jurisdiction of this Court.

46. Porsche Cars North America has a dealership, and at all times relevant to this action did have a dealership, engaged in the representation, advertising, promotion, marketing, offering for sale, sale and lease of automobiles in Kentucky. Porsche Cars North America currently has one (1) dealership in Kentucky engaged in the advertising, promotion, marketing, offering for sale, sale and lease of automobiles.

47. Porsche North America sold 47,007 cars in the United States in 2014.

48. **Dr. Ing. H.c. F. Porsche**

49. The Defendant, Dr. Ing. H.c. F. Porsche, doing business as or also known as Porsche AG (“Porsche AG”), is a corporation organized under the laws of the Republic of Germany, with its principal place of business in Stuttgart, Germany.

50. Porsche AG is the parent company of the Defendant, Porsche Cars North America, Inc. Porsche AG a wholly-owned subsidiary of the Defendant, Volkswagen AG.

51. Porsche AG, in person or through its agent, does business in Kentucky, and at all times relevant to this action did do business in Kentucky, including the representation, advertising, promotion, marketing, designing, development, manufacturing, offering for sale or lease, sale, and lease of Porsche automobiles, and Porsche AG engages in a persistent course of conduct in Kentucky.

52. Porsche AG derives revenues from its products and goods sold, used, or consumer in Kentucky, or from its services rendered in Kentucky.

53. Porsche AG is subject to the jurisdiction of this Court pursuant to the Kentucky Long-Arm Statute, KRS 454.210.

54. Porsche AG engineered, designed, developed, manufactured, and installed the defeat devices on certain vehicles of certain makes and models and model years equipped with a 3.0-liter TDI® diesel engine and exported those certain vehicles with the knowledge and understanding that they would be sold throughout the United States, including Kentucky.

55. The acts the Commonwealth alleges the Defendants' committed in Kentucky were authorized, ordered to be committed, and/or ratified by the Defendants' officers, agents, employees, or representatives while engaged in the management, direction, control, or transaction of the Defendants' business affairs.

FACTS

56. The Commonwealth brings this action to recover: statutory penalties under KRS 367.990; injunctive relief under KRS 367.190; all remedies available under KRS 367.200; and all remedies, including damages, or other equitable relief afforded by Kentucky statute or common law, including punitive damages under KRS 411.184.

The Defendants Installed Defeat Devices on Diesel Automobiles to Deceive Emissions Testing and Allow the Automobiles to be Offered for Sale in Kentucky

57. As Volkswagen has admitted, the starting point of Volkswagen's fraudulent conduct began in 2005, when Volkswagen made the strategic decision to launch a large-scale promotion of diesel vehicles in the United States. However, it proved impossible to have the EA 189 diesel engine ("TDI®") meet by legal means the stricter NOx requirements in the United States within the required timeframe and budget, which led to the incorporation of software that adjusted NOx emission levels according to whether vehicles were on the road or in emissions testing.

58. Traditionally, diesel fuel is more fuel-efficient than gasoline, but diesel engines can emit higher levels of pollutants, including higher levels of NO_x, than gasoline engines. A light-duty vehicle like the Deceptive Vehicles must meet certain emission standards and be certified as in conformity with those standards before it may be introduced into the stream of commerce in the United States, including Kentucky. *See* EPA Notice of Violation, Sept. 18, 2015.

59. Volkswagen chose not to use a selective catalytic reduction emission control system utilizing urea – a post-combustion emission reductant generically referred to as “Diesel Exhaust Fluid” and marketed as “Bluetec” by Mercedes-Benz and as “AdBlue” by Volkswagen and other German automobile manufacturers – because of cost and necessary retrofitting of vehicles. Volkswagen also pursued a lower-cost NO_x trap system that was also less effective at reducing emissions and resulted in lower fuel efficiency, and which Volkswagen has admitted did not meet emission standards in the United States. In or around October of 2015, Volkswagen announced its intention to use “AdBlue” and selective catalytic reduction system technology in its diesel engines.

60. Knowing that the TDI® diesel engine could not meet emission standards in the United States, Volkswagen engineered, designed, developed, manufactured and installed the defeat devices in the form of a sophisticated software algorithm in the electronic control module (“ECM”) of the Deceptive Vehicles, for the specific purpose of evading emissions requirements.

61. In the Deceptive Vehicles equipped with 2.0-liter TDI® diesel engines, these defeat devices allowed the Deceptive Vehicles to detect the conditions of official emission inspection and maintenance testing, and switch to dyno calibration to turn on full emission controls during testing to reduce the amount of emissions the vehicles produced and bring them

within allowable emissions limits. The defeat devices sensed whether the vehicles were being tested based on various inputs, including the position of the steering wheel, the speed of the vehicle, the duration of the engine's operation, and barometric pressure. At all other times of normal vehicle operation, the defeat devices deactivated and the electronic control module ("ECM") software switched to road calibration, which reduced the effectiveness of the emission control system.

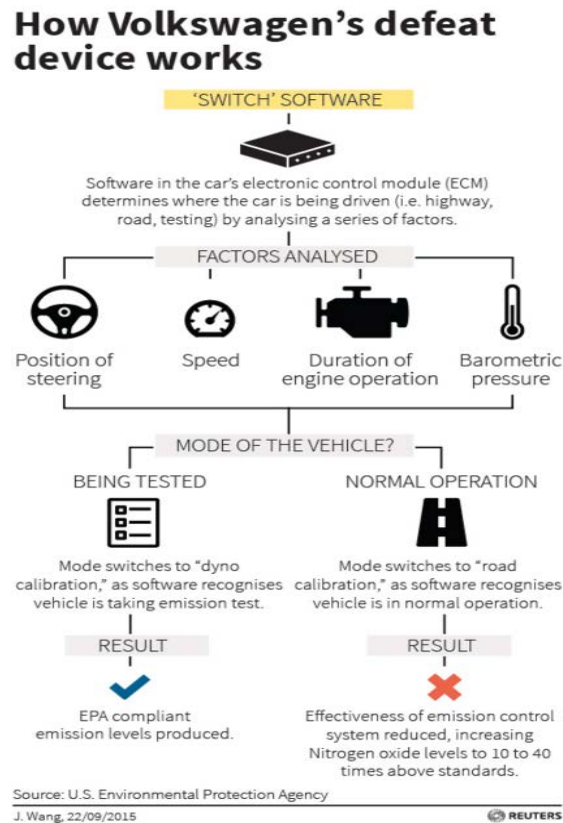
62. This resulted in, and continues to result in, tailpipe emissions of NO_x from the 2.0-liter Deceptive Vehicles during normal vehicle operation of a factor of ten (10) to forty (40) times above allowable emissions limits, depending on where the vehicle is traveling, such as a city road or a highway.

63. In the Deceptive Vehicles equipped with 3.0-liter TDI® diesel engines, these defeat devices allowed the Deceptive Vehicles to detect the conditions of official emission inspection and maintenance testing, and directed the vehicles to employ a low NO_x temperature conditioning mode, with a status bit in the software indicating that a temperature conditioning mode was active. In that mode, the vehicles operated under a number of emission control parameters, including injection timing, exhaust gas recirculation, and common rail fuel pressure, so that the parameters yielded low engine-out NO_x emissions and high exhaust temperatures. The high exhaust temperatures heated the selective catalytic reduction system and improved its ability to reduce tailpipe NO_x emissions. In this mode, the combination of low engine-out NO_x and improved selective catalytic reduction system performance resulted in tailpipe NO_x emissions below the applicable emissions standard. A timer employed by the defeat devices directed the vehicles to cease low NO_x temperature conditions mode, and the transition to normal mode is activated, immediately rendering the emission control system less effective. The

vehicles then employed a different injection timing, exhaust gas recirculation rate, and common rail fuel pressure, yielding higher levels of NOx from the engine.

64. When the vehicles start under conditions the defeat device determines are not the beginning of official emission inspection and maintenance testing, they do not use the low NOx temperature-conditioning mode, at all. In normal mode, the 3.0-liter Deceptive Vehicles' tailpipe emissions of NOx are up to nine (9) times above allowable emissions limits, depending on where the vehicle is traveling, such as a city road or a highway.

65. The following diagram depicts how the defeat devices operate:



66. Nitrogen oxide (NOx) is a hazardous and harmful air pollutant, consisting of groups of highly-reactive gases made of nitrogen and oxygen. When nitrogen oxide and volatile organic compounds react in the presence of heat and sunlight, ozone is formed. Ozone is an air pollutant that is the main component of smog, and can cause or aggravate cardiovascular and

respiratory health problems, including, but not limited to, chest pain, pain when taking deep breaths, wheezing, and coughing. Ozone can lead to the premature aging of the lungs, faster or more shallow breathing, and can worsen asthma, emphysema, bronchitis, and existing heart disease. Over-exposure to NOx can have negative effects on breathing and the respiratory system, damage to lung tissue, and premature death. Children are at the greatest risk of experience negative health consequences from exposure to ozone.

67. Furthermore, the smog that results from ozone prevents the public enjoyment of public lands by lessening the air quality and visibility. The agricultural damages that ozone causes include, but are not limited to, damaged vegetation and reduced crop yields.

The Defendants' Concealment of the Defeat Devices Results in Multiple Makes and Models of the Deceptive Vehicles Reaching the Marketplace in Kentucky

68. The Defendants willfully, knowingly, and deliberately designed, developed, manufactured, distributed, offered for sale or lease, sold, or leased the Deceptive Vehicles containing these defeat devices, and did not reveal or disclose their existence before the Deceptive Vehicles were introduced into the stream of commerce in the United States and offered for sale or lease in the United States, including Kentucky.

69. Although the Defendants concealed the existence of these defeat devices on the Deceptive Vehicles in the United States and in Kentucky, media reports suggest that the decision to cheat emission standards and regulators in the United States and worldwide was an “open secret” in Volkswagen’s engine development department.

70. The Defendants engineered, designed, developed, manufactured, and installed these defeat devices in approximately 500,000 Deceptive Vehicles with 2.0-liter TD1® of model years 2009-2015 that were sold or leased to consumers in the United States, including Kentucky.

71. The Defendants engineered, designed, developed, manufactured, and installed

these defeat devices in approximately 80,000 Deceptive Vehicles with 3.0-liter TD1® of model years 2009-2016 that were sold or leased to consumers in the United States, including Kentucky.

72. The Deceptive Vehicles include the following makes and models of diesel engine vehicles of the Defendants offered for sale or lease, sold, or leased in the United States, including Kentucky, for the 2009 through 2016 model years:

2.0 Liter Diesel Models:

Model Year	EPA Test Group	Vehicle Make and Model(s)
2009	9VWXV02.035N	VW Jetta, VW Jetta Sportwagen
2009	9VWXV02.0U5N	VW Jetta, VW Jetta Sportwagen
2010	AVWXV02.0U5N	VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3
2011	BVWXV02.0U5N	VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3
2012	CVWXV02.0U5N	VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3
2012	CVWXV02.0U4S	VW Passat
2013	DVWXV02.0U5N	VW Beetle, VW Beetle Convertible, VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3
2013	DVWXV02.0U4S	VW Passat
2014	EVWXV02.0U5N	VW Beetle, VW Beetle Convertible, VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3
2014	EVWXV02.0U4S	VW Passat
2015	FVGAV02.0VAL	VW Beetle, VW Beetle Convertible, VW Golf, VW Golf Sportwagen, VW Jetta, VW Passat, Audi A3

3.0 Liter Diesel Models:

Model Year	EPA Test Group(s)	Vehicle Make and Model(s)
2009	9ADXT03.03LD	VW Touareg, Audi Q7
2010	AADXT03.03LD	VW Touareg, Audi Q7
2011	BADXT03.02U G	VW Touareg Audi Q7
2012	CADXT03.02U G	VW Touareg Audi Q7
2013	DADXT03.02U G DADXT03.03U	VW Touareg Audi Q7 Cayenne Diesel

2014	EADXT03.02U G EADXT03.03U G	VW Touareg Audi Q7 Cayenne Diesel A6 quattro, A7 quattro, A8, A8L, Q5
2015	FVGAT03.0NU2 FVGAT03.0NU3 FPRXT03.0CD D	VW Touareg Audi: Q7 Cayenne Diesel A6 quattro, A7 quattro, A8, A8L, Q5
2016	GVGAT03.0NU2 GPRXT03.0CD D	VW Touareg Cayenne Diesel A6 quattro, A7 quattro, A8, A8L, Q5

73. As of the date of the filing of this Complaint, 3,797 of the Deceptive Vehicles were registered in Kentucky through the Kentucky Transportation Cabinet.

74. At all times relevant to this action, the Defendants worked in concert with the common objective of willfully deceiving regulators and consumers by engaging in the conduct described in this Complaint. Each of the Defendants was, and still is, the agent of the others for this purpose, and each has acted, and is acting, for the common goals and profit of all of the Defendants. Therefore, all acts and knowledge that may be attributed to any one of the Defendants are properly attributed to the other Defendants.

The Defendants Publicly Assert Claims About the Development of “Clean Diesel” Technology While Concealing the Presence of the Defeat Devices

75. While having willfully and knowingly engineered, designed, developed, manufactured, and installed the defeat devices on the Deceptive Vehicles, as early as 2008 Volkswagen publicly touted its development of “clean diesel” technology.

76. In its own publication, Volkswagen claimed, “The 2.0 Liter TDI engine with common rail injection system is the first of a new generation of dynamic and efficient diesel engines from Volkswagen.” Volkswagen claimed that: “By combining the successful and proven 2.0 Liter TDI engine with common rail technology, Volkswagen is setting new standards in terms of such characteristic TDI attributes as dynamics, driving enjoyment, economy, and

reliability. The superior qualities of the 2.0 Liter TDI engine with common rail injection system are oriented towards future challenges in acoustics, comfort, and exhaust gas after-treatment.” Volkswagen claimed that the 2.0 Liter TDI® engine confirmed its role “as a pioneer in diesel technology,” and that the engine offered “the potential for future improvements in exhaust gas standards and associated technologies.” Volkswagen further asserted, “Equipped with a special after-treatment system, this engine meets current emissions standards.” *See Self Study Program 826803: 2.0 Liter TDI Common Rail Bin5 ULEV Engine, Volkswagen of America, Inc. (2008).*

77. Volkswagen claimed that the exhaust after-treatment system in 2.0 Liter TDI® diesel engine consisted of a diesel particulate filter and an oxidation catalyst, and an exhaust gas recirculation (“EGR”) system, and a NOx-storage catalyst to supplement the particulate filter system and act as a temporary reservoir to temporarily hold NOx emissions until they could be burned off during one of the engine cycles. The exhaust after-treatment system was designed to reduce NOx emissions and attain allowable emissions standards in the United States. *See Self Study Program 826803: 2.0 Liter TDI Common Rail Bin5 ULEV Engine, Volkswagen of America, Inc. (2008). See also Hadler, et al., Volkswagen’s New 2.0l TDI Engine Fulfills the Most Stringent Emission Standards, Internationales Wiener Motorensymposium 2008.*

78. The Defendants branded, represented, promoted, advertised and marketed its purported new technology to consumers in the United States, including Kentucky, as TDI® Clean Diesel.

79. In its 2007 Annual Report, the Defendant, Volkswagen AG, highlighted Audi’s “pioneering role” on the United States market for its accomplishments with the TDI® diesel engine. The report stated that “the Audi Q7 was equipped with the cleanest diesel engine in the world in time for its US market launch in 2009,” and that, “Audi profiles itself as a long-

established premium brand with the magic words ‘ultra low emission system’ – a system that already complies with the extremely strict US LEV II BIN 5 emission standards and has been approved in all states of the US.” The report hailed, “Audi Q7 3.0 L TDI – conquering America with ultra-modern diesel technology,” and, “Now, with the Q7’s high-performance diesel powertrain, Audi is not only complying with the strict US emissions regulations, but is carving out a new image at the same time.” See Volkswagen AG 2007 Annual Report, pp. 26-29.

80. In November of 2008, *the Green Car Journal* gave its Green Car of the Year award to Volkswagen’s 2009 Jetta TDI®, marking the first time a diesel-engine automobile had taken the industry’s top environmental award. “This signals that clean diesel has arrived,” said Ron Cogan, the editor of the *Green Car Journal*, about the award, adding, “This is the vehicle that stood out among all of the five finalists as the one that really exhibited the greatest environmental achievement. You get 30 percent better fuel efficiency, on average, with a diesel, and a commensurate reduction in greenhouse gases.”

81. Volkswagen America’s then-head of operations, Stefan Jacoby, called the 2009 Jetta TDI® technology “a breakthrough in this country,” and said, “I don’t want to say it’s better than other technologies, but it’s a real alternative to hybrids. It brings down fuel consumption, it’s environmentally friendly, and – this is a difference with a Prius – this is really fun to drive.” The price of the five-passenger 2009 Volkswagen Jetta TDI® started at \$21,990, compared with \$17,340 for a traditional Jetta.

82. The 2010 Audi A3 TDI® received the *Green Car Journal* Green Car of the Year award in 2010. The Manufacturer’s Suggested Retail Price of the 2010 Audi A3 TDI® was \$29,950.

83. After the Defendants’ defeat device scheme became known, the *Green Car*

Journal rescinded the Green Car of the Year awards for the 2009 Jetta TDI® and the 2010 Audi A3 TDI®.

84. Volkswagen created the “Think Blue” campaign after the 2009 Jetta TDI® received the Green Car of the Year award. The “Think Blue” campaign web site states that the campaign “embodies Volkswagen’s goal of creating environmentally friendly products and solutions, encouraging more eco-conscious behavior and contributing to a sustainable future. It’s about being responsible on the road and more environmentally conscious – not just in our cars, but everywhere, every day.”

The Defendants Deceptively Promoted and Advertised Their Vehicles as High-Performing and “Clean” Diesel Automobiles

85. Volkswagen used the purported “clean diesel” engine technology as a selling point to consumers in the United States, including Kentucky, in promoting and marketing the Deceptive Vehicles as environmentally sound and as good as, if not better than, hybrid electric automobiles offered by the Defendants’ competitors. In an October 9, 2009, interview, then-Volkswagen America Chief Operating Officer Mark Barnes said as follows when asked about the advantage of a diesel over a hybrid:

It’s a fantastic powertrain. It gives very good fuel economy. 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 oxides are cut by 95%. Clean enough to be certified in all 50 states. It’s just like driving a high-powered gasoline engine so you are not giving up one bit of the driving experience that you’d expect from a regular gasoline engine.

When asked how to “re-brand something that’s dirty like diesel as something that’s green,”

Barnes answered:

The way we’ve gone about it is through a number of communication pieces. One of them we’ve used is TDI Truth & Dare. It is a very good website that compares some older diesels versus the current TDI clean diesel. And one of the things we

do is we put coffee filters over the exhaust pipes of both cars. We let them run for five minutes and after they are done, we take them off and the older diesel product (not a VW diesel) has a round sooty spot on that coffee filter. Ours is very clean. In fact they actually make coffee out of the filter that was attached to the Volkswagen clean diesel tail pipe and they drink it.

When asked why Americans were switching their buying habits, Barnes said, in part, “I think we are bringing people to the brand because of the clean diesel TDI and its working very well for us.”

86. From in or around 2009 through in or around 2015, Volkswagen engaged in a massive campaign to promote, advertise, and market its “clean diesel” technology and the Deceptive Vehicles, across a variety of media, including, but not limited to, newspapers, magazines, brochures, television commercials, Internet web sites, YouTube videos, social media, and direct dealer communications the Defendants supported and allowed.

87. In its promotion, advertisement, and marketing of the Deceptive Vehicles, the Defendants willfully, knowingly and falsely represented the Deceptive Vehicles as having superior fuel economy and performance, while remaining in full compliance with emissions standards in the United States.


88. For example, Volkswagen published the below print advertisement:

This ain't your daddy's diesel.

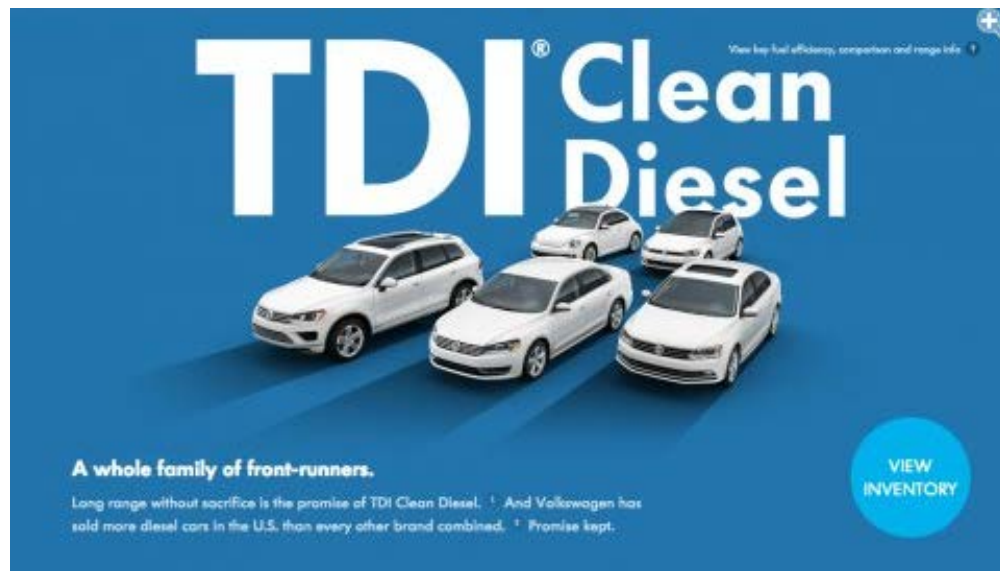
Stinky, smoky, and sluggish. Those old diesel realities no longer apply. Enter TDI Clean Diesel. Ultra-low-sulfur fuel, direct injection technology, and extreme efficiency. We've ushered in a new era of diesel.

- Engineered to burn low-sulfur diesel fuel
- “Common Rail” direct injection system

[View key fuel efficiency info](#)



89. The below advertisement appearing on the Internet featured a family of TDI® Clean Diesel automobiles and stated : “Long range without sacrifice is the promise of TDI® Clean Diesel. And Volkswagen has sold more diesel cars in the U.S. than “every other brand combined. Promise Kept.”:



90. The Defendants also aired commercial videos on television and the Internet, like a series of video advertisements known as the “old wives’ tales” widely disseminated by Volkswagen in an effort to dispel the notion that diesel engines were dirty and noxious. In the advertisement, one of the women puts her white scarf against the tailpipe of the Deceptive Vehicle to prove to the other two women that diesel is clean, and then shows the scarf to the women and says, “See how clean it is?” The advertisement concludes by showing the words “Volkswagen TDI® Clean Diesel | Like really clean diesel.” The following images are screen shots of the advertisement:



91. Volkswagen brochures that were available at dealerships and online at Volkswagen's web site falsely described the TDI® diesel engine technology, including statements about its high efficiency, powerful performance, and purported "clean" characteristics. The brochures also falsely claimed eco-friendly emissions figures and that the Deceptive Vehicles were compliant with emissions standards in all fifty (50) states.

92. For example, a 2012 Volkswagen Family brochure promoted the TDI® diesel engine by stating: "T is for Turbo. TDI Clean Diesel was designed around one belief: driving is more fun than refueling. The low cost of high performance." The brochure included a page titled "Blue sky thinking" that stated, in part (with footnotes omitted):

Here in America, the shorthand term for being environmentally conscious is green. But at Volkswagen, we call it blue. ... Think Blue® represents our efforts to drive progress by designing and producing cars that are more efficient, environmentally sound, and fun to drive. Why compromise when you can have it all? Thanks to our BlueMotion® technologies, such as TXDI, DSG, TSI, and hybrid, we're taking huge steps toward making every one of our models as blue as possible. Which is likely to make other car companies green with envy.

The same brochure stated that the 2012 Passat TDI® Clean Diesel engine had "an industry-leading range of 795 miles and 43 highway mpg." The brochure also stated the following about the 2012 Jetta TDI® Clean Diesel (with footnotes omitted):

The Jetta TDI Clean Diesel is the engineering equivalent to having your cake and eating it too. It achieves an astonishing 42 highway mpg and travels up to 609 miles on a single tank without sacrificing one bit of turbocharged performance. That's all thanks to TDI technology.

93. As another example, a brochure for the 2010 Jetta and Jetta SportWagen stated (with footnotes omitted):

Did you know that a Volkswagen was named the 2009 World Car of the Year? Or that Volkswagen has ESP® standard on all 2010 vehicles? Or that we provide a Carefree Maintenance™ Program on all our 2010 cars? Or that we were the first to clean diesel available in all 50 states? ... Or that the Jetta is the best-selling German-engineered sedan in America? How about that right now, the VW forest

is growing in Louisiana thanks to the Volkswagen Carbon Neutral Project – the first US carbon offsetting program initiated by a car manufacturer? There may be a lot you don't know about Volkswagen. Keep turning the pages, and you'll discover why the Jetta TDI was given MotorWeek's 2009 Driver's Choice Best of the Year Award.

In a section titled, "The people want powerful choices," the same brochure touted the 2.0-liter TDI® Clean Diesel as providing "140 hp and 236lbs-ft of torque" and "the toast of Europe for its quickness, low emissions, and fuel efficiency" In another section titled, "The people want good, clean, diesel fun. And they want to get paid for it.," the brochure stated (with footnotes omitted):

Jetta TDI Clean Diesel offers fuel efficiency, power, performance, and a \$1,300 tax credit from Uncle Sam because it qualifies as an Advanced Lean Burn Credit. Or, in other words, lean, mean, cleaner burning machines. Volkswagen believes in delivering a no-compromise German-tuned auto that performs, and still leaves a small carbon footprint. The Volkswagen TDI engine is cleaner than conventional diesels, emitting as much as 95% less soot than previous diesel engines, as well as a reduction in oxides of nitrogen and sulfur. It's powerful, with the kind of low-end torque that racers and tuners demand. It's efficient, using a turbocharger and smart exhaust design to burn fuel more effectively. So much so, in fact, that Volkswagen was the first automaker to make clean diesel cars certified in all 50 states. And best of all, it will help save you money with an out-of-this-world AMCI-estimated mileage of 38 city/44 highway mpg (automatic) and over 594 miles on a single tank of fuel. There's even a Jetta SportWagen TDI Clean Diesel, with the same astonishing clean diesel technology, plus a whopping 65.9 cubic feet of cargo room.

94. Print advertisements directed consumers to promotional web sites like clearlybetterdiesel.org and TDItruthanddare.com. TDItruthanddare.com launched in May 2009 and included promotional videos and interactive tools falsely proclaiming TDI® diesel engines' cleanness. The web site featured a video entitled "the eco-conscious car showdown" showing a race between the Jetta TDI® and the Toyota Prius. Another video that appeared on the web site featured "diesel decaf" testers who placed coffee filters on the exhaust pipes of a Touareg TDI® and an older model diesel Mercedes Benz and then made coffee using both filters. A "Savings

Calculator” compared the fuel efficiency and carbon emissions of TDI® models to Volkswagen’s competitors.

95. The web site clearlybetterdiesel.org is as an informational factsheet listing claims about the environmental, efficiency, and performance benefits of “clean diesel” engines. The web site states, “Since Clean Diesel is not only cleaner but also more fuel-efficient, the new Clean Diesel vehicles are friendlier to both the environment at drivers’ wallets throughout the U.S.” Under the heading “Our Partners,” the web site states that the Volkswagen Jetta TDI® and the Audi A3 TDI® won the “Green Car of the Year” award in 2009 and 2010, respectively.

96. In the video ad depicted below, called “Oil Parade,” Audi claims that diesel is “no longer a dirty word”:



97. A brochure for the 2015 Audi A3 TDI® clean Diesel stated, in pertinent part (with footnotes omitted):

The Audi TDI® clean diesel engines have achieved ultra-low emissions vehicle (Bin-5/ULEV II) status in all 50 states while reducing emissions by an average of 12% compared to their gasoline equivalents. And the brainy attributes don’t hide the brawn – in fact, Audi has dominated the 24 Hours of Le Mans over the years with Audi TDI® prototype race cars. With these facts in mind, maybe you are thinking that an Audi TDI® might be your choice – which goes to show that clean diesel really is fuel for thought.

The same page of the brochure featured illustrations detailing the features of the TDI® clean diesel engine, including a diagram stating that, “Combining a high compression ratio with direct injection makes combustion more efficient, and produces emissions cleaner than those of engines with a lower compression ratio.” An additional diagram about after-exhaust treatment explained that, “With innovative diesel particulate filters and the nontoxic AdBlue reducing agent, we eliminate up to 95% of diesel NOx emissions.”

98. Porsche represented, promoted, advertised and marketed its Porsche Cayenne sport-utility vehicle (“SUV”) as having “clean diesel” engine in print, Internet, and social media. One brochure for the diesel-powered 2013 Porsche Cayenne SUV, which was available at dealerships in print version and online, stated of the Deceptive Vehicle, “[t]his is no ordinary diesel. This is a Porsche 3.0 liter V6 turbo diesel engine. It’s a technological marvel, able to take its unique fuel source and transform it into clean, efficient, and incredibly torque-rich power.” The brochure also claimed that the degree of refinement that Porsche had brought to diesel power “making it a new 3.0-liter turbo diesel V6 that is far advanced from what many people perceive – especially in terms of its acceleration, clean emissions, and quiet running operation.” The brochure describes the complete exhaust system of the Deceptive Vehicle, including the diesel particulate filter that traps and eliminates the majority of particulate, and the reduction catalytic converter that converts the remaining nitrogen oxides to nitrogen and oxygen utilizing the AdBlue® agent. The brochure expressly states that the exhaust system processes described therein “help to ensure the reduction of harmful pollutants into the environment and make the Cayenne diesel compliant with U.S. emissions standards.”

99. The Defendants’ misleading, false, fraudulent, deceptive, and unfair representation, promotion, marketing, and advertisement of the Deceptive Vehicles was

effective, as the Commonwealth details in this Complaint.

100. For instance, Volkswagen became the largest seller of diesel passenger automobiles in the United States. As Volkswagen admitted, it sold approximately 11,000,000 of the Deceptive Vehicles in approximately 150 countries worldwide. In 2015, Fortune 500 named Volkswagen the world's largest-selling automaker, ranking Volkswagen as the eighth-largest company in the world for the year 2014.

The Defendants' Deceptive Promotion of the Purported "Clean Diesel" Vehicles Harmed Kentucky Consumers Who Believed They were Buying or Leasing "Clean" Diesel Vehicles

101. At all times relevant to this action, the Defendants' misleading, false, fraudulent, deceptive, and unfair representation, promotion, marketing, and advertising of the Deceptive Vehicles, including, but not limited to those described herein, was available to and/or seen by Kentucky citizens.

102. The Defendants' representation, promotion, marketing, and advertising of the Deceptive Vehicles, including, but not limited to those described herein, were misleading, false, fraudulent, deceptive and unfair. The Defendants made affirmative misrepresentations about the Deceptive Vehicles by falsely representing them as clean, high-performing, highly-efficient, and environmentally-friendly. The Deceptive Vehicles' performance and efficiency during normal operations were and are only attainable when the defeat devices the Defendants engineered, designed, developed, manufactured and installed on the Deceptive Vehicles are deactivated, resulting in the emission of NOx at levels of up to forty (40) times allowable emissions levels. The Deceptive Vehicles emitted and continue to emit NOx by a factor of up to forty (40) times allowable emissions limits. Further, publicly-available information suggests that the re-sale value for the Deceptive Vehicles has and continues to decrease precipitously because the defeat device scandal has shown that the Defendants did not offer the combination of performance and

efficiency that they promised in their advertisements, and promotional and marketing materials.

103. The Defendants made affirmative omissions in their representation, promotion, marketing, and advertising of the Deceptive Vehicles, by concealing the presence of the defeat devices that the Defendants engineered, designed, developed, manufactured, and installed on the Deceptive Vehicles, which resulted in the Deceptive Vehicles emitting NOx by a factor of up to forty (40) times allowable emissions limits. While concealing the presence of the defeat devices, the Defendants promoted, marketed, and advertised the Deceptive Vehicles as “clean,” environmentally-friendly, and compliant with the emissions standards of all fifty (50) states.

104. The Defendants’ description of the Deceptive Vehicles as “TDI® Clean Diesel” was misleading, false, fraudulent, deceptive and unfair.

105. Along with their misleading, false, fraudulent, deceptive and unfair representation, promotion, advertising, and marketing of the Deceptive Vehicles, the Defendants subjected actual and potential buyers and lessees of the Deceptive Vehicles to additional misrepresentations at and subsequent to the point of sale or lease. In addition to brochures available at dealerships and on the Internet, the Defendants affixed window stickers to the Deceptive Vehicles when offering them for sale or lease that reflected high fuel economy, high greenhouse gas ratings, and high smog ratings, even though the Defendants knew that the Deceptive Vehicles emitted levels of NOx by a factor of up to forty (40) times above allowable emissions limits, which the Defendants knew was not detected by emissions testing because of the defeat devices the Defendants engineered, designed, developed, manufactured, and installed on the Deceptive Vehicles.

106. In purchasing or leasing the Deceptive Vehicles, consumers, including Kentucky consumers, relied on the Defendants’ misleading, false, fraudulent, deceptive, and unfair

representation, promotion, advertising, marketing, and warranting of the Deceptive Vehicles as “clean” and environmentally-friendly diesel automobiles that were also fuel-efficient, provided superior power and performance, and complied with emissions standards in the United States. These consumers purchased or leased the Deceptive Vehicles because of the Defendants’ misleading, false, fraudulent, deceptive, and unfair representations about the Deceptive Vehicles. A large portion of these consumers would not have purchased or leased the Deceptive Vehicles had the Defendants accurately disclosed that they had engineered, designed, developed, manufactured, and installed the defeat devices on the Deceptive Vehicles that allowed vehicles to emit NOx by a factor of up to forty (40) times above allowable emissions standards. Had the Defendants disclosed the presence of the defeat devices, the Deceptive Vehicles would not have been certified as conforming with emissions standards so that they could be introduced in the stream of commerce and offered for sale or lease in the United States, including Kentucky.

107. Consumers, including Kentucky consumers, were willing to pay premium prices for the Deceptive Vehicles that were above the prices for the Defendants’ non-TDI® clean diesel automobiles. These premium prices ranged from approximately \$1,000 to approximately \$6,800 per Deceptive Vehicle above the prices for the Defendants’ non-TDI® automobiles, depending on the model and trim packages chosen. For example, when Volkswagen announced the pricing of the 2015 Jetta, it listed the “frugal TDI Clean Diesel” model at starting prices of \$21,640 (manual) and \$22,740 (automatic) for the S trim, compared with the 2.0-liter S model (manual) price of \$17,325 and the 2.0-liter S model (automatic) price of \$18,245.

108. These consumers, including Kentucky consumers, who purchased or leased the Deceptive Vehicles have sustained actual damages as a result of the Defendants’ wrongful conduct. These damages include, but are not limited to: the premium price they paid for the

Deceptive Vehicles; the loss of re-sale value of the Deceptive Vehicles because of the exposure of the defeat device scandal the Defendants created, perpetrated and maintained; loans with balances that are greater than the values of the Deceptive Vehicles because of the vehicles' decrease in value; reduced equity in the Deceptive Vehicles because of the vehicles' decrease in value; the diminution in the value of their leases; the anticipated losses of fuel efficiency and performance subsequent to any recall of the Deceptive Vehicles; the costs associated with the termination of leases by the consumers who no longer wanted the Deceptive Vehicles; and the costs associated with extended warranties the consumers purchased and no longer want.

109. Consumers, including Kentucky consumers, who purchased or leased the Deceptive Vehicles did not receive what they expected or paid for because of the Defendants' wrongful conduct. These consumers were harmed by the Defendants' wrongful conduct, including, but not limited to, sustaining pecuniary damages, and driving the Deceptive Vehicles that emit NOx levels by a factor of up to forty (40) times above allowable emissions limits in Kentucky, causing or contributing to deleterious environmental and public health effects.

The Defendants Reaped Significant Benefits from Their Deceptive and Fraudulent Promotion of the Deceptive Vehicles, Boosting Record Sales Numbers

110. The Defendants benefitted significantly from their misleading, false, fraudulent, deceptive, and unfair representation, promotion, advertising, marketing, and warranting of the Deceptive Vehicles, in the form of increased automobiles sales and profits in the United States, including Kentucky.

111. In 2014, the Defendant, Volkswagen America, sold 552,729 automobiles in the United States, including 95,240 TDI® "clean diesel" Deceptive Vehicles, from its 1,018 dealer locations in all fifty (50) states. In 2013, the Defendant, Volkswagen America sold 407,704 automobiles, in America, and the TDI® Clean Diesel models accounted for 95,823, or 23.5%, of

sales that year. By the end of 2013, Volkswagen America had delivered more than 500,000 TDI® Clean Diesel automobiles. The TDI® Clean Diesel Passat had its best year in sales on record, with 34,963 sold, which accounted for 32% of sales in 2013. That year marked the second consecutive year that Volkswagen America's sales had surpassed 400,000 automobiles.

112. The Defendant, Volkswagen AG occupied approximately 70% of the market share of diesel automobile sales in the United States in 2014. At one time, 21% of Volkswagen sales were diesel. *See* TDI: U.S. Market Success, March 2015, Volkswagen Group of America.

113. In 2014, the Defendant, Audi America, posted its fifth-straight year of record sales in the United States, selling 182,011 automobiles, which was 15.2% higher than the previous record in 2013. At that time, Audi stated that it held the longest-running monthly record in the premium car market, according to a competitive sales report from MotorIntelligence.com.

114. In December of 2013, the Defendant, Volkswagen America reported it had sold 100,000 TDI® Clean Diesel vehicles from Volkswagen and Audi brands in 2013. Volkswagen America stated that Volkswagen and Audi offered twelve (12) different TDI® Clean Diesel powered models in America, and that more than 75% of the diesel engines sold in the passenger car and SUV segments in the country were under the hoods of models of the two brands. Mark McNabb, then the Chief Operating Officer of Volkswagen America, called surpassing 100,000 TDI® Clean Diesel models “a significant milestone,” and the President of Audi America, Scott Keogh, said that American consumers “understand now more than ever that this is a technology delivering real answers to society's concerns about fuel consumption and greenhouse gas emissions without compromises.”

115. The Defendant, Porsche North America, reported record sales in 2013 and 2014.

In 2013, Porsche North America sold 42,323 automobiles in the United States, a 21% increase from previous record year of 2012, and stated that the new record was fueled by sales of the 911 and Cayenne models. In 2013, 18,507 Cayenne models were sold in the United States. In 2014, Porsche North America increased its sales in the United States to 47,007, including 16,205 Cayenne models.

116. As Volkswagen has admitted, it sold approximately 11,000,000 of the Deceptive Vehicles in approximately 150 countries worldwide. In 2015, Fortune 500 named Volkswagen the world's largest-selling automaker, ranking Volkswagen as the eighth-largest company in the world for the year 2014.

Researchers and Regulators Exposed the Presence of the Defendants' Defeat Devices on the Deceptive Vehicles, Uncovering the Scandal Worldwide

117. In or around May of 2014, the West Virginia University Center for Alternative Fuels, Engines & Emissions ("CAFEE") completed a study commissioned by the International Council on Clean Transportation ("ICCT") and issued a report that found the real-world, on-the-road NOx emissions from two (2) Volkswagen light duty diesel vehicles (a 2012 Jetta and a 2013 Passat) emitted levels of NOx significantly higher than allowable emissions limits.

118. Following the publication of the CAFEE/ICCT report, the California Air Resources Board ("CARB") and the Environmental Protection Agency ("EPA") began investigating the results of the research and demanded an explanation from Volkswagen. Throughout the year following the publication of the report, Volkswagen asserted to the CARB and the EPA that the increased emissions from the automobiles could be attributed to various technical issues and unexpected in-use conditions. In December of 2014, Volkswagen issued a voluntary recall to purportedly address the issue.

119. The CARB and the EPA performed follow-up testing of the automobiles in a test

laboratory setting and in normal road operation to confirm the efficacy of the recall. This testing showed a limited benefit to the recall, prompting the CARB to broaden the testing to pinpoint the exact technical nature of the automobiles' poor performance and to investigate why the automobiles' onboard diagnostic system was not detecting increased emissions. The CARB testing consistently confirmed higher NOx test results, and revealed that none of the potential technical issues Volkswagen had suggested explained those higher NOx results.

120. It became clear that the CARB and the EPA would not approve certificates of conformity for Volkswagen's 2016 model year TDI® diesel engine automobiles until Volkswagen could adequately explain the irregular emissions and ensure that the 2016 model year TDI® diesel engine automobiles would not have similar issues. Only then did Volkswagen admit to the CARB and the EPA that it had designed and installed a defeat device on the 2.0-liter Deceptive Vehicles in the form of a sophisticated software algorithm that detected when the vehicles were undergoing emissions testing.

121. On September 18, 2015, the EPA issued a Notice of Violation to Volkswagen AG, Audi AG, and Volkswagen America, for manufacturing and installing defeat devices in certain model year 2009 through 2015 diesel light-duty vehicles equipped with 2.0-liter engines. As the EPA stated in the Notice: "These defeat devices bypass, defeat, or render inoperative elements of the vehicles' emissions control system that exists to comply with CAA emission standards. ... Additionally, the EPA has determined that, due to the existence of the defeat devices in these vehicles, these vehicles do not conform in all material respects to the vehicle specifications described in the applications for the certificates of conformity that purportedly cover them." The Notice of Violation indicated that as a result of the defeat devices, emissions of NOx from the Deceptive Vehicles increase by a factor of ten (10) to forty (40) times above

allowable emissions standards during road operation, depending on model type and type of drive cycle.

122. Also on September 18, 2014, the CARB sent an “In-Use compliance” letter to Volkswagen AG, Audi AG, and Volkswagen America, advising that it had begun an enforcement investigation of Volkswagen regarding the Deceptive Vehicles at issued in the EPA Notice of Violations. In that letter, the CARB also reiterated Volkswagen’s September 3, 2014 admission to designing and installing the defeat devices on the Deceptive Vehicles to evade emissions testing.

123. Two days after the issuance of the Notice of Violation, Volkswagen made its first public admission of wrongdoing. Then-Volkswagen AG Chief Executive Officer Martin Winterkorn posted a written statement on Volkswagen AG’s web site, in which he did not contest the assertions in the Notice of Violation. Winterkorn stated, in part:

I personally am deeply sorry that we have broken the trust of our customers and the public. We will cooperate fully with the responsible agencies, with transparency and urgency, to clearly, openly, and completely establish all of the facts of this case. Volkswagen has ordered an external investigation of this matter. ... We do not and will not tolerate violation of any kind of our internal rules or of the law.

Winterkorn also posted a video statement, stating, in part:

... [t]he irregularities in our group’s diesel engines go against everything Volkswagen stands for. ... And to be frank with you, manipulation at Volkswagen – that must never be allowed to happen again. Ladies and gentleman, millions of people all over the world trust our brands, our cars, and our technology. I am deeply sorry that we have broken this trust. I would like to make a formal apology to our customers, to the authorities, and to the general public for this misconduct.

124. The Defendants have made numerous admissions to regulators, legislators, consumers, investors, and the public.

125. On September 20, 2015, Volkswagen announced that it would stop selling new

and used 2.0-liter TDI® diesel engine Volkswagen and Audi automobiles in the United States. Volkswagen did not stop selling models of its 3.0-liter TDI® clean diesel automobiles.

126. On September 22, 2015, Michael Horn, then-President and Chief Executive Officer of Volkswagen America, said the following to reporters at a launch event for the 2016 Passat in New York: “Our company was dishonest, with the EPA and the California Air Resources Board, and with all of you and in my German words, we have totally screwed up. We have to make things right, with the government, the public, our customers, our employees and also very important, our dealers.”

127. That same day, Volkswagen disclosed it had sold 11,000,000 million TDI® Clean Diesel automobiles equipped with the defeat devices, and that it would set aside 6.5 billion euros, or approximately \$7.3 billion, to cover the cost of making the automobiles comply with pollution standards.

128. On September 23, 2015, Martin Winterkorn resigned, and stated as follows in his resignation statement: “Above all, I am stunned that misconduct on such a scale was possible in the Volkswagen Group. I am doing this in the interests of the company even though I am not aware of any wrongdoing on my part.”

129. On October 8, 2015, Michael Horn made frank admissions of culpability during his testimony before United States Congress House Committee on Energy and Commerce’s Subcommittee on Oversight and Investigations. Under oath, Horn testified: On behalf of our company, and my colleagues in Germany, I would like to offer a sincere apology for Volkswagen’s use of a software program that served to defeat the regular emissions testing regime.” Although he denied that the use of defeat devices was a corporate decision and said he understood it was “a couple of software engineers” who installed the defeat devices, Horn said,

“I agree, it’s very hard to believe,” when asked whether it was possible that Volkswagen’s top hierarchy did not know about the defeat devices. Responding to a question from Representative Tim Murphy about whether the software was installed “for the express purpose of beating tests,” Horn said that to his knowledge, “It was installed for this purpose, yes.” Horn’s testimony included a summary of Volkswagen’s admission to designing and installing the defeat devices to the CARB and the EPA on September 3, 2015.

130. Michael Horn resigned from Volkswagen America on March 10, 2016.

131. On November 2, 2015, the EPA issued another Notice of Violation to Volkswagen AG, Audi AG, Porsche AG, Volkswagen Group of America, and Porsche Cars North America for manufacturing and installing defeat devices in certain model year 2014-2016 light-duty diesel vehicles equipped with 3.0-liter diesel engines. As the EPA stated in this second Notice of Violation: “These defeat devices bypass, defeat, or render inoperative elements of the vehicles’ emissions control system that exists to comply with CAA emission standards. . . . Additionally, the EPA has determined that, due to the existence of the defeat devices in these vehicles, these vehicles do not conform in all material respects to the vehicle specifications described in the applications for the certificates of conformity that purportedly cover them.” The Notice of Violation indicated that as a result of the defeat devices, emissions of NO_x from the Deceptive Vehicles increase by a factor of up to nine (9) times above allowable emissions standards during road operation, depending on model type and type of drive cycle.

132. On November 3, 2015, Volkswagen denied that it had installed defeat devices on its 3.0-liter V6 diesel power units to alter emissions characteristics in a forbidden manner.”

133. The day after issuing its statement, Volkswagen halted sales of 2013-2016 model-year Volkswagen and Audi vehicles equipped with 3.0-liter diesel engines in the United States,

including the Deceptive Vehicles identified in the November 2, 2015 Notice of Violation, and other makes and models, such as the Audi Q7. Porsche also stopped selling 2014-2016 model-year Cayenne SUVs with diesel engines.

134. On November 22, 2015, Volkswagen issued a statement in which it admitted that it failed to disclose that its United States 3.0-liter TDI® V6 models A6, A7, A8, Q5 and Q7, model years 2009-onward, contained three (3) auxiliary emissions control devices (“AECDs”) to regulators in the United States. The statement explained that one of the AECDs related to the temperature conditioning of the exhaust-gas cleaning system, and continued by stating: “One of them is regarded as a defeat device according to US law. Specifically, this is the software for the temperature conditioning of the exhaust-gas cleaning system.” The statement also relayed that Volkswagen used the engine in the Touareg, and that Porsche had used it in the Cayenne since model year 2013.

135. On November 25, 2015, CARB sent an “In-Use Compliance Letter” to Porsche Cars North America, Porsche AG, Volkswagen America, Volkswagen AG, and Audi AG advising that it had determined “that all 3.0 liter model years 2009-2016 test groups of the [manufacturers listed] are in noncompliance with CARB standards”

136. At a December 10, 2015 press conference, Volkswagen discussed the preliminary results of an internal investigation, and released a presentation and statement regarding its preliminary findings. In the statement, Volkswagen explained that the emissions scandal was not a one-time error, but a chain of errors that were allowed to happen, beginning with the strategic decision to launch a large-scale promotion of diesel vehicles in the United States within the required timeframe and budget. The statement provided that this decision led to the incorporation of software that adjusted nitrogen oxide emission levels according to whether they

were on the road or in testing, and when an effective technical process was later available to reduce NOx emissions, it was not used to the full extent possible. Instead, the software allowed the exhaust gas treatment additive “AdBlue” to be injected in variable amounts such that NOx values were particularly low when automobiles were in testing, but significantly higher when they were on the road. Hans Dieter Pötsch, the Volkswagen Chairman of the Supervisory Board, said that, “No business transaction justifies overstepping legal and ethical bounds.”

137. The public disclosure of the emissions scandal has resulted in the suspension, firing, and resignation of several executives and engineers of the Defendants, including Martin Winterkorn and Michael Horn.

The Latest Emissions Scandal is Not the First for Volkswagen in America

138. According to publicly-available media reports, on July 23, 1973, the EPA accused Volkswagen of installing defeat devices in automobiles it wants to sell in the 1974 model year. Then, Volkswagen admitted to selling 1973 model year automobiles with the devices, which consisted of temperature-switching switches that turned off air pollution controls at low temperatures. The EPA suspected Volkswagen sold 25,000 automobiles equipped with the defeat devices. Volkswagen settled a case for violation of the Clean Air Act in 1974 by paying a \$120,000 fine, but denied any wrongdoing.

The Parties’ Agreements, the Discovery Rule, and the Defendants’ Concealment Toll All Applicable Statutes of Limitation

139. The claims the Commonwealth alleges in this action did not accrue until the Commonwealth discovered that the Deceptive Vehicles the Defendants offered for sale, sold, or leased in the United States, including Kentucky, were equipped with the defeat devices each in the form of a sophisticated software algorithm. The Commonwealth had no realistic ability to discover this fact until, at the earliest, September 18, 2015 when the EPA issued its Notice of

Violation with respect to the Defendants' 2.0-liter TDI® diesel vehicles, and November 2, 2015 when the EPA issued its Notice of Violation as to the Defendants' 3.0-liter TDI® diesel vehicles.

140. The Defendants knew or should have known of the presence of the defeat devices on the Deceptive Vehicles since at least 2008, and certainly well before the time the Deceptive Vehicles were offered for sale, sold, or leased in Kentucky. The Defendants concealed and/or failed to notify the Commonwealth of the existence of the defeat devices, or of the full and complete nature of the defeat devices installed on the Deceptive Vehicles, and did not disclose the existence of the defeat devices on the Deceptive Vehicles until the September 18, 2015 and November 2, 2015 EPA Notices of Violations. Thus, the Defendants' knowledge, active concealment, and denial of the facts alleged in this action have tolled any applicable statute of limitations.

141. The Defendants are also estopped from relying on any statutes of limitation in defense of this action based on their active concealment of the existence of the true character, quality, and nature of their vehicles offered for sale, sold, or leased in Kentucky, in violation of the Defendants' continuing duty to disclose such information to the Commonwealth. The Commonwealth reasonably relied on the Defendants' affirmative misrepresentations and/or active concealment of these facts.

142. The Commonwealth Kentucky executed a tolling agreement with the Volkswagen Group of America, Inc., Audi of America, Inc., Volkswagen AG and Audi AG, as well as their successors, assigns, subsidiaries, parents, and affiliates, on or about October 21, 2015 that tolled all claims as of September 28, 2015. Subsequent extensions were executed that extended the tolling period until September 30, 2015. The Commonwealth also executed a tolling agreement with Dr. Ing.h.d.F. Porsche AG and Porsche Cars North America, as well as their successors,

assigns, subsidiaries, parents, and affiliates, on or about January 8, 2016 that tolled all claims as of November 2, 2015.

CAUSES OF ACTION

COUNT I VIOLATIONS OF THE KENTUCKY CONSUMER PROTECTION ACT

143. The Commonwealth adopts and reiterates each and every allegation and statement above as though fully set forth herein, and incorporates the same by reference.

144. Under the Kentucky Consumer Protection Act, KRS 367.170 prohibits unfair, false, misleading, or deceptive acts or practices in the conduct of any trade or commerce.

145. By engaging in the conduct described above, the Defendants have willfully engaged in unfair, false, misleading, and deceptive acts and practices in the conduct of trade and commerce in violation of KRS 367.170. For example, the Defendants willfully engaged in such acts and practices by:

- (a) Engaging in persistent and repeated implied and express representations that the Deceptive Vehicles were “clean diesel” and the emissions standards and requirements of all fifty (50) states when in fact, they were equipped with defeat devices that allowed them to evade the same emissions standards and requirements, and emit NOx by a factor of up to forty (40) times the allowable emissions limits under those standards and requirements without being detected in emissions testing;
- (b) Engineering, designing, developing, manufacturing and/or installing a defeat device in the Deceptive Vehicles, which rendered those vehicles non-conforming with applicable emission standards;
- (c) Misrepresenting in advertising and marketing and/or falsely warranting the Deceptive Vehicles’ conformity to and/or compliance with applicable emissions standards;
- (d) Placing into commerce vehicles that failed to conform and/or comply with applicable emissions standards that allow automobiles to be placed into the stream of commerce in the United States;
- (e) Failing to disclose and/or actively concealing from regulators and consumers the existence of the defeat devices and their effects on the emissions from the Deceptive Vehicles;

- (f) Failing to disclose and/or actively concealing from consumers the existence of the defeat devices and their harmful environmental impact;
- (g) Violating the explicit terms of an express warranty issued to each buyer and lessor of a Deceptive Vehicle, namely, the express warranty that the car conformed to applicable state and federal emissions standards and other applicable environmental standards;
- (h) Offering for sale or lease, selling, or leasing vehicles that were defective because, without limitation, the cars failed to conform to and/or comply with applicable emissions standards;
- (i) Issuing misleading recalls and/or service actions that failed to provide owners and lessors a clear description of the defect being serviced;
- (j) Falsely and deceptively advertising, promoting and warranting the Deceptive Vehicles as “clean” and “green” despite the fact that, in regular driving, they emit NOx at a factor of up to forty (40) times above allowable emissions limits; and
- (k) Falsely, fraudulently, deceptively, and unfairly promoting, marketing, advertising and warranting the Deceptive Vehicles by failing to disclose the existence of the defeat devices on the vehicles, the accurate environmental characteristics of the vehicles, the accurate efficiency of the vehicles, and the accurate performance characteristics of the vehicles.

146. Defendants are “persons” engaged in “trade or commerce” for purposes of KRS 367.170.

147. The Defendants’ wrongful conduct was knowing and willful.

148. The Defendants committed a separate and independent violation of the Kentucky Consumer Protection Act through each and every unfair, false, misleading, deceptive representation, promotion, or advertisement, regarding the Deceptive Vehicles.

149. The Defendants committed a separate and independent violation of the Kentucky Consumer Protection Act through unconscionable business, trade, or commerce practices by their unfair, false, misleading, or deceptive acts or practices each and every time the Defendants offered for sale or lease, sold, or leased a Deceptive Vehicle to be driven in the Commonwealth of Kentucky.

COUNT TWO
UNJUST ENRICHMENT

150. The Commonwealth adopts and reiterates each and every allegation and statement above as though fully set forth herein, and incorporates the same by reference.

151. The Defendants have been unjustly enriched from their wrongful conduct, at the expense of Kentucky citizens who purchased or leased the Deceptive Vehicles containing the hidden defeat devices. The Defendants received an unfair profit from the sale or lease of the Deceptive Vehicles by Kentucky citizens who overpaid for such purchase or lease because the Defendants' concealment of the defeat devices resulted in the false inflation of the value of the Deceptive Vehicles.

152. The Defendants received and retained unjust benefits from Kentucky citizens, and has resulted in inequity.

153. The unjust benefits the Defendants received have appreciated in value over time.

154. The Defendants' retention of the unjust benefits they have received is inequitable and unconscionable.

155. Kentucky citizens have not benefitted from the Defendants' wrongful conduct, as the Defendants concealed the presence of the defeat devices on the Deceptive Vehicles they allowed to be introduced into the stream of commerce to be offered for sale, sold, or leased in the United States, including Kentucky.

156. The amount of the Defendants' unjust enrichment should be disgorged and reimbursed to Kentucky citizens.

COUNT THREE
COMMON LAW FRAUD

157. The Commonwealth adopts and reiterates each and every allegation and statement above as though fully set forth herein, and incorporates the same by reference.

158. The Defendants committed common law fraud, actual and constructive, by making material misrepresentations about the Deceptive Vehicles that were false, specifically, the fraudulent and deceptive claims about their purported “clean diesel” technology that the Defendants asserted made the clean enough be certified in all fifty (50) states, and that the Defendants knew to be false or made recklessly, with the inducement to be acted upon through the importation, delivery, distribution, offer for sale, sale, or lease of the vehicles in the United States, including Kentucky, as well as the certification as compliant with emissions standards that allowed the Deceptive Vehicles to be offered for sale or lease.

159. The Defendants promoted, advertised, and marketed the Deceptive Vehicles as having “clean diesel” engines and as being environmentally sound automobiles that were better than the alternatives offered by the Defendants’ competitors, while concealing the presence of the defeat devices the Defendants engineered, developed, manufactured, and installed on the Deceptive Vehicles to intentionally thwart emissions testing.

160. Kentucky citizens acted in reliance on the Defendants’ false material representations about the Deceptive Vehicles by purchasing or leasing the Deceptive Vehicles that were permitted to be offered for sale or lease in the United States because of the Defendants’ wrongful and fraudulent conduct.

161. The Defendants’ wrongful and fraudulent conduct has caused injury and continues to cause injury to Kentucky citizens have been injury by purchasing the Deceptive

Vehicles at falsely-inflated prices and by having the value of the Deceptive Vehicles significantly lowered.

162. The Commonwealth seeks all damages, including punitive damages, for the Defendants common law fraud perpetrated against the Commonwealth and Kentucky citizens.

COUNT FOUR
PUBLIC NUISANCE

163. The Commonwealth adopts and reiterates each and every allegation and statement above as though fully set forth herein, and incorporates the same by reference.

164. The Defendants' have created and continue to perpetuate and maintain a public nuisance through their wrongful conduct by placing on public roadways, including Kentucky public roadways, the Deceptive Vehicles that emit NOx levels by a factor up to forty (40) times the allowable emissions limits, causing harm to the health, welfare and safety of Kentucky citizens, and to the air and water of the Commonwealth, and causing inconvenience to Kentucky citizens.

165. The Defendants knew of should have known that their wrongful conduct would harm and inconvenience Kentucky citizens and the air and water of the Commonwealth.

166. The public nuisance the Defendants created and continue to perpetuate and maintain can be abated, and further occurrence of such harm can be prevented.

167. The health and safety of Kentucky citizens, including, but not limited to those citizens who have come in contact with the Deceptive Vehicles, is of great public interest and of legitimate concern to the Commonwealth and its citizens and residents.

168. The Defendants' wrongful conduct was designed to evade the environmental laws of the Commonwealth so that the Deceptive Vehicles could, did and still do pollute and degrade the environment of the Commonwealth, constituting a public nuisance for which the

Commonwealth seeks all damages, including punitive damages, and an order requiring the Defendants to abate the public nuisance.

COUNT FIVE
EQUITABLE ESTOPPEL

169. The Commonwealth adopts and reiterates each and every allegation and statement above as though fully set forth herein, and incorporates the same by reference.

170. The Defendants wrongful conduct amounts to a false representation or concealment of material facts, or, at least, which is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the Defendants subsequently attempted to assert.

171. The Defendants engaged in such wrongful conduct with the intention, or at least the expectation, that such conduct would be acted upon by or influence Kentucky consumers.

172. The Defendants had actual and constructive knowledge of the real facts, which Kentucky consumers did not have.

173. The Defendants wrongful conduct caused Kentucky consumers to be bound by various contracts or obligations to third parties, including subsidiaries that the Defendants' own, to continue paying money toward the purchase or lease of the Deceptive Vehicles that Kentucky consumers would not have entered into and executed but for the Defendants' wrongful conduct.

174. The equitable interests are entirely in favor of Kentucky consumers and the Defendants have unclean hands.

175. The Commonwealth seeks an injunction requiring the Defendants to fully assume and fulfill the payment obligations of Kentucky consumers.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff, Commonwealth of Kentucky *ex rel.* Attorney General Andy Beshear, respectfully requests the following:

A. Entry of a judgment against the Defendants, finding that they willfully committed repeated violations of KRS 367.170;

B. An Order permanently enjoining Defendants from future false, misleading, deceptive, and/or unfair acts or practices in relation to the promotion and sale of their vehicles in the Commonwealth of Kentucky pursuant to KRS 367.190;

C. An award of civil penalties in the amount of two thousand dollars (\$2,000) for each willful violation of KRS 367.170, and ten thousand dollars (\$10,000) for each willful violation targeted to consumers over the age of 60, pursuant to KRS 367.990;

D. Enter an Order providing additional relief for harm suffered by Kentucky consumers, and equitable orders including:

- i. Ordering the Defendants to disgorge all profits unlawfully obtained as a result of its fraudulent conduct; and
- ii. Ordering, pursuant to KRS 367.200, that the Defendants restore to any person in interest any moneys or property, real or personal, which may have been paid out as a result of any practice declared to be unlawful by KRS 367.130 to 367.300.

E. Enter an Order permanently enjoining the Defendants from:

- i. Selling, offering for sale, introducing into commerce, or delivering for introduction into commerce into the Commonwealth any new motor

vehicle equipped with a defeat device or any new motor vehicle not eligible for sale pursuant to emissions and environmental standards; and

- ii. engaging in the unlawful, deliberate, unfair, false, misleading, deceptive, fraudulent, and unfair business practices alleged in this Complaint, including, without limitation, falsely advertising or promoting its vehicles in print, broadcast and electronic media.

F. An Order requiring that the Defendants' unjust enrichment should be disgorged and reimbursed to Kentucky citizens;

G. An award of all remedies, including damages, or other equitable relief, against the Defendants for the common law fraud the Defendants committed against the Commonwealth, including punitive damages under KRS 411.184;

H. An award of all remedies, including damages, or other equitable relief, against the Defendants for the public nuisance the Defendants created and continue to perpetuate and maintain, including punitive damages under KRS 411.184, and an Order requiring the Defendants to abate the public nuisance;

I. An injunction requiring the Defendants to fully assume and fulfill the payment obligations of Kentucky consumers under common law equitable estoppel;

J. An award of reasonable attorneys' fees and costs to the Plaintiff;

K. For a trial by jury; and

L. For any and all such other relief as this Honorable Court deems just and proper.

Respectfully submitted,

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