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Federal Trade Commission

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION

14 IN RE: VOLKSWAGEN “CLEAN DIESEL”
15 MARKETING, SALES PRACTICES AND
PRODUCT LIABILITY LITIGATION

MDL 2672 CRB (JSC)

**AMENDED COMPLAINT FOR
PERMANENT INJUNCTION AND
OTHER EQUITABLE RELIEF**

16
17 This document relates to:

The Honorable Charles R. Breyer

18 *FTC v. Volkswagen Group of America, Inc.*,
19 No. 3:16-cv-1534

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1 Plaintiff, the Federal Trade Commission (“FTC”), for its Amended Complaint alleges:

2 1. The FTC brings this action under Section 13(b) of the Federal Trade Commission
3 Act (“FTC Act”), 15 U.S.C. § 53(b), to obtain permanent injunctive relief, rescission, restitution,
4 the refund of monies paid, disgorgement of ill-gotten monies, and other equitable relief for
5 Defendants’ acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), in
6 connection with Defendants’ marketing and distribution to consumers of diesel-engine vehicles
7 containing illegal defeat device software designed to enable the vehicles to cheat emissions tests.
8 This Court has already entered an Order against Defendant Volkswagen Group of America, Inc.
9 (“Volkswagen USA”) as to the FTC’s claims relating to the 2.0-liter engine vehicles.

10 **JURISDICTION**

11 2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a),
12 and 1345, and 15 U.S.C. § 45(a).

13 **VENUE AND INTRADISTRICT ASSIGNMENT**

14 3. Venue is proper in this district under 28 U.S.C. § 1391(b)(1)-(2) and (c)(2), and
15 15 U.S.C. § 53(b).

16 4. Intradistrict assignment to the San Francisco Division is proper pursuant to Civil
17 Local Rule 3-2(c) because acts or omissions giving rise to the FTC’s claims occurred, among
18 other places, in San Francisco County, California.

19 **PLAINTIFF**

20 5. The FTC is an independent agency of the United States Government created by
21 statute. 15 U.S.C. §§ 41-58. The FTC enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a),
22 which prohibits unfair or deceptive acts or practices in or affecting commerce.

23 6. The FTC is authorized to initiate federal district court proceedings, by its own
24 attorneys, to enjoin violations of the FTC Act and to secure such equitable relief as may be
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1 appropriate in each case, including rescission or reformation of contracts, restitution, the refund
2 of monies paid, and the disgorgement of ill-gotten monies. 15 U.S.C. §§ 53(b), 56(a)(2)(A).

3 **DEFENDANTS**

4 7. Defendant Volkswagen USA is a New Jersey corporation with its principal place
5 of business located at 2200 Ferdinand Porsche Drive, Herndon, VA 20171. Volkswagen USA
6 transacts or has transacted business in this district and throughout the United States.

7 8. Volkswagen USA also transacts or has transacted business in this district and
8 throughout the United States as Volkswagen of America, Inc. and Audi of America, Inc.,
9 fictitious business names registered in Ohio.

10 9. Volkswagen USA is a subsidiary of Volkswagen AG, with headquarters in
11 Wolfsburg, Germany.

12 10. Defendant Porsche Cars North America, Inc. ("Porsche NA") is a Delaware
13 corporation with its principal place of business located at 1 Porsche Drive, Atlanta, Georgia
14 30354. Porsche NA transacts or has transacted business in this district and throughout the United
15 States.

16 11. Porsche NA is a subsidiary of Porsche AG, a German corporation that is wholly-
17 owned by Volkswagen AG.

18 12. At all times material to this Amended Complaint, acting alone or in concert with
19 others, Defendants have advertised, marketed, offered for sale, sold, offered for lease, leased, and
20 distributed diesel-engine motor vehicles to consumers throughout the United States, including
21 various makes and models marketed as "Clean Diesel" (collectively, "Defeat Device Vehicles,"
22 or "DDVs"). Each of these vehicles contains a defeat device, illegal software designed to enable
23 the vehicle to cheat emissions tests. The defeat device operates when emissions testing occurs
24 and calibrates the emission control system to reduce NOx emissions to legally compliant levels
25 for the duration of the test. After testing, the software resumes its default mode: calibrating the
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1 emission control system to allow NOx emissions above the legal limit, which enables more
2 powerful and durable engine performance. Without sophisticated testing equipment, there is no
3 way to know whether a vehicle contains such a defeat device.

4 **COMMERCE**

5 13. At all times material to this Amended Complaint, Defendants have maintained a
6 substantial course of trade in or affecting commerce, as “commerce” is defined in Section 4 of
7 the FTC Act, 15 U.S.C. § 44.

8 **DEFENDANTS’ BUSINESS ACTIVITIES**

9 14. Defendant Volkswagen USA sells Volkswagen and Audi vehicles through
10 approximately 1,000 dealers and independent distributors throughout the United States.

11 15. From late 2008 to late 2015, Defendant Volkswagen USA advertised, marketed,
12 offered for sale, sold, offered for lease, leased, and distributed more than 550,000 Volkswagen-
13 branded and Audi-branded Defeat Device Vehicles to consumers throughout the United States.

14 16. Volkswagen USA represented that Volkswagen-branded and Audi-branded DDVs
15 had low emissions, complied with government emissions standards, were environmentally
16 friendly, and retained a high resale value. During this time, Volkswagen USA became the
17 largest seller of light-duty diesel vehicles in the United States. The Volkswagen-branded and
18 Audi-branded DDVs had Manufacturer’s Suggested Retail Prices (“MSRPs”) ranging from
19 approximately \$22,000 for the least expensive Volkswagen-branded 2.0L DDV to approximately
20 \$125,000 for the most-expensive Audi-branded 3.0L DDV. Collectively, consumers spent
21 billions purchasing or leasing Defendant Volkswagen USA’s DDVs.

22 17. Defendant Porsche NA sells Porsche vehicles through approximately 200 dealers
23 and independent distributors throughout the United States. From late 2012 to late 2015,
24 Defendant Porsche NA distributed more than 11,000 Porsche-branded Defeat Device Vehicles to
25 consumers throughout the United States. The Porsche-branded DDVs had Manufacturer’s
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1 Suggested Retail Prices (“MSRPs”) ranging from approximately \$56,000 to approximately
2 \$135,000. Collectively, consumers spent hundreds of millions purchasing or leasing Defendant
3 Porsche NA’s DDVs.

4 **Defendants Sold Defeat Device Vehicles.**

5 18. Nitrogen oxides (“NOx”) are a group of dangerous atmospheric pollutants that
6 contribute to a host of harms to the environment and human health, including smog, acid rain,
7 water quality deterioration, childhood asthma, other respiratory ailments, and premature death.

8 19. To reduce these risks to the American public, the Environmental Protection
9 Agency (“EPA”) promulgated NOx emissions limits. In 2007, the EPA fully implemented these
10 limits for light-duty vehicles, which include passenger cars and SUVs.

11 20. To ensure that auto manufacturers comply with its emissions standards, EPA
12 administers an emissions certification program, which requires auto manufacturers to apply for a
13 Certificate of Conformity (“COC”) for each model and model year. It is illegal to sell a vehicle
14 without a valid COC.

15 21. To obtain a COC, a manufacturer must submit an application to EPA’s Office of
16 Transportation and Air Quality (“OTAQ”), which includes, among other things, the
17 manufacturer’s emissions and durability test results. OTAQ reviews the test results, and in some
18 cases, it performs “confirmatory testing” to validate the manufacturer’s results. When a
19 manufacturer submits a COC application for a vehicle with a new engine design, OTAQ always
20 performs confirmatory testing. OTAQ’s confirmatory testing involves operating the vehicle in a
21 laboratory setting; it does not involve “on-road” testing. Defendants knew how and when OTAQ
22 would perform confirmatory testing.

23 22. In June 2008, Volkswagen USA submitted a COC application to OTAQ for its
24 first diesel car in the U.S. market, the 2009 Turbocharged Direct Injection (“TDI”) Jetta. When
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1 OTAQ performed confirmatory testing on the TDI Jetta, it passed solely because it contained
2 illegal software designed to defeat EPA’s testing procedures (*i.e.*, a “defeat device”).

3 23. Volkswagen USA began distributing its first Defeat Device Vehicle, the “Clean
4 Diesel” TDI Jetta, in late 2008. According to Volkswagen USA, its introduction of its new
5 “Clean Diesel” technology in the U.S. market was “proof of [Volkswagen] Group’s commitment
6 to provide customers an alternative in their purchase of fuel efficient, clean emissions vehicles
7 that are also fun to drive.”

8 24. Over the next seven years, Volkswagen USA sold, leased, or distributed more
9 than 550,000 Defeat Device Vehicles, which have contributed—and will continue to
10 contribute—to environmental and human health harms including smog, acid rain, water quality
11 deterioration, childhood asthma, adult respiratory ailments, and premature death.

12 25. In 2012, Porsche NA submitted a COC application to OTAQ for its Defeat Device
13 Vehicle, the 2013 Cayenne Diesel. When OTAQ performed confirmatory testing on the
14 Cayenne Diesel, it passed solely because it contained illegal software designed to defeat EPA’s
15 testing procedures (*i.e.*, a “defeat device”).

16 26. Porsche NA began distributing its Defeat Device Vehicle, the Cayenne Diesel, in
17 late 2012.

18 27. Over the next three years, Porsche NA sold, leased, or distributed more than
19 11,000 Defeat Device Vehicles, which have contributed—and will continue to contribute—to
20 environmental and human health harms including smog, acid rain, water quality deterioration,
21 childhood asthma, adult respiratory ailments, and premature death.

22 **Volkswagen USA Promoted Its Defeat Device Vehicles As “Clean Diesel.”**

23 28. To induce American consumers to purchase its Defeat Device Vehicles,
24 Volkswagen USA spent tens of millions of dollars on widely-disseminated advertising to convey
25 “diesel’s environmental and economic advantages.”
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1 29. Volkswagen USA targeted much of its “Clean Diesel” advertising at
2 “progressive” and “environmentally-conscious” consumers. Volkswagen USA’s marketers
3 studied their targets’ psychology, concluding that such consumers “rationalize themselves out of
4 their aspirations and justify buying lesser cars under the guise of being responsible.” According
5 to Volkswagen USA, such consumers understood purchasing an eco-conscious vehicle as part of
6 being “responsible.”

7 30. Volkswagen USA’s “Clean Diesel” advertising included, among other things,
8 nationally-televised advertisements (including a Super Bowl ad), online social media campaigns
9 (including videos, websites and games on Facebook and elsewhere), press releases and public
10 statements, print advertising (including the slogan, “Diesel – It’s No Longer A Dirty Word”),
11 posters, brochures and other materials distributed to dealers and independent distributors around
12 the country, collaboration with environmental nonprofits (including The Nature Conservancy),
13 and strategic product placement (for instance, Volkswagen USA arranged for actress Gwyneth
14 Paltrow to arrive at the Hollywood premiere of *Iron Man III* in an Audi “Clean Diesel”).

15 31. According to Volkswagen USA’s marketing strategy materials, one of the “key
16 messages” it intended to convey through the word “clean” was that Clean Diesel vehicles
17 produce “NOx emissions [that are] reduced by 95 percent[.]”
18

19 **Volkswagen USA Claimed That Its Defeat Device Vehicles Had Low Emissions.**

20 32. Volkswagen USA’s advertisements, promotional materials, and public statements
21 represented that its Defeat Device Vehicles had low emissions, reduced NOx by 90%, had lower
22 NOx than comparable diesel vehicles, had lower emissions than comparable diesel vehicles, and
23 had lower emissions than comparable gasoline vehicles. For example:

- 24 A. A 2008 television advertisement, “Do Your Part,” depicts people commuting in
25 different environmentally friendly ways: “trying to do their part” by taking the
26 bus, riding a Segway, biking, and driving a car with the bumper sticker “powered
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1 by vegetable oil.” Then an Audi A3 speeds by, and the announcer observes:

2 “Some just have more fun doing it.” The screen reads: “42mpg. 30% fewer

3 emissions.” The ad ends with the tagline: “Diesel. It’s no longer a dirty word.”

4 B. A 2009 promotional mailer reads: “With the new Jetta TDI Clean Diesel, you get
5 a great car that’s low on emissions” The mailer further claims that the car’s
6 engine is “designed to reduce emissions,” which is why it is “[c]lean as a
7 whistle.”

8 C. Press coverage of the 2008 “Audi Mileage Marathon,” quotes an Audi
9 spokesperson saying: “Diesel is not dirty. This marathon is about getting the
10 word out that clean-diesel technology such as ours can achieve 40-percent better
11 fuel economy and reduce nitrogen-oxide emissions by 90%.”

12 D. A press release for the 2014 Volkswagen Touareg states that the “deNOx catalytic
13 converter . . . helps reduce NOx emissions by up to 90 per cent.”

14 E. According to 2010 press materials, the Volkswagen Jetta’s clean diesel
15 technology “reduces nitrogen oxide (NOx) emissions by up to 90% by making
16 internal engine modifications and implementing a NOx storage catalytic
17 converter.”

18 F. A 2009 press release identifies the Audi Q7 as the “world’s cleanest diesel SUV,”
19 states that it has an “advanced exhaust emission control system” that “reduces
20 smog-causing nitrogen oxides by up to 90% when compared with past generations
21 of diesel technologies sold in the U.S.,” and is “significantly less intrusive on the
22 environment than past diesel engines.”

23 G. 2013 emails to consumers promoting Audi TDIs state that “Clean Diesel” offers
24 “fewer NOx emissions than comparable gasoline engines.”
25

1 H. An Audi print ad with the tagline “Diesel. It’s no longer a dirty word,” describes
2 the TDI engine as having “20% fewer emissions than gasoline engines.”

3 I. In the “coffee filter test” video featured on one of Volkswagen USA’s online
4 media campaigns at TDITruthandDare.com, two testers compare a “Clean Diesel”
5 Volkswagen Touareg with a “traditional diesel” by placing clean white coffee
6 filters on the tailpipes “to see which one is cleaner after 10 minutes.” After the
7 “test,” the Touareg filter is still clean white, but the “traditional diesel” filter had a
8 black stain. The tester comments: “That [filter from the “traditional diesel”] is
9 nasty-looking. This [filter from the Touareg] looks pretty good, though.” The
10 tester then proposes making coffee with the filters, commenting: “Traditional
11 diesel coffee, it’s got the extra kick. It’s got the carbon monoxide, the sulfur
12 oxide Ready for some sooty emissions, diesel particulates . . . ?”

13 J. In a 2015 online video titled “Diesel Old Wives’ Tale #6: Diesel is Dirty,” one of
14 the “old wives” asks: “Aren’t diesels dirty?” The TDI driver (another “old wife”)
15 responds: “That used to be dirty; this is 2015.” She then “proves it” by holding a
16 white scarf to the exhaust of a Volkswagen Golf SportWagen TDI car and then
17 brandishing the clean cloth (“See how clean it is?”). The final tagline reads:
18 “Volkswagen TDI Clean Diesel: Like really clean diesel.” This ad reached at
19 least 9 million consumers.

20
21 **Volkswagen USA Claimed Its Defeat Device Vehicles Complied With Emissions Standards.**

22 33. Volkswagen USA’s advertisements, promotional materials, and public statements
23 represented that its Defeat Device Vehicles complied with state and federal emissions standards.

24 For example:

25 A. “Clean Diesel” vehicles “meet the strictest EPA standards in the U.S.”

26 B. “Audi TDI clean diesel technology meets emission standards in all 50 states.”

1 C. Volkswagen USA presents the “50-state compliant clean diesel Volkswagen Jetta
2 TDI sedan and SportWagen TDI.”

3 D. The “Touareg V6 TDI meet[s] the most stringent emission requirements of the
4 world [with] its advanced DeNOx system.”

5 E. “To achieve its 50-state-legal emissions qualification, a deNOx catalytic
6 converter, augmented by a special injection system that sprays [diesel exhaust
7 fluid (“DEF”)] into the exhaust, helps reduce NOx emissions by up to 90 per cent.
8 This lets the engine meet the Tier 2, Bin 5/ULEV II standards imposed across all
9 50 U.S. states.”

10 F. “Certified for use in all 50 states.”

11 **Volkswagen USA Claimed that Its Defeat Device Vehicles Were Environmentally Friendly.**

12 34. Volkswagen USA’s advertisements, promotional materials, and public statements
13 represented that its Defeat Device Vehicles were environmentally friendly, including that they
14 were “environmentally-conscious,” “eco-conscious,” or “green.” For example:

15 A. In a television advertisement broadcast during the 2010 Super Bowl, the “Green
16 Police” arrest consumers who use plastic bags or bottles, throw away batteries,
17 fail to compost orange rinds, install incandescent light bulbs, soak in overheated
18 Jacuzzi water, and drink from Styrofoam cups. When an Audi driver encounters
19 an “Eco Check” roadblock, a Green Police officer asks the driver: “You got a TDI
20 here?” The TDI driver responds: “Clean Diesel.” An officer replies: “You’re
21 good to go, sir.” The Audi driver speeds away and the screen goes black,
22 displaying the tagline: “Green has never felt so right.” The final tagline reads:
23 “Green Car of the Year. Audi A3 TDI clean diesel.”
24

- 1 B. A press release states that the 2011 Audi Q7 “provides premium SUV buyers with
2 a new level of environmental conscientiousness with its efficient 3.0 TDI clean
3 diesel engine.”
- 4 C. A page titled “Our environment” in a 2014 Volkswagen Jetta brochure pictures a
5 pristine river winding through lush green forest and states: “Building cars comes
6 with responsibilities—not just to you, but to the environment.” Under the caption
7 “Our commitment to the environment,” the brochure lists items such as
8 “[e]ncouraging eco-conscious behavior.”
- 9 D. A press release for the launch of the 2009 Touareg TDI “Clean Diesel” states that
10 the Touareg TDI “reinforces Volkswagen’s commitment to clean diesel
11 technology as the most sensible alternative fuel vehicle available today.”
- 12 E. A 2013 brochure calls a TDI “Clean Diesel” vehicle “[g]ood, clean fun,”
13 compares it to a hybrid, and explains its “Think Blue” logo as: “The sky’s the
14 limit. The color blue symbolizes our commitment to building environmentally
15 conscious cars . . . [a]nd setting a good example for eco-conscious behavior,
16 everywhere, and every day.” It concludes: “Think Blue is the Volkswagen way
17 to drive progress by creating and producing cars that are more efficient, eco-
18 conscious, and fun to drive.”
- 19 F. A mailer to Volkswagen customers promotes the 2009 Jetta TDI with the heading,
20 “Hybrids? They’re so last year . . .” It further states: “Now going green doesn’t
21 have to *feel* like you’re going green.”
- 22 G. Stickers on new “Clean Diesel” cars that disclose price, fuel economy, and other
23 features contain a Volkswagen USA motto: “The People Want Good Clean
24 Diesel Fun.” According to Volkswagen USA’s internal marketing materials, this
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1 motto is “meant to convey that VW has the people, processes, [and] products to
2 provide sustainable solutions.”

3 **Volkswagen USA Claimed Its Defeat Device Vehicles Would Retain a High Resale Value.**

4 35. Through its advertising, public statements, and selling and leasing of cars,
5 Volkswagen USA also represented to consumers that its Defeat Device Vehicles were durable,
6 well-engineered vehicles that would retain a high resale value. For example:

- 7 A. Volkswagen USA promoted DDVs as a good investment that likely retains a high
8 resale value. For example, in response to a hypothetical customer’s desire for “a
9 return on my investment,” a 2015 Audi brochure states: “TDI® clean diesel
10 models typically have a higher resale value versus comparable gasoline vehicles.”
11 Press releases and vehicle launches in 2009 cite “better resale value projections”
12 for the Audi Q7 and “phenomenal resale value” for the Volkswagen Touareg.
- 13 B. In marketing the benefits of DDVs, Volkswagen USA often used its tagline:
14 “That’s the power of German engineering,” and referred to its “unparalleled” and
15 “superior” engineering.
- 16 C. Volkswagen USA frequently described DDVs as “long-lasting.” As one brochure
17 states: “Whether you’re . . . driving mile after mile in any of our long-lasting TDI
18 models, Volkswagen is all about performance. In fact, we’re known for it . . . no
19 matter what model you choose, every Volkswagen is designed to perform. Year
20 after year after year.”
- 21 D. In training dealers and distributors to sell and lease DDVs, Volkswagen USA
22 encouraged dealers to highlight the durability and high resale value of TDIs.
23 Training materials and fact sheets for dealers stress that TDIs have a higher resale
24 versus gasoline vehicles (noting a \$3,800 resale difference at 48,000 miles and a
25 \$3,000 difference at 60,000 miles) and that “[t]he durability of the 3.0-liter TDI
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1 engine [] minimizes engine wear and tear over the life of the vehicle[,] which can
2 result in substantially higher resale than comparable competitive models with
3 gasoline engines.”

4 **Volkswagen USA Continued to Deceptively Market Defeat Device Vehicles Despite**
5 **Evidence that the Vehicles Exceeded Legal Emissions Standards.**

6 36. The International Council on Clean Transportation (“ICCT”) hired West Virginia
7 University (“WVU”) to conduct complex on-road testing (as opposed to government-mandated
8 laboratory testing) on several diesel light-duty vehicles. In 2013, WVU began conducting on-
9 road testing in collaboration with the California Air Resources Board (“CARB”).

10 37. WVU performed this testing on a “Clean Diesel” Volkswagen Passat and a
11 “Clean Diesel” Volkswagen Jetta. The “Clean Diesels” exceeded EPA’s NOx limits by as much
12 as 4,000 percent.

13 38. ICCT presented the results at a March 2014 conference attended by Volkswagen
14 engineers. By mid-2014, CARB, EPA, and Volkswagen USA were communicating regularly
15 regarding possible causes of the excess emissions. By October 2014, Volkswagen had
16 independently confirmed WVU’s excess emissions findings, but provided regulators with
17 scientifically invalid explanations for why its vehicles emitted so much NOx.

18 39. Volkswagen USA’s interaction with CARB and EPA eventually led Volkswagen
19 USA to issue software repairs in late 2014, and a recall of 2.0L “Clean Diesel” vehicles in April
20 2015 to repair the emissions aftertreatment system. One Volkswagen engineer discussing
21 proposed fixes noted that Volkswagen’s 3.0L “Clean Diesel” vehicles have “exactly the same
22 issues, but not public yet.” He observed: “They have not been caught.”

23 40. In coordination with EPA, CARB conducted both laboratory and on-road testing
24 on the 2.0L “Clean Diesel” vehicles after the fixes and recalls and discovered that they failed to
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1 reduce the “Clean Diesel” vehicles’ illegal NOx emissions. The discrepancy between the Defeat
2 Device Vehicles’ laboratory performance and their real-world performance remained.

3 41. Volkswagen USA attempted to explain the discrepancy in various ways that
4 CARB and EPA found increasingly implausible. Nonetheless, during this period, Volkswagen
5 USA continued to market “Clean Diesel” vehicles as producing low emissions, complying with
6 emissions standards, being environmentally friendly, and having a high resale value.

7 42. In August 2015, EPA and CARB informed Volkswagen USA that it would not
8 receive COCs for 2016 model year 2.0L “Clean Diesel” vehicles until the issue was resolved.

9 43. At this point, Volkswagen USA admitted that its 2.0L diesel vehicles contained
10 defeat devices. On September 18, 2015, EPA issued Volkswagen USA a Notice of Violation
11 (“NOV”) covering approximately 480,000 2.0L Defeat Device Vehicles.

12 44. However, Volkswagen USA continued selling 3.0L “Clean Diesel” vehicles with
13 TDI engines that also contained defeat devices.

14 45. On November 2, 2015, EPA issued a second NOV covering 3.0L “Clean Diesel”
15 vehicles. EPA’s second NOV explains that the 3.0L vehicles also contain defeat devices that
16 operate when testing occurs, and reduce NOx emissions to compliant levels only during the test.
17 Defendants admitted that these vehicles contain undisclosed software similar to the defeat
18 devices in the 2.0L vehicles.
19

20 **VIOLATIONS OF THE FTC ACT**

21 46. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits “unfair or deceptive acts
22 or practices in or affecting commerce.”

23 47. Misrepresentations or deceptive omissions of material fact constitute deceptive
24 acts or practices prohibited by Section 5(a) of the FTC Act.

25 48. Acts or practices are unfair under Section 5 of the FTC Act if they cause or are
26 likely to cause substantial injury to consumers that consumers cannot reasonably avoid
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1 themselves and that is not outweighed by countervailing benefits to consumers or competition.
2 15 U.S.C. § 45(n).

3 **Count I: Deceptive Representations (Volkswagen USA)**

4 49. In numerous instances in connection with the advertising, marketing, offering for
5 sale, sale, offering for lease, lease, and distribution of Defeat Device Vehicles, Defendant
6 Volkswagen USA represented, directly or indirectly, expressly or by implication:

7 A. That Volkswagen-branded and Audi-branded Defeat Device Vehicles
8 have low emissions, including that they reduce NOx by 90%, have lower NOx than comparable
9 diesel vehicles, have lower emissions than comparable diesel vehicles, and have lower emissions
10 than comparable gasoline vehicles;

11 B. That Volkswagen-branded and Audi-branded Defeat Device Vehicles
12 meet basic emissions standards, including that DDVs satisfied federal and state standards for
13 emissions compliance;

14 C. That Volkswagen-branded and Audi-branded Defeat Device Vehicles are
15 environmentally friendly, including that they were “environmentally-conscious,” “eco-
16 conscious,” or “green”; and

17 D. That Volkswagen-branded and Audi-branded Defeat Device Vehicles
18 would not suffer a significant reduction in their resale value compared with similar vehicles,
19 including that their resale value would be “higher . . . versus comparable gasoline vehicles.”

20 50. In truth and in fact:

21 A. Volkswagen-branded and Audi-branded Defeat Device Vehicles do not
22 have low emissions, do not reduce NOx by 90%, do not have lower NOx than comparable diesel
23 vehicles, do not have lower emissions than comparable diesel vehicles, and do not have lower
24 emissions than comparable gasoline vehicles;
25

1 B. Volkswagen-branded and Audi-branded Defeat Device Vehicles do not
2 meet basic emissions standards, including federal and state standards for emissions compliance;

3 C. Volkswagen-branded and Audi-branded Defeat Device Vehicles are not
4 environmentally friendly, not “environmentally-conscious,” not “eco-conscious,” and not
5 “green”; and

6 D. Volkswagen-branded and Audi-branded Defeat Device Vehicles will
7 suffer a significant reduction in their resale value compared with similar vehicles because they
8 contain defeat devices.

9 51. Therefore, Defendant Volkswagen USA’s representations as set forth in
10 Paragraph 49 of this Complaint are false and misleading and constitute a deceptive act or
11 practice, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

12 **Count II: Deceptive Failure to Disclose (Volkswagen USA)**

13 52. In numerous instances in connection with the advertising, marketing, offering for
14 sale, sale, offering for lease, lease, and distribution of Volkswagen-branded and Audi-branded
15 Defeat Device Vehicles, Defendant Volkswagen USA represented, directly or indirectly,
16 expressly or by implication, that Volkswagen-branded and Audi-branded DDVs were durable,
17 well-engineered vehicles.

18 53. In numerous instances in which Volkswagen USA has made the representations
19 set forth in Paragraph 52 of this Complaint, Volkswagen USA failed to disclose that
20 Volkswagen-branded and Audi-branded DDVs contain defeat devices that adversely affect the
21 resale value of the Volkswagen-branded and Audi-branded DDVs.

22 54. The additional information described in Paragraph 53 of this Complaint would be
23 material to consumers in deciding whether, or at what price, to purchase Volkswagen-branded
24 and Audi-branded DDVs.
25

1 55. Volkswagen USA's failure to disclose the material information described in
2 Paragraph 53, in light of the representations in Paragraph 51, constitutes a deceptive act or
3 practice in violation of Section 5 of the FTC Act, 15 U.S.C. 45(a).

4 **Count III: Means and Instrumentalities (Volkswagen USA)**

5 56. Defendant Volkswagen USA has distributed advertisements and promotional
6 materials, including but not limited to videos, webpages, brochures, posters, stickers, and point
7 of sale materials containing the representations described in Paragraph 49 to dealers and
8 independent distributors that sold, leased, and distributed Volkswagen-branded and Audi-
9 branded Defeat Device Vehicles. In doing so, Volkswagen USA provided dealers and
10 distributors with the means and instrumentalities for the commission of deceptive acts or
11 practices.

12 57. Volkswagen USA's practices as set forth in Paragraph 56 of this Complaint
13 constitute a deceptive act or practice, in or affecting commerce in violation of Section 5(a) of the
14 FTC Act, 15 U.S.C. § 45(a).

15 **Count IV: Unfairness (Volkswagen USA & Porsche NA)**

16 58. As described in Paragraphs 22 of this Complaint, Defendant Volkswagen USA's
17 Defeat Device Vehicles contained defeat devices. Volkswagen USA then advertised, marketed,
18 offered for sale, sold, offered for lease, leased, and distributed these vehicles to consumers, as
19 described in Paragraphs 28-455 of this Complaint.

20 59. As described in Paragraphs 225-247 of this Complaint, Defendant Porsche NA's
21 Defeat Device Vehicles contained defeat devices. Porsche NA then distributed these vehicles to
22 consumers, as described in Paragraph 27 of this Complaint.

23 60. Defendants' actions caused or are likely to cause substantial injury to consumers,
24 including that consumers unknowingly purchased or leased vehicles that, when driven on roads,
25 exceed legal emission standards, emit high levels of NOx and, as a result, have a substantially
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1 reduced value. Because of Defendants' actions, consumers purchased or leased substantially
2 different vehicles than the ones they thought they purchased and did not receive the benefit of
3 their bargain. Collectively, these consumers suffered billions of dollars in injury.

4 61. Consumers could not have reasonably avoided this substantial injury because they
5 could not reasonably have known the Defeat Device Vehicles contained defeat devices before
6 they purchased or leased the vehicles.

7 62. The substantial injury suffered by consumers is not outweighed by countervailing
8 benefits to consumers or competition. Because defeat devices are illegal, they produce no legally
9 cognizable benefit to consumers. Additionally, any alleged benefit the defeat devices delivered
10 to consumers is vastly outweighed by the billions in injury consumers suffered. Furthermore, the
11 use of a defeat device disadvantaged auto manufacturers that did not employ illegal software.

12 63. Therefore, Defendants' practices as described in Paragraphs 58-59 of this
13 Complaint constitute unfair acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C.
14 §§ 45(a) and 45(n).

15 **CONSUMER INJURY**

16 64. Consumers have suffered and will continue to suffer substantial injury as a result
17 of Defendants' violations of the FTC Act. In addition, Defendants have been unjustly enriched
18 as a result of their unlawful acts or practices. Absent injunctive relief by this Court, Defendants
19 are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

20 **THIS COURT'S POWER TO GRANT RELIEF**

21 65. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant
22 injunctive and such other relief as the Court may deem appropriate to halt and redress violations
23 of any provision of law enforced by the FTC. The Court, in the exercise of its equitable
24 jurisdiction, may award ancillary relief, including rescission or reformation of contracts,
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27
28

1 restitution, the refund of monies paid, and the disgorgement of ill-gotten monies, to prevent and
2 remedy any violation of any provision of law enforced by the FTC.

3 **PRAYER FOR RELIEF**

4 Wherefore, Plaintiff FTC, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b),
5 and the Court's own equitable powers, requests that the Court:

6 A. Enter a permanent injunction to prevent future violations of the FTC Act by
7 Defendant;

8 B. Award such additional relief as the Court finds necessary to redress injury to
9 consumers resulting from Defendants' violations of the FTC Act, including but not limited to,
10 rescission or reformation of contracts, restitution, the refund of monies paid, and the
11 disgorgement of ill-gotten monies;

12 C. Award Plaintiff the costs of bringing this action, as well as such other and
13 additional relief as the Court may determine to be just and proper.

14
15
16 Respectfully submitted,

17 DAVID C. SHONKA
18 Acting General Counsel

19 Dated: January 31, 2017

20 /s/ Jonathan Cohen
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